AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 83 Friday,

No. 189 September 28, 2018

Pages 48905–49264

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 83 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

Printed on recycled paper.

Contents

Federal Register

Vol. 83, No. 189

Friday, September 28, 2018

Agriculture Department
See Food Safety and Inspection Service
See Forest Service

Army Department
NOTICES
Intent to Grant Exclusive License:
U.S. Government-Owned Invention, 49074

Bureau of Consumer Financial Protection
NOTICES
Requests for Information:
Bureau Data Collections, 49072–49074

Bureau of Safety and Environmental Enforcement
RULES
Oil and Gas and Sulphur Operations on the Outer Continental Shelf:
Oil and Gas Production Safety Systems, 49216–49263

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49094–49095

Coast Guard
RULES
Regulated Navigation Areas:
Upper Mississippi River, Sabula Railroad Drawbridge, Mile Marker 535, Sabula, IA, 48954–48957
Special Local Regulations:
San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration, San Francisco, CA, 48953–48954
PROPOSED RULES
Safety Zones:
Annual Fireworks Displays within Sector Columbia River Captain of the Port Zone, 49028–49031
Penn's Landing, Delaware River, Philadelphia, PA; Fireworks Display, 49026–49028
Special Local Regulations:
Manasquan Inlet, Manasquan, NJ, 49024–49026

Commerce Department
See Industry and Security Bureau
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
See Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49062–49063

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 49070–49072

Comptroller of the Currency
PROPOSED RULES
Regulatory Capital Treatment for High Volatility Commercial Real Estate Exposures, 48990–49001
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49160–49175

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Repeal of DFARS Clause Additional Services, 49178–49179
Repeal of DFARS Clause Award Fee, 49180–49181
Repeal of DFARS Clause Indefinite Quantities—Fixed Charges, 49181–49182
Repeal of DFARS Clause Indefinite Quantities—No Fixed Charges, 49179–49180

Defense Department
See Army Department
See Defense Acquisition Regulations System
See Engineers Corps
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49074–49075

Drug Enforcement Administration
RULES
Schedules of Controlled Substances:
Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements, 48950–48953

Education Department
PROPOSED RULES
Proposed Priorities, Requirements, Definitions, and Performance Measures—Comprehensive Centers Program, 49031–49040

Energy Department
See Federal Energy Regulatory Commission

Engineers Corps
NOTICES
Environmental Impact Statements; Availability, etc.:
Chehalis River Basin Flood Damage Reduction Project Proposed by the Chehalis River Basin Flood Control Zone District, Lewis County, WA, 49075–49077
Final Missouri River Recovery Management Plan, 49077

Environmental Protection Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49089–49090
Environmental Impact Statements; Availability, etc.:
Weekly Receipts, 49089
Grant Funding Guidance:
CERCLA; State and Tribal Response Programs for FY2019, 49079–49088
Meetings:
National and Governmental Advisory Committees, 49090
Public Water System Supervision Program; Revisions:
Hawaii, 49091

Requests for Nominations:
Experts to Consider for ad hoc Participation on Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel, 49091–49092

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus SAS Airplanes, 48920–48924, 48930–48935
BAE Systems (Operations) Limited Airplanes, 48938–48940
Dassault Aviation Airplanes, 48924–48926
Embraer S.A. Airplanes, 48935–48938
Gulfstream Aerospace Corporation Airplanes, 48918–48920
The Boeing Company Airplanes, 48915–48917, 48927–48930
PROPOSED RULES
Airworthiness Directives:
Fokker Services B.V. Airplanes, 49020–49022
The Boeing Company Airplanes, 49017–49020
NOTICES
Intent of Waiver with Respect to Land:
Indianapolis International Airport, Indianapolis, IN, 49157–49158
Meetings:
Industry Meeting, 49159–49160
Petitions for Exemptions; Summaries:
Wing Aviation, LLC, 49158–49159
Submission Deadlines for Schedule Information:
Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Summer 2019 Scheduling Season, 49155–49157

Federal Bureau of Investigation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Records Modification Form, 49125–49126

Federal Communications Commission
RULES
Nonsubstantive, Editorial Revisions of Rules and Regulations to Correct Authority Citations, 48962–48964
PROPOSED RULES
Requests for Comments:
Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks within Winning Bid Areas, 49040–49046

Federal Deposit Insurance Corporation
PROPOSED RULES
Regulatory Capital Treatment for High Volatility Commercial Real Estate Exposures, 48990–49001
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49160–49175

Federal Emergency Management Agency
NOTICES
Flood Hazard Determinations, 49117–49119
Flood Hazard Determinations; Changes, 49115–49117
Major Disaster and Related Determinations:
Minnesota, 49118
Nebraska, 49115

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 49077–49079
Complaints:
Owensboro Municipal Utilities v. Louisville Gas and Electric Co. and Kentucky Utilities Co., 49077

Federal Motor Carrier Safety Administration
RULES
Military Licensing and State Commercial Driver's License Reciprocity, 48964–48976

Federal Reserve System
PROPOSED RULES
Regulatory Capital Treatment for High Volatility Commercial Real Estate Exposures, 48990–49001
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49092–49094, 49160–49175

Fish and Wildlife Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Subsistence Regulations and Associated Forms, 49121–49123

Food and Drug Administration
RULES
New Animal Drugs:
Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Changes of Sponsorship; Change of a Sponsor's Name, 48940–48950
Withdrawal of Approval of New Animal Drug Applications, 48950
PROPOSED RULES
Label Requirement for Food that has been Refused Admission into the United States; Withdrawal, 49022–49023
Use of Materials Derived from Cattle in Medical Products Intended for Use in Humans and Drugs Intended for Use in Ruminants; Reporting Information Regarding Falsification of Data; Withdrawal, 49023–49024
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49107–49108
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use, 49108–49109
Debarment Orders:
John D. McCoy, 49099–49101
Richard M. Fleming, 49095–49097
Food Labeling:
Use of the Names of Dairy Foods in the Labeling of Plant-Based Products, 49103–49107
Guidance:
The Special 510(k) Program, 49097–49099
Meetings:
Vaccines and Related Biological Products Advisory Committee, 49101–49102
New Drug Applications:
GlaxoSmithKline, LLC, et al.; Withdrawal of Approval of 24 Abbreviated New Drug Applications, 49102–49103

Food Safety and Inspection Service
NOTICES
Petition to Permit Waivers of Maximum Line Speeds:
Young Chicken Establishments Operating under the New Poultry Inspection System; Criteria for Consideration of Waiver Requests for Young Chicken Establishments to Operate at Line Speeds of up to 175 Birds Per Minute, 49048–49060

Forest Service
NOTICES
Boundary Establishment:
Black Butte National Wild and Scenic River, including Portions of Cold Creek, Mendocino National Forest, Mendocino County, CA, 49062
Environmental Impact Statements; Availability, etc.:
Chugach National Forest; AK; Proposed Amendment to the Chugach National Forest Land and Resource Management Plan, Applying Only to the Sterling Highway Milepost 45–60 Project, 49060–49062
Proposed East Smoky Panel Mine Project at Smoky Canyon Mine, Caribou County, ID, 49123–49124

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See Transportation Security Administration
See U.S. Citizenship and Immigration Services

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Procedures for Submitting Request for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum, 49064
Procedures for Submitting Requests for Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum, 49063

Interior Department
See Bureau of Safety and Environmental Enforcement
See Fish and Wildlife Service
See Land Management Bureau

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Steel Trailer Wheels from China, 49124–49125
Tapered Roller Bearings from China, 49125

Justice Department
See Drug Enforcement Administration
See Federal Bureau of Investigation

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
RULES
Minerals Management:
Adjustment of Cost Recovery Fees, 48957–48961
Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 49184–49214
NOTICES
Environmental Impact Statements; Availability, etc.:
Proposed East Smoky Panel Mine Project at Smoky Canyon Mine, Caribou County, ID, 49123–49124

National Aeronautics and Space Administration
NOTICES
Meetings:
Heliophysics Advisory Committee, 49130–49131

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 49131

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 49113–49114
National Cancer Institute, 49113
National Heart, Lung, and Blood Institute, 49111–49112
National Human Genome Research Institute, 49112
National Institute of Neurological Disorders and Stroke, 49111
National Institute on Aging, 49112
National Institute on Deafness and Other Communication Disorders, 49114–49115
Prospective Grant of an Exclusive Patent License:
Development and Commercialization of Cell Therapies for Cancer, 49109–49111
Senior Executive Service 2018 Performance Review Board, 49112

National Oceanic and Atmospheric Administration
RULES
Endangered and Threatened Species:
List the Chambered Nautilus as Threatened under the Endangered Species Act, 48976–48985
Fisheries of the Northeastern United States:
Northeast Skate Complex; Framework Adjustment 5 and 2018–2019 Specifications, 48985–48989
PROPOSED RULES
Atlantic Large Whale Take Reduction Plan Massachusetts Trap/Pot Restricted Area and the Great South Channel Trap/Pot Restricted Area, 49046–49047
NOTICES
Exempted Fishing Permit; Applications:
General Provisions for Domestic Fisheries, 49065–49066
Meetings:
South Atlantic Fishery Management Council, 49064–49067
Western Pacific Fishery Management Council, 49066

National Science Foundation
NOTICES
Permit Modifications Received under Antarctic Conservation Act, 49132
Permits Issued under the Antarctic Conservation Act, 49132

National Telecommunications and Information Administration

NOTICES
Meetings:
BroadbandUSA Webinar Series, 49067

Nuclear Regulatory Commission
RULES
Discontinuance of Certain Commission Regulatory Authority within the State; Wyoming, 48905–48908
NOTICES
Meetings:
Advisory Committee on Reactor Safeguards Subcommittee on Structural Analysis, 49138–49139
Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants:
LWR Edition; Standard Review Plan—Section Revision, 49132–49138
Standard Review Plan Section 2.5.3, Surface Deformation, 49139–49141

Occupational Safety and Health Administration
NOTICES
Grant of Expansion of Recognition and Modification to the Nationally Recognized Testing Laboratory Program's List of Appropriate Test Standards:
FM Approvals, LLC, 49126–49128
Nationally Recognized Testing Laboratories:
Underwriters Laboratories, Inc.; Grant of Expansion of Recognition and Modification to the Program's List of Appropriate Test Standards, 49128–49130

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fee Deficiency Submissions, 49069–49070
International Work Sharing, 49067–49069
Patent Reexamination and Supplemental Examinations, 49069
Post Patent Public Submissions, 49070

Postal Regulatory Commission
NOTICES
Public Inquiry on Service Performance Measurement Systems, 49141

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe Exchange, Inc., 49144–49145
New York Stock Exchange, LLC, 49143–49144
NYSE Arca, Inc., 49142–49143

Small Business Administration
RULES
Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns, 48908–48915
PROPOSED RULES
Express Loan Programs; Affiliation Standards, 49001–49017
NOTICES
Disaster Declarations:
Florida; Declaration of Economic Injury, Amendment 1, 49145
Interest Rates, 49145

State Department
NOTICES
Determinations under Department of State, Foreign Operations, and Related Programs Appropriations Act:
Government of Egypt, 49145–49146
Waiver of Requirement, 49146
Meetings:
International Telecommunication Advisory Committee; Preparations for Upcoming International Telecommunications Meetings, 49146

Surface Transportation Board
NOTICES
Acquisition Exemptions:
San Pedro Valley Holdings, LLC; San Pedro and Southwestern Railroad Co. in Cochise County, AZ, 49152–49153
Acquisitions of Control:
National Express, LLC; Wise Coaches, Inc., 49146–49148
Adverse Abandonments:
New York State Department of Environmental Conservation; Saratoga and North Creek Railway in Town of Johnsburg, NY, 49151–49152
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rail Carrier Financial Reports, 49149–49151
Continuances in Control Exemptions:
Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.; San Pedro Valley Holdings, LLC and San Pedro Valley Railroad, LLC in Cochise County, AZ, 49151
Operation Exemptions:
San Pedro Valley Railroad, LLC; San Pedro Valley Holdings, LLC in Cochise County, AZ, 49148–49149

Trade Representative, Office of United States
NOTICES
China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 49153–49155

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration

Transportation Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery, 49119–49120

Treasury Department
See Comptroller of the Currency

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Request for Fee Waiver; Exemptions, 49120–49121

Separate Parts In This Issue

Part II
Defense Department, Defense Acquisition Regulations System, 49178–49182

Part III
Interior Department, Land Management Bureau, 49184–49214

Part IV
Interior Department, Bureau of Safety and Environmental Enforcement, 49216–49263

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
150 48905

12 CFR
Proposed Rules:
3 48990
217 48990
324 48990

13 CFR
125 48908
Proposed Rules:
103 49001
120 49001
121 49001

14 CFR
39 (9 documents) 48915, 48918, 48920, 48924, 48927, 48930, 48932, 48935, 48938
Proposed Rules:
39 (2 documents) 49017, 49020

21 CFR
510 48940
520 (2 documents) 48940, 48950
522 (2 documents) 48940, 48950
524 (2 documents) 48940, 48950
529 48940
556 48940
558 (2 documents) 48940, 48950
1308 48950
1312 48950
Proposed Rules:
Ch. I 49023
1 49022

30 CFR
250 49216

33 CFR
100 48953
165 48954
Proposed Rules:
100 49024
165 (2 documents) 49026, 49028

34 CFR
Proposed Rules:
Ch. II 49031

43 CFR
3000 48957
3160 49184
3170 49184

47 CFR
0 48962
1 48962
4 48962
5 48962
12 48962
13 48962
17 48962
42 48962
43 48962
52 48962
53 48962
61 48962
63 48962
64 48962
73 48962
78 48962
80 48962
90 48962
97 48962
Proposed Rules:
54 49040

48 CFR
216 49180
247 (3 documents) 49178, 49179, 49181
252 (4 documents) 49178, 49179, 49180, 49181

49 CFR
383 48964
384 48964

50 CFR
223 48976
648 48985
Proposed Rules:
229 49046

Rules and Regulations

Federal Register
Vol. 83, No. 189
Friday, September 28, 2018

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

[NRC–2018–0104]

State of Wyoming: Discontinuance of Certain Commission Regulatory Authority Within the State; Notice of Agreement Between the NRC and the State of Wyoming

AGENCY: Nuclear Regulatory Commission.

ACTION: Final State agreement.

SUMMARY: This document is announcing that on September 25, 2018, Kristine L. Svinicki, Chairman of the U.S. Nuclear Regulatory Commission (NRC or Commission), and Governor Matthew H. Mead of the State of Wyoming, signed an Agreement as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (the Act). Under the Agreement the Commission discontinues its regulatory authority, and the State of Wyoming assumes regulatory authority over the management and disposal of byproduct material as defined in Section 11e.(2) of the Act and a subcategory of source material or ores involved in extraction or concentration of uranium or thorium milling in the State. As of the effective date of the Agreement, a person in Wyoming possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** (FR) and are codified in the Commission's regulations. The Agreement is published here as required by Section 274e. of the Act.

DATES: The effective date of the Agreement is September 30, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0104 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104. Address questions about dockets in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search''. For problems with ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession numbers for the request for an Agreement by the Governor of Wyoming, including all information and documentation submitted in support of the request, and the NRC staff assessment are: ML16300A294, ML17319A921, ML18094B074, and ML18192B111 (includes final staff assessment).
- *NRC's Public Document Room (PDR):* The public may examine and purchase copies of public documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Stephen Poy, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301–415–7135; e-mail: *Stephen.Poy@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC published the proposed Agreement in the **Federal Register** for comment once each week for 4 consecutive weeks on June 26, 2018 (83 FR 29828), July 3, 2018 (83 FR 31174), July 10, 2018 (83 FR 31981), and July 17, 2018 (83 FR 33257), as required by the Act. The comment period ended on July 26, 2018. The Commission received 11 comment letters and responses—two supporting the Agreement, three opposing the Agreement, and the remaining not stating an opinion or providing statements related to the proposed Agreement. The comments did not alter the NRC staff's finding that the Wyoming Agreement State program is adequate to protect public health and safety and compatible with the NRC's program. The Wyoming Agreement is consistent with Commission policy and thus meets the criteria for an Agreement with the Commission.

After considering the request for an Agreement by the Governor of Wyoming, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Wyoming Department of Environmental Quality, the NRC staff completed an assessment of the Wyoming program. The agency made a copy of the staff assessment available in the NRC's Public Document Room (PDR) and electronically on the NRC's Web site. Based on the staff's assessment, the Commission determined on September 10, 2018, that the Wyoming program for control of radiation hazards is adequate to protect public health and safety and compatible with the Commission's program. This Agreement is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 25th day of September, 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT

AN AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE STATE OF WYOMING FOR THE DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as ''the Commission'') is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq. (hereinafter referred to as ''the Act''), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with

respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

WHEREAS, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35–11–2001 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (hereinafter referred to as ''the State'') has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on September 10, 2018, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State as follows:

ARTICLE I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act; and,

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as ''source material associated with milling activities'').

ARTICLE II

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;
2. Byproduct material as defined in Section 11e.(3) of the Act;
3. Byproduct material as defined in Section 11e.(4) of the Act;
4. Source material except for source material as defined in Article I.B. of this Agreement;
5. Special nuclear material;
6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;
7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;
11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;
12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;
13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,
14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license (License No. SUA–667; Docket No. 040–04492).

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.
2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

d. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

e. The authority to require, in the case of a license for any activity that produces such byproduct material

(which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

f. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

g. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

ARTICLE III

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

ARTICLE IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

ARTICLE V

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

ARTICLE VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes. The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

ARTICLE VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

ARTICLE VIII

A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35–11–2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.

B. The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

ARTICLE IX

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such surety or other financial requirements must be sufficient to

ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

ARTICLE X

This Agreement shall become effective on September 30, 2018, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Cheyenne, Wyoming, in triplicate, this 25th day of September, 2018.

FOR THE UNITED STATES

NUCLEAR REGULATORY COMMISSION.

/RA/

Kristine L. Svinicki, Chairman

FOR THE STATE OF WYOMING.

/RA/

Matthew H. Mead, Governor

[FR Doc. 2018–21229 Filed 9–27–18; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AG85

Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations to implement provisions of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017). The NDAA 2017 placed the responsibility for issuing regulations relating to ownership and control for the Department of Veterans Affairs verification of Veteran-Owned (VO) and Service-Disabled Veteran-Owned (SDVO) Small Business Concerns (SBCs) with the SBA. Pursuant to NDAA 2017, SBA issues one definition of ownership and control for these concerns, which applies to the Department of Veterans Affairs in its verification and Vets First Contracting Program procurements, and all other government acquisitions which require self-certification. The legislation also provided that in certain circumstances a firm can qualify as VO or SDVO when there is a surviving spouse or an employee stock ownership plan (ESOP).

DATES: This rule is effective October 1, 2018.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 205–7337; *brenda.fernandez@sba.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

The Vets First Contracting Program within the Department of Veterans Affairs (VA) was created under the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. 109–461), 38 U.S.C. 501, 513. This contracting program was created for Veteran-Owned Small Businesses and expanded the Service-Disabled Veteran-Owned contracting program for VA procurements. Approved firms are eligible to participate in Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business (SDVOSB) set-asides issued by VA. More information regarding the Vets First Contracting Program can be found on the Department of Veterans Affairs website at *https://www.va.gov/osdbu/faqs/109461.asp*.

This rule complies with the directive in the National Defense Authorization Act of 2017 (Pub. L. 114–328), section 1832, to standardize definitions for VOSBs and SDVOSBs between VA and SBA. As required by section 1832, the Secretary of Veterans Affairs will use SBA's regulations to determine ownership and control of VOSBs and SDVOSBs. The Secretary would continue to determine whether individuals are veterans or service-disabled veterans and would be responsible for verification of applicant firms. Challenges to the status of a VOSB or SDVOSB based upon issues of ownership or control would be decided by the administrative judges at the SBA's Office of Hearings and Appeals (OHA).

The VA proposed its companion rule, VA Veteran-Owned Small Business (VOSB) Verification Guidelines (RIN 2900–AP97) on January 10, 2018 (83 FR 1203)(Docket Number: VA–2018–VACO–0004). Their proposed rule sought to remove all references related to ownership and control and to add and clarify certain terms and references that are currently part of the verification process. The NDAA also provides that in certain circumstances a firm can qualify as VOSB or Service-Disabled Veteran Owned Small Business (SDVOSB) when there is a surviving spouse or an employee stock ownership plan (ESOP). The final VA rule was issued on September 24, 2018 and is effective October 1, 2018. 83 FR 48221.

Similarly, SBA has finalized another related rule on March 30, 2018. SBA Final Rule: Rules of Practice for Protests and Appeals Regarding Eligibility for Inclusion in the U.S. Department of Veterans Affairs Center for Verification and Evaluation Database (83 FR 13626; RIN: 3245–AG87; Docket Number: SBA–2017–0007). This rule, also effective October 1, 2018, amends the rules of practice of SBA's Office of Hearings and Appeals (OHA) to implement procedures for protests of eligibility for inclusion in the Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) database, and procedures for appeals of denials and cancellations of inclusion in the CVE database. OHA added two subparts to 13 CFR part 134: one for protests; the other for appeals. These amendments are issued in accordance with sections 1832 and 1833 of the National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017).

SBA proposed this rule on January 29, 2018 (83 FR 4005; Docket Number: SBA–2018–0001). Sixty-eight comments were received, not all of which were germane to the rulemaking.

SBA received several comments related to this rulemaking as a whole. Two comments were supportive of the rule because the rule would align SBA's and VA's regulations, and would help to define elements previously addressed only outside the regulations through OHA decisions or case-by-case determinations. Six commenters opposed the proposed rule for addressing issues beyond just standardizing SBA's and VA's definitions. As explained in the section-by-section analysis, this rule codifies standards and practices that SBA has applied consistently through determinations and OHA decisions. SBA believes it benefits VOSB and SDVOSBs to have these standards and practices reflected in the regulations.

One commenter stated that SBA and VA should jointly issue regulations. SBA has consulted with VA in order to properly understand VA's positions and implement the statutory requirements in a way that is consistent with both SBA's and VA's interpretations. SBA and VA will each issue regulations effective on October 1, 2018, which will have the effect of creating a single ownership and control rule for both agencies.

Section-by-Section Analysis, Comments, and SBA's Responses

Section 125.11

In response to the NDAA 2017 changes, SBA proposed to amend the definitions in § 125.11 by incorporating language from VA's regulations and also from SBA's 8(a) Business Development (BD) program regulations. 13 CFR part 124, subpart A. SBA is defining a surviving spouse and the requirements for a surviving spouse-owned SDVO SBC to maintain program eligibility. Further, SBA is adding definitions for Daily Business Operations, Negative Control, Participant, and Unconditional Ownership. The added definitions are being adopted from SBA's 8(a) BD regulations found in part 124. SBA received two comments on the proposed definition of ''Daily business operations.'' One comment advised that ''setting of the strategic direction of the firm'' is better categorized as long-term operations. SBA agrees and has deleted the reference to ''setting of the strategic direction of the firm'' from the definition of ''daily business operations.'' A second comment objected to the inclusion of executive oversight, company policy, and strategic direction. SBA's deletion of strategic direction addresses this comment because, although the definition includes executive supervision and policy implementation, the definition does not address oversight or the creation of policy.

SBA received one comment on the ''unconditional ownership'' definition stating that it should be subject to the same conditions as extraordinary circumstances. SBA does not see a reason to conflate ownership and control requirements, and therefore is not changing the ''unconditional ownership'' definition.

SBA is adding a definition for Employee Stock Ownership Plan (ESOP). This definition is adopted from section 1832(a)(6). SBA is also replacing the definitions of permanent caregiver, service-disabled veteran, and surviving spouse. SBA is adding a new definition for service-disabled veteran with a permanent and severe disability. These definitions are being updated in consultation with VA in an effort to ensure consistency across programs at both Agencies. SBA is also adding a definition for small business concerns. Concerns will need to meet all the requirements of part 121, including § 121.105(a)(1), which requires that the firm be organized for profit, ''with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' This definition will address how to generally determine the size of a concern. VO and SDVO SBCs will still be required to meet size standards corresponding to the NAICS code assigned to each contract pursuant to §§ 125.14 and 125.15. SBA did not receive any comments on these definitions.

SBA proposed to add a definition for ''extraordinary circumstances'' under which a service disabled veteran owner would not have full control over a firm's decision-making process, but would not render the firm ineligible as a firm owned and controlled by one or more service disabled veterans. This definition will be used to identify discrete circumstances that SBA views as rare. The new definition will be used to allow minority equity holders to have negative control over these enumerated instances. SBA listed five limited circumstances in which a service-disabled veteran owner will not have full control over the decision making process. These five circumstances are exclusive, and SBA will not recognize any other facts or circumstances that would allow negative control by individuals that are not service-disabled. SBA received four comments on the definition for ''extraordinary circumstances.'' One comment was supportive, and three comments suggested that SBA either eliminate the list, or add more protection for non-service-disabled-veteran owners. One commenter cited two SBA Office and Hearing Appeals size decisions to argue that the new rule is more restrictive than SBA's affiliation regulations. Upon reviewing those two cases, *Size Appeal of EA Engineering, Science and Technology, Inc.,* SBA No. SIZ–4973 (2008), and *Size Appeal of Carntribe-Clement 8AJV #1, LLC,* SBA No. SIZ–5357 (2012), SBA does not agree that they govern the matter of control of an SDVO SBC by a service-disabled veteran. In *Firewatch Contracting of Florida, LLC,* SBA No. VET–137 (2008), OHA specifically stated that *EA Engineering* does not interpret the SDVO SBC regulations. The ''extraordinary circumstances'' definition already includes both of the powers addressed in *Carntribe-Clement,* adding a new stakeholder and dissolution. Other cases involving the SDVO SBC regulations, including *Apex Ventures, LLC,* VET–219 (2011), show that SBA's current regulation requiring that the service-disabled veteran control ''all'' decisions is stricter than the proposed definition. SBA believes that current definition strikes a clear balance in favor of ensuring that SDVO SBCs are actually controlled by the service-disabled veteran. SBA has decided not to change the definition of ''extraordinary circumstances.''

Section 125.12

SBA proposed to amend § 125.12(b), which pertains to the requirement for ownership of a partnership. SBA's prior regulation required service-disabled veterans to own at least 51% of each type of partnership interest. Therefore, if a partnership had general partners and limited partners it was required that the service disabled veteran be both a general and limited partner. SBA is changing the requirement so that service-disabled veterans will need to own at least 51% of the aggregate voting interest in the partnership. SBA received one comment on this change that stated that the proposed rule was inconsistent with the treatment of corporations. SBA does not find that the treatment of partnership and corporations must be identical, and therefore SBA is adopting § 125.12(b) as proposed.

SBA proposed to add coverage to § 125.12(d) to address statutory language with regard to public companies and ownership. This language does not include any equity held by an ESOP when determining ownership for a publicly owned business. SBA did not receive any comments on this change.

SBA proposed to add a new § 125.12(g) to provide clarity with regard to requirements for dividends and distributions. In general, one's right to receive benefits, compensation, and the ultimate value of one's equity should be consistent with the purported amount of equity. For example, it is not consistent with SBA's regulations for a firm to state that a service-disabled veteran owns 60 percent of the equity but records show that he or she is entitled only to a smaller amount of the firm's profit, or that the residual value of that equity is less than 60 percent if the firm is sold. SBA received two comments on § 125.12(g). One commenter argued that this new rule would be inconsistent with SBA's regulations for joint ventures which require profit distribution based on workshare. SBA does not find that the SDVO SBC regulation needs to be consistent with the joint venture regulations, which address an entirely different situation. A joint venture is not itself an SDVO SBC and is therefore treated differently. SBA does not see a benefit of treating joint ventures and

SDVO SBCs as if they were the same. One commenter indicated that requiring that the service-disabled veteran be entitled to the full value of the veteran's stated equity would prevent the veteran from being able to secure commercial loans. As noted from the proposed rule, the proposed language is similar to already existing 8(a) BD requirements. Through experience with that program, SBA has not witnessed the adverse effects predicted by this comment. The commenter presented no evidence to support the prediction, so SBA is adopting the proposed rule.

Under the new § 125.12(h), ownership decisions will be decided without regard to community property laws. This provision is similar to SBA's ownership regulations for women owned businesses. *See* 13 CFR 127.201. SBA did not receive any comments on this change.

The new § 125.12(i) allows the transfer of ownership in a SDVO SBC from a service-disabled veteran to his or her spouse upon the death of the service-disabled veteran without adversely affecting the firm's status as a SDVO SBC. SBA received two comments requesting that SBA extend survivor benefits beyond 100% service-disabled veterans. This allowance is taken from statute and can be seen in the definition of *Surviving spouse* in the proposed changes to § 125.11. As noted in the definition, the statutory provision can be found at 38 U.S.C. 101(3). SBA does not believe it has the authority to modify the definition and its application in the manner requested by the commenters. As such SBA is retaining the proposed language as is.

Section 125.13

SBA proposed to add several new paragraphs to § 125.13 to incorporate provisions from SBA's 8(a) BD program and VA's former ownership and control regulations. SBA will continue to rely on the 8(a) program rules in part 124 for guidance in interpreting these control requirements.

SBA proposed to add language to describe how to determine if a service-disabled veteran controls the Board of Directors in § 125.13(e). This language is adopted from SBA's 8(a) BD regulations and is added to provide more clarity. In § 125.13(f), SBA added language that will require firms to provide notification of supermajority voting requirements. This regulation will simplify the procedures for reviewing eligibility criteria related to super majority requirements. SBA did not receive any comments on these changes.

SBA proposed that § 125.13(g), (h), (i), and (j) would adopt policies and language from SBA's 8(a) BD program and VA's regulations. These provisions provide guidance on when SBA may find that a non-service-disabled veteran controls the firm. These regulations add more clarity and detail to specific issues such as quorum requirements and loan arrangements with non-service-disabled veterans. SBA received several comments on § 125.13(i). One comment recommended that SBA present the requirement as a rebuttable presumption. SBA agrees that language about a rebuttable presumption adds clarity and consistency. As such, SBA has adopted the suggestion.

SBA received three comments on the provision in § 125.13(i)(1) that a non-service-disabled veteran owner or manager not be a former employer or principal of a former employer. Specifically, the commenters mentioned that as written the requirement is not easily understood. One commenter recommended that SBA add ''current'' employer to the requirement because being a current employer is even more likely to lead to issues than being a former employer. SBA agrees and is adding ''current.'' SBA also agrees that that the regulation could be clearer, and as such SBA has changed the language based on the suggestions in the comments. SBA does not believe that these changes affect the intent of the requirement.

SBA received three comments on the provision in § 125.13(i)(2) that a non-service-disabled veteran cannot receive higher compensation than the highest officer. One comment requested that SBA remove the requirement in its entirety. SBA believes this rule is necessary and has enough options for high payment of sought-after professionals to not hinder business progress. VA's regulations had a similar regulation, and SBA's 8(a) BD program currently includes this regulation. Two commenters requested changes to the language without challenging the intent of the regulation. One of these commenters requested that SBA adopt VA's position that a non-service-disabled veteran that is the highest-compensated employee should not be an officer or a manager. The proposed language mirrors language from SBA's 8(a) BD program. SBA believes that this language has a track record of providing clarity to participants about compensation expectations, while also allowing the flexibility for firms to make business decisions that benefit the concern without harming the service-disabled veteran.

SBA received two comments on § 125.13(i)(3), relating to when an SDVO SBC is co-located with another firm. One comment suggested a revision and another suggested deletion. SBA believes the co-location regulation is necessary to address a common situation where a service-disabled veteran is not in control of the concern because of reliance on the co-located firm. Like the other elements in the control regulation, this co-location element is a rebuttable presumption, so it is still possible to find control by the service-disabled veteran if the SDVO SBC presents sufficient evidence to rebut the presumption. SBA changed the last word in the proposed regulation to clarify that the regulation will apply when the co-located firm or individual has an equity interest in the concern seeking SDVO SBC status.

SBA proposed to add rebuttable presumptions to § 125.13(k) and (l). Paragraph (k) adds a rebuttable presumption that a person not working for a firm regularly during normal working hours does not control the firm. As a rebuttable presumption, this is not a full-time devotion requirement and can be rebutted by providing evidence of control. SBA received four comments on this proposed rule. All commenters stated that this regulation was a new hindrance placed on SDVO SBCs and should not be included. The rule, however, reflects a control element that SBA and VA are already applying to current SDVO SBCs. This has always been a factor that SBA will consider, but now it is clearly rebuttable by providing evidence of control. If a service-disabled veteran is not working during the firm's normal hours or has outside employment, SBA may presume that another individual is assuming the management role not being filled by the service-disabled veteran. This recognizes the reality of day-to-day control. SBA's regulations have always required that the day-to-day management and administration of SDVO SBC business operations must be conducted by one or more service-disabled veterans. The rebuttable presumption in paragraph (k) provides clarity on how SBA has always viewed the ''day-to-day management'' requirement and such is not a new requirement. Day-to-day management typically requires that an individual manage on a daily basis. In this case, if a firm does not require, and does not have an individual providing, management on a daily basis, the firm may provide that evidence to SBA to rebut the presumption.

Similarly, SBA proposed § 125.13(l) to add a rebuttable presumption

regarding place of work. SBA received four comments on this proposed rule. All commenters stated that this regulation was a new hindrance placed on SDVO SBCs and should not be included. As with § 125.13(k), this is not a new policy by SBA. This is how SBA has been treating this issue already, and how SBA would treat this issue even if this paragraph was not included. A case from OHA supports SBA's position. See *In the Matter of First Capital Interiors, Inc.,* VET–2006–10–25–07 (2006). That decision makes clear that an inquiry into how an individual manages a firm remotely is reasonable, and that it is the SDVO SBC's responsibility to demonstrate that a service-disabled veteran actually controls the firm. With this regulation, SBA is attempting to address the situation where no service-disabled veteran owner lives or works near the firm's headquarters or worksites. SBA will presume that this indicates a lack of control because there is work at the headquarters and jobsites being managed and directed by individuals that are not service-disabled veterans. All of the comments focused on the ability to work remotely in today's current environment, but this does not address SBA's main concern. As noted in SBA's proposed regulation, the main issue in these place of work instances is not remote management, but over-delegation of authority to non-service-disabled-veteran individuals who work at the office and who are at the work sites, namely, when there is evidence that individuals located at the headquarters and onsite are providing day-to-day management that should be provided by a service-disabled veteran. SBA's regulations require control over day-to-day operations, but remote observation and over-delegation do not meet this requirement. As noted in the proposed rule, this is a rebuttable presumption in which the firm may present evidence that the service-disabled has not abdicated authority to others to run the firm. Therefore, SBA is adopting the rule as proposed.

SBA is adopting § 125.13(m) and (n) as proposed. SBA did not receive comments on either subsection. The new § 125.13(m) is an exception to the control requirements in ''extraordinary circumstances.'' As noted above, SBA has defined extraordinary circumstances to include a limited and exhaustive list of five circumstances. The rule will allow an exception to the general requirement that SDVs control long term decision making. The new § 125.13(n) is an exception to the control requirements when an individual in the reserves is recalled to active duty. SBA and VA do not think a firm owned by a service-disabled veteran should lose its status due to the necessary military commitments of its owner when serving the nation.

SBA had proposed to make technical changes to §§ 125.22 and 125.23. These technical changes along with several others have already been implemented pursuant to other rulemaking. 83 FR 13849. As such, SBA has removed the proposed changes from this final rule.

Justification for the October 1, 2018 Effective Date

The Administrative Procedure Act (APA) requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the APA provision delaying the effective date of a rule for 30 days after publication is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth below, SBA finds that good cause exists to make this final rule become effective on October 1, 2018, less than 30 days after it is published in the **Federal Register**.

As noted above, SBA and the VA have been working together to jointly implement the provisions of NDAA 2017. In doing so, SBA and the VA believe a single date on which all of the changes go into effect is the most effective path for implementation. SBA and the VA consider October 1, 2018 to be the best date for implementation of new unified rules for the programs. October 1, 2018 is the start of the new fiscal year, and is therefore the best date for separation of contract actions between different sets of regulations. Having contracts actions applying different regulations in the same fiscal year can often lead to confusion among contracting officials, and program participants. Procurements conducted in fiscal year 2018 will generally follow the old rules, while all new procurements in fiscal year 2019 will follow the new jointly developed regulations which SBA believes will lead to less confusion.

In addition to the joint effort in implementing these provisions of NDAA 2017, SBA has in a parallel rule making process implemented Sections 1932 and 1833 of NDAA 2017. These sections dealt with the transition of certain protest and appeal functions from the VA to SBA's Office of Hearing and Appeals. The final rule implementing those sections also has an implementation date of October 1, 2018. 83 FR 13626.

SBA and VA believe that a uniform transition combining the programs ownership and control requirements is extremely important. As such, SBA believes that an earlier effective date that aligns with the new fiscal year for contracting, and with the other changes implementing NDAA 2017 is the best course of action.

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

Executive Order 12866

OMB has determined that this rule does not constitute a ''significant regulatory action'' under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act, 5 U.S.C. 800. This rule amends the rules concerning ownership and control of VO and SDVO SBCs. As such, the rule has no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA or VA. Therefore, the rule is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. In addition, this rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations of such recipients, nor raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is part of a joint effort by the VA and SBA to reduce the regulatory burden on the veteran business community. This rule consolidates ownership and control requirements in one regulation thus eliminating duplicate functions. Prior to the enactment of this regulation business owners had the burden of complying with both regulations. This regulation will eliminate that burden. The single rule helps streamline the verification and certification processes which will save business owners time and money. This will also lead to less confusion.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil

Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have Federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment.

Executive Order 13771

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Paperwork Reduction Act

The SBA has determined that this rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. However, this rule does include an information collection for the VA and the OMB approval number for this collection is 2900–0675.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule merges SBA and VA regulations concerning ownership and control of VO and SDVO SBCs as directed by Congress. The regulation is not attempting to create new regulation, but to streamline two already existing regulations into a single regulatory framework. In SBA's determination, this rule will not have a significant economic impact on any small business.

There are approximately 21,000 firms registered as SDVO SBCs in the System for Award Management (SAM) and approximately 13,000 firms that have been certified by the VA. To a large extent SBA's and the VA's ownership and control rules were substantially similar in terms of the regulatory language, and in many instances identical. Thus, the vast majority of these firms will not be impacted by this rule. For example, this rule will not impact firms that are 100% owned and control by a service-disabled veteran. To the extent there are differences in SBA's and the VA's ownership and control rules, this rule will reduce cost and positively impact all SDVO firms, because there will be one set of criteria to measure service-disabled-veteran ownership and control throughout the Federal government. Further, SBA's current rules do not ignore ESOPs when determining ownership, which means firms that are majority owned by ESOPs are not eligible for SDVO set-asides or sole source awards. We have no data on the number of firms that this rule will be impact, but the number is very small. After consulting with industry representatives, many firms owned by ESOPs are entirely owned by the ESOP, especially those that operate in industries with employee based size standards. Those firms will still not qualify if this rule is finalized because there is still a 51% service-disabled-veteran ownership requirement of the remaining ownership interest, not including ESOPs. However, some firms that intend to institute an ESOP may do so in way that allows the firm to qualify under this rule. With respect to surviving spouse, SBA's current rules do not recognize ownership or control by a surviving spouse. Although the VA does allow firms owned and controlled by surviving spouses to qualify under its certification program, the number of firms that qualify under the exception is extremely small. To the extent firms qualify under the surviving spouse exception the benefit will be positive, not negative. Firms that were previously not eligible to continue as SDVO firms will be able to continue for a period of time.

Therefore, the Administrator of SBA determines, under 5 U.S.C. 605(b), that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 125 as follows:

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 1. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634(b)(6), 637, 644, 657(f), 657q, and 657s; 38 U.S.C. 501 and 8127.

■ 2. Revise § 125.11 to read as follows:

§ 125.11 What definitions are important in the Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) Program?

Contracting officer has the meaning given such term in section 27(f)(5) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)(5)).

Daily business operations include, but are not limited to, the marketing, production, sales, and administrative functions of the firm, as well as the supervision of the executive team, and the implementation of policies.

ESOP has the meaning given the term ''employee stock ownership plan'' in section 4975(e)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)).

Extraordinary circumstances, for purposes of this part, are only the following:

(1) Adding a new equity stakeholder;
(2) Dissolution of the company;
(3) Sale of the company;
(4) The merger of the company; and
(5) Company declaring bankruptcy.

Negative control has the same meaning as that set forth in § 121.103(a)(3) of this chapter.

Participant means a veteran-owned small business concern that has verified status in the Vendor Information Pages database, available at *https://www.vip.vetbiz.gov/.*

Permanent caregiver, for purposes of this part, is the spouse, or an individual, 18 years of age or older, who is legally designated, in writing, to undertake responsibility for managing the well-being of the service-disabled veteran with a permanent and severe disability, as determined by Department of Veterans Affairs' Veterans Benefits Administration, to include housing, health and safety. A permanent caregiver may, but does not need to, reside in the same household as the service-disabled veteran with a permanent and severe disability. In the case of a service-disabled veteran with a permanent and severe disability lacking legal capacity, the permanent caregiver shall be a parent, guardian, or person having legal custody. There may be no more than one permanent caregiver per service-disabled veteran with a permanent and severe disability.

(1) A permanent caregiver may be appointed, in a number of ways, including:

(i) By a court of competent jurisdiction;

(ii) By the Department of Veterans Affairs, National Caregiver Support

Program, as the Primary Family Caregiver of a Veteran participating in the Program of Comprehensive Assistance for Family Caregivers (this designation is subject to the Veteran and the caregiver meeting other specific criteria as established by law and the Secretary and may be revoked if the eligibility criteria do not continue to be met); or

(iii) By a legal designation.

(2) Any appointment of a permanent caregiver must in all cases be accompanied by a written determination from the Department of Veterans Affairs that the veteran has a permanent and total service-connected disability as set forth in 38 CFR 3.340 for purposes of receiving disability compensation or a disability pension. The appointment must also delineate why the permanent caregiver is given the appointment, must include the consent of the veteran to the appointment and how the appointment would contribute to managing the veteran's well-being.

Service-connected has the meaning given that term in 38 U.S.C. 101(16).

Service-disabled veteran is a veteran who possesses either a valid disability rating letter issued by the Department of Veterans Affairs, establishing a service-connected rating between 0 and 100 percent, or a valid disability determination from the Department of Defense or is registered in the Beneficiary Identification and Records Locator Subsystem maintained by Department of Veterans Affairs' Veterans Benefits Administration as a service-disabled veteran. Reservists or members of the National Guard disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify.

Service-disabled veteran with a permanent and severe disability means a veteran with a service-connected disability that has been determined by the Department of Veterans Affairs, in writing, to have a permanent and total service-connected disability as set forth in 38 CFR 3.340 for purposes of receiving disability compensation or a disability pension.

Small business concern means a concern that, with its affiliates, meets the size standard corresponding to the NAICS code for its primary industry, pursuant to part 121 of this chapter.

Small business concern owned and controlled by service-disabled veterans (also known as a Service-Disabled Veteran-Owned SBC) means any of the following:

(1) A small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran;

(2) A small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or

(ii) In the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

Surviving spouse has the meaning given the term in 38 U.S.C. 101(3).

Unconditional ownership means ownership that is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death of incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

Veteran has the meaning given the term in 38 U.S.C. 101(2). A Reservist or member of the National Guard called to Federal active duty or disabled from a disease or injury incurred or aggravated in line of duty or while in training status also qualify as a veteran.

Veteran owned small business concern means a small business concern:

(1) Not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans. All of the provisions of subpart B of this part apply for purposes of determining ownership and control.

■ 3. Amend § 125.12 by:

■ a. Revising the introductory text;

■ b. Revising the first sentence in paragraph (b);

■ c. Adding a sentence at the end of paragraph (d); and

■ d. Adding paragraphs (g) through (i).

The revisions and additions read as follows:

§ 125.12 Who does SBA consider to own an SDVO SBC?

Generally, a concern must be at least 51% unconditionally and directly owned by one or more service-disabled veterans. More specifically:

* * * * *

(b) * * * In the case of a concern which is a partnership, at least 51% of aggregate voting interest must be unconditionally owned by one or more service-disabled veterans. * * *

* * * * *

(d) * * * In the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) must be unconditionally owned by one or more veterans.

* * * * *

(g) *Dividends and distributions.* One or more service-disabled veterans must be entitled to receive:

(1) At least 51 percent of the annual distribution of profits paid to the owners of a corporation, partnership, or limited liability company concern;

(2) 100 percent of the value of each share of stock owned by them in the event that the stock or member interest is sold; and

(3) At least 51 percent of the retained earnings of the concern and 100 percent of the unencumbered value of each share of stock or member interest owned in the event of dissolution of the corporation, partnership, or limited liability company.

(4) An eligible individual's ability to share in the profits of the concern must be commensurate with the extent of his/her ownership interest in that concern.

(h) *Community property.* Ownership will be determined without regard to community property laws.

(i) *Surviving spouse.* (1) A small business concern owned and controlled by one or more service-disabled veterans immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, will continue to qualify as a small business concern owned and controlled by service-disabled veterans during the time period if:

(i) The surviving spouse of the deceased veteran acquires such

veteran's ownership interest in such concern;

(ii) Such veteran had a service-connected disability (as defined in 38 U.S.C. 101(16)) rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such veteran died as a result of a service-connected disability; and

(iii) For a participant, immediately prior to the death of such veteran, and during the period described in paragraph (i)(2) of this section, the small business concern is included in the database described in 38 U.S.C. 8127(f).

(2) The time period described in paragraph (i)(1)(iii) of this section is the time period beginning on the date of the veteran's death and ending on the earlier of—

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(iii) The date that is 10 years after the date of the death of the veteran.

■ 4. Amend § 125.13 by revising paragraph (e) and adding paragraphs (f) through (n) to read as follows:

§ 125.13 Who does SBA consider to control an SDVO SBC?

* * * * *

(e) *Control over a corporation.* One or more service-disabled veterans (or in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran) must control the Board of Directors of the concern.

(1) SBA will deem service-disabled veteran individuals to control the Board of Directors where:

(i) A single service-disabled veteran individual owns 100% of all voting stock of an applicant or concern;

(ii) A single service-disabled veteran individual owns at least 51% of all voting stock of an applicant or concern, the individual is on the Board of Directors and no super majority voting requirements exist for shareholders to approve corporation actions. Where super majority voting requirements are provided for in the concern's articles of incorporation, its by-laws, or by state law, the service-disabled veteran individual must own at least the percent of the voting stock needed to overcome any such super majority voting requirements; or

(iii) More than one service-disabled veteran shareholder seeks to qualify the concern (*i.e.,* no one individual owns 51%), each such individual is on the Board of Directors, together they own at least 51% of all voting stock of the concern, no super majority voting requirements exist, and the service-disabled veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting. Where the concern has super majority voting requirements, the service-disabled veteran shareholders must own at least that percentage of voting stock needed to overcome any such super majority ownership requirements. In the case of super majority ownership requirements, the service-disabled veteran shareholders can demonstrate that they have made enforceable arrangements to permit one of them to vote the stock of all as a block without a shareholder meeting.

(2) Where an applicant or concern does not meet the requirements set forth in paragraph (e)(1) of this section, the service-disabled veteran individual(s) upon whom eligibility is based must control the Board of Directors through actual numbers of voting directors or, where permitted by state law, through weighted voting (*e.g.,* in a concern having a two-person Board of Directors where one individual on the Board is service-disabled veteran and one is not, the service-disabled veteran vote must be weighted—worth more than one vote—in order for the concern to be eligible). Where a concern seeks to comply with this paragraph (e)(2):

(i) Provisions for the establishment of a quorum cannot permit non-service-disabled veteran Directors to control the Board of Directors, directly or indirectly; and

(ii) Any Executive Committee of Directors must be controlled by service-disabled veteran directors unless the Executive Committee can only make recommendations to and cannot independently exercise the authority of the Board of Directors.

(3) Non-voting, advisory, or honorary Directors may be appointed without affecting service-disabled veteran individuals' control of the Board of Directors.

(4) Arrangements regarding the structure and voting rights of the Board of Directors must comply with applicable state law.

(f) *Super majority requirements.* One or more service-disabled veterans must meet all super majority voting requirements. An applicant must inform the Department of Veterans Affairs, when applicable, of any super majority voting requirements provided for in its articles of incorporation, its by-laws, by state law, or otherwise. Similarly, after being verified, a participant must inform the Department of Veterans Affairs of changes regarding super majority voting requirements.

(g) *Licenses.* A firm must obtain and keep current any and all required permits, licenses, and charters, required to operate the business.

(h) *Unexercised rights.* A service-disabled veteran owner's unexercised right to cause a change in the control or management of the applicant concern does not in itself constitute control and management, regardless of how quickly or easily the right could be exercised.

(i) *Control by non-service-disabled veterans.* Non-service-disabled veteran individuals or entities may not control the firm. There is a rebuttable presumption that non-service-disabled veteran individuals or entities control or have the power to control a firm in any of the following circumstances, which are illustrative only and not inclusive:

(1) The non-service-disabled veteran individual or entity who is involved in the management or ownership of the firm is a current or former employer or a principal of a current or former employer of any service-disabled veteran individual upon whom the firm's eligibility is based. However, a firm may provide evidence to demonstrate that the relationship does not give the non-service-disabled veteran actual control over the concern and such relationship is in the best interests of the concern.

(2) One or more non-service-disabled veterans receive compensation from the firm in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest-ranking officer (usually CEO or President). The highest ranking officer may elect to take a lower amount than the total compensation and distribution of profits that are received by a non-veteran only upon demonstrating that it helps the concern.

(3) In circumstances where the concern is co-located with another firm in the same or similar line of business, and that firm or an owner, director, officer, or manager, or a direct relative of an owner, director, officer, or manager of that firm owns an equity interest in the concern.

(4) In circumstances where the concern shares employees, resources, equipment, or any type of services, whether by oral or written agreement with another firm in the same or similar line of business, and that firm or an owner, director, officer, or manager, or a direct relative of an owner, director, officer, or manager of that firm owns an equity interest in the concern.

(5) A non-service-disabled veteran individual or entity, having an equity

interest in the concern, provides critical financial or bonding support.

(6) In circumstances where a critical license is held by a non-service-disabled individual, or other entity, the non-service-disabled individual or entity may be found to control the firm. A critical license is considered any license that would normally be required of firms operating in the same field or industry, regardless of whether a specific license is required on a specific contract.

(7) Business relationships exist with non-service-disabled veteran individuals or entities which cause such dependence that the applicant or concern cannot exercise independent business judgment without great economic risk.

(j) *Critical financing.* A non-service-disabled veteran individual or entity may be found to control the concern through loan arrangements with the concern or the service-disabled veteran(s). Providing a loan or a loan guaranty on commercially reasonable terms does not, by itself, give a non-service-disabled veteran individual or entity the power to control a firm, but when taken into consideration with other factors may be used to find that a non-service-disabled firm or individual controls the concern.

(k) *Normal business hours.* There is a rebuttable presumption that a service-disabled veteran does not control the firm when the service-disabled veteran is not able to work for the firm during the normal working hours that businesses in that industry normally work. This may include, but is not limited to, other full-time or part-time employment, being a full-time or part-time student, or any other activity or obligation that prevents the service-disabled veteran from actively working for the firm during normal business operating hours.

(l) *Close proximity.* There is rebuttable presumption that a service-disabled veteran does not control the firm if that individual is not located within a reasonable commute to firm's headquarters and/or job-sites locations, regardless of the firm's industry. The service-disabled veteran's ability to answer emails, communicate by telephone, or to communicate at a distance by other technological means, while delegating the responsibility of managing the concern to others is not by itself a reasonable rebuttal.

(m) *Exception for ''extraordinary circumstances.''* SBA will not find that a lack of control exists where a service-disabled veteran does not have the unilateral power and authority to make decisions in ''extraordinary circumstances.'' The only circumstances in which this exception applies are those articulated in the definition.

(n) *Exception for active duty.* Notwithstanding the provisions of this section requiring a service-disabled veteran to control the daily business operations and long-term strategic planning of a concern, where a service-disabled veteran individual upon whom eligibility is based is a reserve component member in the United States military who has been called to active duty, the concern may elect to designate in writing one or more individuals to control the concern on behalf of the service-disabled veteran during the period of active duty. The concern will not be considered ineligible based on the absence of the service-disabled veteran during the period of active duty. The concern must keep records evidencing the active duty and the written designation of control, and provide those documents to VA, and if requested to SBA.

Dated: September 21, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–21112 Filed 9–27–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0452; Product Identifier 2017–NM–150–AD; Amendment 39–19439; AD 2018–20–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. This AD was prompted by the results of a fleet survey, which revealed cracking in bulkhead frame webs at a certain body station. This AD requires repetitive inspections of the bulkhead frame web at a certain body station and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0452.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0452; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. The NPRM published in the **Federal Register** on May 29, 2018 (83 FR 24433). The NPRM was prompted by the results of a fleet survey on retired Model 737 airplanes, which revealed cracking in bulkhead frame webs at a certain body station. No cracks have been reported on Model 727 airplanes but Model 727 and Model 737 airplanes have a similar frame installation at station 259.5. The NPRM proposed to require repetitive inspections of the bulkhead frame web at a certain body station and applicable on-condition actions.

We are issuing this AD to address cracking in the station 259.5 bulkhead frame web from the first stiffener above stringer S–10 to S–13. Such cracking may lead to subsequent failure of the skin and cockpit window surround structure, and could result in rapid decompression.

Comments

We gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Boeing concurred with the NPRM.

Request To Specify Repetitive Inspection Interval

The commenter, Lynise Hogue, indicated that the reports mentioned in the Discussion section of the NPRM revealed cracking in the bulkhead frame of retired Boeing Model 737 airplanes but there was no evidence of cracking in the bulkhead frame of Boeing Model 727 airplanes, despite those airplanes having a similar frame installation. The commenter stated this posed concerns and asked how often would ''. . . said repetitive inspections be conducted?''

We infer the commenter is asking about the repetitive inspections required by this AD and agree to clarify the inspection interval. As stated in paragraph (g) of this AD inspections are done at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017, which is at intervals not to exceed 8,600 flight cycles. We have determined that these intervals and inspections are adequate to address the unsafe condition. This AD has not been changed in this regard.

Request To Clarify Unsafe Condition

The commenter, Lynise Hogue, inquired if the unsafe product was confined to a certain batch or if it is an overall poor product. The commenter further questioned that if it is indeed an overall poor product, what measures other than an annual inspection are being taken to prevent cracking in additional bulkhead frames.

We agree to clarify. Airplane maintenance and inspection programs include many types of inspections, which are designed to detect and address potential unsafe conditions. However, when those inspections are not adequate to prevent an unsafe condition, we issue an AD to address the identified unsafe condition, such as this one. We are currently not planning additional rulemaking on other bulkhead frames. However, as we obtain and analyze additional data, we might consider further rulemaking. This AD has not been changed in this regard.

Request To Expand Applicability to All Boeing Airplanes

The commenter, Lynise Hogue, requested that we change the applicability to all Boeing airplanes because the proposed AD addresses ''an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.'' The commenter provided no further justification for the request.

We do not agree with the commenter's request to change the applicability of this AD. The commenter has not provided any additional data, views, or arguments to support this request. Furthermore, such a change would expand the scope of this AD and therefore require additional public review and delay issuance of this final rule. This AD applies only to those airplanes affected by the identified unsafe condition. We are currently not planning additional rulemaking for other airplanes. However, as we obtain and analyze additional data, we might consider further rulemaking. We have not changed this AD in this regard.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017. The service information describes procedures for repetitive high frequency eddy current inspections and low frequency eddy current inspections for cracks of the station 259.5 bulkhead frame web from the first stiffener above S–10 to S–13, on the left and right sides of the airplane, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 106 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	41 work-hours × $85 per hour = $3,485 per inspection cycle.	$0	$3,485 per inspection cycle	$369,410 per inspection cycle.

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness

Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–20–05 The Boeing Company: Amendment 39–19439; Docket No. FAA–2018–0452; Product Identifier 2017–NM–150–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the results of a fleet survey, which revealed cracking in bulkhead frame webs at a certain body station. We are issuing this AD to address cracking in the station 259.5 bulkhead frame web from the first stiffener above stringer S–10 to S–13. Such cracking may lead to subsequent failure of the skin and cockpit window surround structure, and could result in rapid decompression.

(f) Compliance

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

(g) Required Actions

Except as required by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017.

Note 1 to paragraph (g) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 727–53A0235, dated October 12, 2017, which is referred to in Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017, uses the phrase ''the original issue date of Requirements Bulletin 727–53A0235 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017, specifies contacting Boeing, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, but concurrence by the Manager, Los Angeles ACO Branch, FAA, is required before issuance of the special flight permit.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email: *george.garrido@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 727–53A0235 RB, dated October 12, 2017.

(ii) Reserved.

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

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 13, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20917 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0870; Product Identifier 2018–CE–047–AD; Amendment 39–19438; AD 2018–20–04]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Gulfstream Aerospace Corporation (Gulfstream) Model GVI airplanes. This AD requires revising the Normal and Abnormal Procedures sections of the airplane flight manual (AFM). This AD was prompted by potential failure of the bi-directional data bus that sends and receives critical signals between the flight control computer (FCC) and the flight control surfaces. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 15, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 15, 2018.

We must receive comments on this AD by November 13, 2018.

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

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

For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone: 800–810–4853; fax: 912–965–3520; email: *pubs@gulfstream.com;* internet: *http://www.gulfstream.com/product-support/technical-publications*. You may view this service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0870.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0870; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Myles Jalalian, Aerospace Engineer, Systems and Equipment Section, AIR–7A3, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5572; fax: 404–474–5606; email: *Myles.Jalalian@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On Gulfstream Model GVI airplanes, the FCC and the remote electronics unit (REU) communicate with each other by means of bi-directional data buses, referred to as BD429. Gulfstream notified us that loss of bi-directional (Transmit/Receive) BD429 communication, due to wire/connector failures, between the REU and the FCC would result in the display of a cyan ''FCS MAINTENANCE REQUIRED'' advisory message on the crew alerting system (CAS). Because this cyan advisory message does not directly indicate that BD429 communication has failed, the aircraft can be dispatched with this advisory message. The Model GVI system depends on the BD429 bus to assure signal transmission to address a linear variable differential transformer (LVDT) disconnect monitor and/or surface oscillatory monitor event.

During recent developmental testing, Gulfstream discovered that certain BD429 failures prevent the shutdown of a flight control surface that would normally occur during an oscillatory or LVDT disconnect event. The only indication of the failure is a cyan ''FCS MAINTENANCE REQUIRED'' advisory message on the CAS.

If the FCC cannot receive information from the REU that a particular flight control surface had an event, then the FCC cannot issue a command to place that particular flight control surface into standby/damped bypass mode. The REU will still receive flight control commands from the FCC via the secondary (receive only) bus; however, because the secondary bus is receive-only for certain REUs, the FCC will no longer receive REU data needed for the LVDT disconnect monitor and/or surface oscillatory monitor for the impacted flight control surface.

This condition (results in a cyan CAS message, but does not indicate the exact reason) can remain latent for up to one year. To date, there have been no known events or failures of the BD429 communications bus wiring or connectors in the field. However, the Gulfstream GVI fleet has experienced multiple in-flight flight control events requiring a standby command sent over the BD429 bus to keep the airplane safe. Since the GVI system uses these monitors to mitigate potentially unsafe failure modes, dispatch with their loss leaves the aircraft one failure away from a potential loss of control event.

This condition, if not addressed, could result in the FCC's inability to identify when a problematic flight control surface needs to be damped, which could result in loss of control of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Gulfstream Aerospace G650 AFM Supplement No. G650–2018–01, dated August 14, 2018; and Gulfstream Aerospace G650ER AFM Supplement No. G650ER–2018–01, dated August 14, 2018. For each applicable airplane configuration, the AFM supplement provides instructions and warnings to the Normal Procedures and Abnormal Procedures section of the AFM for the pilot to follow if a cyan ''FCS MAINTENANCE REQUIRED'' CAS message displays with the airplane on the ground or in flight. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

This AD requires revising the Normal and Abnormal Procedures sections of the AFM by adding instructions and warnings for the pilot if a cyan ''FCS MAINTENANCE REQUIRED'' CAS message displays with the airplane on the ground or in flight.

Interim Action

We consider this AD interim action. Gulfstream is analyzing the failures and working to develop a terminating action that will address the unsafe condition identified in this AD. Once this action is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the inability of the FCC to send a standby command when the BD429 bus is in a failed state could leave the airplane with only one level of protection from a catastrophic flight control failure. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0870 and Product Identifier 2018–CE–047–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

We estimate that this AD affects 213 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise Gulfstream AFM	1 work-hour × $85 per hour = $85	Not applicable	$85	$18,105

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–20–04 Gulfstream Aerospace Corporation: Amendment 39–19438; Docket No. FAA–2018–0870; Product Identifier 2018–CE–047–AD.

(a) Effective Date

This AD is effective October 15, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GVI airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by the potential for an un-annunciated failure of the bi-directional data bus that sends critical signals from the flight control computer to the flight controls. This unsafe condition, if not addressed, could result in the flight control computer's inability to identify when a problematic flight control surface needs to be damped, which could result in loss of control of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual Revisions

Within 30 days after October 15, 2018 (the effective date of this AD), revise the Normal Procedures and Abnormal Procedures sections of the airplane flight manual by adding the information in Gulfstream Aerospace G650 Airplane Flight Manual Supplement No. G650–2018–01, dated August 14, 2018; or Gulfstream Aerospace G650ER Airplane Flight Manual Supplement No. G650ER–2018–01, dated August 14, 2018; as applicable to the model configuration of your airplane.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Myles Jalalian, Aerospace Engineer, Systems and Equipment Section, AIR–7A3, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5572; fax: 404–474–5606; email: *Myles.Jalalian@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Gulfstream Aerospace G650 Airplane Flight Manual, Supplement No. G650–2018–01, dated August 14, 2018.

(ii) Gulfstream Aerospace G650ER Airplane Flight Manual, Supplement No. G650ER–2018–01, dated August 14, 2018.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone: 800–810–4853; fax: 912–965–3520; email: *pubs@gulfstream.com;* internet: *http://www.gulfstream.com/product-support/technical-publications*.

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri, on September 20, 2018.

Melvin J. Johnson,

Aircraft Certification Service, Deputy Director, Policy and Innovation Division, AIR–601.

[FR Doc. 2018–21103 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0455; Product Identifier 2017–NM–121–AD; Amendment 39–19436; AD 2018–20–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 98–18–24, which applied to certain Airbus SAS Model A320 series airplanes. AD 98–18–24 required repetitive inspections to detect cracking in the inner flange of a certain door frame, and corrective actions, if necessary. AD 98–18–24 also provided an optional terminating action for the repetitive inspections. This AD continues to require the repetitive inspections of the inner flange of a certain door frame, with reduced repetitive inspection intervals, and corrective action if necessary. This AD was prompted by a report of cracks on the inner flange of a certain door frame, and by the results of a full scale fatigue test that indicated the intervals for the repetitive inspections required by AD 98–18–24 must be reduced. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; internet *http://www.airbus.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0455.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0455; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA; 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 98–18–24, Amendment 39–10740 (63 FR 49272, September 15, 1998) (''AD 98–18–24''). AD 98–18–24 applied to certain Airbus SAS Model A320 series airplanes. The NPRM published in the **Federal Register** on May 30, 2018 (83 FR 24690). The NPRM was prompted by a report of cracks on the inner flange of door frame 66 at stringer positions 18 and 20, and by the results of a full scale fatigue test that indicated the intervals for the repetitive inspections required by AD 98–18–24 must be reduced. The NPRM

proposed to continue to require the repetitive inspections of the inner flange of a certain door frame, with reduced repetitive inspection intervals, and corrective actions if necessary. We are issuing this AD to address fatigue cracking in the inner flange of door frame 66, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0128, dated July 24, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–211 and A320–231 airplanes. The MCAI states:

> During fatigue test on simulated flights, cracks developed on the inner flange of door frame 66 at stringer 18 and 20 positions. These cracks were located in the gusset plate attachment holes and were hidden by the plates.
>
> This condition, if not detected and corrected, could affect the structural integrity of the fuselage.
>
> To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A320–53–1071, later revised, to provide instructions to inspect and repair the gusset plate attachment holes at frame 66, at stringers 18, 20 and 22 both left hand (LH) and right hand (RH) side of the fuselage (hereafter collectively referred to as ''the attachment holes'' in this [EASA] AD), and [Airbus] SB A320–53–1072, providing instructions for reworking of the attachment holes.
>
> Consequently, DGAC France issued [French] AD 1996–234–087, later revised [which corresponds to FAA AD 98–18–24], requiring repetitive inspections and, depending on findings, repair of the attachment holes, and including reference to a reworking procedure, which constitutes optional terminating action for the repetitive inspections of the attachment holes.
>
> Since that [French] AD was issued, based on results from a full scale fatigue test, it was determined that the inspection intervals must be reduced. Airbus issued SB A320–53–1071 Revision 03, modifying the inspection threshold and intervals, and not changing the inspection instructions.
>
> For the reason described above, this [EASA] AD retains the requirement of DGAC France AD 1996–234–087 R1, which is superseded, and requires reduction of the repetitive inspection interval.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0455.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–53–1071, Revision 03, dated July 20, 2017. This service information describes procedures for detailed inspections of the gusset plate attachment holes at door frame 66 for cracking and corrective action.

Airbus also issued Service Bulletin A320–53–1072, Revision 02, dated May 5, 2016. This service information describes procedures for modification of the gusset frame attachment at door frame 66.

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

Costs of Compliance

We estimate that this AD affects 3 airplanes of U.S. registry.

The actions required by AD 98–18–24, and retained in this AD, take about 8 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 98–18–24 is $680 per product.

We estimate that it would take about 19 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,845, or $1,615 per product.

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

In addition, we estimate that the optional terminating action would take about 20 work-hours per product, at an average labor rate of $85 per work-hour. Required parts costs would be about $60. Based on these figures, the estimated cost of the optional terminating action would be $1,760 per product.

We also estimate that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $255, or $85 per product.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

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

delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–18–24, Amendment 39–10740 (63 FR 49272, September 15, 1998), and adding the following new AD:

2018–20–02 Airbus SAS: Amendment 39–19436; Docket No. FAA–2018–0455; Product Identifier 2017–NM–121–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

This AD replaces AD 98–18–24, Amendment 39–10740 (63 FR 49272, September 15, 1998) (''AD 98–18–24'').

(c) Applicability

This AD applies to Airbus SAS Model A320–211 and Model A320–231 airplanes, certificated in any category, serial numbers 0029, 0045, 0046, 0049 through 0057 inclusive, 0059, 0064, and 0065.

(d) Subject

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

(e) Reason

This AD was prompted by a report of cracks on the inner flange of door frame 66 at stringer positions 18 and 20, and by the results of a full scale fatigue test that indicated the intervals for the repetitive inspections required by AD 98–18–24 must be reduced. We are issuing this AD to address fatigue cracking in the inner flange of door frame 66, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Eddy Current Inspection, With No Changes

This paragraph restates the requirements of paragraph (a) of AD 98–18–24, with no changes. For Model A320 series airplanes on which Airbus Modification 21778 (reference Airbus Service Bulletin A320–53–1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996) has not been accomplished: Prior to the accumulation of 20,000 total flight cycles, or within 1 year after October 20, 1998 (the effective date of AD 98–18–24), whichever occurs later: Perform a rotating probe eddy current inspection to detect cracking around the edges of the gusset plate attachment holes of the inner flange of door frame 66, left and right, at stringer positions P18, P20, and P22, in accordance with Airbus Service Bulletin A320–53–1071, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996. If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Section, Transport Standards Branch, FAA. Repeat the inspection thereafter at intervals not to exceed 20,000 flight cycles.

(h) Retained Optional Terminating Action, With No Changes

This paragraph restates the optional terminating action of paragraph (b) of AD 98–18–24, with no changes. Modification of the gusset plate attachment holes of the inner flange of door frame 66, left and right (Airbus Modification 21778), in accordance with Airbus Service Bulletin A320–53–1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996, constitutes terminating action for the repetitive inspection requirements of paragraph (g) of this AD.

(i) New Requirement of This AD: Repetitive Inspections

At the applicable compliance time specified in figure 1 to paragraph (i) of this AD, do a rotating probe eddy current inspection to detect cracking around the edges of the gusset plate attachment holes of the inner flange of door frame 66, left and right, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1071, Revision 03, dated July 20, 2017. Repeat the inspection thereafter at intervals not to exceed 10,900 flight cycles.

Figure 1 to paragraph (i) of this AD – *Initial Compliance Times*

Airplane Condition (Number of rotating probe eddy current inspections completed prior to the effective date of this AD using Airbus Service Bulletin A320-53-1071.)	Initial Compliance Time
None	Before exceeding 39,000 flight cycles since the airplane's first flight.
One rotating probe eddy current inspection completed	Before exceeding 39,000 flight cycles since the airplane's first flight, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, but before exceeding 20,000 flight cycles since completion of the first rotating probe eddy current inspection
Two rotating probe eddy current inspections completed	Within 10,900 flight cycles since completion of the most recent rotating probe eddy current inspection, or before exceeding 49,900 flight cycles since the airplane's first flight, whichever occurs first; or within 30 days after the effective date of this AD; whichever occurs later.

(j) Corrective Actions

(1) If, during any inspection required by paragraph (i) of this AD, any crack is found on a gusset plate attachment hole: Before further flight, repair the affected attachment hole, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1071, Revision 03, dated July 20, 2017, except as required by paragraph (n) of this AD.

(2) If, during any inspection required by paragraph (i) of this AD, any crack is found on any other hole of the gusset plate: Before further flight, contact the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA); for approved repair instructions and accomplish those instructions accordingly. If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Terminating Action for This AD

(1) Repair of a gusset plate attachment hole area as required by paragraph (j)(1) of this AD terminates the repetitive inspections required by paragraph (i) of this AD for that attachment hole area on that airplane only.

(2) Repair of any other hole of the gusset plate, as required by paragraph (j)(2) of this AD, does not terminate the repetitive inspections required by paragraph (i) of this AD for that airplane, unless specified otherwise in the repair instructions provided by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus's EASA DOA.

(3) Accomplishing the initial inspection required by paragraph (i) of this AD terminates the inspections required by paragraph (g) of this AD.

(l) Optional Modification

Modification of the gusset plate attachment holes of the inner flange of door frame 66, left and right, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1072, Revision 02, dated May 5, 2016, terminates the repetitive inspections required by paragraph (i) of this AD for that airplane.

(m) Reporting

Report the results of the inspection required by paragraph (i) of this AD that are done on or after the effective date of this AD to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com/*), or submit the results to Airbus in accordance with the instructions of Airbus Service Bulletin A320–53–1071, Revision 03, dated July 20, 2017. Submit the report within 30 days after accomplishing the inspection required by paragraph (i) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. If operators have reported findings as part of obtaining any corrective actions approved by the EASA DOA, operators are not required to report those findings as specified in this paragraph.

(n) Service Information Exception

Where Airbus Service Bulletin A320–53–1071, Revision 03, dated July 20, 2017, specifies to contact Airbus for appropriate action, and specifies that action as ''RC'' (Required for Compliance): Before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (q)(2) of this AD.

(o) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1071, Revision 01, dated July 4, 2002; or Airbus Service Bulletin A320–53–1071, Revision 02, dated May 5, 2016.

(2) This paragraph provides credit for actions identified in paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–53–1072, dated November 7, 1995, as revised by Change Notice 0A, dated July 5, 1996; or Airbus Service Bulletin A320–53–1072, Revision 01, dated July 4, 2002.

(p) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to

respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(q) Other FAA AD Provisions

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (r)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*.

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

(ii) AMOCs approved previously for AD 98–18–24 are approved as AMOCs for the corresponding provisions of this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): Except as required by paragraph (n) of this AD: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(r) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0128, dated July 24, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0455.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA; 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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

(s) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–53–1071, Revision 03, dated July 20, 2017.

(ii) Airbus Service Bulletin A320–53–1072, Revision 02, dated May 5, 2016.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com*.

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on September 13, 2018.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20951 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0306; Product Identifier 2018–NM–039–AD; Amendment 39–19426; AD 2018–19–25]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 2000 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would

apply to all Dassault Aviation Model FALCON 2000 airplanes. The NPRM published in the **Federal Register** on April 30, 2018 (83 FR 18749). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate new maintenance requirements and airworthiness limitations.

We are issuing this AD to prevent reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0236, dated November 30, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FALCON 2000 airplanes. The MCAI states:

> The airworthiness limitations for Dassault Falcon 2000 aeroplanes, which are approved by EASA, are currently defined and published in Aircraft Maintenance Manual (AMM) Airworthiness Limitations Section (ALS) Chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* reduced controllability of the airplane].
>
> EASA previously issued [EASA] AD 2012–0156 [which corresponds to FAA AD 2014–03–12, Amendment 39–17749 (79 FR 11693, March 3, 2014) (''AD 2014–03–12'')], requiring the actions described in Dassault Falcon 2000 AMM Chapter 5–40 (DGT 113876) at Revision 17.
>
> Since that [EASA] AD was issued, Dassault published Revision 18 of Dassault Falcon 2000 AMM Chapter 5–40 (DGT 113876), containing new and/or more restrictive maintenance tasks and introducing (among other changes) the Corrosion Prevention and Control Programme.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0156, which is superseded, and requires accomplishment of the actions specified in Dassault Falcon 2000 AMM Chapter 5–40 (DGT 113876) at Revision 18 * * * .

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR part 51

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual. This service information describes instructions applicable to airworthiness and safe life limitations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 195 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although this figure may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–25 Dassault Aviation: Amendment 39–19426; Docket No. FAA–2018–0306; Product Identifier 2018–NM–039–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (''AD 2010–26–05''); and AD 2014–03–12, Amendment 39–17749 (79 FR 11693, March 3, 2014) (''AD 2014–03–12'').

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 2000 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by manufacturer revisions to the airplane maintenance manual (AMM) that introduce new or more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced controllability of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual. The initial compliance times for doing the tasks are at the time specified in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, or within 90 days after the effective date of this AD, whichever occurs later; except as required by paragraphs (g)(1) through (g)(3) of this AD. The term ''LDG'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, means total airplane landings. The term ''FH'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, means total flight hours. The term ''FC'' in the ''First Inspection'' column of any table in Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual, means total flight cycles.

(1) For Task 30–11–09–350–801 identified in the service information specified in the introductory text of paragraph (g) of this AD, the initial compliance time is the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) At the earlier of the times specified in paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this AD.

(A) Prior to the accumulation of 2,400 total flight hours or 2,000 total flight cycles, whichever occurs first.

(B) Within 2,400 flight hours or 2,000 flight cycles after April 7, 2014 (the effective date of AD 2014–03–12), whichever occurs first.

(ii) Within 30 days after April 7, 2014 (the effective date of AD 2014–03–12).

(2) For Task 52–20–00–610–801–01 identified in the service information specified in the introductory text of paragraph (g) of this AD, the initial compliance time is within 24 months after April 7, 2014 (the effective date of AD 2014–03–12).

(3) The limited service life of part number F2MA721512100 is 3,750 total flight cycles on the part or 6 years since the manufacturing date of the part, whichever occurs first.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), or intervals, may be used unless the actions, or intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Actions for Other ADs

(1) Accomplishing the actions required by this AD terminates all of the requirements of AD 2014–03–12.

(2) Accomplishing the actions required by paragraph (g) of this AD terminates the requirements of paragraph (g) of AD 2010–26–05 for all Dassault Aviation Model FALCON 2000 airplanes.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0236, dated November 30, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0306.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(l) Material Incorporated by Reference

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

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

(i) Chapter 5–40, Airworthiness Limitations, DGT 113876, Revision 19, dated November 2017, of the Dassault Falcon 2000 Maintenance Manual.

(ii) Reserved.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet *http://www.dassaultfalcon.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 14, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20924 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0504; Product Identifier 2018–NM–046–AD; Amendment 39–19433; AD 2018–19–32]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 707, 720, and 720B series airplanes. This AD was prompted by a report indicating that a fracture of the midspar fitting resulted in the separation of the inboard strut and engine from the airplane, and a determination that existing inspections are not sufficient for timely detection of cracking. This AD requires repetitive inspections of certain nacelle strut spar and overwing fittings, and diagonal braces and associated fittings; replacement of the diagonal brace assembly on certain airplanes; and applicable related investigative and corrective actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0504.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0504; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jeffrey Chang, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5263; fax: 562–627–5210; email: *jeffrey.chang@faa.gov;* or George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email *george.garrido@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 707, 720, and 720B series airplanes. The NPRM published in the **Federal Register** on June 7, 2018 (83 FR 26383). The NPRM was prompted by a report indicating that a fracture of the midspar fitting resulted in the separation of the inboard strut and engine from the airplane, and a determination that existing inspections are not sufficient for timely detection of cracking. The NPRM proposed to require repetitive inspections of certain nacelle strut spar and overwing fittings, and diagonal braces and associated fittings; replacement of the diagonal brace assembly on certain airplanes; and applicable related investigative and corrective actions.

We are issuing this AD to address cracks, which if not detected and corrected, could grow beyond a critical length, allowing the strut fitting to fail and reducing the structural integrity of the nacelle. This, in combination with damage to adjacent attachment structure, could result in the loss of an engine from the airplane.

Comments

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

Request To Clarify Service Information Used for Oversizing Certain Holes

Boeing requested that we revise paragraph (k) of the proposed AD to specify outboard diagonal brace end fitting (forward or aft) attach holes that have been oversized as specified in Boeing 707 Alert Service Bulletin A3364, ''Revision 3, dated May 29, 1981,'' rather than ''Revision 4, dated February 21, 2017.'' Boeing noted that Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017, does not contain instructions for oversizing the attach holes, but instead refers to oversizing done as specified in Revision 3. Boeing added that, as written, the proposed AD would not require operators to replace a diagonal brace assembly with attach holes that were oversized as specified in Boeing 707 Alert Service Bulletin A3364, Revision 3, dated May 29, 1981, potentially allowing an unsafe condition to continue.

We agree with the commenter's request. We have revised paragraph (k) of this AD to specify ''. . . outboard diagonal brace end fitting (forward or aft) attach holes have been oversized as specified in Boeing 707 Alert Service Bulletin A3364, Revision 3, dated May 29, 1981.''

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. We have determined that these minor changes:

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

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

Related Service Information Under 1 CFR Part 51

We reviewed the following service information.

- Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017. This service information describes procedures for repetitive detailed inspections of the diagonal brace tube for any crack; repetitive detailed inspections and high frequency eddy current (HFEC) inspections of the nacelle strut diagonal brace end fittings, forward mating fitting, and aft mating

fitting for any crack; an alternative dye penetrant inspection of vertical webs on aft mating fitting for any crack; an HFEC inspection of the diagonal brace tube for any crack; and corrective actions.

• Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017. This service information describes procedures for repetitive detailed, HFEC, and ultrasonic inspections of the overwing support fittings for any crack at the bolt hole forward of the wing front spar and at the holes for the four fasteners attaching the fitting to the spar, and related investigative and corrective actions.

• Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016. This service information describes procedures for repetitive detailed and surface HFEC inspections of the front spar fittings at nacelle struts numbers 1, 2, 3, and 4 for cracks, and replacement of cracked front spar fittings.

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

Costs of Compliance

We estimate that this AD affects 65 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspections per Service Bulletin A3364, Revision 4.	36 work-hours × $85 per hour = $3,060 per inspection cycle.	$0	$3,060 per inspection cycle.	$198,900 per inspection cycle.
HFEC inspections per Service Bulletin A3364, Revision 4.	128 work-hours × $85 per hour = $10,880 per inspection cycle.	0	$10,880 per inspection cycle.	$707,200 per inspection cycle.
Inspections per Service Bulletin A3365, Revision 3.	20 work-hours × $85 per hour = $1,700 per inspection cycle.	0	$1,700 per inspection cycle.	$110,500 per inspection cycle.
Detailed inspections per Service Bulletin A3514, Revision 1.	12 work-hours × $85 per hour = $1,020 per inspection cycle.	0	$1,020 per inspection cycle.	$66,300 per inspection cycle.
HFEC inspections per Service Bulletin A3514, Revision 1.	32 work-hours × $85 per hour = $2,720 per inspection cycle.	0	$2,720 per inspection cycle.	$176,800 per inspection cycle.

We estimate that any necessary replacement of affected fittings would take about 96 work-hours for a cost of $8,160 per fitting. We have received no definitive data on the parts costs of the affected fittings. We have no way of determining the number of aircraft that might need this replacement.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–32 The Boeing Company: Amendment 39–19433; Docket No. FAA–2018–0504; Product Identifier 2018–NM–046–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

This AD affects AD 82–24–03, Amendment 39–4496 (47 FR 51099, November 12, 1982) (''AD 82–24–03'') and AD 2005–08–15, Amendment 39–14067 (70 FR 21136, April 25, 2005) (''AD 2005–08–15'').

(c) Applicability

This AD applies to all The Boeing Company Model 707–100 Long Body, –200, –100B Long Body, and –100B Short Body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by a report indicating that a fracture of the midspar fitting resulted in the separation of the

inboard strut and engine from the airplane, and a determination that existing inspections for other nacelle strut fittings are not sufficient for timely detection of cracking. We are issuing this AD to address cracks, which if not detected and corrected, could grow beyond a critical length, allowing the strut fitting to fail and reducing the structural integrity of the nacelle. This, in combination with damage to adjacent attachment structure, could result in the loss of an engine from the airplane.

(f) Compliance

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

(g) Repetitive Detailed Inspections of the Front Spar Fittings at Nacelle Struts Numbers 1, 2, 3, and 4

Prior to the accumulation of 3,500 total flight hours; within 700 flight hours after the most recent inspection specified in Boeing 707 Alert Service Bulletin A3514, dated July 29, 2004, was done; or within three months after the effective date of this AD; whichever occurs later: Do a detailed inspection for cracking of the front spar fittings at nacelle struts numbers 1, 2, 3, and 4, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016. If any cracking is found, before further flight, replace the affected fitting, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016. Repeat the inspections thereafter at intervals not to exceed 700 flight hours.

(h) Repetitive Surface High Frequency Eddy Current (HFEC) Inspections of the Aft Lugs on the Front Spar Fittings at Nacelle Struts Numbers 1, 2, 3, and 4

Within 1,500 flight cycles or 48 months after the most recent detailed inspection required by paragraph (g) of this AD was done, whichever occurs first, do a surface HFEC inspection for cracking of the aft lugs on the front spar fittings at nacelle struts numbers 1, 2, 3, and 4, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016, except as required by paragraph (l)(4) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 1,500 flight cycles or 48 months, whichever occurs first.

(i) Repetitive Inspections of the Overwing Support Fitting at Nacelle Struts Numbers 1, 2, 3, and 4

At the times specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017, except as required by paragraph (l)(1) of this AD: Do the inspections specified in paragraphs (i)(1) through (i)(3) of this AD and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017, except as required by paragraph (l)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017.

(1) Do a detailed inspection for any crack at all five holes in the overwing support fitting, and at the flange radii.

(2) Do the inspection specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) Do a surface HFEC inspection for any crack in the overwing support fitting around the hole immediately forward of the spar chord, with the bolt in place, and at the flange radii.

(ii) Do an open hole HFEC inspection for any crack in the overwing support fitting at the hole immediately forward of the spar chord.

(3) Do the inspection specified in paragraph (i)(3)(i) or (i)(3)(ii) of this AD.

(i) Do an ultrasonic inspection for any crack in the overwing support fitting around the four holes common to the fitting and the spar chord, with the bolts in place.

(ii) Do a surface HFEC inspection for any crack in the overwing support fitting around the four holes common to the fitting and the spar chord, with the bolts in place.

(j) Inspections of the Nacelle Strut Diagonal Braces and Associated Fittings

For airplanes with nacelle strut diagonal braces and associated fittings which have accumulated 7,500 flight cycles or more: At the applicable times specified in paragraph 1.E., ''Compliance'' of Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017, except as required by paragraph (l)(2) of this AD, do the inspections specified in paragraphs (j)(1) through (j)(3) of this AD. Repeat the inspections thereafter at the applicable intervals specified in tables 1, 2, 3, and 4 of paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017. If any crack is found during any inspection required by this paragraph, before further flight, do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017, except as required by paragraph (l)(3) of this AD.

(1) Do a detailed inspection of the nacelle strut diagonal brace end fittings, diagonal brace tube, forward mating fitting, and aft mating fitting for any crack.

(2) Do HFEC inspections of the nacelle strut diagonal brace end fittings, forward mating fitting, and aft mating fitting for any crack. As an alternative for the aft mating fitting, do a dye penetrant inspection of vertical webs on aft mating fitting for any crack.

(3) Do an HFEC inspection of the diagonal brace tube for any crack.

(k) Replacement

For Group 3, 4, and 6 airplanes as identified in Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017, on which the outboard diagonal brace end fitting (forward or aft) attach holes have been oversized as specified in Boeing 707 Alert Service Bulletin A3364, Revision 3, dated May 29, 1981: Within 1,000 flight cycles after the effective date of this AD, replace the diagonal brace assembly, in accordance with Figure 3 of Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017.

(l) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017, uses the phrase ''the Revision 3 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(2) For purposes of determining compliance with the requirements of this AD: Where Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017, uses the phrase ''the Revision 4 date of this service bulletin,'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017; and Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017; specify contacting Boeing: This AD requires repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(4) Where Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016, specifies contacting Boeing for replacement instructions: This AD requires replacement using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(m) Terminating Action for Other ADs

(1) Accomplishing the initial inspections required by paragraph (j) of this AD terminates all requirements of AD 82–24–03.

(2) Accomplishing the initial inspections required by paragraph (g) of this AD, terminates all requirements of AD 2005–08–15.

(n) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a front spar fitting having a part number other than the part numbers specified in paragraph 2.C.2. of Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016.

(o) Alternative Methods of Compliance (AMOCs)

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

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

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

(p) Related Information

(1) For more information about this AD, contact Jeffrey Chang, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5263; fax: 562–627–5210; email: *jeffrey.chang@faa.gov;* or George Garrido, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5232; fax: 562–627–5210; email *george.garrido@faa.gov*.

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

(q) Material Incorporated by Reference

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

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

(i) Boeing 707 Alert Service Bulletin A3364, Revision 4, dated February 21, 2017.

(ii) Boeing 707 Alert Service Bulletin A3365, Revision 3, dated March 9, 2017.

(iii) Boeing 707 Alert Service Bulletin A3514, Revision 1, dated November 9, 2016.

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

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Des Moines, Washington, on September 17, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20918 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0491; Product Identifier 2017–NM–158–AD; Amendment 39–19432; AD 2018–19–31]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A310 series airplanes. This AD was prompted by a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. This AD requires revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0491.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0491; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A310 series airplanes. The NPRM published in the **Federal Register** on June 1, 2018 (83 FR 25412). The NPRM was prompted by a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations.

We are issuing this AD to address prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0206, dated October 12, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A310 series airplanes. The MCAI states:

> The airworthiness limitations for the Airbus A310 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A310 Airworthiness Limitations Section (ALS) documents. The Damage Tolerant Airworthiness Limitation Items are specified in the A310 ALS Part 2. These instructions have been identified as mandatory for continuing airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> EASA previously issued AD 2016–0217 [which corresponds to FAA AD 2017–21–08, Amendment 39–19079 (82 FR 48904, October 23, 2017) (''AD 2017–21–08'')] to require compliance with the maintenance requirements and associated airworthiness limitations defined in Airbus A310 ALS Part 2 Revision 01, Variation 1.1 and Variation 1.2.
>
> Since that [EASA] AD was issued, new or more restrictive maintenance requirements and associated airworthiness limitations

were approved by the EASA. Consequently, Airbus published Revision 02 of the A310 ALS Part 2, compiling all ALS Part 2 changes approved since previous Revision 01.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0217, which is superseded, and requires accomplishment of the actions specified in Airbus A310 ALS Part 2 Revision 02.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0491.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued A310 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017. This service information describes airworthiness limitations applicable to the DT–ALIs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–31 Airbus SAS: Amendment 39–19432; Docket No. FAA–2018–0491; Product Identifier 2017–NM–158–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

This AD affects AD 2017–21–08, Amendment 39–19079 (82 FR 48904, October 23, 2017) (''AD 2017–21–08'').

(c) Applicability

This AD applies to Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness

Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017. The initial compliance time for doing the tasks is at the time specified in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for AD 2017–21–08

Accomplishing the actions required by this AD terminates all requirements of AD 2017–21–08.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0206, dated October 12, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0491.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3225.

(l) Material Incorporated by Reference

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

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

(i) Airbus A310 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com*; internet: *http://www.airbus.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 17, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20931 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0360; Product Identifier 2018–NM–009–AD; Amendment 39–19434; AD 2018–19–33]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. This AD requires revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The

NPRM published in the **Federal Register** on April 30, 2018 (83 FR 18756). The NPRM was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance requirements and airworthiness limitations.

We are issuing this AD to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD EASA AD 2017–0205, dated October 12, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

> The airworthiness limitations for the Airbus A300–600 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A300–600 Airworthiness Limitations Section (ALS) documents. The Damage Tolerant Airworthiness Limitation Items are specified in the A300–600 ALS Part 2. These instructions have been identified as mandatory for continuing airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane].
>
> EASA previously issued [EASA] AD 2016–0218 [which corresponds to FAA AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07'')] to require compliance with the maintenance requirements and associated airworthiness limitations defined in Airbus A300–600 ALS Part 2 Revision 01, Variation 1.1 and Variation 1.2.
>
> Since that [EASA] AD was issued, new or more restrictive maintenance requirements and airworthiness limitations were approved by the EASA. Consequently, Airbus published Revision 02 of the A300–600 ALS Part 2, compiling all ALS Part 2 changes approved since previous Revision 01.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0218, which is superseded, and requires accomplishment of the actions specified in Airbus A300–600 ALS Part 2 Revision 02.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360.

Comments

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

Request

United Parcel Service (UPS) requested that we provide approval for alternative methods of compliance (AMOCs) that were previously approved for AD 2013–13–13, Amendment 39–17501 (79 FR 48957, August 19, 2014) (''AD 2013–13–13''); and AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07'').

We agree that AMOCs previously approved for AD 2018–01–07 and AD 2013–13–13 should be approved for this AD. The FAA has reviewed the related AMOCs, and it is acceptable to give credit for previous AMOCs approved for AD 2018–01–07, which will be terminated by this AD. AD 2018–01–07 approved the use of AMOCs for AD 2013–13–13, and those AMOCs remain in force. As a result, we have revised paragraph (j)(1) of this AD accordingly.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule with the change described previously and minor editorial changes. We have determined that these minor changes:

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

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

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017. This service information describes airworthiness limitations applicable to the DT–ALIs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an AMOC according to paragraph (j)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Difference Between the MCAI and This AD

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus SAS maintenance documentation. However, this AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this AD.

Costs of Compliance

We estimate that this AD affects 125 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we

have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–33 Airbus SAS: Amendment 39–19434; Docket No. FAA–2018–0360; Product Identifier 2018–NM–009–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

This AD affects AD 2018–01–07, Amendment 39–19148 (83 FR 2042, January 16, 2018) (''AD 2018–01–07'').

(c) Applicability

This AD applies to Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017. The initial compliance times for doing the tasks are at the applicable times specified in Airbus A300–600 ALS, Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017, or within 90 days after the effective date of this AD, whichever occurs later.

(h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Actions for AD 2018–01–07

Accomplishing the actions required by this AD terminates all requirements of AD 2018–01–07.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

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

(ii) AMOCs approved previously for AD 2018–01–07 are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0205, dated October 12, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0360.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225.

(l) Material Incorporated by Reference

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

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

(i) Airbus A300–600 Airworthiness Limitations Section (ALS), Part 2, ''Damage Tolerant Airworthiness Limitation Items (DT–ALI),'' Revision 02, dated August 28, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 17, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20921 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0509; Product Identifier 2017–NM–076–AD; Amendment 39–19429; AD 2018–19–28]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, -200 LR, and -200 IGW airplanes. This AD was prompted by reports of bushing migration and loss of nut torque on the engine pylon lower inboard and outboard link fittings. This AD requires modification of the attaching parts of the left-hand (LH) and right-hand (RH) pylon lower link fittings, inboard and outboard positions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brazil; phone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; email: *distrib@embraer.com.br;* internet: *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0509

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0509; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3221.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. The NPRM published in the **Federal Register** on June 11, 2018 (83 FR 26877). The NPRM was prompted by reports of bushing migration and loss of nut torque on the engine pylon lower inboard and outboard link fittings. The NPRM proposed to require modification of the attaching parts of the LH and RH pylon lower link fittings, inboard and outboard positions. The NPRM also specified that accomplishing certain proposed actions would terminate certain requirements in AD 2014–16–16, Amendment 39–17940 (79 FR 48018, August 15, 2014).

We are issuing this AD to address loss of integrity of the engine pylon lower link fittings, possibly resulting in separation of the engine from the wing.

Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian AD 2017–04–01, effective April 25, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes. The MCAI states:

> This [Brazilian] AD was prompted by reports of bushing migration and loss of nut torque on the engine pylon lower inboard and outboard link fittings. We are issuing this [Brazilian] AD to prevent loss of integrity of the engine pylon lower link fittings, which could result in separation of the engine from the wing.
>
> This [Brazilian] AD requires modifications of the attaching parts of the left handle (LH) and right handle (RH) pylon lower link fittings, inboard and outboard positions.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0509.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it supported the intent of the NPRM.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Embraer S.A. has issued Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017; and Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018. The service information describes procedures for modification of the attaching parts of the LH and RH pylon lower link fittings, inboard and outboard positions. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 85 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	Up to 270 work-hours × $85 per hour = $22,950	$3,200	Up to $26,150	Up to $2,222,750.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–28 Embraer S.A.: Amendment 39–19429; Docket No. FAA–2018–0509; Product Identifier 2017–NM–076–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

This AD affects AD 2014–16–16, Amendment 39–17940 (79 FR 48018, August 15, 2014) (''AD 2014–16–16'').

(c) Applicability

This AD applies to the Embraer S.A. airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; as identified in Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017.

(2) Model ERJ 190–100 ECJ airplanes as identified in Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Reason

This AD was prompted by reports of bushing migration and loss of nut torque on the engine pylon lower inboard and outboard link fittings. We are issuing this AD to prevent loss of integrity of the engine pylon lower link fittings, possibly resulting in separation of the engine from the wing.

(f) Compliance

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

(g) Definitions

(1) Group 1 airplanes are defined as: Serial numbers 19000002, 19000004, 19000006 through 19000108 inclusive, 19000110 through 19000139 inclusive, 19000141 through 19000158 inclusive, 19000160 through 19000176 inclusive, 19000178 through 19000202 inclusive, 19000204 through 19000224 inclusive, 19000226 through 19000235 inclusive, 19000237 through 19000242 inclusive, 19000244 through 19000260 inclusive, 19000262 through 19000277 inclusive, 19000279 through 19000295 inclusive, 19000297 through 19000306 inclusive, 19000308 through 19000316 inclusive, 19000318 through 19000361 inclusive, 19000363 through 19000437 inclusive, 19000439 through 19000452 inclusive, 19000454 through 19000466 inclusive, 19000468 through 19000525 inclusive, 19000527 through 19000533 inclusive, 19000535 through 19000558 inclusive, 19000560 through 19000570 inclusive, 19000572 through 19000610 inclusive, 19000612 through 19000631 inclusive, and 19000633 through 19000636 inclusive.

(2) Group 2 airplanes are defined as: Serial numbers 19000637 through 19000640 inclusive, 19000642 through 19000655 inclusive, 19000657 through 19000682 inclusive, 19000684 through 19000686 inclusive, 19000688, 19000689, and 19000692 through 19000694 inclusive.

(h) Left-Hand (LH) Pylon Lower Link Fitting Attaching Parts Modification

(1) For Group 1 airplanes as identified in paragraph (g)(1) of this AD: Within 15,000 flight hours or 48 months after the effective date of this AD, whichever occurs later, replace the plain bushings of the lower inboard and outboard link fittings, install the lock washers with the L-profile on the fuse pin's head side, and replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART I'' of the Accomplishment Instructions of Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017.

(2) For Group 2 airplanes as identified in paragraph (g)(2) of this AD: Within 15,000 flight hours or 48 months after the effective date of this AD, whichever occurs later, replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART I'' of the Accomplishment Instructions of Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017.

(3) For airplanes identified as Group 1 in Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018: Within 48 months after the effective date of this AD, replace the plain bushings of the lower inboard and outboard link fittings, install the lock washers with the L-profile on the fuse pin's head side, and replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART I'' of the Accomplishment Instructions of Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018.

(4) For airplanes identified as Group 2 in Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018: Within 48 months after the effective date of this AD, replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART I'' of the Accomplishment Instructions of Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018.

(i) Right-Hand (RH) Pylon Lower Link Fitting Attaching Parts Modification

(1) For Group 1 airplanes as identified in paragraph (g)(1) of this AD: Within 15,000 flight hours or 48 months after the effective date of this AD, whichever occurs later, replace the plain bushings of the lower inboard and outboard link fittings, install the lock washers with the L-profile on the fuse pin's head side, and replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART II'' of the Accomplishment Instructions of Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017.

(2) For Group 2 airplanes as identified in paragraph (g)(2) of this AD: Within 15,000 flight hours or 48 months after the effective date of this AD, whichever occurs later, replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART II'' of the Accomplishment Instructions of Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017.

(3) For airplanes identified as Group 1 in Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018: Within 48 months after the effective date of this AD, replace the plain bushings of the lower inboard and outboard link fittings, install the lock washers with the L-profile on the fuse pin's head side, and replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART II'' of the Accomplishment Instructions of Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018.

(4) For airplanes identified as Group 2 in Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018: Within 48 months after the effective date of this AD, replace the internal shear pin of the fuse pins with new ones having larger head diameter, in accordance with ''PART II'' of the Accomplishment Instructions of Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018.

(j) Terminating Action for AD 2014–16–16

(1) Accomplishing the actions required by paragraph (h)(1) or (h)(2) of this AD, as applicable, terminates the requirements of paragraphs (g)(1), (h)(1), and (i)(1) of AD 2014–16–16 for that LH pylon lower link fitting.

(2) Accomplishing the actions required by paragraph (h)(3) or (h)(4) of this AD, as applicable, terminates the requirements of paragraphs (g)(2), (h)(2), and (i)(2) of AD 2014–16–16 for that LH pylon lower link fitting.

(3) Accomplishing the actions required by paragraph (i)(1) or (i)(2) of this AD, as applicable, terminates the requirements of paragraphs (g)(1), (h)(1), and (i)(1) of AD 2014–16–16 for that RH pylon lower link fitting.

(4) Accomplishing the actions required by paragraph (i)(3) or (i)(4) of this AD, as applicable, terminates the requirements of paragraphs (g)(2), (h)(2), and (i)(2) of AD 2014–16–16 for that RH pylon lower link fitting.

(k) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (h)(1), (h)(2), (i)(1), and (i)(2) of this AD, if those actions were performed before the effective date of this AD using Embraer Service Bulletin 190–54–0016, dated September 22, 2015; Embraer Service Bulletin 190–54–0016, Revision 01, dated January 18, 2016; Embraer Service Bulletin 190–54–0016, Revision 02, dated September 12, 2016; or Embraer Service Bulletin 190–54–0016, Revision 03, dated May 18, 2017.

(2) This paragraph provides credit for actions required by paragraphs (h)(3), (h)(4), (i)(3), and (i)(4) of this AD, if those actions were performed before the effective date of this AD using Embraer Service Bulletin 190LIN–54–0008, dated October 2, 2015; or Embraer Service Bulletin 190LIN–54–0008, Revision 01, dated April 13, 2017.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(3) *Required for Compliance (RC):* For service information that contains steps that are labeled as RC, the provisions of paragraphs (l)(3)(i) and (l)(3)(ii) of this AD apply.

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

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Brazilian AD 2017–04–01, effective April 25, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0509.

(2) For more information about this AD, contact Krista Greer, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3221.

(n) Material Incorporated by Reference

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

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

(i) Embraer Service Bulletin 190–54–0016, Revision 04, dated December 7, 2017.

(ii) Embraer Service Bulletin 190LIN–54–0008, Revision 02, dated May 9, 2018.

(3) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brazil; phone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; email: *distrib@embraer.com.br*; internet: *http://www.flyembraer.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 14, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20929 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0555; Product Identifier 2017–NM–152–AD; Amendment 39–19431; AD 2018–19–30]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model 4101 airplanes. This AD was prompted by a report of an improperly installed spacer around the electrical pins in the cartridge connector for the fire bottle extinguisher cartridge. This AD requires repetitive inspections for excessive or missing spacers, and applicable corrective actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 2, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 2, 2018.

ADDRESSES: For service information identified in this final rule, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com*; internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all BAE Systems (Operations) Limited Model 4101 airplanes. The NPRM published in the **Federal Register** on June 28, 2018 (83 FR 30377).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0212, dated October 25, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all BAE Systems (Operations) Limited Model 4101 airplanes. The MCAI states:

> During scheduled maintenance (fire bottle extinguisher cartridge resistance check) it was noted that on the extinguisher cartridge, the blue spacer around the electrical pins appeared to be located too far forward. It was discovered that, inadvertently, an additional spacer (possibly from a previous extinguisher cartridge) was located in the extinguisher cartridge connector. This effectively shortens the electrical pins in the cartridge connector, which could result in insufficient engagement with the associated sockets on the aeroplane connector. A missing spacer would not affect the electrical connection between the extinguisher cartridge and the aeroplane wiring, but could allow moisture ingress over time.
>
> Both conditions, if not detected and corrected, could prevent the fire extinguisher bottle from discharging when required, possibly resulting in damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, BAE Systems (Operations) Ltd issued Service Bulletin (SB) J41–26–009, providing

inspection instructions to ensure that a single blue spacer is fitted on the inside of the extinguisher cartridge connector.

For the reason described above, this [EASA] AD requires a one-time [general visual] inspection [and inspection after a maintenance task that involves disconnection or re-connection of the electrical connector] of the extinguisher cartridge electrical connector and the aeroplane's electrical connector and, depending on findings, removal of excessive spacers or replacement of the fire extinguisher bottle.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555.

Comments

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

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

BAE Systems (Operations) Limited has issued Service Bulletin J41–26–009, dated November 23, 2016. This service information describes procedures for a general visual inspection of the cartridge electrical connector and the aircraft electrical connector for missing or excessive spacers, and corrective actions including removing excessive spacers or replacing the fire bottle extinguisher cartridge. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$340

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85	Up to $1,734	Up to $1,819.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2018–19–30 BAE Systems (Operations) Limited: Amendment 39–19431; Docket No. FAA–2018–0555; Product Identifier 2017–NM–152–AD.

(a) Effective Date

This AD is effective November 2, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire protection.

(e) Reason

This AD was prompted by a report of an improperly installed spacer around the electrical pins in the cartridge connector for the fire bottle extinguisher cartridge. We are issuing this AD to detect and correct excessive or missing spacers, which could result in the fire extinguisher bottle not discharging when required, possibly resulting in damage to the airplane.

(f) Compliance

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

(g) Inspection

Within 12 months after the effective date of this AD, do a general visual inspection of the inside of the cartridge electrical connector and the inside of the airplane electrical connector in accordance with the Accomplishment Instructions of the BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(h) Inspections After Maintenance

As of the effective date of this AD, before further flight after each accomplishment of a maintenance task involving disconnection or (re-)connection of an electrical connector of a fire bottle extinguisher cartridge, do a general visual inspection of the inside of the cartridge electrical connector and the inside of the airplane electrical connector in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(i) Corrective Actions

(1) If, during any inspection as required by paragraph (g) or (h) of this AD, as applicable, more than one spacer is found inside the cartridge electrical connector: Before further flight, remove the excessive spacer(s) from the inside of the cartridge electrical connector in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(2) If, during any inspection as required by paragraph (g) or (h) of this AD, as applicable, one or more spacers are found inside the airplane electrical connector: Before further flight, remove all spacers from the inside of the airplane electrical connector in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(3) If, during any inspection as required by paragraph (g) or (h) of this AD, as applicable, no blue spacer is found inside the cartridge electrical connector body: Before further flight, replace the cartridge in accordance with the Accomplishment Instructions of the BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or BAE Systems (Operations) Limited's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2017–0212, dated October 25, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0555.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3228.

(l) Material Incorporated by Reference

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

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

(i) BAE Systems (Operations) Limited Service Bulletin J41–26–009, dated November 23, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com*; internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Des Moines, Washington, on September 14, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20923 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 529, 556, and 558

[Docket No. FDA–2018–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Withdrawal of Approval of New Animal Drug Applications; Changes of Sponsorship; Change of a Sponsor's Name

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during January, February, and March 2018. FDA is informing the public of the availability

of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to reflect the withdrawal of approval of applications, changes of sponsorship of applications, and a change of a sponsor's name, and to make technical amendments to improve the accuracy of the regulations.

DATES: This rule is effective September 28, 2018, except for amendatory instructions 7 to 21 CFR 520.580, 18 to 21 CFR 520.905d, 20 to 21 CFR 520.1182, 29 to 21 CFR 520.1840, 33 to 21 CFR 520.2380a, 37 to 21 CFR 522.1182, 51 to 21 CFR 524.900, 62 to 21 CFR 558.185, 68 to 21 CFR 558.365, and 70 to 21 CFR 558.485, which are effective October 9, 2018.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5689, *george.haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Approval Actions

FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during January, February, and March 2018, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the office of the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday. Persons with access to the internet may obtain these documents at the CVM FOIA Electronic Reading Room: *https://www.fda.gov/AboutFDA/CentersOffices/Officeof Foods/CVM/CVMFOIAElectronic ReadingRoom/default.htm.* Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *https://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/default.htm.*

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING JANUARY, FEBRUARY, AND MARCH 2018

Approval date	File No.	Sponsor	Product name	Species	Effect of the action	Public documents
January 5, 2018.	141–449	Intervet, Inc., 2 Giralda Farms, Madison, NJ 07940.	SAFE–GUARD AquaSol (fenbendazole oral suspension), Suspension Concentrate.	Chickens	Supplemental approval for the treatment and control of certain nematode worms in laying hens; and of a tolerance in chicken eggs.	FOI Summary; EA/FONSI [1].
January 16, 2018.	200–563	Norbrook Laboratories, Ltd., Station Works, Newry BT35 6JP, Northern Ireland.	EPRIZERO (eprinomectin), Pour-On for Beef and Dairy Cattle.	Cattle	Original approval as a generic copy of NADA 141–079.	FOI Summary.
January 19, 2018.	141–494	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140.	CREDELIO (lotilaner), Chewable Tablet.	Dogs	Original approval for killing adult fleas, and for the treatment of flea infestations and the treatment and control of tick infestations in dogs.	FOI Summary.
January 29, 2018.	200–622	Pharmgate LLC, 1800 Sir Tyler Dr., Wilmington, NC 28405.	Chlortetracycline and decoquinate, Type C medicated feeds.	Cattle	Original approval as a generic copy of NADA 141–185.	FOI Summary.
February 28, 2018.	141–482	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	LINCOMIX (lincomycin) and ROBENZ (robenidine hydrochloride), Type C medicated feeds.	Chickens	Original approval for the control of necrotic enteritis and for the prevention of coccidiosis in broiler chickens.	FOI Summary.
February 28, 2018.	141–483	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	LINCOMIX (lincomycin) and DECCOX (decoquinate), Type C medicated feeds.	Chickens	Original approval for the control of necrotic enteritis and for the prevention of coccidiosis in broiler chickens.	FOI Summary.
March 2, 2018	141–484	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	LINCOMIX (lincomycin) and BIO–COX (salinomycin sodium), Type C medicated feeds.	Chickens	Original approval for the control of necrotic enteritis and for the prevention of coccidiosis in broiler chickens.	FOI Summary.
March 5, 2018	141–489	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	LINCOMIX (lincomycin) and ZOAMIX (zoalene), Type C medicated feeds.	Chickens	Original approval for the control of necrotic enteritis and for the prevention and control of coccidiosis in broiler chickens.	FOI Summary.
March 8, 2018	141–492	Merial, Inc., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640.	CENTRAGARD (eprinomectin and praziquantel transdermal solution).	Cats	Original approval for the prevention of heartworm disease, and for the treatment and control of roundworms, hookworms, and tapeworms in cats and kittens.	FOI Summary.
March 26, 2018	141–491	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	LINCOMIX (lincomycin) and COBAN (monensin), Type C medicated feeds.	Chickens	Original approval for the control of necrotic enteritis and as an aid in the prevention of coccidiosis in broiler chickens.	FOI Summary.

[1] The Agency has carefully considered an environmental assessment (EA) of the potential environmental impact of this action and has made a finding of no significant impact (FONSI).

II. Change of Sponsorship

Agri Laboratories Ltd., P.O. Box 3103, St. Joseph, MO 64503 has informed FDA that it has transferred ownership of, and all rights and interest in, the following applications to Huvepharma EOOD, 5th Floor, 3A Nikolay Haytov Str., 1113 Sofia, Bulgaria:

File No.	Product name	21 CFR section
200–030	DI-METHOX (sulfadimethoxine) 12.5% Solution	520.2220a
200–031	DI-METHOX (sulfadimethoxine) Soluble Powder	520.2220a
200–037	LEGACY (gentamicin sulfate) Solution	529.1044a
200–038	DI-METHOX (sulfadimethoxine) Injection 40%	522.2220
200–049	TETRA-BAC 324 (tetracycline hydrochloride) Soluble Powder	520.2345d
200–061	FLU-NIX (flunixin meglumine) Injection	522.970
200–066	AGRIMYCIN-343 (oxytetracycline hydrochloride) Soluble Powder	520.1660d
200–128	AGRIMYCIN-200 (oxytetracycline dihydrate) Injection	522.1660a
200–185	GEN-GARD (gentamicin sulfate) Soluble Powder	520.1044c
200–225	PROHIBIT (levamisole hydrochloride) Soluble Drench Powder	520.1242a
200–271	Levamisole Phosphate Injection	522.1242
200–407	Lincomycin-Spectinomycin (lincomycin hydrochloride/spectinomycin dihydrochloride pentahydrate) Water Soluble Powder.	520.1265

Following this withdrawal of approval, Agri Laboratories Ltd. is no longer the sponsor of an approved application. Accordingly, it will be removed from the list of sponsors of approved applications in § 510.600(c) (21 CFR 510.600(c)).

Strategic Veterinary Pharmaceuticals, Inc., 100 NW Airport Rd., St. Joseph, MO 64503 has informed FDA that it has transferred ownership of, and all rights and interest in, the following applications to Cronus Pharma LLC, 2 Tower Center Blvd., Suite 1101, East Brunswick, NJ 08816:

File No.	Product name	21 CFR section
011–531	DIZAN (dithiazanine iodide) Tablets	520.763a
011–674	DIZAN (dithiazanine iodide) Powder	520.763b
012–469	DIZAN (dithiazanine iodide) Suspension with Piperazine Citrate	520.763c
031–512	ATGARD (dichlorvos) Swine Wormer	558.205
033–803	TASK (dichlorvos) Dog Anthelmintic	520.600
035–918	EQUIGARD; VERDISOL (dichlorvos)	520.596
039–483	BIO-TAL (thiamylal sodium) Injection	522.2424
040–848	ATGARD C (dichlorvos) Swine Wormer	558.205
043–606	ATGARD V (dichlorvos) Swine Wormer	558.205
045–143	OXYJECT (oxytetracycline hydrochloride) Injection	522.1662a
047–278	BIO-MYCIN OXY-TET 50 (oxytetracycline hydrochloride) Injection	522.1662a
047–712	BIZOLIN–100; BIZOLIN–200 (phenylbutazone) Injection	522.1720
048–010	ANAPLEX (dichlorophene and toluene) Canine and Feline Wormer Caps	520.580
048–237	EQUIGEL (dichlorvos)	520.602
048–271	TASK (dichlorvos) Tablets	520.598
049–032	ATGARD C (dichlorvos) Premix 9.6%	558.205
065–461	ANACETIN (chloramphenicol) Tablets	520.390a
065–481	Calf Scour Boluses (chlortetracycline hydrochloride)	520.443
065–486	CTC Bisulfate (chlortetracycline bisulfate) Soluble Powder	520.441
065–491	MEDICHOL (chloramphenicol) Tablets	520.390a
092–837	NEMACIDE (diethylcarbamazine citrate) Oral Syrup	520.622b
093–516	BIZOLIN (phenylbutazone) Injection 20%	522.1720
097–452	OXYJECT 100 (oxytetracycline hydrochloride) Injection	522.1662a
098–569	MEDACIDE–SDM (sulfadimethoxine) Injection 10%	522.2220
099–618	BIZOLIN (phenylbutazone) 1–G Bolus	520.1720a
108–963	MEDAMYCIN (oxytetracycline hydrochloride) Injectable Solution	522.1662a
117–689	NEUROSYN (primidone) Tablets	520.1900
125–797	Nitrofurazone Dressing	524.1580a
126–236	Nitrofurazone Soluble Powder	524.1580b
126–676	D & T (dichlorophene and toluene) Worm Capsules	520.580
127–627	NEMACIDE; NEMACIDE–C (diethylcarbamazine citrate) Tablets	520.622a
128–069	NEMACIDE (diethylcarbamazine citrate) Chewable Tablets	520.622c
132–028	ANESTATAL (thiamylal sodium) Injectable Solution	522.2424
135–771	Methylprednisolene Tablets	520.1408
136–212	Methylprednisolone Acetate Injection	522.1410
137–310	Gentamicin Sulfate Injectable Solution	522.1044
138–869	Triamcinolone Acetonide Suspension	522.2483
140–442	Xylazine HCl Injection	522.2662
200–023	Gentamicin Sulfate Solution 100 mg/mL	522.1044
200–029	Ketamine Hydrochloride Injection	522.1222
200–165	SDM (sulfadimethoxine) Concentrated Solution 12.5%	520.2220a

The animal drug regulations are being amended to reflect these changes of sponsorship.

III. Withdrawals of Approval

Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137 has requested that FDA withdraw approval of the NADAs listed in the following table because the products are no longer manufactured or marketed:

File No.	Product name	21 CFR section
011–779	PURINA PIGEMIA 100 (colloidal ferric oxide)	522.1182
040–205	PURINA Horse Wormer Medicated (thiabendazole)	520.2380a
042–116	PURINA 6 DAY WORM–KILL Feed Premix (coumaphos)	558.185
043–215	PURINA GRUB–KILL Pour-on Cattle Insecticide (famphur)	524.900
046–700	STATYL (nequinate) Medicated Premix	558.365
091–260	PULVEX WORM CAPS (piperazine phosphate monohydrate)	520.1804
097–258	PURINA BAN–WORM for Pigs (pyrantel tartrate)	558.485
102–942	PULVEX Multipurpose Worm Caps (dichlorophene, toluene)	520.580
113–748	PURINA PIGEMIA Oral (iron dextran complex)	520.1182
135–941	CHECK–R–TON BM (pyrantel tartrate)	558.485
136–116	PURINA WORM–A–REST™ Litter Pack Premix (fenbendazole)	520.905d
140–869	PURINA SAF–T–BLOC BG Medicated Feed Block (poloxalene, 6.6%)	520.1840

Elsewhere in this issue of the **Federal Register**, FDA gave notice that approval of NADAs 011–779, 040–205, 042–116, 043–215, 046–700, 091–260, 097–258, 102–942, 113–748, 135–941, 136–116, and 140–869, and all supplements and amendments thereto, is withdrawn, effective October 9, 2018. As provided in the regulatory text of this document, the animal drug regulations are amended to reflect these actions.

IV. Technical Amendments

JBS United Animal Health II LLC, 322 S Main St., Sheridan, IN 46069 has informed FDA that it has changed its name to United-AH II LLC. Accordingly, we are amending § 510.600(c) to reflect this change.

We are also making technical amendments to update the scientific name of a pathogenic bacterium and to accurately list the concentrations of new animal drug ingredients in combination drug medicated feeds. These actions are being taken to improve the accuracy of the regulations.

V. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b(i)), which requires **Federal Register** publication of ''notice[s] . . . effective as a regulation,'' of the conditions of use of approved new animal drugs. This rule sets forth technical amendments to the regulations to codify recent actions on approved new animal drug applications and corrections to improve the accuracy of the regulations, and as such does not impose any burden on regulated entities.

Although denominated a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866, which defines a rule as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.''

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 520, 522, 524, 529, 556, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), remove the entry for ''JBS United Animal Health II LLC'', and alphabetically add an entry for ''United-AH II LLC''; and in the table in paragraph (c)(2), revise the entry for ''051233'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
United-AH II LLC, 322 S Main St., Sheridan, IN 46069	051233
* * * * * * *	
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
051233	United-AH II LLC, 322 S Main St., Sheridan, IN 46069
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.390a [Amended]

■ 4. In § 520.390a, in paragraph (b)(1)(i), remove ''054628'' and in its place add ''069043''.

§ 520.441 [Amended]

■ 5. In § 520.441, in paragraph (b)(3), remove ''069254 and 076475'' and in its place add ''069043, 069254, and 076475''.

§ 520.443 [Amended]

■ 6. In § 520.443, in paragraph (b), remove ''054628'' and in its place add ''069043''.

§ 520.580 [Amended]

■ 7. In § 520.580, in paragraph (b)(1), remove ''051311''; and in paragraph (b)(2), remove ''000061 and 054771'', and in its place add ''000061, 054771, and 069043''.

§ 520.600 [Redesignated as § 520.596]

■ 8. Redesignate § 520.600 as § 520.596 and revise newly redesignated § 520.596 to read as follows:

§ 520.596 Dichlorvos powder.

(a) *Specifications*—(1) Each 2-ounce packet contains 2.27 grams (4 percent) dichlorvos.

(2) Each milligram of powder contains 2.27 milligrams (mg) dichlorvos.

(b) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter for use of the product described in paragraph (a)(1) of this section as in paragraph (d)(1) of this section and the product described in paragraph (a)(2) of this section as in paragraph (d)(2) of this section.

(c) *Related tolerances.* See § 556.180 of this chapter.

(d) *Conditions of use*—(1) *Swine* (adult gilts, sows, and boars)—(i) *Amount.* Add powder to the indicated amount of feed and administered shortly after mixing, as follows:

Weight of animal in pounds	Pounds of feed to be mixed with each 0.08 ounce of dichlorvos	Pounds of mixed feed to be administered to each pig as a single treatment	Number of pigs to be treated per 0.08 ounce of dichlorvos
20–30	4	0.33	12
31–40	5	0.56	9
41–60	6	1.00	6
61–80	5	1.00	5
81–100	4	1.00	4
	16	4.00	4

(ii) *Indications for use.* For the removal and control of sexually mature (adult), sexually immature and/or 4th stage larvae of the whipworm (*Trichuris suis*), nodular worms (*Oesophagostomum* spp.), large round-worm (*Ascaris suum*), and the mature thick stomach worm (*Ascarops strongylina*) occurring in the lumen of the gastrointestinal tract of pigs, boars, and open or bred gilts and sows.

(iii) *Limitations.* Do not use this product on animals either simultaneously or within a few days before or after treatment with or exposure to cholinesterase inhibiting drugs, pesticides, or chemicals. The preparation should be mixed thoroughly with the feed on a clean, impervious surface. Do not allow swine access to feed other than that containing the preparation until treatment is complete. Do not treat pigs with signs of scours until these signs subside or are alleviated by proper medication. Resume normal feeding schedule afterwards. Swine may be retreated in 4 to 5 weeks.

(2) *Horses*—(i) *Amount.* Administer in the grain portion of the ration at a dosage of 14.2 to 18.5 mg per pound of body weight as a single dose. Administered at one-half of the single

recommended dosage and repeated 8 to 12 hours later in the treatment of very aged, emaciated, or debilitated subjects or those reluctant to consume medicated feed. In suspected cases of severe ascarid infection sufficient to cause concern over mechanical blockage of the intestinal tract, the split dosage should be used.

(ii) *Indications for use.* For the removal and control of bots (*Gastrophilus intestinalis, G. nasalis*), large strongyles (*Strongylus vulgaris, S. equinus, S. edentatus*), small strongyles (of the genera *Cyathostomum, Cylicocercus, Cylicocyclus, Cylicodontophorus, Triodontophorus, Poteriostomum, Gyalocephalus*), pinworms (*Oxyuris equi*), and large roundworm (*Parascaris equorum*) in horses including ponies and mules. Not for use in foals (sucklings and young weanlings).

(iii) *Limitations.* Do not use in horses which are severely debilitated, suffering from diarrhea or severe constipation, infectious disease, toxemia, or colic. Do not administer in conjunction with or within 1 week of administration of muscle relaxant drugs, phenothiazine derived tranquilizers or central nervous system depressant drugs. Horses should not be subjected to insecticide treatment for 5 days prior to or after treating with the drug. Do not administer to horses afflicted with chronic alveolar emphysema (heaves) or related respiratory conditions. The product is a cholinesterase inhibitor and should not be used simultaneously or within a few days before or after treatment with or exposure to cholinesterase inhibiting drugs, pesticides or chemicals. Do not use in animals other than horses, ponies, and mules. Do not use in horses, ponies, and mules intended for food purposes. Do not allow fowl access to feed containing this preparation or to fecal excrement from treated animals.

■ 9. Add § 520.598 to read as follows:

§ 520.598 Dichlorvos tablets.

(a) *Specifications.* Each tablet contains 2, 5, 10, or 20 milligrams (mg) dichlorvos.

(b) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs, puppies, cats, and kittens*—(1) *Amount.* Administer orally at 5 mg dichlorvos per pound of body weight.

(2) *Indications for use*—(i) *Dogs and puppies:* Removal and control of intestinal roundworms (*Toxocara canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*).

(ii) *Cats and kittens:* Removal and control of intestinal roundworms (*Toxocara cati* and *Toxascaris leonina*) and hookworms (*Ancylostoma tubaeforme* and *Uncinaria stenocephala*).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 10. Add § 520.600 to read as follows:

§ 520.600 Dichlorvos capsules and pellets.

(a) *Specifications.* Each capsule contains 2.27 milligrams (mg) (4 percent) dichlorvos.

(b) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer any combination of capsules and/or pellets so that the animal receives a single dose equaling 12 to 15 mg of dichlorvos per pound of body weight.

(2) *Indications for use.* For removal of *Toxocara canis* and *Toxascaris leonina* (roundworms), *Ancylostoma caninum* and *Uncinaria stenocephala* (hookworms), and *Trichuris vulpis* (whipworm) residing in the lumen of the gastrointestinal tract.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 11. Add § 520.602 to read as follows:

§ 520.602 Dichlorvos gel.

(a) *Specifications.* Each milligram (mg) of gel contains 2.27 milligrams (mg) dichlorvos.

(b) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 20 mg per kilogram of body weight for the removal of bots and ascarids. Repeat administration every 21 to 28 days for the control of bots and ascarids. For the control of bots only, the repeat dosage is 10 milligrams per kilogram of body weight every 21 to 28 days during bot fly season.

(2) *Indications for use.* For the removal and control of first, second, and third instar bots (*Gastrophilus intestinalis* and *G. nasalis*), sexually mature and sexually immature (4th stage) ascarids (*Parascaris equorum*) in horses and foals.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.622a [Amended]

■ 12. In § 520.622a, in paragraph (a)(6), remove ''054628'' and in its place add ''069043''.

§ 520.622b [Amended]

■ 13. In § 520.622b, in paragraph (c)(2), remove ''054628'' and in its place add ''069043''.

§ 520.622c [Amended]

■ 14. In § 520.622c, in paragraph (b)(6), remove ''054628'' and in its place add ''069043''.

§ 520.763a [Amended]

■ 15. In § 520.763a, in paragraph (b), remove ''054628'' and in its place add ''069043''.

§ 520.763b [Amended]

■ 16. In § 520.763b, in paragraph (b), remove ''000010'' and in its place add ''069043''.

§ 520.763c [Amended]

■ 17. In § 520.763c, in paragraph (b), remove ''054628'' and in its place add ''069043''.

■ 18. In § 520.905d, revise paragraphs (a) and (b) to read as follows:

§ 520.905d Fenbendazole powder.

(a) *Specifications.* Each 2-ounce packet contains 2.27 grams (4 percent) fenbendazole.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

* * * * *

§ 520.1044c [Amended]

■ 19. In § 520.1044c, in paragraph (b)(2), remove ''057561'' and in its place add ''016592''.

§ 520.1182 [Removed]

■ 20. Remove § 520.1182.

§ 520.1242a [Amended]

■ 21. In § 520.1242a, in paragraph (b)(3), remove ''057561'' and in its place add ''016592''.

§ 520.1263c [Amended]

■ 22. In § 520.1263c, in paragraph (b)(1), remove ''Nos. 016592 and 054771'' and in its place add ''No. 054771''; and in paragraph (b)(2), remove ''Nos. 054925, 061623, and 076475'' and in its place add ''Nos. 016592, 054925, 061623, and 076475''.

§ 520.1265 [Amended]

■ 23. In § 520.1265, in paragraph (b)(2), remove ''057561'' and in its place add ''016592''.

■ 24. Add § 520.1286 to read as follows:

§ 520.1286 Lotilaner.

(a) *Specifications.* Each chewable tablet contains 56.25, 112.5, 225, 450, or 900 milligrams (mg) lotilaner.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer orally once a month at the recommended minimum dosage of 9 mg/lb (20 mg/kg).

(2) *Indications for use.* Kills adult fleas, and for the treatment of flea infestations (*Ctenocephalides felis*), and the treatment and control of tick infestations (*Amblyomma americanum* (lone star tick), *Dermacentor variabilis* (American dog tick), *Ixodes scapularis* (black-legged tick), and *Rhipicephalus sanguineus* (brown dog tick)) for 1 month in dogs and puppies 8 weeks of age or older and weighing 4.4 pounds or greater.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.1408 [Amended]

■ 25. In § 520.1408, in paragraph (b)(1), remove ''054628'' and in its place add ''069043''.

§ 520.1660d [Amended]

■ 26. In § 520.1660d, in paragraph (b)(4), remove ''No. 057561'' and in its place add ''No. 016592''.

§ 20.1720a [Amended]

■ 27. In § 520.1720a, in paragraph (b)(2), remove ''Nos. 054628 and 069043'' and in its place add ''No. 069043''.

§ 520.1804 [Removed]

■ 28. Remove § 520.1804.

§ 520.1840 [Amended]

■ 29. In § 520.1840, remove paragraph (b)(2), redesignate paragraphs (b)(3) and (4) as paragraphs (b)(2) and (3), and remove paragraph (d)(4).

§ 520.1900 [Amended]

■ 30. In § 520.1900, in paragraph (b)(1), remove ''054628'' and in its place add ''069043''.

§ 520.2220a [Amended]

■ 31. In § 520.2220a, in paragraph (b)(1), remove ''Nos. 016592, 054628, 054771, 054925, and 057561'' and in its place add ''Nos. 016592, 054771, 054925, and 069043''; and in paragraph (b)(2), remove ''Nos. 054771, 054925, 057561, 058829, 061623, and 066104'' and in its place add ''Nos. 016592, 054771, 054925, 058829, 061623, and 066104''.

§ 520.2345d [Amended]

■ 32. In § 520.2345d, in paragraph (b)(4), remove ''Nos. 054925, 057561, 061623, and 076475'' and in its place add ''Nos. 016592, 054925, 061623, and 076475''.

§ 520.2380a [Amended]

■ 33. In § 520.2380a, remove and reserve paragraphs (b)(1) and (d)(1)(i).

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 34. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.970 [Amended]

■ 35. In § 522.970, in paragraph (b)(1), remove ''Nos. 000061, 000859, 055529, 057561, and 061623'' and in its place add ''Nos. 000061, 000859, 016592, 055529, and 061623''.

§ 522.1044 [Amended]

■ 36. In § 522.1044, in paragraph (b)(3), remove ''054628'' and in its place add ''069043''.

§ 522.1182 [Amended]

■ 37. In § 522.1182, in paragraph (b)(4), remove ''Nos. 051311 and 054771'' and in its place add ''No. 054771''.

§ 522.1222 [Amended]

■ 38. In § 522.1222, in paragraph (b), remove ''Nos. 000859, 026637, 054628, 054771, 059399, and 063286'' and in its place add ''Nos. 000859, 026637, 054771, 059399, 063286, and 069043''.

§ 522.1242 [Amended]

■ 39. In § 522.1242, in paragraph (b), remove ''057561'' and in its place add ''016592''.

§ 522.1410 [Amended]

■ 40. In § 522.1410, in paragraph (b), remove ''054628 and 054771'' and in its place add ''054771 and 069043''.

§ 522.1660a [Amended]

■ 41. In § 522.1660a, in paragraph (b), remove ''057561,''.

§ 522.1662a [Amended]

■ 42. In § 522.1662a, in paragraphs (a)(2), (b)(2), (g)(2), and (h)(2), remove ''054628'' and in its place add ''069043''.

§ 522.1720 [Amended]

■ 43. In § 522.1720, in paragraph (b)(3), remove ''054628 and 058005'' and in its place add ''058005 and 069043''.

§ 522.2220 [Amended]

■ 44. In § 522.2220, in paragraph (b)(1), remove ''054628'' and in its place add ''069043''; and in paragraph (b)(3), remove ''Nos. 016592, 057561, and 061623'' and in its place add ''Nos. 016592 and 061623''.

§ 522.2424 [Amended]

■ 45. In § 522.2424, in paragraph (b), remove ''054628 and 054771'' and in its place add ''054771 and 069043''.

§ 522.2483 [Amended]

■ 46. In § 522.2483, in paragraph (b), remove ''054628'' and in its place add ''069043''.

§ 522.2662 [Amended]

■ 47. In § 522.2662, in paragraph (b)(1), remove ''054628'' and in its place add ''069043''.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 48. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 49. In § 524.814, revise paragraph (b) to read as follows:

§ 524.814 Eprinomectin.

* * * * *

(b) *Sponsors.* See Nos. 050604 and 055529 in § 510.600(c) of this chapter.

* * * * *

■ 50. Add § 524.815 to read as follows:

§ 524.815 Eprinomectin and praziquantel.

(a) *Specifications.* Each milliliter (mL) of solution contains 4 milligrams (mg) eprinomectin and 83 mg praziquantel.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use in cats*—(1) *Amount.* Using the 0.3 mL and 0.9 mL unit applicators, administer a minimum dose of 0.23 mg eprinomectin per pound body weight and 4.55 mg praziquantel per pound body weight by topical application on the dorsal midline between the base of the skull and the shoulder blades.

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis,* and for the treatment and control of roundworms (adult and fourth stage larval *Toxocara cati*), hookworms (adult and fourth stage larval *Ancylostoma tubaeforme;* adult *Ancylostoma braziliense*), and tapeworms (adult *Dipylidium caninum* and *Echinococcus multilocularis*), in cats and kittens 7 weeks of age and older and 1.8 lbs or greater.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.900 [Amended]

■ 51. In § 524.900, in paragraph (b), remove ''Nos. 000061 and 051311'' and in its place add ''No. 000061''.

§ 524.1580a [Amended]

■ 52. In § 524.1580a, in paragraph (b)(1), remove ''Nos. 054628, 054925, 058005, 059051, and 061623'' and in its place add ''Nos. 054925, 058005, 059051, 061623, and 069043''.

§ 524.1580b [Amended]

■ 53. In § 524.1580b, in paragraph (b), remove ''054628 and 059051'' and in its place add ''059051 and 069043''.

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 54. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1044a [Amended]

■ 55. In § 529.1044a, in paragraph (b), remove ''Nos. 000061, 000859, 054628, 054771, 057561, 058005, and 061623'' and in its place add ''Nos. 000061, 000859, 016592, 054628, 054771, 058005, and 061623''.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 56. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 57. In § 556.275, add paragraph (b)(3)(ii) to read as follows:

§ 556.275 Fenbendazole.

* * * * *

(b) * * *

(3) * * *

(ii) *Eggs.* The tolerance for fenbendazole sulfone (the marker residue) is 1.8 ppm.

* * * * *

§ 556.440 [Removed]

■ 58. Remove § 556.440.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 59. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

§ 558.4 [Amended]

■ 60. In § 558.4, in paragraph (d), in the ''Category I'' table, remove the row entry for ''Nequinate''.

§ 558.128 [Amended]

■ 61. In § 558.128, in paragraphs (e)(4)(xi) and (xiii), in the ''Indications for use'' column, remove ''*P. multocida*'' and in its place add ''*P. multocida* organisms''.

■ 62. In § 558.185, revise paragraph (b), remove paragraph (e)(1), and redesignate paragraphs (e)(2) and (3) as paragraphs (e)(1) and (2).

The revision reads as follows:

§ 558.185 Coumaphos.

* * * * *

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

* * * * *

§ 558.195 [Amended]

■ 63. In § 558.195, remove and reserve paragraph (e)(2)(v).

■ 64. In § 558.205, revise paragraph (a); redesignate paragraphs (b) through (d) as paragraphs (c) through (e); and add new paragraph (b).

The revision and addtion read as follows:

§ 558.205 Dichlorvos.

(a) *Specifications.* Type A medicated articles containing 3.1 or 9.6 percent dichlorvos.

(b) *Sponsor.* See No. 069043 in § 510.600(c) of this chapter.

* * * * *

■ 65. In § 558.311, revise paragraph (e)(5) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(5) Lasalocid may also be used in combination with:

(i) Chlortetracycline as in § 558.128.

(ii) Melengestrol as in § 558.342.

(iii) Oxytetracycline as in § 558.450.

(iv) Tylosin alone or in combination with melengestrol acetate as in § 558.625.

(v) Virginiamycin as in § 558.635.

■ 66. In § 558.325, redesignate paragraph (e)(1)(ii) as paragraph (e)(1)(v); add reserved paragraphs (e)(1)(ii), (iii), and (vi); and add paragraphs (e)(1)(iv), (vii), (viii), (ix), and (x) to read as follows:

§ 558.325 Lincomycin.

* * * * *

(e) * * *

(1) * * *

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(ii) [Reserved]				
(iii) [Reserved]				
(iv) 2	Decoquinate, 2.72	Broiler chickens: For the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to lincomycin; and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*.	Feed as the sole ration. Do not use in feeds containing bentonite. Not for use in laying hens, breeding chickens, or turkeys. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. Decoquinate as provided by No. 054771 in § 510.600 of this chapter.	054771
*	*	*	*	*
(vi) [Reserved]				
(vii) 2	Monensin, 90 to 110	Broiler chickens: For the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to lincomycin, and as an aid the prevention of coccidiosis caused by *Eimeria necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*.	Feed as the sole ration. Must be thoroughly mixed in feeds before use. Do not feed undiluted. Not for use in laying hens, breeding chickens, or turkeys. Do not allow horses, or other equines, mature turkeys, or guinea fowl access to feed containing monensin. Ingestion of monensin by horses and guinea fowl has been fatal. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. Monensin as provided by No. 058198 in § 510.600 of this chapter.	054771

Lincomycin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(viii) 2	Robenidine hydrochloride, 30.	Broiler chickens: For the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to lincomycin, and as an aid in the prevention of coccidiosis caused by *Eimeria mivati, E. brunetti, E. tenella, E. acervulina, E. maxima,* and *E. necatrix*.	Feed as the sole ration. Do not use in feeds containing bentonite. Do not feed to laying hens producing eggs for human consumption. Not for use in laying hens, breeding chickens, or turkeys. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. Withdraw 5 days prior to slaughter. Type C feed containing robenidine hydrochloride must be fed within 50 days from the date of manufacture. Robenidine hydrochloride as provided by No. 054771 in § 510.600 of this chapter.	054771
(ix) 2	Salinomycin sodium, 40 to 60.	Broiler chickens: For the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to lincomycin, and for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E maxima, E. brunetti,* and *E. mivati*.	Feed as the sole ration to broiler chickens. Do not feed to laying hens producing eggs for human consumption. Not approved for use with pellet binders. May be fatal if accidentally fed to adult turkeys or horses. Not for use in laying hens, breeding chickens, or turkeys. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. Salinomycin sodium as provided by No. 054771 in § 510.600 of this chapter.	054771
(x) 2	Zoalene, 113.5	Broiler chickens: For the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to lincomycin; and for the prevention and control of coccidiosis.	Feed as the sole ration from the time chicks are placed in floor pens until slaughtered for meat. Not for use in laying hens, breeding chickens, or turkeys. Do not allow rabbits, hamsters, guinea pigs, horses, or ruminants access to feeds containing lincomycin. Ingestion by these species may result in severe gastrointestinal effects. Zoalene as provided by No. 054771 in § 510.600 of this chapter.	054771

* * * * *

■ 67. In § 558.342, in paragraph (e)(1), revise the table headings, add paragraphs (e)(1)(iii) and (iv), and remove paragraphs (e)(1)(v) through (xi); and in paragraph (e)(2), redesignate paragraphs (e)(2)(i) through (iii) as paragraphs (e)(2)(ii) through (iv) and add new paragraph (e)(2)(i).

The revisions and additions read as follows:

§ 558.342 Melengestrol.

* * * * *

(e) * * *

(1) * * *

Melengestrol acetate in mg/head/day	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	
(iii) 0.25 to 0.5	Lasalocid, 10 to 30	Heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat); and for control of coccidiosis caused by *Eimeria bovis* and *Eimeria zuernii*.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb to a feed containing 10 to 30 g of lasalocid per ton to provide 0.25 to 0.5 mg melengestrol acetate and 100 to 360 milligrams of lasalocid per head/day. See § 558.311(d) of this chapter. Lasalocid as provided by No. 054771 in § 510.600(c) of this chapter.	054771 058198
(iv) 0.25 to 0.5	Monensin, 10 to 40	Heifers fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat); and for the prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*.	Add at the rate of 0.5 to 2.0 lb/head/day a medicated feed (liquid or dry) containing 0.125 to 1.0 mg melengestrol acetate/lb to a feed containing 10 to 40 g of monensin per ton to provide 0.25 to 0.5 mg melengestrol acetate/head/day and 0.14 to 0.42 mg monensin/lb body weight, depending on severity of coccidiosis challenge, up to 480 mg monensin/head/day. See § 558.355(d) of this chapter. Monensin as provided by No. 058198 in § 510.600(c) of this chapter.	054771 058198

(2) * * *

(i) Oxytetracycline as in § 558.450.

* * * * *

§ 558.365 [Removed]

■ 68. Remove § 558.365.

§ 558.450 [Amended]

■ 69. In § 558.450, in paragraph (e)(5)(iv) entries 1 and 2, remove ''*A. liquefaciens*'' and in its place add ''*A. hydrophila*''.

■ 70. Revise § 558.485 to read as follows:

§ 558.485 Pyrantel.

(a) *Specifications.* Type A medicated articles containing 48 or 80 grams per pound pyrantel tartrate.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (e) of this section.

(1) No. 066104: 48 and 80 grams per pound for use as in paragraph (e)(1) of this section.

(2) Nos. 017135 and 054771: 48 grams per pound for use as in paragraph (e)(2) of this section.

(c) *Related tolerances.* See § 556.560 of this chapter.

(d) *Special considerations*—(1) See § 500.25 of this chapter. Consult a veterinarian before using in severely debilitated animals.

(2) Do not mix in Type B or Type C medicated feeds containing bentonite.

(e) *Conditions of use*—(1) *Swine*—

Pyrantel grams/ton	Indications for use	Limitations	Sponsor
(i) 96	Swine: As an aid in the prevention of migration and establishment of large roundworm (*Ascaris suum*) infections; aid in the prevention of establishment of nodular worm (*Oesophagostomum*) infections.	Feed continuously as the sole ration in a Type C feed. Withdraw 24 hours prior to slaughter.	066104
(ii) 96	Swine: For the removal and control of large roundworm (*Ascaris suum*) infections.	Feed for 3 days as the sole ration in a Type C feed. Withdraw 24 hours prior to slaughter.	066104
(iii) 800	Swine: For the removal and control of large roundworm (*Ascaris suum*) and nodular worm (*Oesophagostomum*) infections.	Feed as the sole ration for a single therapeutic treatment in Type C feed at a rate of 1 lb of feed per 40 lb of body weight for animals up to 200 lb, and 5 lb of feed per head for animals 200 lb or over. Withdraw 24 hours prior to slaughter.	066104

(2) *Horses*—

Pyrantel grams/ton	Indications for use	Limitations	Sponsor
To provide 1.2 mg/lb body weight.	Prevention of *Strongylus vulgaris* larval infections; control of adult large strongyles (*S. vulgaris,* and *S. edentatus*), adult and 4th stage larvae small strongyles (*Cyathostomum* spp., *Cylicocyclus* spp., *Cylicostephanus* spp., *Cylicodontophorus* spp., *Poteriostomum* spp., and *Triodontophorus* spp.), adult and 4th stage larvae pinworms (*Oxyuris equi*), and adult and 4th stage larvae ascarids (*Parascaris equorum*).	Feed continuously. Administer either as a top-dress (not to exceed 20,000 g/ton) or mixed in the horse's daily grain ration (not to exceed 1,200 g/ton) during the time that the animal is at risk of exposure to internal parasites. Not for use in horses intended for food. Consult your veterinarian before using in severely debilitated animals and for assistance in the diagnosis, treatment, and control of parasitism.	017135 054771

(3) Pyrantel may also be used in combination with:

(i) Carbadox as in § 558.115.

(ii) Lincomycin as in § 558.325.

(iii) Tylosin as in § 558.625.

■ 71. In § 558.625, revise paragraphs (e)(2)(ii) and (iii) to read as follows:

§ 558.625 Tylosin.

* * * * *

(e) * * *

(2) * * *

Tylosin grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(ii) 8 to 10	Lasalocid, 100 to 1440; plus melengestrol, 0.25 to 2.0.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes;* and for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	Feed continuously as sole ration. Feed to heifers at the rate of 0.5 to 2.0 pound(s) per head per day (specify one level) to provide 0.25 to 0.5 mg melengestrol acetate per head per day (specify one level), 100 to 360 mg lasalocid per head per day (specify one level), and 90 mg tylosin per head per day. This Type C product may be top dressed onto or mixed into a complete feed prior to feeding. Tylosin as provided by Nos. 016592 and 058198; lasalocid as provided by No. 054771; melengestrol as provided by Nos. 054771 and 058198 in § 510.600(c) of this chapter. See §§ 558.311(d) and 558.342(d) in this chapter.	016592 054771 058198
(iii) 8 to 10	Melengestrol, 0.25 to 2.0.	Heifers fed in confinement for slaughter: For reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium pyogenes;* and for increased rate of weight gain, improved feed efficiency, and suppression of estrus (heat).	Feed continuously as sole ration. Each pound contains 0.125 to 1.0 mg melengestrol acetate and 45 to 180 mg of tylosin. Feed to heifers at a rate of 0.5 to 2.0 pounds per head per day to provide 0.25 to 0.5 mg melengestrol acetate and 60 to 90 mg tylosin per head per day. Prior to feeding, this Type C product must be top-dressed onto a complete feed or mixed into the amount of complete feed consumed by an animal per day. Tylosin provided by Nos. 016592 and 058198; melengestrol provided by Nos. 054771 and 058198 in § 510.600(c) of this chapter. See § 558.342(d) in this chapter.	016592 054771 058198
*	*	*	*	*

Dated: September 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21146 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, 524, and 558

[Docket No. FDA–2018–N–0002]

New Animal Drugs; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 12 new animal drug applications (NADAs) at the sponsor's request because these products are no longer manufactured or marketed.

DATES: Withdrawal of approval is effective October 9, 2018.

FOR FURTHER INFORMATION CONTACT: Sujaya Dessai, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5761, *sujaya.dessai@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137, has requested that FDA withdraw approval of the NADAs listed in the following table because the products are no longer manufactured or marketed:

File No.	Product name	21 CFR section
011–779	PURINA PIGEMIA 100 (colloidal ferric oxide).	522.1182
040–205	PURINA Horse Wormer Medicated (thiabendazole).	520.2380a
042–116	PURINA 6 DAY WORM-KILL Feed Premix (coumaphos).	558.185
043–215	PURINA GRUB-KILL Pour-on Cattle Insecticide (famphur).	524.900
046–700	STATYL Medicated Premix (nequinate).	558.365
091–260	PULVEX WORM CAPS (piperazine phosphate monohydrate).	520.1804
097–258	PURINA BAN-WORM for Pigs (pyrantel tartrate).	558.485
102–942	PULVEX Multipurpose Worm Caps (dichlorophene, toluene).	520.580
113–748	PURINA PIGEMIA Oral (iron dextran complex).	520.1182
135–941	CHECK-R-TON BM (pyrantel tartrate).	558.485
136–116	PURINA WORM-A-REST™ Litter Pack Premix (fenbendazole).	520.905d
140–869	PURINA SAF-T-BLOC BG Medicated Feed Block (poloxalene, 6.6%).	520.1840

Therefore, under authority delegated to the Commissioner of Food and Drugs, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of NADAs 011–779, 040–205, 042–116, 043–215, 046–700, 091–260, 097–258, 102–942, 113–748, 135–941, 136–116, and 140–869, and all supplements and amendments thereto, is hereby withdrawn, effective October 9, 2018.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the voluntary withdrawal of approval of these applications.

Dated: September 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21147 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1308, 1312

[Docket No. DEA–486]

Schedules of Controlled Substances: Placement in Schedule V of Certain FDA-Approved Drugs Containing Cannabidiol; Corresponding Change to Permit Requirements

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: With the issuance of this final order, the Acting Administrator of the Drug Enforcement Administration places certain drug products that have been approved by the Food and Drug Administration (FDA) and which contain cannabidiol (CBD) in schedule V of the Controlled Substances Act (CSA). Specifically, this order places FDA-approved drugs that contain CBD derived from cannabis and no more than 0.1 percent tetrahydrocannabinols in schedule V. This action is required to satisfy the responsibility of the Acting Administrator under the CSA to place a drug in the schedule he deems most appropriate to carry out United States obligations under the Single Convention on Narcotic Drugs, 1961. Also consistent therewith, DEA is adding such drugs to the list of substances that may only be imported or exported pursuant to a permit.

DATES: Effective September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Kathy L. Federico, Regulatory Drafting and Policy Support Section (DPW), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

The United States is a party to the Single Convention on Narcotic Drugs, 1961 (Single Convention), and other international conventions designed to establish effective control over international and domestic traffic in controlled substances. 21 U.S.C. 801(7). The Single Convention entered into force for the United States on June 24, 1967, after the Senate gave its advice and consent to the United States' accession. *See* Single Convention, 18 U.S.T. 1407. The enactment and enforcement of the Controlled Substances Act (CSA) are the primary means by which the United States carries out its obligations under the Single Convention.[1] Various provisions of the CSA directly reference the Single Convention. One such provision is 21 U.S.C. 811(d)(1), which relates to scheduling of controlled substances.

As stated in subsection 811(d)(1), if control of a substance is required ''by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970, the Attorney General shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by [subsections 811(a) or 812(b)] and without regard to the procedures prescribed by [subsections 811(a) and (b)].'' This provision is consistent with the Supremacy Clause of the U.S. Constitution (art. VI, sec. 2), which provides that all treaties made under the authority of the United States ''shall be the supreme Law of the Land.'' In accordance with this constitutional

[1] *See* S. Rep. No. 91–613, at 4 (1969) (''The United States has international commitments to help control the worldwide drug traffic. To honor those commitments, principally those established by the Single Convention on Narcotic Drugs of 1961, is clearly a Federal responsibility.''); *Control of Papaver Bracteatum,* 1 Op. O.L.C. 93, 95 (1977) (''[A] number of the provisions of [the CSA] reflect Congress' intent to comply with the obligations imposed by the Single Convention.'').

mandate, under section 811(d)(1), Congress directed the Attorney General (and the Administrator of DEA, by delegation) [2] to ensure that compliance by the United States with our nation's obligations under the Single Convention is given top consideration when it comes to scheduling determinations.

Section 811(d)(1) is relevant here because, on June 25, 2018, the Food and Drug Administration (FDA) announced that it approved a drug that is subject to control under the Single Convention. Specifically, the FDA announced that it approved the drug Epidiolex for the treatment of seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome, in patients two years of age and older. *www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm611046.htm.* Epidiolex is an oral solution that contains cannabidiol (CBD) extracted from the cannabis plant. This is the first FDA-approved drug made from the cannabis plant.[3] Now that Epiodiolex has been approved by the FDA, it has a currently accepted medical use in treatment in the United States for purposes of the CSA. Accordingly, Epidiolex no longer meets the criteria for placement in schedule I of the CSA. *See* 21 U.S.C. 812(b) (indicating that while substances in schedule I have no currently accepted medical use in treatment in the United States, substances in schedules II–V do); *see also United States* v. *Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483, 491–92 (2001) (same). DEA must therefore take the appropriate scheduling action to remove the drug from schedule I.

In making this scheduling determination, as section 811(d)(1) indicates, it is necessary to assess the relevant requirements of the Single Convention. Under the treaty, cannabis, cannabis resin, and extracts and tinctures of cannabis are listed in Schedule I.[4] The cannabis plant contains more than 100 cannabinoids. Among these are tetrahydrocannabinols (THC) and CBD.[5] Material that contains THC and CBD extracted from the cannabis plant falls within the listing of extracts and tinctures of cannabis for purposes of the Single Convention.[6] Thus, such material, which includes, among other things, a drug product containing CBD extracted from the cannabis plant, is a Schedule I drug under the Single Convention.

Parties to the Single Convention are required to impose a number of control measures with regard to drugs listed in Schedule I of the Convention. These include, but are not limited to, the following:

- Limiting exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of such drugs. Article 4.
- Furnishing to the International Narcotics Control Board (INCB) annual estimates of, among other things, quantities of such drugs to be consumed for medical and scientific purposes, utilized for the manufacture of other drugs, and held in stock. Article 19.
- Furnishing to the INCB statistical returns on the actual production, utilization, consumption, imports and exports, seizures, and stocks of such drugs during the prior year. Article 20.
- Requiring that licensed manufacturers of such drugs obtain quotas specifying the amounts of such drugs they may manufacture to prevent excessive production and accumulation beyond that necessary to satisfy legitimate needs. Article 29.
- Requiring manufacturers and distributors of such drugs to be licensed. Articles 29 & 30.
- Requiring medical prescriptions for the dispensing of such drugs to patients. Article 30.
- Requiring importers and exporters of such drugs to be licensed and requiring each individual importation or exportation to be predicated on the issuance of a permit. Article 31.
- Prohibiting the possession of such drugs except under legal authority. Article 33.
- Requiring those in the legitimate distribution chain (manufacturers, distributors, scientists, and those who lawfully dispense such drugs) to keep records that show the quantities of such drugs manufactured, distributed, dispensed, acquired, or otherwise disposed of during the prior two years. Article 34.

Because the CSA was enacted in large part to satisfy United States obligations under the Single Convention, many of the CSA's provisions directly implement the foregoing treaty requirements. None of the foregoing obligations of the United States could be satisfied for a given drug if that drug were removed entirely from the CSA schedules. At least one of the foregoing requirements (quotas) can only be satisfied if the drug that is listed in Schedule I of the Single Convention is also listed in schedule I or II of the CSA because, as 21 U.S.C. 826 indicates, the quota requirements generally apply only to schedule I and II controlled substances.

The permit requirement warrants additional explanation. As indicated above, the Single Convention obligates parties to require a permit for the importation and exportation of drugs listed in Schedule I of the Convention. This permit requirement applies to a drug product containing CBD extracted from the cannabis plant because, as further indicated above, such a product is a Schedule I drug under the Single Convention. However, under the CSA [7] and DEA regulations, the import/export permit requirement does not apply to all controlled substances. Rather, a permit is required to import or export any controlled substance in schedule I and II as well as certain controlled substances in schedules III, IV, and V. *See* 21 U.S.C. 952 and 953; 21 CFR 1312.11, 1312.12, 1312.21, 1312.22. Thus, in deciding what schedule is most appropriate to carry out the United States' obligations under the Single Convention with respect to the importation and exportation of Epidiolex, I conclude there are two options:

(i) Control the drug in schedule II, which will automatically require an

[2] 28 CFR 0.100.

[3] The drug Marinol was approved by the FDA in 1985. Marinol contains a *synthetic* form of dronabinol (an isomer of tetrahydrocannabinol) and thus is not made from the cannabis plant.

[4] The text of the Single Convention capitalizes schedules (*e.g.,* ''Schedule I''). In contrast, the text of the CSA generally refers to schedules in lower case. This document will follow this approach of using capitalization or lower case depending on whether the schedule is under the Single Convention or the CSA.

It should also be noted that the schedules of the Single Convention operate somewhat differently than the schedules of the CSA. Unlike the CSA, the Single Convention imposes additional restrictions on drugs listed in Schedule IV that go beyond those applicable to drugs listed in Schedule I. All drugs in Schedule IV of the Single Convention are also in Schedule I of the Convention. Cannabis and cannabis resin are among the drugs listed in Schedule IV of the Single Convention.

[5] There are numerous isomers of cannabidiol, which will be referred to here collectively as ''CBD.''

[6] Although the Single Convention does not define the term ''extract,'' the ordinary meaning of that term would include a product, such as a concentrate of a certain chemical or chemicals, obtained by a physical or chemical process. *See, e.g.,* Webster's Third New International Dictionary 806 (1976). Thus, the term extract of cannabis would include any product that is made by subjecting cannabis material to a physical or chemical process designed to isolate or increase the concentration of one or more of the cannabinoid constituents.

[7] The provisions of federal law relating to the import and export of controlled substances—those found in 21 U.S.C. 951 through 971—are more precisely referred to as the Controlled Substances Import and Export Act (CSIEA). However, federal courts and DEA often use the term ''CSA'' to refer collectively to all provisions from 21 U.S.C. 801 through 971 and, for ease of exposition, this document will do likewise.

import/export permit under existing provisions of the CSA and DEA regulations or

(ii) control the drug in schedule III, IV, or V, and simultaneously amend the regulations to require a permit to import or export Epidiolex.

It bears emphasis that where, as here, control of a drug is required by the Single Convention, the DEA Administrator ''shall issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, *without regard to the findings required by [21 U.S.C. 811 (a) or 812(b)] and without regard to the procedures prescribed by [21 U.S.C. 811 (a) or (b)].*'' 21 U.S.C. 811(d)(1) (emphasis added). Thus, in such circumstances, the Administrator is not obligated to request a medical and scientific evaluation or scheduling recommendation from the Department of Health and Human Services (HHS) (as is normally done pursuant to section 811(b)).[8] Nonetheless, DEA did seek such an evaluation and recommendation from HHS with respect to the Epidiolex formulation. In responding to that request, HHS advised DEA that it found the Epidiolex formulation to have a very low potential for abuse and, therefore, recommended that, if DEA concluded that control of the drug was required under the Single Convention, Epidiolex should be placed in schedule V of the CSA.[9] Although I am not required to consider this HHS recommendation when issuing an order under section 811(d)(1), because I believe there are two legally viable scheduling options (listed above), both of which would satisfy the United States' obligations under the Single Convention, I will exercise my discretion and choose the option that most closely aligns to the HHS recommendation. Namely, I am hereby ordering that the Epidiolex formulation (and any future FDA-approved generic versions of such formulation made from cannabis) be placed in schedule V of the CSA.

As noted, this order placing the Epidiolex formulation in schedule V will only comport with section 811(d)(1) if all importations and exportations of the drug remain subject to the permit requirement. Until now, since the Epidiolex formulation had been a schedule I controlled substance, the importation of the drug from its foreign production facility has always been subject to the permit requirement. To ensure this requirement remains in place (and thus to prevent any lapse in compliance with the requirements of the Single Convention), this order will amend the DEA regulations (21 CFR 1312.30) to add the Epidiolex formulation to the list of nonnarcotic schedule III through V controlled substances that are subject to the import and export permit requirement.

Finally, a brief explanation is warranted regarding the quota requirement in connection with the Single Convention. As indicated above, for drugs listed in Schedule I of the Convention, parties are obligated to require that licensed manufacturers of such drugs obtain quotas specifying the amounts of such drugs they may manufacture. The purpose of this treaty requirement is to prevent excessive production and accumulation beyond that necessary to satisfy legitimate needs. Under this scheduling order, the United States will continue to meet this obligation because the bulk cannabis material used to make the Epidiolex formulation (as opposed to the FDA-approved drug product in finished dosage form) will remain in schedule I of the CSA and thus be subject to all applicable quota provisions under 21 U.S.C. 826.[10]

Requirements for Handling FDA-Approved Products Containing CBD

As noted, until now, Epidiolex has been a schedule I controlled substance. By virtue of this order, Epidiolex (and any generic versions of the same formulation that might be approved by the FDA in the future) will be a schedule V controlled substance. Thus, all persons in the distribution chain who handle Epidiolex in the United States (importers, manufacturers, distributors, and practitioners) must comply with the requirements of the CSA and DEA regulations relating to schedule V controlled substances. As further indicated, any material, compound, mixture, or preparation *other than Epidiolex* that falls within the CSA definition of marijuana set forth in 21 U.S.C. 802(16), including any non-FDA-approved CBD extract that falls within such definition, remains a schedule I controlled substance under the CSA.[11] Thus, persons who handle such items will continue to be subject to the requirements of the CSA and DEA regulations relating to schedule I controlled substances.

Regulatory Analyses

Administrative Procedure Act

The CSA provides for an expedited scheduling action where control of a drug is required by the United States' obligations under the Single Convention. 21 U.S.C. 811(d)(1). Under such circumstances, the Attorney General must ''issue an *order* controlling such drug under the schedule he deems most appropriate to carry out such obligations,'' without regard to the findings or procedures otherwise required for scheduling actions. *Id.* (emphasis added). Thus, section 811(d)(1) expressly requires that this type of scheduling action not proceed through the notice-and-comment rulemaking procedures governed by the Administrative Procedure Act (APA), which generally apply to scheduling actions; it instead requires that such scheduling action occur through the issuance of an ''order.''

Although the text of section 811(d)(1) thus overrides the normal APA considerations, it is notable that the APA itself contains a provision that would have a similar effect. As set forth in 21 U.S.C. 553(a)(1), the section of the APA governing rulemaking does not apply to a ''foreign affairs function of the United States.'' An order issued under section 811(d)(1) may be considered a foreign affairs function of the United States because it is for the express purpose of ensuring that the

[8] In the House Report to the bill that would become the CSA (H. Rep. No. 91–1444, at 36 (1970)), this issue is explained as follows:

Under subsection [811(d)], where control of a drug or other substance by the United States is required by reason of its obligations under [the Single Convention], the bill does not require that the Attorney General seek an evaluation and recommendation by the Secretary of Health, Education, and Welfare, or pursue the procedures for control prescribed by the bill but he may include the drug or other substance under any of the five schedules of the bill which he considers most appropriate to carry out the obligations of the United States under the international instrument, and he may do so without making the specific findings otherwise required for inclusion of a drug or other substance in that schedule.

[9] HHS most recently updated its medical and scientific evaluation and scheduling recommendation for the Epidiolex formulation by letter to DEA dated June 13, 2018.

[10] At present, the cannabis used to make Epidiolex is grown in the United Kingdom and the drug is imported into the United States in finished dosage form.

[11] Nothing in this order alters the requirements of the Federal Food, Drug, and Cosmetic Act that might apply to products containing CBD. In announcing its recent approval of Epidiolex, the FDA Commissioner stated:

[W]e remain concerned about the proliferation and illegal marketing of unapproved CBD-containing products with unproven medical claims. . . . The FDA has taken recent actions against companies distributing unapproved CBD products. These products have been marketed in a variety of formulations, such as oil drops, capsules, syrups, teas, and topical lotions and creams. These companies have claimed that various CBD products could be used to treat or cure serious diseases such as cancer with no scientific evidence to support such claims.

www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm611047.htm.

United States carries out its obligations under an international treaty.

Executive Order 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs

This action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and the principles reaffirmed in Executive Order 13563 (Improving Regulation and Regulatory Review), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This order is not an Executive Order 13771 regulatory action.

Executive Order 12988, Civil Justice Reform

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This action does not have federalism implications warranting the application of Executive Order 13132. This action does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications warranting the application of Executive Order 13175. The action does not 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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or any other law. As explained above, the CSA exempts this order from the APA notice-and-comment rulemaking provisions. Consequently, the RFA does not apply to this action.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. 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.

Congressional Review Act

As noted above, this action is an order, not a rulemaking. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules. However, the DEA has submitted a copy of this final order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (CRA), 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1312

Administrative practice and procedure, Drug traffic control, Exports, Imports, Reporting requirements.

For the reasons set out above, DEA amends 21 CFR parts 1308 and 1312 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b) unless otherwise noted.

■ 2. In § 1308.15, add paragraph (f) to read as follows:

§ 1308.15 Schedule V.

* * * * *

(f) *Approved cannabidiol drugs.* (1) A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydro cannabinols 7367

(2) [Reserved]

* * * * *

PART 1312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

■ 3. The authority citation for part 1312 is revised to read as follows:

Authority: 21 U.S.C. 821, 871(b), 952, 953, 954, 957, 958.

■ 4. In § 1312.30, revise the introductory text and add pargraph (b) to read as follows:

§ 1312.30 Schedule III, IV, and V non-narcotic controlled substances requiring an import and export permit.

The following Schedule III, IV, and V non-narcotic controlled substances have been specifically designated by the Administrator of the Drug Enforcement Administration as requiring import and export permits pursuant to sections 201(d)(1), 1002(b)(2), and 1003(e)(3) of the Act (21 U.S.C. 811(d)(1), 952(b)(2), and 953(e)(3)):

* * * * *

(b) A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

Dated: September 21, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–21121 Filed 9–27–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2018–0795]

Special Local Regulations for Marine Events; San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations in the navigable waters of the San Francisco Bay for the San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration from October 4 through October 7, 2018. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, unauthorized

persons or vessels are prohibited from entering into, transiting through, or anchoring in the regulated area, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 100.1105 will be enforced from 10:30 a.m. until 12:30 p.m. on October 5, 2018; from 12:50 p.m. until 5 p.m. on October 4, 2018; from 12:50 p.m. until 4 p.m. on October 5, 2018; and from 12:35 p.m. until 4 p.m. on October 6 through 7, 2018 as identified in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice of enforcement, call or email Lieutenant Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual San Francisco Bay Navy Fleet Week Parade of Ships and Blue Angels Demonstration in 33 CFR 100.1105.

Regulations for the Navy Parade of Ships will be enforced from 10:30 a.m. until 12:30 p.m. on October 5, 2018; the U.S. Navy Blue Angels Activities will be enforced from 12:50 p.m. until 5 p.m. on October 4, 2018, and from 12:50 p.m. until 4 p.m. on October 5, 2018, and from 12:35 p.m. until 4 p.m. on October 6 through 7, 2018. Under the provisions of 33 CFR 100.1105, except for persons or vessels authorized by the PATCOM, in regulated area ''Alpha'' no person or vessel may enter or remain within 500 yards ahead of any Navy parade vessel. No person or vessel shall anchor, block, loiter in, or impede the through transit of ship parade participants or official patrol vessels in regulated area ''Alpha.''

Except for persons or vessels authorized by the PATCOM, no person or vessel may enter or remain within regulated area ''Bravo.''

When hailed and/or signaled by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, a person or vessel shall come to an immediate stop. Persons or vessels shall comply with all directions given; failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco, California. The PATCOM is empowered to forbid and control the movement of all vessels in the regulated area.

This notice of enforcement is issued under authority of 33 U.S.C. 1233. In addition to this notification in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the regulated area and its enforcement period via the Local Notice to Mariners, and Broadcast Notice to Mariners.

Dated: September 20, 2018.

Anthony J. Ceraolo,

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

[FR Doc. 2018–21094 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0917]

RIN 1625–AA11

Regulated Navigation Area; Upper Mississippi River, Sabula Railroad Drawbridge, Mile Marker 535, Sabula, IA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) for certain navigable waters of the Upper Mississippi River under one of the navigable spans of the Sabula Railroad Drawbridge at mile marker (MM) 535. The RNA is necessary to protect persons, vessels, and the marine environment from potential hazards associated with emergency repair work to the Sabula Railroad Bridge following a vessel's allision with the bridge. This regulation applies only to southbound vessel transits through the RNA, and depending on the water flow as measured from Lock and Dam 12, this regulation either prohibits transit or establishes operating requirements unless a deviation is authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. We invite your comments on this rulemaking.

DATES: This rule is effective without actual notice from September 28, 2018 through November 30, 2018. For the purposes of enforcement, actual notice will be used from September 24, 2018 through September 28, 2018. Comments and related material must be received by the Coast Guard on or before October 15, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2018–0917 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Kody Stitz, Sector Upper Mississippi River Prevention Department U.S. Coast Guard; telephone 314–269–2568, email *Kody.J.Stitz@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. On September 16, 2018, a vessel allided with the Sabula Railroad Drawbridge and immediate action is needed to respond to the potential hazards associated with emergency bridge repairs. It is impracticable to publish an NPRM because we must establish this regulated navigation area as soon as possible. The NPRM process would delay establishment of the regulated navigation area until after the emergency repairs are necessary and compromise public safety. However, the Coast Guard is providing an opportunity to comment while the rule is in effect and may amend the rule after it becomes effective, if necessary.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal**

Register. Delaying the effective date of this rule would be contrary to public interest because immediate action is needed to respond to the potential safety hazards associated with emergency bridge repairs.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Eighth District Commander has determined that potential hazards associated with emergency bridge repairs following an allision will be a safety concern for vessels transiting southbound through the right descending span, also known as Iowa span, of the Sabula Railroad Drawbridge. This rule is necessary to protect persons, vessels, and the marine environment on the navigable waters of the Upper Mississippi River while the bridge is being repaired. The duration of this rule is intended to cover the period of emergency repairs.

IV. Discussion of the Rule

This rule establishes a temporary regulated navigation area from September 21, 2018 through November 30, 2018, or until the emergency bridge repairs are completed, whichever occurs first. The regulated area covers all navigable waters of the Upper Mississippi River under the right descending bank span, also known as the Iowa span, of the Sabula Railroad Drawbridge at mile marker (MM) 535. This rule applies only to southbound vessel transits through the RNA, and depending on the water flow as measured from Lock and Dam 12, this regulation either prohibits transit or establishes operating requirements unless a deviation is authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

When the water flow rate as measured from Lock and Dam 12 is 100kcfs or greater, vessels are prohibited from transiting southbound through the RNA unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels may transit southbound through the RNA only if navigating at their slowest safe speed and avoiding contact with any part of the Sabula Railroad Drawbridge and the unprotected rest pier located on the right descending side of the Sabula Railroad Drawbridge.

When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels engaged in towing may transit southbound through the RNA only if the size of the tow does not exceed 15 barges, the towing vessels possess a minimum of 250 horsepower per loaded barge in the tow, and the towing vessel uses an assist vessel of at least 1,000 horsepower when pushing three or more barges. If an assist vessel is required by this rule, the assist vessel and the towing vessel must discuss a plan to transit through the RNA before doing so and both the assist vessel and the towing vessel must be capable of continuous two-way voice communication during the transit.

The COTP or a designated representative may review, on a case-by-case basis, alternatives to the minimum operating or towing requirements set forth in this rule and may approve a deviation from these requirements should they provide an equivalent level of safety. The COTP or a designated representative may determine, on a case-by-case basis, that although the conditions triggering the RNA may be met, the current potential hazards do not require that each requirement of the RNA be enforced and that only certain of the above-prescribed restrictions are necessary under the circumstances. The COTP or a designated representative may consider environmental factors, the water flow rate at Lock and Dam 12, mitigating safety factors, and the completion progress of the bridge repairs among other factors. The COTP or a designated representative will broadcast notice of such determination and any subsequent changes. Notice that these vessel operational conditions are anticipated to be put into effect, or are in effect, will be given by Broadcast Notice to Mariners, Local Notices to Mariners, Marine Safety Information Broadcasts, and/or actual notice, as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the limited applicability of rule, the availability of an alternate route, and the ability of the COTP to issue a deviation from the requirements of this rule or suspend enforcement of this rule on a case-by-case basis. This rule only affects southbound vessel transits through the RNA; northbound vessels may transit the RNA at any time without restrictions. In addition, the regulated area only covers the navigable waters under the span of the Sabula Railroad Drawbridge that was damaged in the allision, the right descending span, or Iowa span, of the bridge. Vessels may transit north or southbound through the left descending span, or Illinois span, at any time without restriction. Finally, this rule allows vessels to seek permission to transit through the RNA and/or deviate from the operating requirements, and also allows the COTP to suspend enforcement of particular provisions of the RNA under appropriate circumstances.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a regulated navigation area lasting approximately two months that prohibits entry or establishes vessel operating requirements for southbound transits through the right descending span of the Sabula Railroad Drawbridge on the Upper Mississippi River while emergency repairs are made to the bridge. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination will be made available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. The Coast Guard may amend this temporary final rule if we receive comments from the public that indicate that a change is warranted. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0917 to read as follows:

§ 165.T08–0917 Regulated Navigation Area; Upper Mississippi River, Sabula Railroad Drawbridge, Mile Marker 535, Sabula, IA.

(a) *Location.* The following area is a regulated navigation area (RNA): All navigable waters of the Upper Mississippi River under the right descending bank span, also known as the Iowa span, of the Sabula Railroad Drawbridge at mile marker (MM) 535.

(b) *Effective period.* This section is effective from September 21, 2018 through November 30, 2018, or until the emergency bridge repairs are completed, whichever occurs first.

(c) *Applicability.* This section only applies to vessels transiting southbound through the RNA.

(d) *Regulations.* (1) In accordance with the general regulations contained in 33 CFR 165.10, 165.11, and 165.13, when the water flow rate as measured from Lock and Dam 12 is 100kcfs or greater, vessels are prohibited from transiting southbound through the RNA unless authorized by the Captain of the

Port Sector Upper Mississippi River (COTP) or a designated representative.

(2) When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels may transit southbound through the RNA only under the following conditions:

(i) Vessels operate at their slowest safe speed; and

(ii) Vessels avoid contacting any part of the Sabula Railroad Drawbridge and the unprotected rest pier located on the right descending side of the Sabula Railroad Drawbridge.

(3) When the water flow rate as measured from Lock and Dam 12 is less than 100kcfs, vessels engaged in towing may transit southbound through the RNA only under the following conditions:

(i) The size of the tow does not exceed 15 barges; and

(ii) The towing vessel possesses a minimum of 250 horsepower per loaded barge in the tow; and

(iii) When pushing three or more barges, an assist vessel of at least 1,000 horsepower is utilized.

(4) If an assist vessel is required under this section, before entering the RNA:

(i) The assist vessel and the tow vessel shall discuss a plan to transit through the bridge, and

(ii) Both the assist vessel and the towing vessel shall be capable of continuous two-way voice communication while transiting through the bridge.

(5) The COTP or a designated representative may review, on a case-by-case basis, alternatives to the minimum operating or towing requirements and conditions set forth in subparagraphs (d)(2)–(d)(4) of this section and may approve a deviation to these requirements and conditions should they provide an equivalent level of safety.

(6) The COTP or a designated representative may determine, on a case-by-case basis, that although the conditions triggering the RNA may be met, the current potential hazards do not require that each requirement of the RNA be enforced and that only certain of the above-prescribed restrictions are necessary under the circumstances. The COTP or a designated representative may consider environmental factors, the water flow rate at Lock and Dam 12, mitigating safety factors, and the completion progress of bridge the repairs among other factors. The COTP or a designated representative shall broadcast such notice of such determination and any changes under the provisions of paragraph (e).

(e) *Notice of requirements.* Notice that these vessel operational conditions are anticipated to be put into effect, or are in effect, will be given by Broadcast Notice to Mariners, Local Notices to Mariners, Marine Safety Information Broadcasts, and/or actual notice, as appropriate.

Dated: September 24, 2018

P.F. Thomas,

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

[FR Doc. 2018–21135 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[18X.LLWO310000.L13100000.PP0000]

RIN 1004–AE57

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the fees set forth in the Bureau of Land Management (BLM) mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective October 1, 2018.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW, Washington, DC 20240; Attention: RIN 1004–AE57.

FOR FURTHER INFORMATION CONTACT: Steve Wells, Chief, Division of Fluid Minerals, 202–912–7143; Mitch Leverette, Chief, Division of Solid Minerals, 202–912–7114; or Mark Purdy, Regulatory Affairs, 202–912–7635. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising fees and service charges for processing documents related to its minerals programs (2005 Cost Recovery Rule). In addition, the 2005 Cost Recovery Rule also established the method the BLM would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in subchapter C (43 CFR parts 3000 through 3900) according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule updates those fees and service charges consistent with that direction. The fee adjustments in this rule are based on the mathematical formula set forth in the 2005 Cost Recovery Rule. The public had an opportunity to comment on that adjustment procedure as part of the 2005 rulemaking. Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the fee adjustments in this rule may be effective less than 30 days after publication. See 43 CFR 3000.10(c).

II. Discussion of Final Rule

As set forth in the 2005 Cost Recovery Rule, the fee updates are based on the change in the IPD–GDP. The BLM's minerals program publishes the updated cost recovery fees, which become effective on October 1, the start of the fiscal year (FY).

Since the BLM did not publish a fee update for FY 2018, this rule updates the cost recovery fees from FY 2017 for FY 2019. The update is based on the change in the IPD–GDP from the 4th Quarter of 2015 to the 4th Quarter of 2017 and reflects the rate of inflation over a two-year time period (or eight calendar quarters).

Under this rule, 17 fees will remain the same and 31 fees will increase. Of the 31 fees that are being increased by this rule, 18 of the increases are equal to $5 each. The largest increase, $105, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from $3,110 to $3,215. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $50, from $1,555 to $1,605.

The calculations that resulted in the new fees are included in the table below:

Fixed cost recovery fees	Existing fee [1] (FY 2017)	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5] (FY 2019)
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):					
Noncompetitive lease application	$415	$413.233	$14.050	$427.283	$425
Competitive lease application	160	160.367	5.452	165.819	165
Assignment and transfer of record title or operating rights	95	92.511	3.145	95.656	95
Overriding royalty transfer, payment out of production	10	12.333	0.419	12.752	15
Name change, corporate merger or transfer to heir/devisee	215	215.858	7.339	223.197	225
Lease consolidation	455	456.392	15.517	471.909	470
Lease renewal or exchange	415	413.233	14.050	427.283	425
Lease reinstatement, Class I	80	80.167	2.726	82.893	85
Leasing under right-of-way	415	413.233	14.050	427.283	425
Geophysical exploration permit application—Alaska [6]	25				25
Renewal of exploration permit—Alaska [7]	25				25
Geothermal (part 3200):					
Noncompetitive lease application	415	413.233	14.050	427.283	425
Competitive lease application	160	160.367	5.452	165.819	165
Assignment and transfer of record title or operating right	95	92.511	3.145	95.656	95
Name change, corporate merger or transfer to heir/devisee	215	215.858	7.339	223.197	225
Lease consolidation	455	456.392	15.517	471.909	470
Lease reinstatement	80	80.167	2.726	82.893	85
Nomination of lands	115	115.457	3.926	119.383	120
Plus per acre nomination fee	0.12	0.116	0.004	0.12	0.12
Site license application	60	61.674	2.097	63.771	65
Assignment or transfer of site license	60	61.674	2.097	63.771	65
Coal (parts 3400, 3470):					
License to mine application	10	12.333	0.419	12.752	15
Exploration license application	340	339.216	11.533	350.749	350
Lease or lease interest transfer	70	67.856	2.307	70.163	70
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):					
Applications other than those listed below	35	37.009	1.258	38.267	40
Prospecting permit amendment	70	67.856	2.307	70.163	70
Extension of prospecting permit	110	111.015	3.775	114.79	115
Lease modification or fringe acreage lease	30	30.848	1.049	31.896	30
Lease renewal	530	530.420	18.034	548.454	550
Assignment, sublease, or transfer of operating rights	30	30.848	1.049	31.896	30
Transfer of overriding royalty	30	30.848	1.049	31.897	30
Use permit	30	30.848	1.049	31.897	30
Shasta and Trinity hardrock mineral lease	30	30.848	1.049	31.897	30
Renewal of existing sand and gravel lease in Nevada	30	30.848	1.049	31.897	30
Multiple Use; Mining (Group 3700):					
Notice of protest of placer mining operations	15	12.333	0.419	12.752	15
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):					
Application to open lands to location	10	12.333	0.419	12.752	15
Notice of Location	20	18.493	0.629	19.122	20
Amendment of location	10	12.333	0.419	12.752	15
Transfer of mining claim/site	10	12.333	0.419	12.752	15
Recording an annual FLPMA filing	10	12.333	0.419	12.752	15
Deferment of assessment work	110	111.015	3.775	114.79	115
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	30.848	1.049	31.897	30
Mineral Patent adjudication (more than ten claims)	3,110	3,108.492	105.689	3,214.181	3,215
(ten or fewer claims)	1,555	1,554.230	52.844	1,607.074	1,605
Adverse claim	110	111.015	3.775	114.79	115
Protest	70	67.856	2.307	70.163	70
Oil Shale Management (parts 3900, 3910, 3930):					
Exploration License Application	325	325.360	11.062	336.422	335
Assignment or sublease of record title or overriding royalty	65	66.181	2.250	68.431	70

[1] The Existing Fee was established by the 2016 (FY 2017) cost recovery fee update rule. The 2016 cost recovery fee update rule was published on September 23, 2016 (81 FR 65558) and effective on October 1, 2016. The existing fees were not updated for FY18.

[2] The Existing Value was used to derive the Existing Fee column for the 2016 (FY 2017) cost recovery fee update rule. The numbers in the Existing Value column appear in the New Value column in the 2016 cost recovery fee update rule. The values in this column are rounded to 3 decimal places for display purposes only.

[3] From 4th Quarter 2015 (110.513) to 4th Quarter 2017 (114.275), the IPD–GDP increased by 3.4 percent. The values in this column equal 3.4 percent multiplied by the corresponding Existing Value. The values in this column are rounded to 3 decimal places for display purposes only.

[4] The New Value is used to calculate the new cost recovery fees for FY19. The New Value equals the sum of the corresponding Existing Value and the IPD–GDP Increase. The New Values may not sum due to rounding. The values in this column are rounded to 3 decimal places for display purposes only.

[5] The New Fee for FY 2019 is the corresponding New Value rounded to the nearest $5 for values equal to or greater than $1 or rounded to the nearest penny for values under $1.

[6] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that ''the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations.'' In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854—58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this $25 fee.

[7] The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this $25 fee, as well.

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis (May 30, 2018).

III. How Fees Are Adjusted

The BLM took the base values (or ''existing values'') upon which it derived the FY 2017 cost recovery fees (or ''existing fees'') and multiplied it by the percent change in the IDP–GDP (3.4 percent for this update) to generate the ''IDP–GDP increases'' (in dollars). The BLM then added the ''IDP–GDP increases'' to the ''existing values'' to generate the ''new values.'' The BLM then calculated the ''new fees'' by rounding the ''new values'' to the closest multiple of $5 for fees equal to or greater than $1, or to the nearest cent for fees under $1. The ''new fees'' are the updated cost recovery fees for FY 2019.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The changes in this rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflationary adjustment factor to existing user fees for processing certain actions associated with the onshore minerals programs.

Finally, this rule will not raise novel legal or policy issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 Cost Recovery Rule.

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This action is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result, a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm's length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Iron ore mining (NAICS code 212210): 750 or fewer employees
- Gold ore mining (NAICS code 212221): 1,500 or fewer employees
- Silver ore mining (NAICS code 212222): 250 or fewer employees
- Uranium-Radium-Vanadium ore mining (NAICS code 212291): 250 or fewer employees
- All Other Metal ore mining (NAICS code 212299): 750 or fewer employees
- Bituminous Coal and Lignite Surface Mining (NAICS code 212111): 1,250 or fewer employees
- Bituminous Coal Underground Mining (NAICS code 212112): 1,500 or fewer employees
- Crude Petroleum Extraction (NAICS code 211120): 1,250 or fewer employees
- Natural Gas Extraction (NAICS code 211130): 1,250 or fewer employees
- All Other Non-Metallic Mineral Mining (NAICS code 212399): 500 or fewer employees

The SBA would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule may affect a large number of small entities because 31 fees for activities on public lands will be increased. The adjustments result in no increase in the fees for processing 17 actions relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims; that fee will increase by $105. Accordingly, the BLM has concluded that the economic effect of the rule's changes will not be significant, even for small entities.

For the 2005 Cost Recovery Rule, the BLM completed a Regulatory Flexibility Act threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in this rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, a Small Entity Compliance Guide is not required.

Executive Order 13132, Federalism

This final rule 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. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

The Paperwork Reduction Act of 1995

This rule does not contain information collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this rule, the new fees may affect the non-hour burdens associated with the following control numbers:

Oil and Gas

(1) 1004–0034 which expires June 30, 2021;
(2) 1004–0137 which expires September 30, 2018; [8]
(3) 1004–0162 which expires October 31, 2018; [9]
(4) 1004–0185 which expires March 31, 2019;

Geothermal

(5) 1004–0132 which expires February 29, 2020;

Coal

(6) 1004–0073 which expires January 31, 2020;

Mining Claims

(7) 1004–0025 which expires March 31, 2019;
(8) 1004–0114 which expires January 31, 2020; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires August 31, 2019.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1508.4).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian tribes. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Mark Purdy of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Joseph R. Balash,

Assistant Secretary for Land and Minerals Management.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.;* 30 U.S.C. 181 *et seq.,* 301–306, 351–359, and 601 *et seq.;* 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.;* and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for Fiscal Year (FY) 2019. These fees are nonrefundable and must be included with documents filed under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM website (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

Table 1 to paragraph (a)—

[8] A request for renewal is pending with the Office of Management and Budget.

[9] A request for renewal is pending with the Office of Management and Budget.

FY 2019 PROCESSING AND FILING FEE TABLE

Document/action	FY 2019 Fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):	
Noncompetitive lease application	$425
Competitive lease application	165
Assignment and transfer of record title or operating rights	95
Overriding royalty transfer, payment out of production	15
Name change, corporate merger or transfer to heir/devisee	225
Lease consolidation	470
Lease renewal or exchange	425
Lease reinstatement, Class I	85
Leasing under right-of-way	425
Geophysical exploration permit application—Alaska	25
Renewal of exploration permit—Alaska	25
Geothermal (part 3200):	
Noncompetitive lease application	425
Competitive lease application	165
Assignment and transfer of record title or operating rights	95
Name change, corporate merger or transfer to heir/devisee	225
Lease consolidation	470
Lease reinstatement	85
Nomination of lands	120
plus per acre nomination fee	0.12
Site license application	65
Assignment or transfer of site license	65
Coal (parts 3400, 3470):	
License to mine application	15
Exploration license application	350
Lease or lease interest transfer	70
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	40
Prospecting permit application amendment	70
Extension of prospecting permit	115
Lease modification or fringe acreage lease	30
Lease renewal	550
Assignment, sublease, or transfer of operating rights	30
Transfer of overriding royalty	30
Use permit	30
Shasta and Trinity hardrock mineral lease	30
Renewal of existing sand and gravel lease in Nevada	30
Public Law 359; Mining in Powersite Withdrawals: General (part 3730):	
Notice of protest of placer mining operations	15
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):	
Application to open lands to location	15
Notice of location *	20
Amendment of location	15
Transfer of mining claim/site	15
Recording an annual FLPMA filing	15
Deferment of assessment work	115
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30
Mineral patent adjudication	[1] 3,215
	[2] 1,605
Adverse claim	115
Protest	70
Oil Shale Management (parts 3900, 3910, 3930):	
Exploration license application	335
Application for assignment or sublease of record title or overriding royalty	70

* To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute (43 CFR part 3833) must be paid.
[1] More than 10 claims.
[2] 10 or fewer claims.

* * * * *

[FR Doc. 2018–21298 Filed 9–27–18; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 4, 5, 12, 13, 17, 42, 43, 52, 53, 61, 63, 64, 73, 78, 80, 90, and 97

[MD Docket No. 18–285; DA 18–976]

Nonsubstantive, Editorial Revisions of Rules and Regulations To Correct Authority Citations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission makes non-substantive revisions to authority citations in its regulations. These authority citations are required by the rules of the Administrative Committee of the Federal Register, and their format is prescribed by the Document Drafting Handbook of the Office of the Federal Register. Certain of the authority citations currently in the Commission's rules may not conform to those specifications.

DATES: This rule is effective September 28, 2018.

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

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein, Office of General Counsel, at (202) 418–1720.

SUPPLEMENTARY INFORMATION: This is a summary of the Order adopted by the Commission's Managing Director, DA 18–976, adopted on September 21, 2018, and released on September 21, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554, or at *https://www.fcc.gov/edocs.*

1. In this *Order,* the Managing Director makes non-substantive revisions to authority citations in title 47 of the Code of Federal Regulations. These authority citations are required by the rules of the Administrative Committee of the Federal Register (ACFR), and their format is prescribed by the Document Drafting Handbook of the Office of the Federal Register. Certain of the authority citations currently in the Commission's rules may not conform to those specifications.

2. The changes effected by this Order are intended only to bring the authority citations into conformance with the ACFR regulations and Document Drafting Handbook of the Office of the Federal Register. None of these changes should be construed to change the substantive requirements of the affected rules or the sources of Commission authority for those requirements.

3. *Regulatory Flexibility Act.* Because we adopt this Order without notice and comment, the Regulatory Flexibility Act (RFA) does not apply.

4. *Paperwork Reduction Act.* The Order does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

5. *Congressional Review Act.* Because this Order affects only rules of agency organization, procedure, or practice and does not substantially affect the rights or obligations of non-agency parties, it is not subject to the Congressional Review Act.

6. Petitions for reconsideration pursuant to 47 CFR 1.429 or applications for review pursuant to 47 CFR 1.115 of this Order may be filed within thirty days of publication of a summary of this Order in the **Federal Register**. Should no petitions for reconsideration or applications for review be timely filed, this proceeding shall be terminated and its docket closed.

7. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 4(j), and 5 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 155, and § 0.231(b) of the rules of the Federal Communications Commission, 47 CFR 0.231(b), this Order *is adopted*, effective immediately upon publication in the **Federal Register**.

8. *It is further ordered* that title 47 of the Code of Federal Regulations *is amended* as set forth in the regulatory text hereto.

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Government publications, Infants and children, Organization and functions (Government agencies), Postal Service, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wages.

47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

47 CFR Part 12

Communications equipment, Security measures.

47 CFR Part 13

Radio

47 CFR Part 17

Aviation safety, Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 42

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 43

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

47 CFR Part 53

Accounting, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 61

Communications common carriers, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

47 CFR Part 64

Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

47 CFR Part 73

Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 78

Cable television, Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 80

Alaska, Communications equipment, Great Lakes, Marine safety, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone, Vessels.

47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Common carriers, Communications equipment, Emergency medical services, Individuals with disabilities, Radio, Reporting and recordkeeping requirements.

47 CFR Part 97

Aliens, Civil defense, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Volunteers.

Federal Communications Commission.

Mark Stephens,

Managing Director.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter I as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 is revised to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; Sec. 102(c), Div. P, Public Law 115–141, 132 Stat. 1084; 28 U.S.C. 2461, unless otherwise noted.

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 3. The authority citation for part 4 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i)–(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, 615c, 1302, unless otherwise noted.

PART 5—EXPERIMENTAL RADIO SERVICE

■ 4. The authority citation for part 5 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 336.

PART 12—RESILIENCY, REDUNDANCY AND RELIABILITY OF COMMUNICATIONS

■ 5. The authority citation for part 12 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 201(b), 214(d), 218, 219, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, 615c, 621(b)(3), 621(d), unless otherwise noted.

PART 13—COMMERCIAL RADIO OPERATORS

■ 6. The authority citation for part 13 is revised to read as follows:

Authority: 47 U.S.C. 154, 303.

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

■ 7. The authority citation for part 17 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 303, 309.

PART 42—PRESERVATION OF RECORDS OF COMMUNICATION COMMON CARRIERS

■ 8. The authority citation for part 42 is revised to read as follows:

Authority: 47 U.S.C. 154(i), 219, 220.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL SERVICES AND CERTAIN AFFILIATES

■ 9. The authority citation for part 43 is revised to read as follows:

Authority: 47 U.S.C. 35–39, 154, 211, 219, 220; sec. 402(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 129.

PART 52—NUMBERING

■ 10. The authority citation for part 52 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332, unless otherwise noted.

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

■ 11. The authority citation for part 53 is revised to read as follows:

Authority: 47 U.S.C. 151–155, 157, 201–205, 218, 251, 253, 271–275, unless otherwise noted.

PART 61—TARIFFS

■ 12. The authority citation for part 61 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, unless otherwise noted.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 13. The authority citation for part 63 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 14. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted.

PART 73—RADIO BROADCAST SERVICES

■ 15. The authority citation for part 73 is revised to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.51 [Amended]

■ 16. The sectional authority citation for § 73.51 is removed.

§ 73.69 [Amended]

■ 17. The sectional authority citation for § 73.69 is removed.

PART 78—CABLE TELEVISION RELAY SERVICE

■ 18. The authority citation for part 78 is revised to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

PART 80—STATIONS IN THE MARITIME SERVICES

■ 19. The authority citation for part 80 is revised to read as follows:

Authority: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 20. The authority citation for part 90 is revised to read as follows:

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

PART 97—AMATEUR RADIO SERVICE

■ 21. The authority citation for part 97 is revised to read as follows:

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

[FR Doc. 2018–21198 Filed 9–27–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2017–0047]

RIN 2126–AB99

Military Licensing and State Commercial Driver's License Reciprocity

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: This rule allows, but does not require, State Driver Licensing Agencies (SDLAs) to waive requirements for the commercial learner's permit (CLP) knowledge test for certain individuals who are, or were, regularly employed within the last year in a military position that requires, or required, the operation of a commercial motor vehicle (CMV). This rule includes the option for an SDLA to waive the tests required for a passenger carrier (P) endorsement, tank vehicle (N) endorsement, or hazardous material (H) endorsement, with proof of training and experience.

DATES: This final rule is effective November 27, 2018.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than October 29, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by email at *Selden.fritschner@dot.gov,* or by telephone at (202) 366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, by telephone at (202) 366–9826.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. Rulemaking Documents
A. Availability of Rulemaking Documents
B. Privacy Act
II. Executive Summary
III. Abbreviations and Acronyms
IV. Legal Basis for the Rulemaking
V. Regulatory Background
A. Current Standards
B. Recent Activity
C. Notice of Proposed Rulemaking
VI. Discussion of Comments and Responses
A. Endorsements, License Classes, and License Restrictions
B. Military Occupational Specialties, Military Occupational Codes
C. Time Period for Waiver
D. Extension of the Proposal
E. SDLA Compliance
F. Driver Training
G. Proof of Training and Experience
H Converting CLP to CDL
I. Other Comments
VII. International Impacts
VIII. Section-by-Section Analysis
A. Section 383.23 Commercial Driver's License
B. Section 383.77 Substitute for Knowledge and Driving Skills Tests for Drivers With Military CMV Experience
C. Section 383.79 Driving Skills Testing of Out-of-State Students; Knowledge and Driving Skills Testing of Military Personnel
D. Section 384.301 Substantial Compliance General Requirements
IX. Regulatory Analyses
A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)
C. Regulatory Flexibility Act (Small Entities)
D. Assistance for Small Entities
E. Unfunded Mandates Reform Act of 1995
F. Paperwork Reduction Act (Collection of Information)
G. E.O. 13132 (Federalism)
H. E.O. 12988 (Civil Justice Reform)
I. E.O. 13045 (Protection of Children)
J. E.O. 12630 (Taking of Private Property)
K. Privacy
L. E.O. 12372 (Intergovernmental Review)
M. E.O. 13211 (Energy Supply, Distribution, or Use)
N. E.O. 13783 (Promoting Energy Independence and Economic Growth)
O. E.O. 13175 (Indian Tribal Governments)
P. National Technology Transfer and Advancement Act (Technical Standards)
Q. Environment (NEPA)

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2017–0047 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments without edit including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Executive Summary

This rule allows, but does not require, SDLAs to waive the knowledge test requirements and tests required for some endorsements with proof of experience for certain individuals who are regularly employed, or were regularly employed within the last year, in a military position requiring the operation of a vehicle that would be classified as a CMV pursuant to 49 CFR 383.5, if operated in a civilian context. This rulemaking implements part of section 5401 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94).

In combination with a recent rulemaking—Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Military Commercial Driver's License Act of 2012 (2012 Act), published on October 13, 2016 (81 FR 70634), hereafter referred to as the Military CDL I Rule—this rule gives States the option to waive both the CDL knowledge and driving skills tests for certain current and former military service members who received training to operate CMVs during active-duty, National Guard or reserve service in military vehicles that are comparable to CMVs. The combined effect of the Military CDL I Rule and this rule will allow certain current or former military drivers, domiciled in participating States, to transition to a civilian CDL more quickly due to their armed forces training and experience.

FMCSA evaluated potential costs and benefits associated with this rulemaking. The Agency concluded that the final rule would result in a 10-year cost savings of $16.66 million undiscounted, $14.21 million discounted at 3 percent, $11.70 million discounted at 7 percent, and $1.67 million on an annualized basis at both 7 percent and 3 percent discount rates. FMCSA has determined that this final rule is a deregulatory action under Executive Order (E.O.) 13771.

III. Abbreviations and Acronyms

AAMVA American Association of Motor Vehicle Administrators
ABA American Bus Association
ATA American Trucking Associations
BLS Bureau of Labor Statistics
CDL Commercial Driver's License
CE Categorical Exclusion
CLP Commercial Learner's Permit
CMV Commercial Motor Vehicle

CMVSA Commercial Motor Vehicle Safety Act of 1986
CVTA Commercial Vehicle Training Association
DMV Department of Motor Vehicles
DOL Department of Labor
DOR Department of Revenue
DOT Department of Transportation
E.O. Executive Order
ECEC Employer Costs for Employee Compensation
ELDT Entry-Level Driver Training
FAST Act Fixing America's Surface Transportation Act
FMCSA Federal Motor Carrier Safety Administration
H Hazardous Material Endorsement
IFDA International Foodservice Distributors Association IFDA
MAP–21 Moving Ahead for Progress in the 21st Century Act
Michigan Bureau of Driver and Vehicle Programs for the Michigan Department of State
MOS Military Occupational Specialties
NEPA National Environmental Policy Act of 1969
N Tank Vehicle Endorsement
NPGA National Propane Gas Association
NSTA National School Transportation Association
NTTAA National Technology Transfer and Advancement Act
OES Occupational Employment Statistics
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Drivers Association
Oregon Oregon Driver and Motor Vehicle Service
PGANE Propane Gas Association of New England
P Passenger Carrier Endorsement
RFA Regulatory Flexibility Act of 1980
RIA Regulatory Impact Analysis
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDLAs State Driver Licensing Agencies
TSA Transportation Security Administration

IV. Legal Basis for the Rulemaking

This final rule rests on the authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and 49 CFR parts 382, 383, and 384. The rule also responds to section 5401(a) of the FAST Act [Pub. L. 114–94, 129 Stat. 1312, 1546, December 4, 2015]. This section requires FMCSA to modify the minimum testing standards of its CDL regulations to credit the training and knowledge received by certain current or former military drivers in the armed forces, including the reserve components and National Guard, to drive military vehicles similar to civilian CMVs [49 U.S.C. 31305(d)(1)(C)].

The CMVSA provides broadly that ''[t]he Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle'' [49 U.S.C. 31305(a)]. In general, those regulations must include the following: (1) Minimum standards for knowledge and driving (skills) tests; (2) use of a representative vehicle to take the driving test; (3) minimum testing standards; and (4) working knowledge of CMV regulations and vehicle safety systems [49 U.S.C. 31305(a)(1)–(4)].

Section 5401(a) of the FAST Act, as amended by section (3)(1) of the Jobs for Our Heroes Act (Pub. L. 115–105, 131 Stat. 2263, January 8, 2018) added 49 U.S.C. 31305(d): ''Standards for Training and Testing of Operators Who Are Members of the Armed Forces, Reservists, or Veterans.'' Section 31305(d)(1)(A) requires the Agency to modify its CDL regulations to ''exempt a covered individual from all or a portion of a driving test if the covered individual had experience in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle.'' Section 31305(d)(1)(B), as also amended by the Jobs for Our Heroes Act, requires FMCSA to ''ensure that a covered individual may apply for an exemption under subparagraph (A)—(i) while serving in the armed forces or reserve components; and (ii) during, at least, the 1-year period beginning on the date on which such individual separates from services in the armed forces or reserve components.'' The term ''reserve components'' includes the Army and Air National Guard, as well as the normal reserve units of all branches of the military service. Section 5401(c) of the FAST Act also directed the Agency to adopt regulations allowing certain military personnel an exemption from the normal CDL domicile requirement, as authorized by the 2012 Act and codified at 49 U.S.C. 31311(a)(12)(C). These three provisions were implemented by the Military CDL I Rule.

The last element of section 5401(a), which was not addressed in the Military CDL I Rule, directed the Agency to ''credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge'' [49 U.S.C. 31305(d)(1)(C)]. That requirement is the subject of this final rule. It should be noted that section 31305(d)(2)(B) originally defined a ''covered individual'' as someone over 21 years of age who is ''(i) a former member of the armed forces; or (ii) a former member of the reserve components.'' However, section 3(3) of the Jobs for Our Heroes Act amended section 31305(d)(2)(B) to define a ''covered individual'' as someone over 21 years of age who is ''(i) a current or former member of the armed forces; or (ii) a current or former member of one of the reserve components.'' Using the broad authority of 49 U.S.C. 31315(b), the Agency implicitly took the same position in granting all SDLAs the temporary option (for a 2-year period) of waiving the CLP knowledge test for current or former members of the military services, including the reserves and National Guard, who had completed certain formal military driver training (81 FR 74861, Oct. 27, 2016). [See ''Knowledge Test Exemption Request'' discussion below.]

Federal training standards for CDL drivers were adopted only recently. Section 32304 of MAP–21 [Pub. L. 112–141, July 6, 2012, 126 Stat. 405, 791] required entry-level driver training (ELDT) of CDL applicants [49 U.S.C. 31305(c)]. That requirement was promulgated on December 8, 2016 [81 FR 88732]. However, the ELDT rule provides that ''[v]eterans with military CMV experience who meet all the requirements and conditions of § 383.77'' are not required to complete the new entry-level training program [49 CFR 380.603(a)(3)]. Because § 383.77 authorizes the States to exempt CDL applicants with military CMV experience from the driving skills test, those drivers are also exempt from ELDT.

Under 49 CFR 383.77, as amended by the Military CDL I Rule, the Agency now provides credit for military drivers' training and knowledge by allowing States to exempt from the CDL driving skills test those employees who are or were regularly employed within the last year in a military position requiring the operation of a military vehicle that is comparable to a CMV.

This rule implements 49 U.S.C. 31305(d)(1)(C) by giving States limited discretion, to exempt CDL applicants with military CMV experience from the knowledge test required for a CLP. This final rule completes the requirement of section 31305(d)(1)(C) to ''credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge.''

V. Regulatory Background

A. Current Standards

Knowledge Test

As specified in 49 CFR 383.71(a)(2)(ii), any individual applying for a CDL is first required to take and pass a general knowledge test, which

authorizes the issuance of a CLP. The general knowledge test must meet the Federal standards contained in subparts F, G, and H of part 383 for the commercial vehicle group that person operates or expects to operate.

Skills Test

Any individual applying for a CDL is required to take and pass a general skills test, but only after passing the knowledge test and obtaining a CLP. A final rule published on May 9, 2011 [''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (76 FR 26854)] added a new 49 CFR 383.77, which allows the States to substitute CDL applicants' eligible military CMV experience for the skills test.

B. Recent Activity

Military CDL I Rule

The Military CDL I Rule addressed the requirements of 49 U.S.C. 31305(d)(1)(A) and (B) (81 FR 70634, Oct. 13, 2016) and allows States to extend the period to apply for a skills test waiver after leaving the military from 90 days to 1 year for an individual who is regularly employed or was regularly employed in a military position requiring operation of a CMV.

Additionally, the Military CDL I Rule allows the SDLA in the State where military personnel are stationed (State of duty station) to coordinate with the State of domicile to expedite the processing of applications and administer the knowledge and skills tests for a CLP or CDL. The SDLA in the State of domicile could then issue the CLP or CDL based on tests performed by the SDLA in the State of duty station.

Knowledge Test Exemption Request

The Missouri Department of Revenue (DOR) submitted a request for an exemption from the FMCSA regulation that requires any driver to pass the general knowledge test before being issued a CLP or CDL. The exemption request is available in docket FMCSA–2016–0130, at: *https://www.regulations.gov/document?D=FMCSA-2016-0130-0004.* The Missouri DOR asked FMCSA to waive the knowledge test requirement for qualified veterans who participated in dedicated training through approved military programs. The Missouri DOR contended that qualified personnel who participated in such programs had already received the numerous hours of classroom training, practical skills, and one-on-one road training that are essential for safe driving. FMCSA agrees with Missouri DOR's reasoning and granted a 2-year exemption on October 27, 2016 (81 FR 74861), which the Agency extended to allow all SDLAs, at their discretion, to waive the knowledge test requirements to qualified veterans, reservists, National Guard, and active-duty personnel. FMCSA does not have data from all of the States utilizing this exemption. However, since January 1, 2018, Illinois has granted more than 75 exemptions through this program. There have been no reports of serious incidents about any of these drivers.

C. Notice of Proposed Rulemaking

On June 12, 2017, FMCSA published an NPRM (82 FR 26894) that proposed allowing SDLAs to waive the requirements for the CLP knowledge tests for certain individuals who are, or were, regularly employed within the last year in a military position that requires, or required, the operation of a CMV.

VI. Discussion of Comments and Responses

FMCSA received 17 comments on the NPRM. Of these, 15 supported the proposal, though some requested alterations. The rule was supported by the American Trucking Associations (ATA), the Owner-Operator Independent Drivers Association (OOIDA), the American Bus Association (ABA), the International Foodservice Distributors Association (IFDA), the Propane Gas Association of New England (PGANE), the National Propane Gas Association (NPGA), the Commercial Vehicle Training Association (CVTA), the Oregon Driver and Motor Vehicle Service (Oregon), the Virginia Department of Motor Vehicles (Virginia DMV), the National School Transportation Association (NSTA), a motor carrier, and several individuals. Commenters in favor of the NPRM argued that it would: Build on the success of past waiver programs and recent complementary regulations; reduce the burden to enter the industry for qualified military and veterans; remove duplicative requirements and reduce the time to get licensed; reduce problems in recruiting qualified employees; establish a standard of safety equivalent to that of the CLP knowledge test requirement of the CDL exam; and codify already existing practices by individual SDLAs. Several commenters lauded the Agency, saying the provisions of the proposed rule ensured that individuals receiving a waiver would be well-qualified.

One commenter, the Bureau of Driver and Vehicle Programs for the Michigan Department of State (Michigan), agreed with the need to help veterans, but not with a waiver of the knowledge test.

One commenter opposed the NPRM, claiming that there is no way to know if someone meets the knowledge test requirements unless that individual takes the test.

Several individuals commented on the licensing process, medical standards, and other issues outside the scope of the NPRM.

A. Endorsements, License Classes, and License Restrictions

The NPRM did not address the question of waiving the knowledge tests for endorsements, nor did it discuss license classes or license restrictions for current service personnel or veterans.

The ABA requested clarification on whether the proposed testing waiver would apply to endorsements as well, and stated that it did not support exemptions from the knowledge tests for endorsements.

Citing an inconsistency between §§ 383.79(c)(1) and 383.111, Oregon asked whether the Agency intended to allow waivers for all knowledge tests or just the general CDL knowledge test. Oregon pointed out that allowing a waiver only of the general knowledge test would limit the type of license that could be issued and acknowledged the concern about waiving other knowledge tests.

The NPGA and PGANE asked that the proposal be amended to allow SDLAs to waive the knowledge test for the H endorsement for veterans and military service members with applicable experience. They argued that this change would not reduce safety and would increase opportunities for service men and women. One commenter pointed out that military training and experience would likely exceed civilian training and experience, due to military concerns over the transportation of hazardous materials. CVTA stated that many military drivers haul materials that would be considered hazardous in a non-military setting, and that they should have access to the H endorsement via a testing waiver, though only for a Class A license.

The NSTA asked that the passenger and school bus endorsements be waived only for drivers with applicable experience. CVTA stated that FMCSA should consider a restricted license for a military driver who operated only an automatic, not a manual, transmission.

FMCSA Response: FMCSA believes that a waiver of certain endorsement tests is appropriate, given that many service members operate vehicles and transport loads using an equivalent endorsement on a civilian CDL.

In response to these comments, this final rule explicitly allows SDLAs to

waive the knowledge tests for H and N endorsements, and the knowledge and driving skills tests for the P endorsement. Several Military Occupational Specialties (MOS) include training that corresponds to the knowledge tests for H, N, and P endorsements. If applicants can demonstrate that they have received such training, SDLAs may waive one or more of these knowledge tests. FMCSA provides regulatory language with which SDLAs must comply to waive the testing requirements for these three endorsements.

As the D.C. Circuit said in *National Mining Ass'n* v. *Mine Safety and Health* Admin., 116 F.3d 520 (1997), ''[a]gencies are not limited to adopting final rules identical to proposed rules. No further notice and comment is required if a regulation is a 'logical outgrowth' of the proposed rule . . . Our cases offer no precise definition of what counts as a 'logical outgrowth.' We ask 'whether ''the purposes of notice and comment have been adequately served.'' ' . . . Notice was inadequate when 'the interested parties could not reasonably have ''anticipated the final rulemaking from the draft [rule] (internal citations omitted).'' ' '' Id. at 531. In this case, the purposes of the NPRM were more than adequately served. Many commenters not only anticipated the possibility that the final rule might waive the knowledge tests for certain endorsements, some argued that the Agency had overlooked that obvious implication of the proposed rule while others, although accepting that implication, argued that such knowledge tests should not be waived, at least in certain cases. The inclusion of three endorsement waivers in this final rule is therefore a logical outgrowth of the purpose and structure of the NPRM.

No waivers of endorsements are allowed beyond the three discussed above because the various military services provide training equivalent to that required to pass the written endorsement tests *only* for H, N, and P. Additionally, because this rule is voluntary, SDLAs may decide not to adopt it at all, or may adopt it but decline to offer waivers for the H or N knowledge tests, or P knowledge or driving skills tests. FMCSA believes that allowing waivers for endorsement knowledge testing will resolve nearly all concerns expressed by commenters about the class of licensure, as SDLAs will be able to issue CDLs with certain endorsements.

There is no need to require restricted licenses based upon the type of transmission installed on military vehicles, because FMCSA recognizes that many military vehicles are fitted with automatic transmissions. However, all service branches have vehicles with manual transmissions in their fleet inventory. Each service branch has documentation of drivers' training, experience, and certification in vehicles with manual transmissions that can be provided to the SDLA when the driver applies for a CDL. The same proof of experience with different braking systems exists, including air brakes and air over hydraulics. As this rule is voluntary, SDLAs are still allowed to test these drivers' brake and manual transmission abilities, if they wish, and to impose a license restriction.

B. Military Occupational Specialties, Military Occupational Codes

The NPRM provided examples of training and certification for four MOS: Army—88M—Motor Transport, Operator; Air Force—2T1—Vehicle Operations; Marine Corps—3531—Motor Vehicle Operator; and Navy—EO—Equipment Operator. The NPRM proposed allowing SDLAs to waive the knowledge test for current service members or veterans who are or were regularly employed in a military position requiring operation of a CMV, and are or were operating a vehicle representative of the CMV the driver applicant expects to operate after receiving a CDL, or who operated such a vehicle immediately preceding separation from the military, regardless of MOS.

The ABA requested that a list of MOS be put into regulatory language or the driver's SDLA record, and suggested that it would be appropriate to add such a list to an appendix to the final rule, a website, or a new ELDT rule. The ABA stated that a driver's use of the waiver and potentially his or her MOS should be included in the driver's record for prospective employers to review and evaluate during pre-employment screening.

Oregon asked for a list of specific MOS to which the knowledge test waivers would apply and provided a list it said should be used. Oregon stated that the list could be expanded in the future, but was necessary for SDLAs' use.

Virginia DMV asked if the Agency's intent was to allow test waivers only for the MOS listed in the NPRM; if so the regulatory language should be amended to refer to ''a military position occupation specialty requiring completion of a military driver training program that has been approved by FMCSA and operation of a CMV.''

FMCSA Response: FMCSA agrees with the commenters and has included in the regulatory language a full list of MOS that are eligible for a waiver of the general knowledge test.

The list of MOS in this final rule has been expanded to include the following:

- 88M (Army), motor transport operator.
- 14T (Army), PATRIOT launching station operator.
- 92F (Army), fueler.
- 2T1 (Air Force), vehicle operator.
- 2F0 (Air Force), fueler.
- 3E2 (Air Force), pavement and construction equipment operator.
- 3531 (Marine Corps), motor vehicle operator.
- EO (Navy), equipment operator.

The Agency has concluded that these programs enable drivers likely to achieve a level of safety equivalent to, or greater than, the level that would be achieved by requiring them to pass the CLP knowledge test. The Army, Air Force, Marine Corps, and Navy provide specific training dedicated to operating heavy-duty vehicles.[1]

There are three basic military job training classifications, with additional training for other types of heavy-duty specialty vehicles (*e.g.,* fuel haulers, construction vehicles, and military equipment transport oversize/overweight [non-track vehicles]).

The four core training programs for heavy vehicle operations, based on the occupational specialty code of the service member, are:

- Army—88M—Motor Transport Operator.
- Air Force—2T1—Vehicle Operations.
- Marine Corps—3531—Motor Vehicle Operator.
- Navy—EO—Equipment Operator.

Army—88M Training

The 88M Instructor Training Manual is 142 pages long. The student manual—*STP 55–88M14–SM–TG Soldier's Manual and Trainer's Guide 88M, Motor Transport Operator*—is 229 pages long and includes four levels of training. The 6-week core curriculum of the Army 88M course contains a total of 221 hours of training, including:

- Lecture—32 classroom hours.
- Practical application—road driving—189 hours.

Motor Transport Operators are responsible primarily for operating wheeled vehicles to transport personnel

[1] **Note:** Heavy-duty vehicles is a generic description used in the military to describe vehicles that have been determined by FMCSA and the American Association of Motor Vehicle Administrators to have weights equal to or larger than the weights that require a driver to hold a CDL.

and cargo. Motor Transport Operator duties include: Interior components/controls and indicators; basic vehicle control; driving vehicles over all types of roads and terrain, traveling alone or in convoys; braking, coupling, backing, and alley docking; adverse/tactical driving operations; pre-trip inspections; reading load plans; checking oil, fuel and other fluid levels, as well as tire pressure; operations in automatic and manual modes; crash prevention; safety check procedures; basic vehicle maintenance and repairs; transporting hazardous materials; and keeping mileage records.

A fueler for the Army, a driver with an Army classification of 92F, has completed the Army 88M course and additional training specific to the job of a fueler.

A PATRIOT Launching Station Operator, a driver with an Army classification of 14T, has completed the Army 88M course and additional training specific to the both the vehicle and systems the vehicle transports. Total training for this MOS exceeds 264 hours.

Air Force—2T1—Vehicle Operations

The Air Force *Tractor Trailer Plan of Instruction* (POI) is 226 pages long. The minimum length of instruction for the basic school is 84 hours, including:

- 22 hours of classroom.
- 62 hours of hands-on activity, both alone on a training pad and on the road with an instructor.

The core curriculum is based on the material in the *American Association of Motor Vehicle Administrators (AAMVA) CDL Manual—2005 edition (2014 revised).* Students participating in the basic 2T1 curriculum learn general principles in the classroom. Specialized training occurs at the installation using the *Tractor Trailer Plan of Instruction.* A minimum of 40 hours over-the-road time is expected on each vehicle/trailer type.

Topics covered in the Air Force Vehicle Operations course include: Overview of training and Federal requirements; Federal motor vehicle safety standards; tractor/trailer design; hazards and human factors relative to the environment where used; safety clothing and equipment; driving safely; pre- and post-trip vehicle inspection; basic vehicle control; shifting gears; managing space and speed; driving in mountains, fog, winter, very hot weather, and at night; railroad crossings; defensive awareness to avoid hazards and emergencies; skid control and recovery; what to do in case of a crash; fires; staying alert and fit to drive; hazardous materials—rules for all commercial drivers; preparing, inspecting, and transporting cargo safely; inspecting and driving with air brakes; driving combination vehicles safely; and coupling and uncoupling.

Air Force fuelers holding 2F0, and Air Force pavement and construction equipment operators holding 3E2, must first complete training for 2T1, before completing additional training specific to the roles of 2F0 and 3E2.

Marine Corps—3531—Motor Vehicle Operator

The core curriculum of the Marine Corps 3531 course—TM 11240–15/3G contains three training areas:

- Lecture—24 classroom hours.
- Demonstration—classroom/training pad—35 hours.
- Practical application—road driving—198 hours.

Instructional breakout includes:

- Demonstration: 35 hours.
- Guided discussion: 1.5 hours.
- Lecture: 24 hours.
- Performance examination: 62 hours.
- Practical application (individual): 198 hours.
- Knowledge examination: 7 hours.

Classroom instruction includes lectures, demonstration, and practice time for the specific tasks identified. Each classroom session includes knowledge and performance evaluations to ensure students have mastered all learning objectives for the specialty proficiency. Training includes simulators and actual vehicle operation. Practical training includes on-the-road and skills operations, ground guide procedures, and operating a vehicle with a towed load. Students practice their driving and backing, with and without a trailer. Instructors ride with the students as they operate on approved road routes. Specific training areas (pads) are provided for the students to practice their backing skills and ground guide procedures safely.

The Marine Corps training curriculum includes emergency procedures and cargo loading.

Navy—EO—Equipment Operator

The core curriculum of the USN Heavy Vehicle Operator (Truck Driver) (EO) course (53–3032.00) is designed to train Navy personnel to operate passenger and cargo vehicles to rated capacity. They palletize, containerize, load and safely transport various types of cargo and demonstrate knowledge and skills to qualify as a driver journeyman. The complete program covers topics including:

- Hazardous materials transportation.
- Line haul planning.
- Manual tractor-truck operations.
- Vehicle Recovery Operations.

The course is taught over 160 hours including 30 hours of classroom and 130 hours of lab (behind the wheel). Upon completion of this course, the Navy driver will be able to:

- Perform the duties of normal, non-combat conditions driving in accordance with the local State driver licensing agency's CDL driver handbook;
- Manage hazardous petroleum, oils and lubricants (POL) material required during line haul and worksite activities, to support normal, non-combat operations;
- Perform preventive maintenance on a non- or up-armored manual truck tractor with drop-neck trailer, consisting of pre-start, during-operations, and after-operations equipment checks, to support normal, non-combat operations, in accordance with local State Driver License Agency CDL handbooks;
- Operate vehicle controls of a non- or up-armored manual truck-tractor, to support normal, non-combat operations; and
- Be proficient with the components and controls of a drop-neck trailer relative to a detached/attached gooseneck and a coupled/uncoupled trailer.

Other topics covered within the Navy EO training program include:

- Development and maintenance of operational records.
- Operation of high mobility multi-purpose wheeled vehicles.
- Weight distribution and load securement.
- Loading bulk and container cargo.
- Preventive maintenance.
- Pre- and post-trip vehicle safety inspections.

The military training programs described above are thorough and comprehensive, incorporating most of the elements recommended by the Professional Truck Driver Institute, which has been the principal standard-setting organization for private-sector motor carrier training for decades. They are entirely compatible with the requirements of FMCSA's ELDT rule. Although geared to heavy-duty military vehicles, military training is readily transferrable to a civilian context, as the operational characteristics of large military and civilian vehicles are very similar and, in some cases, identical. The Agency believes that exempting these drivers from the CLP knowledge test, in addition to the skills test, will have no adverse effect on highway safety.

This final rule also provides for waivers involving H, N, and P endorsements of drivers who hold an

MOS listed above. Though military service members are not required to comply with 49 CFR, including hazardous materials training (part 172, subpart H), several service branches offer a training curriculum that meets or exceeds FMCSA testing requirements for endorsements. Proof of such training can be confirmed at the SDLA, for example by providing a copy of the U.S. Air Force motor vehicle identification card (AF 2293) which includes an identification of the class of vehicle operated, any endorsement held by the operator, and any restrictions to which he or she are subject. The identification card also includes a list of the vehicles the person is authorized to operate. Similar cards are authorized by the Navy and Marine Corps (both designated as OF 346), and Army (DA 5984). This rule is not applicable to school bus endorsement but, as noted above, is acceptable for the P endorsement if the service member verifies his/her military Passenger credential.

FMCSA recognizes that military vehicles can carry a variety of hazardous materials. Military personnel who carry fuel and other types of hazardous materials, including powder, weapons, and ammunition, are trained and certified to transport these materials. FMCSA clarifies that service members applying for waivers from the H endorsement knowledge test must still undergo the Hazardous Materials Endorsement Threat Assessment Program through the Transportation Security Administration (TSA) (49 CFR part 1572). SDLAs may not issue the H endorsement until TSA has completed its background check and approved the driver.

The Agency's ELDT final rule has a compliance date of February 7, 2020. Under 49 CFR 383.603(a)(3) of that rule, ''[v]eterans with military CMV experience who meet all the requirements and conditions of § 383.77'' are exempt from the rule's training requirements [81 FR 88732, 88790, December 8, 2016]. Section 383.77 allows States to waive the skills test for certain drivers with military CMV experience. This final rule allows a comparable waiver of the knowledge test. However, this rule does not affect 49 CFR 391.31, under which motor carriers must require their drivers to complete a road test before operating a CMV, unless the carrier chooses to accept a valid CDL in lieu of the road test (though it may not waive the road test if the driver has an N endorsement) [49 CFR 391.33]. In short, employers may still require drivers with military CMV experience who obtain a CDL without completing either the skills test or the knowledge test to complete a road test.

C. Time Period for Waiver

FMCSA proposed to allow States to exempt from the knowledge test for a CLP or CDL certain current or former military service members who were regularly employed in a military position requiring the operation of a CMV during a 1-year period immediately prior to the application. There would be no time limit for military personnel while on active duty or serving actively within a reserve component or the National Guard to apply for the waiver.

The NPGA and the PGANE asked that the proposal's 1-year waiver period be extended to 5 years. These commenters argued that the nature of CMV driving does not change so rapidly that a 5-year period would make training obsolete, even if the applicant had not driven in the past year.

Oregon thought that the time limits for the knowledge and skills test waivers should be identical. Oregon stated that, as proposed, the NPRM did not match the length of the skills test waiver.

FMCSA Response: FMCSA declines to extend the 1-year waiver period. This rule's intended effect is to allow qualified veterans and service members to waive the knowledge and skills tests simultaneously to obtain licensure. The Military CDL I rule used a 1-year period; FMCSA believes that is appropriate here as well, as the two are now synchronized.

D. Extension of the Proposal

One commenter requested that the proposal be extended to non-military personnel. Another stated that veterans should have licenses granted automatically, as they are driving on behalf of the U.S. Military.

FMCSA Response: The application process for what might be called an ''even exchange'' of a military truck or bus license for a civilian CDL was directed by the 2012 Act and section 5401 of the FAST Act. That process is limited explicitly to military service members with appropriate experience. As amended by section 5401(a), 49 U.S.C. 31305(d)(1)(C) requires FMCSA to ''credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge.'' Only individuals currently serving on active duty, including the National Guard and reserve components, or recently separated service men and women with comparable training and experience, will be eligible for a waiver of the knowledge test. There is no equivalent requirement to waive knowledge tests for non-military personnel. In any case, that step would take this rule far beyond its original purpose and scope.

Federal regulations already exempt active duty military personnel from the need to hold a CDL when driving while on duty in a military vehicle on official military orders (49 CFR 383.3(c)). This final rule, in combination with the Military CDL I final rule, will allow States to make the licensing of current or former military personnel as close to automatic as possible. Other Federal requirements for licensure, like a medical examiner's certification, must be met and cannot be waived. However, qualified current and separated service members will now have significantly reduced obstacles to earning non-military licenses.

E. SDLA Compliance

The Agency's June 12, 2017, NPRM proposed that SDLAs may waive the knowledge test; it would be entirely voluntary.

The CVTA asked FMCSA to consider setting guidelines for the process to increase consistency between SDLAs. ABA asked how the driver's SDLA record will reflect whether certain tests were waived.

Several commenters, including the two propane gas organizations, supported a voluntary waiver program and stated that a 3-year compliance date for States was appropriate.

ATA suggested that FMCSA work with AAMVA to develop a required form to verify that a driver has been trained in the ELDT elements to a level at least equivalent to that reflected by passage of the knowledge exam. Oregon asked several questions regarding coordination between the State of duty station and the State of domicile. Oregon asked if it was the Agency's intention to allow a State to administer all knowledge tests for certain military service members not domiciled there, but to limit that provision to just the general knowledge test for all other non-domiciled applicants.

The Virginia DMV stated that the process outlined in the proposed rule regarding testing for and obtaining a civilian CDL seems unnecessary and burdensome to the applicant because the 2012 Act already allows a State to issue a CDL to military personnel stationed but not domiciled there. The commenter called attention to the CDL rule prohibiting a driver from holding

more than one license, noting that issuance of a CDL by the State of domicile would invalidate any other license held by the driver, making it illegal for him or her to drive for a period of several days until the newly-issued CDL arrived. Moreover, the commenter added that the proposed rule did not require States that decide to participate in the program to change their laws, if necessary, and invalidate or destroy the non-CDL, even before the CDL document is delivered to the applicant.

Another concern of the Virginia DMV was the requirement of 49 CFR 383.71(b)(9) for applicants to provide a proof of citizenship or lawful residency in a State of domicile in cases where they do not have such identification. Moreover, the commenter believed that FMCSA should provide an exception for applicants who do not have an active residential or mailing address in the State of domicile and allow such applicants' CDL or CLP to show an address located in the State of duty station.

The Virginia DMV was concerned with the provision that permits the State of duty station to accept an application for a CLP or CDL, including an application for waiver of the knowledge test or skills test, only if the State of duty station obtains prior approval from the State of domicile. The commenter wrote that ''this creates an excessive burden on States to go state by State in obtaining prior approval agreements with other States. DMV is also concerned that if a duty station State does not obtain prior approval from a State of domicile before proceeding or the duty station State misunderstands what is approved[,] this will result in an undue hardship on military service members who must rely on the duty station State to follow regulations. Therefore, the Virginia DMV recommends that it should be the applicant's responsibility to obtain written approval from the State of domicile prior to beginning any exams in the duty station State since some applicants may be ineligible for domicile accommodation, due to outstanding administrative requirements in the State of domicile (*e.g.* photograph, compliance, lawful presence, State residency).'' Furthermore, given that the NPRM would allow, but not require, States to waive the knowledge test, this commenter stated that permitting States to impose additional conditions and limitations on applicants, beyond those included in the proposed rule, would result in a lack of uniformity from State to State, creating a confusing process for service members to navigate.

Lastly, Virginia DMV noted that the cost associated with complying with the proposed rule is neither minimal, given the need for changes to State law, nor would the required re-programming of information technology systems would be minor, as the NPRM indicated. FMCSA needs to address these administrative and other costs. Moreover, Virginia DMV said that, if it participates in the waiver program, it would not do so until AAMVA had developed a secure system to transmit knowledge test results and other documentation.

FMCSA Response: As stated previously, States waiving knowledge tests under this rule are not required to coordinate their programs between States, although all States granting waivers must verify the qualifications of applicants based on various military documents, as specified in this rule. With respect to the CVTA comment, § 383.135(c) currently requires recording of the application for waiver in the driver's file. As for the comments of the propane gas organizations, FMCSA believes this rule should be available to States as soon as possible. The Agency is therefore making this final rule effective 60 days after publication.

Responding to the ATA's request that FMCSA specify a form demonstrating the equivalence of military training with the standards required for ELDT, the Agency has concluded, after consultation with AAMVA and close examination of the military training and testing manuals and procedures, that training to the prescribed MOS standards meets or exceeds that required by the ELDT rule. The form requested by ATA is therefore unnecessary.

This final rule makes no changes to the existing domicile requirements or any other provision of part 383. While the 2012 Act does allow States to issue CDLs to military personnel stationed there, no States have done so. The NPRM and this final rule avoid the possibility that CDL applicants could inadvertently lose their ''home'' State of domicile by accepting a CDL from the State of duty station.

The requirement and documents needed to provide proof of citizenship or lawful permanent residency in § 383.71(b)(9) are the same, whether the application is being made in the State of domicile or some other State. Without that proof, a CLP or CDL may not be issued. As for Virginia DMV's concern about the possible inability of an applicant to show an active mailing address in his or her ''home'' State to prove domicile, § 383.71(b)(10) allows the use of a ''government issued tax form'' to serve as proof. Without such a tax record, there is no good reason to believe an applicant's assertion of domicile in a State.

F. Driver Training

The NPRM described the various military training programs and explained that they are thorough and comprehensive. These programs incorporate most of the elements recommended by the Professional Truck Driver Institute. Military training is entirely compatible with the requirements of FMCSA's ELDT rule (81 FR 88732, December 8, 2016, also available in docket FMCSA–2007–27748).

ATA stated that FMCSA should verify that all military training programs thoroughly cover all elements required by the ELDT rule, and, if they do not, should work with the military branches to secure comparable training.

CVTA stated that the training manuals from the Army, Navy, Air Force, and Marines all covered, in ''considerable detail,'' the skills needed under the ELDT rule.

FMCSA Response: As stated previously, the training and testing by the military meet or exceed FMCSA's various training standards listed in appendices A through E to 49 CFR part 380 (compliance required by February 7, 2020) and the AAMVA testing standard specified in 49 CFR 383.131.

G. Proof of Training and Experience

NSTA stated that individuals seeking a waiver should ''certify and provide evidence'' of their training and experience, specifically for passenger carrier and school bus endorsements. ATA asked the Agency for ''explicit acknowledgement'' that a driver using the waiver has the knowledge necessary to pass the test. ATA also said that employers may view the waiver as a lesser standard, and that FMCSA should provide the same process for checking the driver's record, experience, restrictions, equipment, etc., as States allow for other drivers. ATA expressed concern that veterans utilizing this program might be perceived as holding a lesser license.

ABA requested guidance on how an employer could confirm a driver's service and MOS. Oregon asked how to confirm that a driver attempting to use this waiver had proper training and experience. Oregon also asked if certain MOS should be considered proof of appropriate training, and requested a formal definition of ''approved training.''

FMCSA Response: Under this rule, drivers who hold or held such designations have completed ''approved training'' comparable to that required to pass the general knowledge test. SDLAs will be able to verify a driver's MOS status. As indicated above, the SDLA will be able to check military documents, such as AF 2293, etc. The Agency will also provide SDLAs with guidance and sample documents that can be used to verify an applicant's required training and testing in the appropriate vehicle. A document summarizing that guidance is currently under development, and will be available to SDLAs. Certification to an employer that a driver is qualified is not part of this rulemaking. Individuals who are waived from the tests will receive standard CDLs and be treated the same as all other CDL holders.

H. CDL Waiting Period

ATA asked if FMCSA planned to require the usual 14-day waiting period between issuing these two licenses (49 CFR 383.25(e)).

FMCSA Response: Under this rule, a State may treat military personnel with the appropriate MOS as though they had completed the knowledge test for a CLP. However, because recipients of such waivers are eligible immediately for a CDL, they are not issued a CLP. The 14-day waiting period was adopted to ensure that drivers had time to obtain behind-the-wheel training before attempting to pass the skills test. However, § 383.77 requires applicants with military experience seeking a waiver of the driving skills test to certify certain experience over a 2-year period prior to the application. The MOSs listed in this final rule demonstrate that the applicant has received training equivalent to that required by the ELDT rule, which is also sufficient to pass the general and endorsement knowledge tests. Under these circumstances, a 14-day waiting period would serve no purpose. This rule does not waive other requirements for the issuance of a CDL, including the medical card required of all CDL holders and the TSA background check for applicants for H endorsement.

I. Other Comments

FMCSA revised 49 CFR 383.77, *Substitute for driving skills tests for drivers with military CMV experience,* and 49 CFR 383.79, *Skills testing of out-of-State students; Knowledge and skills testing of military personnel,* in the 2016 Military CDL I final rule. In the NPRM, FMCSA proposed edits to these two sections to accommodate the provisions related to the knowledge test.

Virginia DMV submitted multiple comments and questions about parts of the FMCSRs that were not substantively modified by this rulemaking, reflecting misunderstandings about the NPRM. Modifications to the final rule in response to other comments have resolved and clarified the issues raised by Virginia DMV.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VIII. Section–by–Section Analysis

A. Section 383.23 Commercial Driver's License

The reference to ''written'' tests in paragraph (a)(1) is changed to ''knowledge'' tests and the term ''commercial motor vehicle'' is abbreviated as ''CMV'' to match the terminology used elsewhere in 49 CFR part 383. The word ''skills'' is added after ''driving'' to clarify the type of test. No changes are made to other paragraphs in this section.

B. Section 383.77 Substitute for Knowledge and Driving Skills Tests for Drivers With Military CMV Experience

This section is retitled as *Substitute for knowledge and driving skills tests for drivers with military CMV experience* to include knowledge test waivers. The existing introductory paragraph is now contained in new paragraph (b)(1) and the introductory text of paragraph (b)(2).

FMCSA adds new paragraph (a), titled *Knowledge test waivers for certain current or former military service members applying for a CLP or CDL,* to outline the requirements for eligibility for knowledge test waivers, including paragraphs (a)(2)(i)(A) through (H) that list specific MOS eligible for knowledge test waivers. Existing paragraph (a) is now contained in new paragraph (b)(2)(ii). The language has been slightly modified to make it consistent with new paragraph (a).

New paragraph (b) is titled *Driving skills test waivers for certain current or former military service members applying for a CDL.* Existing paragraph (b) is now contained in new paragraph (b)(2)(i).

New paragraph (c) is titled *Endorsement waivers for certain current or former military service members applying for a CLP or a CDL.* Paragraphs (c)(1) through (3) contain the requirements certain applicants must meet for SDLAs to grant them relief from the knowledge and skills tests for P, and the knowledge tests for N and H. New paragraph (c)(4) provides the conditions and limitations that are placed on a waiver of the tests required for a P, N, or H endorsement.

C. Section 383.79 Driving Skills Testing of Out-of-State Students; Knowledge and Driving Skills Testing of Military Personnel

The title of this section and paragraph (a) are modified to include the term ''driving'' before the terms ''skills.'' Other editorial changes are made to paragraph (a). Existing paragraph (b), *Military service member applicants for a CLP or CDL,* is removed and replaced by a new paragraph (b), *Active duty military service members.* New paragraphs (b)(1) and (2) discuss the responsibilities of the State of duty station and the State of domicile, respectively.

D. Section 384.301 Substantial Compliance General Requirements

New paragraph (l) is added to provide a compliance date for this rule.

IX. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA performed an analysis of the impacts of the final rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563, Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (Feb. 26, 1979)).

This rule will allow, but not require, States to waive the requirements for the CDL knowledge tests for certain current or former military service members who can certify and provide evidence that they were regularly employed within the last year in a military position that requires/required the operation of a CMV. This rule will provide an expedited path for certain military service members to enter the labor market by eliminating the usual 14-day waiting period after passing the knowledge test for the CLP and either

taking the driving skills test or applying for a skills test waiver.

FMCSA evaluated potential costs and benefits that could result from this rulemaking. The Agency estimates that an annual average of 2,460 military service members will be affected by the rule, with each experiencing a reduction in costs related to elimination of the CDL knowledge test and the 14-day waiting period. As presented in Table 1, the final rule will result in a 10-year cost savings of $16.66 million undiscounted, $14.21 million discounted at 3 percent, $11.70 million discounted at 7 percent, and $1.67 million on an annualized basis at 7 percent or 3 percent discount rates.

Scope and Key Inputs to the Analysis

The Agency does not know how many military service members will receive CDL knowledge test waivers and uses the number of CDL skills test waivers issued as a proxy for the number of military service members who will be most likely to use the relief provided in this rule. In the Military CDL I final rule, FMCSA estimated that an annual average of 2,460 military service members were granted skills test waivers, and thus estimates that the same number will be granted knowledge test waivers as a result of this final rule. For purposes of this analysis, FMCSA assumed that number would remain constant in future years.

The Agency evaluated changes in the opportunity cost of time for military service members, or drivers, using the driver wage rate to represent the value of the drivers' time. In the absence of the rule, that time would have been spent taking the CDL knowledge tests and waiting to procure employment as CMV drivers, time that will now be available to drivers for other uses, such as productive employment. The source for driver wages is the median hourly wage data (May 2016) from the U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES).[2] The BLS does not publish data on fringe benefits for specific occupations, but it does for the broad industry groups in its Employer Costs for Employee Compensation (ECEC) release. For drivers, this analysis uses an average hourly wage of $25.75 and average hourly benefits of $14.49 for private industry workers in ''transportation and warehousing''[3] to estimate that fringe benefits are equal to 56 percent ($14.49 ÷ $25.75) of wages.

FMCSA assumes that military service members are employed while they are waiting to obtain a CDL and uses the light truck or delivery service driver wage rate (industry code 53–3033) as a proxy for the employment opportunities available to non-CDL drivers. Per the BLS definition, drivers in the light truck or delivery service industry drive a truck or van with a capacity of less than 26,000 pounds gross vehicle weight and, as such, do not require a Class A or a Class B CDL. FMCSA uses a driver wage rate of 23 to account for non-CDL driving opportunities available to military service members, which is the base median hourly wage of $14.70 adjusted to account for fringe benefits ($23 = $14.70 × 1.56).

FMCSA uses the heavy tractor-trailer wage rate (industry code 53–3032) of $31 to represent the employment opportunities available to military service members after they obtain their CDL. This value is the base median wage of $19.87, adjusted to account for fringe benefits ($31 = $19.87 × 1.56).

Costs

This rule will reduce driver opportunity cost by creating an expedited path for certain military service members to obtain their CDL and begin working for a motor carrier. First, the affected military service members will receive a waiver for the CDL knowledge tests and will experience a reduction in opportunity cost equal to the length of time they would have spent taking the CDL knowledge tests. FMCSA estimates that each of the 2,460 affected military service members will save approximately 60 minutes, or one hour, and values this time at the wage the driver will be earning in the absence of the CDL knowledge test requirement, $31. As displayed in Table 1, FMCSA estimates that the annual undiscounted cost savings of allowing a CDL knowledge test waiver are approximately $76,000 ($76,000 = 2,460 drivers × 1 hour × $31), and the total 10-year undiscounted cost savings are approximately $760,000.

Second, because of the waiver, certain military service members will no longer be required to wait 14 days before obtaining their CDL and beginning employment for a motor carrier. Eliminating the waiting period could result in up to 80 hours of increased wages (two 40-hour work weeks). Because the military service members are estimated to be working and earning a wage during the waiting period, the impact of removing the waiting period is the difference between what they are earning under the baseline (estimated at $23), and what they will earn under the rule (estimated at 31). Thus, FMCSA quantified the impact of removing the waiting period at 8 per hour ($8 = $31 − $23). The analysis similarly estimated that this will impact 2,460 service members. As presented in Table 1, FMCSA estimates that the annual undiscounted cost savings are $1.59 million ($8 × 80 × $2,460), and the 10-year total undiscounted cost savings are $15.90 million.

As presented in Table 1, the total cost savings of the final rule are $16.66 million undiscounted, $14.21 million discounted at 3 percent, $11.70 million discounted at 7 percent, and $1.67 million annualized at both a 3 percent and 7 percent discount rate.

TABLE 1—SUMMARY OF THE TOTAL COSTS OF THE FINAL RULE

[In millions of 2016 $]

Year	Undiscounted			Discounted	
	Reduced test time	Earlier employment	Total costs [a]	Discounted at 3 percent	Discounted at 7 percent
	A = 2,460 drivers × 31 × −1 hour	B = 2,460 drivers × 8 × −80 hours	C = A + B		
2018	($0.08)	($1.59)	($1.67)	($1.62)	($1.56)

[2] U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). *Occupational Employment Statistics (OES). National. May 2016.* Available at: *http://www.bls.gov/oes/special.requests/oesm16nat.zip* (accessed January 16, 2018).

[3] U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). *Table 10: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, September 2017.* Available at: *https://www.bls.gov/news.release/pdf/ecec.pdf* (accessed January 16, 2018).

TABLE 1—SUMMARY OF THE TOTAL COSTS OF THE FINAL RULE—Continued

[In millions of 2016 $]

Year	Undiscounted			Discounted	
	Reduced test time	Earlier employment	Total costs [a]	Discounted at 3 percent	Discounted at 7 percent
	A = 2,460 drivers × 31 × −1 hour	B = 2,460 drivers × 8 × −80 hours	C = A + B		
2019	(0.08)	(1.59)	(1.67)	(1.57)	(1.46)
2020	(0.08)	(1.59)	(1.67)	(1.52)	(1.36)
2021	(0.08)	(1.59)	(1.67)	(1.48)	(1.27)
2022	(0.08)	(1.59)	(1.67)	(1.44)	(1.19)
2023	(0.08)	(1.59)	(1.67)	(1.40)	(1.11)
2024	(0.08)	(1.59)	(1.67)	(1.35)	(1.04)
2025	(0.08)	(1.59)	(1.67)	(1.32)	(0.97)
2026	(0.08)	(1.59)	(1.67)	(1.28)	(0.91)
2027	(0.08)	(1.59)	(1.67)	(1.24)	(0.85)
Total	(0.76)	(15.90)	(16.66)	(14.21)	(11.70)
Annualized			(1.67)	(1.67)	(1.67)

Notes:

[a] Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

[b] Values shown in parentheses are negative values (*i.e.*, less than zero), and represent a decrease in cost or a cost savings.

Benefits

In considering the potential impacts on safety from this rule, the Agency notes that affected military service members have previous training or experience operating a CMV, which serves as an adequate substitute for taking the knowledge test and holding a CLP for a minimum of 14 days. Therefore, the Agency anticipates that there will be no change in potential safety benefits associated with this rule.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is expected to be an E.O. 13771 deregulatory action. [4] The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, are approximately $20.8 million. Expressed on an annualized basis, the cost savings are $1.5 million. These values are expressed in 2016 dollars.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.[5] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these entities.

When an agency issues a rulemaking proposal, the RFA requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify, in lieu of preparing an analysis, that the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

FMCSA provided a factual basis and certified in the proposal that the rule would not have a significant impact on a substantial number of small entities. FMCSA did not receive comments on the factual basis or the proposal, and has not changed the determination in this final rule.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Selden Fritschner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

[4] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. Feb. 3, 2017.

[5] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Available at: *https://www.sba.gov/advocacy/regulatory-flexibility-act* (accessed December 14, 2016).

that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $156 million (which is the equivalent of $100 million in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this final rule will not result in such expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act (Collection Information)

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

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

FMCSA has determined that this rule would not have substantial direct costs on or for the States, nor will it limit the policymaking discretion of the States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

K. Privacy

The Consolidated Appropriations Act, 2005, (5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. Because this final rule does not require the collection of personally identifiable information (PII), the Agency is not required to conduct a PIA.

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 note) requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

L. E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that the rule is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This final rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

O. E.O. 13175 (Indian Tribal Governments)

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

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

Q. Environment (NEPA)

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraphs 6.s.(6) and 6.t.(2). The Categorical Exclusion (CE) in paragraph 6.s.(6) covers a requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard. The CE in paragraph 6.t.(2) covers regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by: (2) Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and

licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license. The requirements in this rule are covered by these CEs and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: *http://www.regulations.gov.*

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, parts 383 and 384, to read as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 2. Amend § 383.23 by revising paragraph (a)(1) to read as follows:

§ 383.23 Commercial driver's license.

(a) * * *

(1) No person shall operate a CMV unless such person has taken and passed knowledge and driving skills tests for a CLP or CDL that meet the Federal standards contained in subparts F, G, and H of this part for the CMV that person operates or expects to operate.

* * * * *

■ 3. Revise § 383.77 to read as follows:

§ 383.77 Substitute for knowledge and driving skills tests for drivers with military CMV experience.

(a) *Knowledge test waivers for certain current or former military service members applying for a CLP or CDL*—(1) *In general.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (a)(2) of this section, a State may waive the requirements in §§ 383.23(a)(1) and 383.25(a)(3) that a person must pass a knowledge test for a CLP or CDL.

(2) *Conditions and limitations.* A current or former military service member applying for waiver of the knowledge test described in paragraph (a)(1) of this section must certify and provide evidence that, during the 1-year period immediately prior to the application, he/she:

(i) Is or was regularly employed and designated as a:

(A) Motor Transport Operator—88M (Army);

(B) PATRIOT Launching Station Operator—14T (Army);

(C) Fueler—92F (Army);

(D) Vehicle Operator—2T1 (Air Force);

(E) Fueler—2F0 (Air Force);

(F) Pavement and Construction Equipment Operator—3E2 (Air Force);

(G) Motor Vehicle Operator—3531 (Marine Corps); or

(H) Equipment Operator—E.O. (Navy).

(ii) Is operating a vehicle representative of the CMV type the driver applicant expects to operate upon separation from the military, or operated such a vehicle type immediately preceding separation from the military;

(iii) Has not simultaneously held more than one civilian license (in addition to a military license);

(iv) Has not had any license suspended, revoked, or cancelled;

(v) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(vi) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in § 383.51(c); and

(vii) Has not had any conviction for a violation of military, State, or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault.

(b) *Driving skills test waivers for certain current or former military service members applying for a CDL*—(1) *In general.* At the discretion of a State, the driving skills test required by § 383.23(a)(1), and as specified in § 383.113, may be waived for a CMV driver with military CMV experience who is currently licensed at the time of his/her application for a CDL and substituted with an applicant's driving record in combination with certain driving experience.

(2) *Conditions and limitations.* The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the driving skills test described in § 383.113. Such conditions must require at least the following:

(i) An applicant must provide evidence and certify that he/she:

(A) Is regularly employed or was regularly employed within the last year in a military position requiring operation of a CMV;

(B) Was exempted from the CDL requirements in § 383.3(c); and

(C) Was operating a vehicle representative of the CMV type the driver applicant operates or expects to operate, for at least the 2 years immediately preceding separation from the military.

(ii) An applicant must certify that, during the 2-year period immediately prior to applying for a CDL, he/she:

(A) Has not simultaneously held more than one civilian license (in addition to a military license);

(B) Has not had any license suspended, revoked, or cancelled;

(C) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(D) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in § 383.51(c); and

(E) Has not had any conviction for a violation of military, State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic crash, and has no record of a crash in which he/she was at fault.

(c) *Endorsement waivers for certain current or former military service members applying for a CLP or a CDL*—(1) *Passenger.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (c)(4) of this section, a State may waive the requirements in § 383.25(a)(5)(i), § 383.93(a) and (c)(2) that an applicant must pass a driving skills test and a specialized knowledge test, described in § 383.117, for a passenger (P) endorsement.

(2) *Tank vehicle.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (c)(4) of this section, a State may waive the requirements in §§ 383.25(a)(5)(iii) and 383.93(a) and (c)(3) that an applicant must pass a specialized knowledge test, described in § 383.119, for a tank vehicle (N) endorsement.

(3) *Hazardous materials.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in

paragraph (c)(4) of this section, a State may waive the requirements in § 383.93(a)(1) and (c)(4) that an applicant must pass a specialized knowledge test, described in § 383.121, for a hazardous materials (H) endorsement. States must continue to meet the requirements for a hazardous materials endorsement in subpart I of this part.

(4) *Conditions and limitations.* A current or former military service member applying for waiver of the driving skills test or the specialized knowledge test for a passenger carrier endorsement, the knowledge test for the tank vehicle endorsement, or the knowledge test for the hazardous materials endorsement, must certify and provide evidence that, during the 1-year period immediately prior to the application, he/she:

(i) Is or was regularly employed in a military position requiring operation of a passenger CMV, if the applicant is requesting a waiver of the knowledge and driving skills test for a passenger endorsement; operation of a tank vehicle, if the applicant is requesting a waiver of the knowledge test for a tank vehicle endorsement; or transportation of hazardous materials, if the applicant is requesting a waiver of the knowledge test for a hazardous materials endorsement;

(ii) Has not simultaneously held more than one civilian license (in addition to a military license);

(iii) Has not had any license suspended, revoked, or cancelled;

(iv) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(v) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in § 383.51(c); and

(vi) Has not had any conviction for a violation of military, State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic crash, and has no record of a crash in which he/she was at fault.

■ 4. Revise § 383.79 to read as follows:

§ 383.79 Driving skills testing of out-of-State students; knowledge and driving skills testing of military personnel.

(a) *CDL applicants trained out-of-State*—(1) *State that administers the driving skills test.* A State may administer its driving skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another United States jurisdiction (*i.e.,* his or her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in a direct, efficient and secure manner.

(2) *The State of domicile.* The State of domicile of a CDL applicant must accept the results of a driving skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73.

(b) *Active duty military service members.* An active-duty military service member may apply for a CLP or a CDL in the State where the individual is stationed but not domiciled if the requirements of this section are met.

(1) *Role of State of duty station.* (i) Upon prior agreement with the State of domicile, a State where active-duty military service members are stationed, but not domiciled, may accept an application for a CLP or CDL, including an application for waiver of the knowledge test or driving skills test prescribed in §§ 383.23(a)(1) and 383.25(a)(3), from such a military service member who:

(A) Is regularly employed or was regularly employed within the last year in a military position requiring operation of a CMV;

(B) Has a valid driver's license from his or her State of domicile;

(C) Has a valid active-duty military identification card; and

(D) Has a current copy of either the service member's military leave and earnings statement, or his or her orders.

(ii) A State where active-duty military service members are stationed, but not domiciled, may:

(A) Administer the knowledge and driving skills tests to the military service member, as appropriate, in accordance with subparts F, G, and H of this part, if the State of domicile requires those tests; or

(B) Waive the knowledge and driving skills tests in accordance with § 383.77, if the State of domicile has exercised the option to waive those tests; and

(C) Destroy the military service member's civilian driver's license on behalf of the State of domicile, unless the latter requires the driver's license to be surrendered to its own driver licensing agency.

(iii) The State of duty station must transmit to the State of domicile by a direct, secure, and efficient electronic system the completed application, any supporting documents, and—if the State of domicile has not exercised its waiver option—the results of any knowledge and driving skills administered.

(2) *Role of State of domicile.* Upon completion of the applicant's application pursuant to § 383.71 and any testing administered by the State of duty station pursuant to §§ 383.71 and 383.73, the State of domicile of the military service member applying for a CLP or CDL may:

(i) Accept the completed application, any supporting documents, and the results of the knowledge and driving skills tests administered by the State of duty station (unless waived at the discretion of the State of domicile); and

(ii) Issue the applicant a CLP or CDL.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 6. Amend § 384.301 by adding paragraph (l) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(l) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of November 27, 2018 as soon as practicable, but, unless otherwise specifically provided in this part, not later than November 27, 2021.

Issued under authority delegated in 49 CFR 1.87. September 25, 2018.

Raymond P. Martinez,

Administrator.

[FR Doc. 2018–21289 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 160614518–8790–03]

RIN 0648–XE685

Endangered and Threatened Wildlife and Plants; Final Rule To List the Chambered Nautilus as Threatened Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, NMFS, announce a final rule to list the chambered nautilus (*Nautilus pompilius*) as threatened under the Endangered Species Act (ESA). We have reviewed the status of the chambered nautilus, including efforts being made to protect this species, and considered public comments, including new information, submitted on the proposed rule. We have made our final determination based on the best scientific and commercial data available. At this time, we conclude that critical habitat is not determinable because data sufficient to perform the required analyses are lacking; however, we solicit information on habitat features and areas in U.S. waters that may meet the definition of critical habitat for the chambered nautilus.

DATES: This final rule is effective October 29, 2018.

ADDRESSES: Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910. Copies of the petition, status review report, and **Federal Register** notices are available on our website at *https://www.fisheries.noaa.gov/species/chambered-nautilus*.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2016, we received a petition from the Center for Biological Diversity to list the chambered nautilus (*N. pompilius*) as a threatened species or an endangered species under the ESA. We found that the petitioned action may be warranted for the species and announced the initiation of a status review (81 FR 58895, August 26, 2016). On October 23, 2017, we announced a positive 12-month finding on the petition and published a proposed rule to list the chambered nautilus as a threatened species under the ESA (82 FR 48948). We solicited information on the proposed listing determination, the potential development of proposed protective regulations, and potential designation of critical habitat for the chambered nautilus. The comment period was open through December 22, 2017, and no hearing requests were received. This final rule provides an overview of the ESA listing and status review process for this species; a discussion of the comments and information we received during the public comment period, as well as our responses to those comments; a summary of the statutory listing factors and other considerations supporting the listing determination; and our final ESA listing determination for the chambered nautilus. This rule should be read in conjunction with the proposed rule.

Listing Species Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered.

Section 3 of the ESA defines ''species'' to include any subspecies of fish or wildlife or plants and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). Because the chambered nautilus is an invertebrate, the ESA does not permit us to consider listing populations as DPSs.

Section 3 of the ESA defines an ''endangered species'' as a species which is in danger of extinction throughout all or a significant portion of its range and a ''threatened species'' as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. 16 U.S.C. 1532(6); (20). Thus, in the context of the ESA, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species'' is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species is or is likely to become in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

As we explained in the proposed rule and summarize here, when we consider whether a species might qualify as threatened under the ESA, we must consider the meaning of the term ''foreseeable future.'' It is appropriate to interpret ''foreseeable future'' as the horizon over which predictions about the conservation status of the species can be reasonably relied upon. The appropriate timescales for analyzing various threats will vary with the data available about each threat. The foreseeable future considers the life history of the species, habitat characteristics, availability of data, particular threats, ability to predict threats, and the ability to reliably forecast the effects of these threats and future events on the status of the species under consideration. Because a species may be susceptible to a variety of threats for which different data are available, or which operate across different time scales, the foreseeable future is not necessarily reducible to a particular number of years.

The statute also requires us to determine whether any species is endangered or threatened throughout all or a significant portion of its range as a result of any one or a combination of the following factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms to address identified threats; or other natural or manmade factors affecting its continued existence (ESA section 4(a)(1)(A)–(E); 16 U.S.C. 1533(a)(1)(A)–(E). *See also* 50 CFR 424.11(c)).

To make a listing determination, we first determine whether a petitioned species meets the ESA definition of a ''species.'' Next, using the best available information gathered during the status review for the species, we assess the extinction risk of the species. In assessing the extinction risk of a species, in conjunction with the section 4(a)(1) factors, we consider demographic risk factors, such as those developed by McElhany *et al.* (2000), to organize and evaluate the forms of risks. The demographic risk analysis is an assessment of the manifestation of past threats that have contributed to the species' current status and also informs the consideration of the biological response of the species to present and future threats. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our previous status reviews (see *https://www.fisheries.noaa.gov/resources/documents?title=&field_category_document_value%5Besa_status_review%5D=esa_status_review&species=&field_species_vocab_target_id=&sort_by=created* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: Abundance and trends, population growth rate or productivity, spatial structure and connectivity, and genetic diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Where a species is found not to warrant listing throughout its range, we must go on to evaluate whether the species may be endangered or threatened in a ''significant portion of its range.'' Conversely, where a species is found to warrant listing as an endangered species or a threatened species based on a review of its status throughout its range, it is not necessary to proceed to an evaluation of potentially significant portions of the range. As explained more fully in the proposed rule, we interpret the Act to require that, where the best available information allows us to determine a status for the species rangewide, that status determination should be given conclusive weight. Our interpretation is also consistent with the 2014 Final Policy on Interpretation of the Phrase ''Significant Portion of its Range'' (79 FR 37578, July 1, 2014).[1]

Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account any efforts being made by any State or foreign nation or political subdivision thereof to protect the species. 16 U.S.C. 1533(b)(1)(A). Therefore, prior to making a listing determination, we also assess such protective efforts to determine if they ameliorate the existing threats to a degree that would affect the listing status of the species under the Act. Any relevant foreign efforts are directly evaluated under standards deducible from section 4(b)(1)(A) and the statute's structure.

Status Review

A summary of basic biological and life history information of the chambered nautilus can be found in the proposed rule and the status review report. In reaching our proposed listing determination, we used the best available scientific and commercial data on the chambered nautilus, which are summarized in the status review report and incorporated herein.

Scientific conclusions about the overall risk of extinction faced by the chambered nautilus under present conditions and in the foreseeable future are based on our evaluation of the species' demographic risks and ESA section 4(a)(1) threat factors. Our assessment of overall extinction risk considered the likelihood and contribution of each particular factor, synergies among contributing factors, and the cumulative impact of all demographic risks and threats on the chambered nautilus. After considering conservation efforts by foreign nations to protect the species, as required under section 4(b)(1)(A), we proposed to list the species as a ''threatened species.''

For the assessment of extinction risk for the chambered nautilus, the ''foreseeable future'' was considered to extend out several decades (> 40 years). Given the species' life history traits, with longevity estimated to be at least 20 years, maturity ranges from 10 to 17 years, with very low fecundity (potentially 10–20 eggs per year with a 1-year incubation period), it would likely take more than a few decades (*i.e.,* multiple generations) for any recent management actions to be realized and reflected in population abundance indices. Similarly, the impact of present threats to the species could be realized in the form of noticeable population declines within this time frame, as demonstrated in the available survey and fisheries data. As the main potential operative threat to the species is overutilization, this time frame would allow for reliable predictions regarding the impact of current levels of fishery-related mortality on the biological status of the species. Additionally, this time frame allows for consideration of the previously discussed impacts on chambered nautilus habitat from climate change and the potential effects on the status of this species.

To make our final listing determination, we reviewed all comments and information provided during the public comment period on the proposed rule. In general, this additional information merely supplemented, and did not differ significantly from, the information presented in the proposed rule. Where new information was received, we have reviewed it and present our evaluation of the information in this final rule. The new information received was not so significant that we are relying on it for our final determination.

With this rule, we finalize our listing determination for the chambered nautilus as a ''threatened species.''

Summary of Comments

In response to our request for public comments on the proposed rule, we received comments and/or relevant information from 16 parties. The large majority of commenters supported the proposed listing determination but provided no new or substantive data or information relevant to the listing of the chambered nautilus. We also solicited comments from the countries where the chambered nautilus occurs via their ambassadors and received a response from the Philippines Bureau of Fisheries and Aquatic Resources and the Government of India. Summaries of the substantive public comments received and our responses are provided below and organized by topic.

Comments on Available Data, Trends, and Analysis

Comment 1: Two commenters provided their personal observations regarding the decline of the chambered nautilus in the Indo-Pacific. One commenter noted that during their 20 years as a researcher studying the chambered nautilus, 1–2 of their study sites are now 100 percent depleted and others are rapidly following suit. Another commenter provided information on historical and current nautilus fishing practices in the Philippines. The commenter stated that nautilus fishing was more lucrative in the 1970s and 1980s in the region of Central Visayas (particularly the Tañon Strait municipalities) compared to the end of the 1990s, resulting in reduced fishing effort of the species. In March 2017, interviews conducted with three shell exporters on Mactan Islands (the major export hub for sea shells from Philippine waters) revealed that they had a few hundred nautilus shells in stock (despite the ban on trade in nautilus shells). The commenter also stated that there are known locations in Central Palawan as well as the southern tip of the island where nautilus fisheries were or still exist. However, the commenter noted that it is unclear whether the nautilus is a target species or just landed as bycatch. The commenter stressed the importance of obtaining information on current and historical fishing activities in order to obtain a better understanding of the present status of nautilus populations in the Philippines.

Response: We thank the commenters for the information. We have updated the status review report (Miller 2018) to reflect the new information provided regarding the March 2017 interviews, which further supports our conclusion that existing regulations to protect *N. pompilius* from overutilization throughout the Philippines are inadequate. We agree with the commenter that fisheries information is

[1] Although two district courts have held in litigation involving the United States Fish and Wildlife Service (USFWS) that the Final Policy's specific definition of ''significant'' is too narrow (*Center for Biological Diversity, et al.* v. *Jewell,* CV–14–02506 (D. Ariz.); *Desert Survivors, et al.* v. *Dep't of Interior,* 16-cv-01165 (N.D. Cal.)), all other provisions of the Final Policy continue in full effect for both Services, including the provisions establishing the overall process for sequencing determinations. Nevertheless, our approach is reached and applied independently of the Final Policy.

useful when examining the status of nautilus populations.

Comment 2: One commenter provided new published information on the genetics of the *Nautilus* genus, including an estimated effective population size of *N. pompilius* across the Indo-Pacific. Specifically, the commenter referenced the study by Combosch *et al.* (2017), which used genome-wide double digest restriction-site associated DNA data to re-analyze nautiloid species taxonomy. The commenter noted that the results from the new study suggest that the geographic distribution of *N. pompilius* may be smaller than previously thought, and would not include nautilids found in the Coral Sea and Southwest Pacific. However, the commenter noted that further research is needed to validate the results before a final decision on the actual geographical range of *N. pompilius* is made. In fact, the commenter stated that given that further research is still necessary, NMFS should rely on the best available science and list *N. pompilius* as one species (one ''superspecies'') throughout its range, as stated in the proposed rule.

In terms of effective population size, the commenter noted that the estimates provided in Combosch *et al.* (2017) generally tend to be in agreement with previous genetic studies (*i.e.,* Williams *et al.* (2015)). While the estimates are rather large (for example, ~4.5 million specimens of *N. pompilius* may potentially exist in the entire Indo-Pacific), the commenter cautioned that the data are more than two decades old and represent what the species could potentially support based on its current genetic diversity, not its current living population abundance estimate. The commenter cautioned that the substantial removal of individuals from *N. pompilius* populations in recent decades, and potential losses in genetic diversity, would take some time before being reflected in genetic-based effective population sizes. Ultimately, the commenter requested that the new genetic information, discussed above, be included in the final rule.

Response: We reviewed the paper referenced by the commenter (Combosch *et al.* 2017) and have updated the status review report with this new information. Specifically, Combosch *et al.* (2017) indicate the existence of three main *Nautilus* clades: South Pacific, Coral Sea, and Indo-Pacific. The authors contend that these three clades consist of five distinct genetic clusters of *Nautilus* that most likely correspond to five different species. Three of these species exist in the South Pacific, including *N. macromphalus* in New Caledonia and two undescribed species (one around American Samoa and Fiji and the other around Vanuatu). A fourth species is found from the Great Barrier Reef to eastern Papua New Guinea, which the authors consider to be *N. stenomphalus.* The fifth species, *N. pompilius,* occurs from Western Australia throughout Indonesia and the Philippines and west to Palau. The authors also suggest that *N. belauensis* and *N. repertus* should be synonymized with *N. pompilius* as they are both nested within this Indo-Pacific clade.

While the results from Combosch *et al.* (2017) contrast with our characterization of *N. pompilius* and its range within the status review report and proposed rule, we find that this new information does not change our recognition of *N. pompilius* as a valid species for listing under the ESA, or our description of the species and its range based on the best available information. As noted in the status review report and proposed rule, nautilus taxonomy is controversial and is still not fully resolved. Until there is a new scientific agreement regarding the taxonomy of the *Nautilus* genus, we will continue to follow the latest scientific consensus as acknowledged by the Integrated Taxonomic Information System, with *N. pompilius* identified as one of five recognized species (N. *pompilius, N. belauensis, N. macromphalus, N. repertus,* and N. *stenomphalus*). In terms of range, we find that the best available information suggest that *N. pompilius* is found throughout the Indo-Pacific and within the South Pacific, including waters off American Samoa, Australia, Fiji, India, Indonesia, Malaysia, New Caledonia, Papua New Guinea, Philippines, Solomon Islands, and Vanuatu. *Nautilus pompilius* is also possibly native to China, Myanmar, Western Samoa, Thailand, and Vietnam.

With respect to the new effective population size estimates in Combosch *et al.* (2017), we have updated the status review report with this data. The authors estimated median current effective population sizes for each of the genetic clades mentioned above (Indo-Pacific, Coral Sea, South Pacific) and found large population sizes in the panmictic Indo-Pacific population (4.5×10^6 specimens; 3.2×10^6 for the Philippines subpopulation) and in the Coral Sea (7.2×10^6 for the Great Barrier Reef and 5.7×10^6 for Papua New Guinea). The South Pacific clade had much smaller effective population sizes, with New Caledonia at 0.34×10^6 specimens, Vanuatu at 0.67×10^6 specimens, and American Samoa/Fiji population at 0.41×10^6 specimens. As the commenters note, these estimates are similar to those from previous genetic studies as reported Williams *et al.* (2015). Specifically, Williams *et al.* (2015) estimated an effective population size for the Philippines of 3.2×10^6 individuals, and 2.6×10^6 individuals for Western Australia. While this new data further support the suggestion that the species may have high genetic diversity, we agree with the commenters that the current level of genetic diversity across the entire range of the species remains highly uncertain. Due to the low fecundity and long generation time of the species, genetic responses to current exploitation rates (such as decreases in genetic diversity) may not yet be detectable. We have updated the status review report with this new data but do not find that it changes our conclusions regarding the risk that genetic diversity currently poses to the species.

Comments on Existing Regulatory Mechanisms

Comment 3: The Philippines Bureau of Fisheries and Aquatic Resources (the Bureau) provided information regarding existing regulations. Specifically, the Bureau stated that under Section 102 (b) of the Philippine Fisheries Code of 1998 (RA 8550 as amended by RA 10654), it is unlawful to fish, take, catch, gather, sell, purchase, possess, transport, export, forward or ship out aquatic species listed under Appendix II and III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Based on the listing of the chambered nautilus in Appendix II of CITES during the Conference of the Parties in 2016, the prohibition became effective on January 2, 2017. However, the export of government-inventoried chambered nautilus Pre-Convention specimens used in the shell craft industry of Cebu, Philippines is allowed until 2018.

Response: We thank the Bureau for its comment and have updated the status review report to reflect this regulation. However, at this time, we have no information regarding the effectiveness of this prohibition, including subsequent enforcement efforts, in protecting the chambered nautilus from continued overutilization throughout the Philippines. Available information from the status review report suggests enforcement of current regulations may be lacking, with evidence of nautilus products being sold in shops in Cebu, the Western Visayas region, and Palawan as recently as 2017, despite local ordinances that prohibit the trade and harvest of *N. pompilius.* Given the significant harvest and trade of the

chambered nautilus throughout the Philippines (with the Philippines being the number one supplier of nautilus commodities to the United States) and present uncertainty regarding the enforcement of existing regulatory measures and subsequent adequacy in reducing the threat of overutilization to the species in the foreseeable future, we find that our conclusions regarding threats to the species and its extinction risk remains the same.

Comment 4: The Government of India (the Government) provided information on India's existing regulations related to the protection of the chambered nautilus. Specifically, the Government commented that the chambered nautilus is listed on Schedule I of India's Wild Life (Protection) Act, 1972, which provides the species with the highest degree of protection from hunting and trade. Commercial trade of *N. pompilius* in India is not permitted. Additionally, the Government states that there are no reports of captures of chambered nautiluses in Indian fishery landing centers. However, the Government notes that illegal trade in the species cannot be ruled out.

The Government of India also commented that India, along with Fiji and the United States, proposed the listing of Nautilidae on Appendix II of CITES during the 17th meeting of the Conference of the Parties to CITES. Considering this, the Government states that India has no objections to the listing of the species as threatened under the ESA.

Response: We thank the Government of India for its comment and support of the listing of chambered nautilus under the ESA. In the status review report, we recognized the listing of *N. pompilius* under Schedule I of the Indian Wild Life (Protection) Act of 1972; however, we found information indicating that *N. pompilius* shells were still being collected in Indian waters and sold in major coastal tourist curio markets as recently as 2007 (John *et al.* 2012). In fact, interviews with retail vendors suggested that a large majority were aware of the Indian Wild Life Protection Act and legal ramifications of selling protected species yet continued to sell large quantities of protected marine mollusks and corals in the curio shops (John *et al.* 2012). Additionally, based on the shell size of the chambered nautiluses in the curio shops, we found it likely that the inventory is comprised entirely of shells from immature individuals. While India may prohibit the harvest and trade of chambered nautilus, the best available information suggests that the species is still being exploited, with the high demand for nautilus shells and profits from the illegal curio trade resulting in the overutilization of *N. pompilius* that will continue to threaten populations within Indian waters. With no new information to consider regarding the effectiveness of enforcement of India's existing regulatory mechanisms, we find that our conclusions regarding threats to the species and its extinction risk remains the same.

Comments on Proposed Listing Determination

Comment 5: We received a number of comments that supported the proposed listing of the chambered nautilus as a threatened species under the ESA. A large majority of the comments were general statements of support for listing and were not accompanied by substantive information or references. Some of the comments were accompanied by information that is consistent with, or cited directly from, our proposed rule or status review report.

Response: Given that no new substantive information was provided in these comments that was not already considered in the proposed rule or status review report, our conclusion regarding the status of the chambered nautilus remains the same. We acknowledge these comments and the considerable public interest expressed in support of the conservation of the chambered nautilus.

Comment 6: Several commenters requested that we list the chambered nautilus as an endangered species under the ESA. One commenter stated that listing as endangered is warranted for a host of reasons including: how little is known about the biology and ecology of the chambered nautilus; lack of information on population abundance and trends in vast portions of the species' range; the species' reproductive characteristics (*i.e.,* long-lived, late maturing, slow growing); its patchy distribution, geographic isolation, specialized habitat needs, and genetic distinction between populations; the massive level of international trade in the species (including in to the United States); and the lack of effective regulations protecting the species where it exists. The commenter suggested that the ''precautionary principle'' would indicate that the species should be listed as an endangered species.

Response: The commenters did not provide any new information regarding threats to the species or its current status that was not already considered in the status review report or proposed rule. One commenter cited the proposed rule and status review report to support their argument of listing the chambered nautilus as, ''preferably,'' an endangered species. With no new information to consider, our conclusion regarding the status of the chambered nautilus remains the same.

Regarding the request to use a precautionary approach when making a listing decision, it would be inappropriate apply a presumption in favor of a particular listing status under the Act. Under the framework of the ESA, the threshold determination of whether or not to list a species is required to be a scientific conclusion based solely on the best available scientific and commercial information. In carrying out other provisions under the ESA that come into play after the time of listing, such as conducting consultations under section 7, it may be appropriate to apply a ''precautionary approach'' or give the benefit of the doubt to the species. But such considerations do not apply at the step of making a listing determination under Section 4. *Trout Unlimited* v. *Lohn,* 645 F. Supp. 2d 929, 947–48 (D. Or. 2007). We simply may not list a species as endangered unless the best available scientific and commercial information supports concluding that it meets the statutory definition of an ''endangered species'' at the time of listing.

Comments on Establishing Protective Regulations Under Section 4(d) of the ESA

Comment 7: Two commenters urged us to promulgate a section 4(d) rule to establish import prohibitions of the species into the United States and other trade regulations, as well as to require permits in order to address the threat of unsustainable overharvesting of the species that supports the international shell trade. As support for their request, one commenter stated that the CITES protection for the species will not be enough to prevent it from becoming endangered in the foreseeable future because illegal trade is likely to happen. Additionally, the commenter noted that without ESA protections, unregulated interstate sale (including from American Samoa) would continue. Thus, even with the CITES Appendix II listing, the commenter stated that regulatory mechanisms remain inadequate to ensure the species' survival in the foreseeable future. The commenters noted that a 4(d) rule restricting trade, including import prohibitions, would allow the U.S. authority to review CITES non-detriment findings and make their own determinations as well as ensure adequate trade restrictions where domestic efforts to protect the species in foreign countries have failed.

Response: Under the ESA, if a species of fish or wildlife is listed as endangered, a number of protections set out in section 9(a)(1) of the Act (16 U.S.C. 1538(a)(1)) automatically apply. Among other prohibitions, any ''take'' of, import into or export from the United States, and interstate or foreign commerce in the species, is illegal, subject to certain exceptions. In the case of a species listed as threatened, the protections of section 9 do not automatically apply. However, section 4(d) of the ESA gives the Secretary the authority to issue such regulations as he or she deems necessary and advisable to provide for the conservation of the species. The Secretary may also prohibit with respect to a threatened species any or all of the acts prohibited under section 9(a)(1) of the ESA. 16 U.S.C. 1533(d).

While the commenter stated that CITES protection for the species would not be sufficient to prevent the chambered nautilus from becoming endangered in the foreseeable future, the commenter pointed to no information regarding current implementation efforts and enforcement of CITES requirements, or overall effectiveness of the CITES Appendix II listing in ensuring the sustainable trade of the chambered nautilus to support their assertion. If sustainable trade in this species is achieved as a result of the CITES Appendix II listing, the need for additional protective measures would be unnecessary; however, at this time, we are still evaluating the effectiveness of the CITES Appendix II listing of the chambered nautilus. Also, in response to the commenter's concerns regarding interstate commerce, as mentioned in the proposed rule and status review report, we found no evidence of local utilization or commercial harvest of chambered nautiluses in American Samoa. Therefore, any sale of non-imported chambered nautilus shells in interstate commerce would likely involve collected drift shells from American Samoa (*i.e.,* the only portion of the species' range in U.S. waters). As such, we do not agree with the commenter that this interstate commerce places the species at risk of extinction at this time.

Summary of Changes From the Proposed Listing Rule

We did not receive, nor did we find, data or references that presented substantial new information that would cause us to change our proposed listing determination. We did, however, make several revisions to the final status review report (Miller 2018) to incorporate, as appropriate, relevant information received in response to our request for public comments.

Specifically, we updated the status review to include new information regarding the sale of nautilus shells in the Philippines (K. Schroeder, pers. comm. 2017), the taxonomy of the species (Combosch *et al.* 2017), and estimates of effective population sizes for nautilus populations (Combosch *et al.* 2017). As noted above, with more detailed discussion in the previous comment responses, consideration of this new information did not alter any conclusions (and in some cases further supported our conclusions) regarding the threat assessment or extinction risk analysis for the chambered nautilus. Thus, the conclusion contained in the status review report and determination based on that conclusion in the proposed rule are reaffirmed in this final action.

Species Determination

As noted previously, nautilus taxonomy is controversial and still not fully resolved. However, the current scientific consensus is that *N. pompilius* is a recognized taxonomically-distinct species and, therefore, meets the definition of ''species'' pursuant to section 3 of the ESA, making it eligible for listing under the ESA.

Summary of Demographic Risk Analysis

As stated previously and as discussed in the proposed rule (82 FR 48948, October 23, 2017), we conducted a demographic risk analysis for the chambered nautilus. This analysis evaluated the population viability characteristics and trends data available for the species to determine the potential risks these demographic factors pose to the species. Based on the available data, we found that the species exists as small and isolated populations throughout its range, with low rates of dispersal and little gene flow among populations, particularly those that are separated by large geographic distances and deep ocean expanses. Genetic variability within the species has likely been reduced due to bottleneck events and genetic drift in the small and isolated *N. pompilius* populations throughout its range. Additionally, the data indicate that the chambered nautilus is a slow-growing and late-maturing species (with maturity estimated between 10 and 17 years, and longevity at least 20 years) with likely very low productivity and, thus, is extremely susceptible to decreases in its abundance. In fact, the data suggest that many chambered nautilus populations are in decline and may be extirpated in the next several decades.

The comments that we received on the proposed rule provided information that was either already considered in our analysis, was not substantial or relevant, or was consistent with or reinforced information in the status review report and proposed rule. Therefore, our consideration of the information received has not altered our analysis of the demographic risks to the species.

Summary of ESA Section 4(a)(1) Factors Affecting the Chambered Nautilus

As stated previously and as discussed in the proposed rule (82 FR 48948, October 23, 2017), we considered whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA are contributing to the extinction risk of the chambered nautilus and result in the species meeting the definition of ''endangered species'' or ''threatened species.'' The primary threat to the chambered nautilus is overutilization through commercial harvest to meet the demand for the international nautilus shell trade. Out of the 10 nations where *N. pompilius* is known to occur, potentially half have targeted nautilus fisheries either historically or currently. These waters comprise roughly three-quarters of the species' known range. Current estimated levels of harvest to meet the international demand are projected to lead to extirpations of local *N. pompilius* populations as has been observed in the past. Additionally, efforts to address overutilization of the species through regulatory measures appear inadequate, with evidence of targeted fishing of and trade in the species, particularly in Indonesia, Philippines, and China, despite prohibitions.

The comments that we received on the proposed rule provided information that was either already considered in our analysis, was not substantial or relevant, or was consistent with or reinforced information in the status review report and proposed rule. Therefore, our consideration of the information received has not led us to change our conclusions regarding any of the section 4(a)(1) factors or their interactions. All of the information, discussion, and conclusions regarding the factors affecting the chambered nautilus contained in the final status review report (Miller 2018) and the proposed rule is reaffirmed in this final action.

Extinction Risk

As discussed previously, the status review report evaluated the demographic risks to the chambered nautilus according to four categories—abundance and trends, population growth/productivity, spatial structure/connectivity, and genetic diversity. As a concluding step, after considering all of the available information regarding demographic and other threats to the species, we rated the species' extinction risk according to a qualitative scale (high, moderate, and low risk). We found that *N. pompilius* is at a moderate risk of extinction throughout its range. We explained in the proposed rule that a species is at a ''moderate risk'' of extinction when it is on a trajectory that puts it at a high level of extinction risk in the foreseeable future. A species may be at moderate risk of extinction because of projected threats or declining trends in abundance, productivity, spatial structure, or diversity. While the chambered nautilus is still traded in considerable amounts (upwards of thousands to hundreds of thousands annually), with evidence of new sites being established for nautilus fishing (*e.g.,* in Indonesia, Philippines, Papua New Guinea), and areas of stable, unfished populations (*e.g.,* eastern Australia, American Samoa), we concluded that without adequate measures controlling the overutilization of the species, *N. pompilius* is on a trajectory where its overall abundance will likely see significant declines within the foreseeable future eventually reaching the point where the species' continued persistence will be in jeopardy. We, therefore, determined that the species is not presently in danger of extinction throughout its range but is likely to become so within the foreseeable future (*i.e.,* the species is a threatened species). Because we find that the chambered nautilus is likely to become an endangered species within the foreseeable future throughout its range, we do not go on to consider whether the species might be threatened or endangered in a significant portion of its range, for the reasons explained in the *Listing Species Under the Endangered Species Act* section above and more fully in the proposed rule.

The information received from public comments on the proposed rule was either already considered in our analysis, was not substantial or relevant, or was consistent with or reinforced information in the status review report and proposed rule. Therefore, our consideration of the information received has not altered our view of the extinction risk of the chambered nautilus. Our conclusion regarding the extinction risk for the chambered nautilus remains the same. Therefore, all of the information, discussion, and conclusions on the extinction risk of the chambered nautilus contained in the final status review report and the proposed rule is reaffirmed in this final action.

Protective Efforts

In addition to regulatory mechanisms (considered under ESA section 4(a)(1)(D)), we considered other efforts being made to protect the chambered nautilus (pursuant to ESA section 4(b)(1)(A)). The efforts we evaluated included a non-profit campaign devoted to raising the awareness of threats to the chambered nautilus and the potential for aquaculture or artificial propagation programs to satisfy the trade industry demand for shells and restore wild populations. We considered whether such protective efforts sufficiently ameliorated the identified threats to the point that they would alter the conclusions of the extinction risk analysis for the species so as to possibly avoid the need to list. None of the information we received on the proposed rule affected our conclusions regarding conservation efforts to protect the chambered nautilus. Thus, all of the information, discussion, and conclusions on the protective efforts for the chambered nautilus contained in the final status review report and proposed rule are reaffirmed in this final action.

Final Determination

We have reviewed the best available scientific and commercial information, including the petition, the information in the final status review report (Miller 2018), the comments of peer reviewers, and public comments. None of the information received since publication of the proposed rule (82 FR 48948, October 23, 2017) altered our analyses or conclusions that led to our determination for the chambered nautilus. Therefore, the determination in the proposed rule is reaffirmed in this final rule and stated below.

Based on the best available scientific and commercial information, and after considering efforts being made to protect *N. pompilius,* we conclude that the chambered nautilus is not currently in danger of extinction throughout its range but is likely to become so in the foreseeable future throughout all of its range from threats of overutilization and the inadequacy of existing regulatory mechanisms. Therefore, we have determined that the chambered nautilus meets the definition of a ''threatened species'' and list it is as such throughout its range under the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include designation of critical habitat, to the maximum extent prudent and determinable (16 U.S.C. 1533(a)(3)(A)); development of recovery plans (16 U.S.C. 1533(f)); Federal agency consultations with NMFS under section 7 of the ESA to ensure their actions are not likely to jeopardize the species or result in adverse modification or destruction of critical habitat, should it be designated (16 U.S.C. 1536); and, for endangered species, prohibitions on taking and certain other activities (16 U.S.C. 1538). Prohibitions on taking, or other protections, may also be extended through regulation to threatened species. (16 U.S.C. 1533(d)). In addition, recognition of the species' imperiled status through listing can indirectly inform voluntary conservation actions by Federal and State agencies, foreign entities, private groups, and individuals.

Protective Measures and Prohibitions

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations (50 CFR part 402) require Federal agencies to consult with us to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. Our section 7 regulations require the responsible Federal agency to initiate formal consultation if a Federal action may affect a listed species or its critical habitat (50 CFR 402.14(a)). Examples of Federal actions that may affect the chambered nautilus include: Fishery harvest and management practices, energy projects, discharge of pollution from point sources, non-point source pollution, dredging, mining, pile-driving, military activities, toxic waste and other pollutant disposal, and shoreline development. This list is not exhaustive, and the extent to which consultation is required will depend on the particular facts of any particular proposed Federal action.

In the case of threatened species, ESA section 4(d) gives the Secretary discretion to issue such regulations as he or she deems necessary and advisable for the conservation of the species. 16 U.S.C. 1533(d). The Secretary may also decide to extend some or all the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) to the species.

As mentioned in the status review report and proposed rule, all nautilus species were included on Appendix II of CITES in October 2016, with the listing going into effect in January 2017. Export of nautilus products, such as shells, requires CITES permits that ensure the products were legally acquired and that the Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species (after taking into account factors such as its population status and trends, distribution, harvest, and other biological and ecological elements). In the proposed rule, this CITES protection was determined not to have ameliorated the threats to the threatened chambered nautilus because the CITES listing had only recently gone into effect and, therefore, we lacked information that would allow us to fully evaluate its adequacy in decreasing the threat of overutilization. We are still in the process of collecting information in order to evaluate the effectiveness of this CITES Appendix II listing of the chambered nautilus as a tool to ensure the sustainable trade in this species. If we determine that additional measures may be necessary to safeguard the species against future depletion of populations or potential extinction of the chambered nautilus, then we may issue protective regulations under section 4(d) or extend some or all of the prohibitions of section 9(a)(1) of the ESA that automatically apply with respect to endangered species. However, at this time, we are not proposing to apply such prohibitions to the chambered nautilus. We may consider potential protective regulations pursuant to section 4(d) for chambered nautilus in a future rulemaking.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary (*i.e.,* the point at which it is ''recovered''). 16 U.S.C. 1532(3). Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

At this time, we find that critical habitat for the chambered nautilus is not determinable because data sufficient to perform the required analyses are lacking. As stated in the status review report and proposed rule, while it is known that chambered nautiluses are extreme habitat specialists, found in association with steep-sloped forereefs with sandy, silty, or muddy-bottomed substrates, and in depths from around 100 meters to 500 meters, the presence of these features does not necessarily indicate the likelihood of chambered nautilus occurrence. Chambered nautiluses have a patchy distribution and, given the difficulty associated with accessing their habitat and observing the species for research purposes, very little is known regarding important aspects of the species' life history, such as reproduction and growth in the wild. As such, we find that sufficient information is not currently available to: (1) Identify the physical and biological features essential to conservation of the species at an appropriate level of specificity, particularly given the uncertainty regarding habitat features necessary to support important life history needs and the irregularity and unpredictability of chambered nautiluses within areas they are known to occur, (2) determine the specific geographical areas that contain the physical and biological features essential to conservation of the species, and (3) assess the impacts of the designation. Therefore, public input on features and areas under U.S. jurisdiction that may meet the definition of critical habitat for the chambered nautilus is invited. Additional details about specific types of information sought are provided in the *Information Solicited* section later in this document. Input may be sent to the Office of Protected Resources in Silver Spring, Maryland (see **ADDRESSES**). Please note that we are not required to respond to any input provided on this matter.

Information Solicited

Because critical habitat is not currently determinable for the chambered nautilus, we are not proposing to designate critical habitat in this rulemaking. We request interested persons to submit relevant information regarding the identification of critical habitat of the chambered nautilus, including specific areas within the geographical area occupied by the species that include the physical or biological features essential to the conservation of the species and that may require special management considerations or protection. Areas outside the occupied geographical area should also be identified if such areas themselves are essential for the conservation of the species. ESA implementing regulations at 50 CFR 424.12(g) specify that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within U.S. jurisdiction.

Section 4(b)(2) of the ESA requires the Secretary to consider the economic impact, impact on national security, and any other relevant impact of designating a particular area as critical habitat. Section 4(b)(2) also gives the Secretary discretion to consider excluding from a critical habitat designation any particular area where the Secretary finds that the benefits of exclusion outweigh the benefits of including the area in the designation, unless excluding that area will result in extinction of the species.

To inform our consideration of potential critical habitat, we also request information describing the following with respect to the relevant features or areas: (1) Activities that may affect the essential features or threats to the essential features, or to an area of potential critical habitat itself; (2) activities that could be affected by designating specific areas as critical habitat; and (3) the positive and negative economic, national security and other relevant impacts, including benefits to the recovery of the species, likely to result if specific areas are designated as critical habitat. We seek information regarding the conservation benefits of designating areas under U.S. jurisdiction as critical habitat. In keeping with the guidance provided by the Office of Management and Budget (2000; 2003), we seek information that would allow the monetization of these effects to the extent possible, as well as information on qualitative impacts.

Information submitted may include, but need not be limited to: (1) Scientific or commercial publications; (2) administrative reports, maps or other graphic materials; and (3) information received from experts. Information and data are particularly sought concerning: (1) Maps and specific information describing the amount, distribution, and use type (*e.g.,* foraging, reproduction) of chambered nautilus habitats, as well as any additional information on occupied

and unoccupied habitat areas; (2) the reasons why any habitat should or should not be included in a designation of critical habitat under sections 3(5)(A) and 4(b)(2) of the ESA; (3) information regarding the benefits of designating particular areas as critical habitat or of excluding particular areas; (4) current or planned activities in the areas that might be proposed for designation and their possible impacts; (5) any foreseeable economic or other potential impacts resulting from designation, and in particular, any impacts on small entities; (6) whether specific unoccupied areas may be essential to provide additional habitat areas for the conservation of the species; and (7) potential peer reviewers for a proposed critical habitat designation, including persons with biological and economic expertise relevant to the species, region, and designation of critical habitat. We solicit information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party (see **ADDRESSES**).

References

A list of all references cited in this final rule is available at *www.regulations.gov* (identified by docket number NOAA–NMFS–2016–0098) or available upon request (see **ADDRESSES**). The peer review report is available at: *http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html*. Additional information can be found on our website at *https://www.fisheries.noaa.gov/species/chambered-nautilus*.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (See NOAA Administrative Order 216–6A (2016) and Companion Manual ''Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities'' at 2 (2017).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not an E.O. 13771 regulatory action because this rule is exempt from review under E.O. 12866.

Executive Order 13132, Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific directives for consultation in situations where a regulation will preempt state law or impose substantial direct ccompliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule; therefore this action does not have federalism implications as that term is defined in E.O. 13132. In accordance with E.O. 13132, we determined that this final rule does not have significant federalism effects and that a federalism assessment is not required.

List of Subjects in 50 CFR Part 223

Endangered and threatened species.

Dated: September 24, 2018.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding a subheading for ''Molluscs'' after the entry for ''Sturgeon, green'' under the ''Fishes'' subheading, and by adding an entry for ''Nautilus, chambered'' underneath the ''Molluscs'' table subheading to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
		Molluscs			
Nautilus, chambered	*Nautilus pompilius*	Entire species	*[Insert **Federal Register** page where the document begins], September 28, 2018.*	NA	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2018–21114 Filed 9–27–18; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180130101–8824–02]

RIN 0648–BH57

Fisheries of the Northeastern United States; Northeast Skate Complex; Framework Adjustment 5 and 2018–2019 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS approves regulations to implement Northeast Skate Complex Fishery Management Plan Framework Adjustment 5 management measures and 2018–2019 specifications for the skate fishery. The action is necessary to establish skate specifications to be consistent with the most recent scientific information and improve management of the skate fisheries. This action is intended to establish appropriate catch limits for the skate fishery and to provide additional operational flexibility to fishery participants.

DATES: Effective on September 28, 2018.

ADDRESSES: New England Fishery Management Council staff prepared an environmental assessment (EA) for Northeast Skate Complex Framework Adjustment 5 and 2018–2019 Specifications that describes the proposed action and other considered alternatives. The EA provides an analysis of the biological, economic, and social impacts of the proposed measures and other considered alternatives, a Regulatory Impact Review, and economic analysis. Copies of the Framework 5 and 2018–2019 Specifications EA are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: *http://www.nefmc.org* and *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0054.*

FOR FURTHER INFORMATION CONTACT: Debra Lambert, Fishery Policy Analyst, (301) 427–8560.

SUPPLEMENTARY INFORMATION:

Background

The Northeast Skate Complex Fishery Management Plan (FMP), developed by the New England Fishery Management Council and implemented in 2003, manages a complex of seven skate species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) off the New England and mid-Atlantic coasts. Skates are harvested and managed in two different fisheries: One for food (the wing fishery) and one for lobster and crab bait (the bait fishery). Additional information on the skate fisheries can be found online at *https://www.greateratlantic.fisheries.noaa.gov/sustainable/species/skate/index.html.*

On July 5, 2018, we proposed management modifications to implement Framework Adjustment 5 to the Northeast Skate Complex FMP and specifications for fishing years 2018–2019 (83 FR 31354). After reviewing public comments in response to the proposed rule, we are approving Framework 5 and 2018–2019 specifications as detailed in our proposed rule.

Specifications for Fishing Years 2018–2019

Specifications including the acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL) for the skate wing and bait fisheries, and possession limits may be specified for up to 2 years. We are approving the Council's recommended specifications for 2018–2019. As recommended, the 2018–2019 skate complex ABC and ACL is 31,327 mt. The ACT is set at 23,495 mt (75 percent of the ACL) to account for management uncertainty. After deducting projected dead discards and state landings, the overall TAL is 13,157 mt. Tables 1 and 2 (below) detail TALs and possession limits for the skate wing and skate bait fisheries. The skate wing and whole skate possession limits are status quo and the possession limits for barndoor skate are described further below.

TABLE 1—TOTAL ALLOWABLE LANDINGS FOR FISHING YEARS 2018–2019

Total allowable landings (TAL)	mt
Skate Wing Fishery:	
Season 1 (May 1–August 31)	4,987
Season 2 (September 1–April 30)	3,762
Skate Bait Fishery:	
Season 1 (May 1–July 31)	1,358
Season 2 (August 1–October 31)	1,635
Season 3 (November 1–April 30)	1,415

TABLE 2—POSSESSION LIMITS PER TRIP FOR FISHING YEARS 2018–2019

Skate possession limits *	Trip limits			
	Skate wings	Whole skates	Barndoor ** skate wings	Whole barndoor ** skates
NE Multispecies, Scallop, or Monkfish Day-At-Sea (DAS):				
Season 1 (May 1–August 31)	2,600 lb, *1,179 kg*	5,902 lb, *2,677 kg*	650 lb, *295 kg*	1,476 lb, *670 kg.*
Season 2 (September 1–April 30)	4,100 lb, *1,860 kg*	9,307 lb, *4,222 kg*	1,025 lb, *465 kg*	2,327 lb, *1,056 kg.*
NE Multispecies B DAS:				
May 1–April 30	220 lb, *100 kg*	500 lb, *227 kg*	0	0.
Non-DAS:				
May 1–April 30	500 lb, *227 kg*	1,135 lb, *515 kg*	0	0.
Whole skate with bait Letter of Authorization:				
May 1–October 31	0	25,000 lb, *11,340 kg*	0	0.
November 1–April 30	0	12,000 lb, *5,443 kg*	0	0.

* Possession limits may be modified in-season in order to prevent catch from exceeding quotas.
** Barndoor skate trip limits are within the overall skate possession limit for each trip, not in addition to it.

Measures To Allow Possession of Barndoor Skates

Possession and landing of barndoor skate has been prohibited since 2003, when the Northeast Skate Complex FMP was first implemented, as part of efforts to rebuild the stock. NMFS declared the stock rebuilt in 2016, and Framework 5 allows for limited retention of barndoor skate in the directed wing fishery. This action specifies a proportional possession limit per trip that corresponds to the barndoor skate contribution (25 percent) to the overall skate catch based on observer data. Specifically, vessels fishing under a Northeast multispecies, scallop, or monkfish DAS, may possess and land up to 650 lb (295 kg) of wings per trip in Season 1 and 1,025 lb (465 kg) of wings per trip in Season 2. The possession limits for barndoor skate wings are included within the overall wing possession limit per trip (*i.e.,* total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 2,600 lb (1,179 kg) in Season 1 and 4,100 lb (1,860 kg) in Season 2). NMFS notes that the full barndoor wing possession limit may be retained, even if the full wing possession limit for a trip is not caught. For example, a vessel may possess 650 lb (295 kg) of barndoor skate wings in Season 1, even if the vessel does not reach the full 2,600 lb (1,179 kg) wing possession limit for that trip.

The regulations for the skate wing fishery include in-season adjustments to possession limits once certain trigger points are met (see 50 CFR 600.322(b)(3)). This action specifies that when an in-season adjustment of the skate wing possession limit for the directed wing fishery is needed and the wing possession limit is reduced to 500 lb (227 kg) per trip, the possession limit for barndoor skate wings will be reduced to 125 lb (57 kg) per trip.

This action prohibits the discarding of any skate wings when a vessel is in possession of barndoor skate. This measure is intended to prevent high-grading and thereby minimize bycatch. Further, this action requires that barndoor skate wings and carcasses on board a vessel must be separated from other species of fish (including other skates) and stored so as to be readily available for inspection. This provision was not part of the Council's recommended measures under Framework 5, but we determined it is necessary to aid in the enforcement of barndoor possession trip limits by segregating barndoor skates to facilitate identification and compliance with the trip limit. We are establishing the measure under the authority of section 305(d) of the Magnuson-Stevens Act.

As described in the proposed rule, Framework 5 did not propose, discuss, or analyze options for allowing barndoor possession for vessels operating under other possession limits for skates, including: Vessels fishing for bait skate under a bait letter of authorization (§ 648.322(c)); vessels fishing under a Northeast multispecies Category B DAS (§ 648.322(b)); vessels fishing under the incidental skate possession limit for vessels not under a DAS (§ 648.322(b)); or when fishing in a Northeast multispecies DAS exemption program area that allows possession and landing of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board (as specified in § 648.80(b)(3)(ii)) without a Northeast multispecies or monkfish DAS. Therefore, this action does not allow vessels operating under the above mentioned scenarios to possess barndoor skates.

Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area Exemption Program

Framework 5 exempts vessels from domestic skate regulations when fishing exclusively within the NAFO Regulatory Area, except for the prohibition on possessing, retaining, or landing prohibited species. U.S. vessels fishing in the NAFO Regulatory Area are currently exempt from domestic Northeast multispecies and monkfish permit, mesh size, effort-control, and possession limit restrictions (see § 648.17). U.S. vessels in the NAFO area are largely targeting yellowtail flounder and Atlantic halibut, and exempting these vessels from domestic skate regulations would provide them additional flexibility to retain and land skates in the United States. NAFO specifies an annual quota and possession limits for skates, and the quota is not allocated to particular countries; access to skates is on a first come, first served basis.

This action specifies that vessels fishing under a High Seas Permit exclusively within the NAFO Regulatory Area are exempt from domestic skate regulations (*e.g.,* skate permit and possession limit restrictions), except for the prohibition on possessing, retaining, or landing prohibited species. U.S. vessels fishing in the NAFO Regulatory Area would be allowed to possess barndoor skate consistent with the NAFO-established incidental possession limits given the aforementioned domestic regulatory changes regarding barndoor skates, but would not be exempt from the prohibition on possessing, retaining, or landing other prohibited skate species (*i.e.,* thorny skate and smooth skates) specified in §§ 648.14(v) and 648.322(g). Further, the skate catch from the NAFO Regulatory Area would not count against domestic skate TALs.

Comments and Responses

We received five public comments on the proposed rule, two of which were not responsive to the action.

Comment 1: The following three commenters expressed support for the action: The Atlantic Offshore Lobstermen's Association; the Cape Cod Commercial Fishermen's Alliance; and Tremont Fisheries LLC. The Atlantic Offshore Lobstermen's Association expressed support for increasing TALs in 2018 and 2019, based on recent updated scientific information about skates. The Cape Cod Commercial Fishermen's Alliance supported the proportional barndoor skate possession limits for the skate wing fishery, measures to prevent high-grading of skate, and the TAL specifications for 2018 and 2019. Lastly, Tremont Fisheries LLC supported the proposed measures to exempt vessels from some domestic skate regulations when fishing exclusively within the NAFO Regulatory Area.

Response: We are approving Framework 5, specifications for 2018 and 2019, and the accompanying measures because the specifications are consistent with the most recent scientific information, and the measures provide additional operational flexibility to fishery participants.

Changes From the Proposed Rule

NMFS has not made any changes to the regulatory text that was specified in the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 5 to the FMP and the 2018–2019 specifications is necessary for the conservation and management of the northeast skate complex and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds that because this rule relieves restrictions and grants an exemption, it is excepted from the 30-day delay in effectiveness under 5 U.S.C. 533(d)(1). This rule relieves restrictions by increasing the ACL and allowing possession of barndoor skate (previously a prohibited species) in the directed skate wing fishery, and exempts vessels from some specific

domestic skate regulations when fishing exclusively within the NAFO Regulatory Area. The 2018 fishing year began on May 1, 2018, and the skate fishery has been operating under the catch limits implemented as part of Framework Adjustment 3 to the FMP and the 2016–2017 specifications (81 FR 54744; August 17, 2016). Under this action, the ACL for the skate complex will increase from 31,081 mt in 2017 to 31,327 mt in 2018. Further, possession and landing of barndoor skate has been prohibited since 2003. This action will allow possession and landing of barndoor skate in the directed wing fishery and will set possession trip limits for the stock. The price of barndoor skate is expected to be higher than that of other skate species currently landed in the fishery; therefore, allowing barndoor possession is expected to provide positive economic impacts. Lastly, U.S. vessels that are permitted to fish in the NAFO Regulatory Area are currently required to comply with domestic skate regulations (*e.g.,* permit requirements, possession limits) if they were to land skate in the U.S. This action would exempt U.S. vessels from domestic skate regulations when fishing exclusively in the NAFO area, except for the prohibition on possessing, retaining, or landing prohibited species. This additional flexibility for NAFO-participating vessels is also expected to provide additional operational flexibility and result in positive economic impacts.

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 25, 2018.

Samuel D. Rauch, III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14, revise paragraphs (v)(2) and (4) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(v) * * *

(2) *All Federal permit holders.* It is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(i) Retain, possess, or land thorny skates taken in or from the EEZ portion of the skate management unit specified at § 648.2.

(ii) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in § 648.322(c); when fishing under a NE multispecies Category B DAS as described under § 648.322(b); when fishing under the incidental skate possession limit for vessels not under a DAS as described in § 648.322(b)(4); or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(iii) Discard any skate wings when in possession of barndoor skate wings.

(iv) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

* * * * *

(4) *Presumption.* For purposes of this part, the following presumption applies: All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion (such as fishing within the NAFO Regulatory Area under § 648.17(a)(3)) of the skate management unit or only in state waters.

* * * * *

■ 3. In § 648.17, add paragraph (a)(3) to read as follows:

§ 648.17 Exemptions for vessels fishing in the NAFO Regulatory Area.

(a) * * *

(3) *Skates.* A vessel issued a valid High Seas Fishing Compliance Permit under part 300 of this title and that complies with the requirements specified in paragraph (b) of this section is exempt from skate permit and possession limit restrictions, specified in §§ 648.4 and 648.322, respectively, and from Atlantic sea scallop, NE multispecies, or monkfish DAS effort control restrictions specified in §§ 648.53, 648.82, and 648.92, respectively, and from mesh size and gear restrictions specified in §§ 648.51, 648.80, and 648.91, respectively, while transiting the EEZ with skates on board the vessel, or landing skates in U.S. ports that were caught while fishing in the NAFO Regulatory Area. These vessels may possess, retain, and land barndoor skate; however, they may not possess, retain, or land other prohibited skate species specified in §§ 648.14(v) and 648.322(g).

* * * * *

■ 4. In § 648.80, revise paragraph (b)(3)(ii) to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(3) * * *

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use as defined in § 648.2, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory

shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts (except for barndoor skate and other prohibited skate species (see §§ 648.14(v)(2) and 648.322(g))—up to 10 percent, by weight, of all other species on board.

* * * * *

■ 5. In § 648.322, revise paragraphs (b) and (g) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) *Skate wing possession and landing limits*—(1) *Vessels fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS.* (i) A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows: Up to 2,600 lb (1,179 kg) of skate wings (5,902 lb (2,677 kg) whole weight) per trip in Season 1 (May 1 through August 31), and 4,100 lb (1,860 kg) of skate wings (9,307 lb (4,222 kg) whole weight) per trip in Season 2 (September 1 through April 30), or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section.

(ii) When fishing under the possession limits specified in paragraph (b)(1)(i) of this section, a vessel is allowed to possess and land up to 650 lb (295 kg) of barndoor skate wings (1,476 lb (670 kg) whole weight) per trip in Season 1, and 1,025 lb (465 kg) of barndoor skate wings (2,327 lb (1,056 kg) whole weight) per trip in Season 2. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.,* total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 2,600 lb in Season 1 and 4,100 lb in Season 2). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(2) *NE multispecies Category B DAS.* A vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip, or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(3) *In-season adjustment of skate wing possession limits.* The Regional Administrator has the authority, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, to reduce the skate wing possession limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight) or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section) for the remainder of the applicable quota season. When the incidental possession limit is implemented, a vessel is allowed to possess and land up to 125 lb (57 kg) of barndoor skate wings (284 lb (129 kg) whole weight) per trip. The possession limits for barndoor skate wings are included within the overall possession limit (*i.e.,* total pounds of skate wings on board, including barndoor skate wings, are not allowed to exceed 500 lb). Vessels are prohibited from discarding any skate wings when in possession of barndoor skate wings. Barndoor skate wings and carcasses on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The in-season adjustment of skate wing possession limits will be implemented under the following circumstances:

(i) When 85 percent of the Season 1 skate wing quota is projected to be landed between May 1 and August 17, the Regional Administrator shall reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(ii) When 85 percent of the Season 1 skate wing quota is projected to be landed between August 18 and August 31, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section.

(iii) When 85 percent of the annual skate wing fishery TAL is projected to be landed in Season 2, the Regional Administrator may reduce the skate wing possession limit to the incidental level described in paragraph (b)(3) of this section, unless such a reduction would be expected to prevent attainment of the annual TAL.

(4) *Incidental possession limit for vessels not under a DAS.* A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is a limited access multispecies vessel participating in an approved sector described under § 648.87 but not fishing on one of the DAS specified at § 648.53, § 648.82, or § 648.92, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of the allowable landing forms defined at paragraph (b)(5) of this section. These vessels may not possess or land barndoor skate, or any other prohibited skate species (see § 648.14(v)(2) and paragraph (g) of this section).

(5) *Allowable forms of skate landings.* Except for vessels fishing under a skate bait letter of authorization as specified at paragraph (c) of this section, a vessel may possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcass discarded), wings with associated carcasses possessed separately (wings removed from the body of the skate but the associated carcass retained on board the vessel), or in whole (intact) form, or any combination of the three, provided that the weight of the skate carcasses on board the vessel does not exceed 1.27 times the weight of skate wings on board. When any combination of skate wings, carcasses, and whole skates are possessed and/or landed, the applicable possession or landing limit shall be based on the whole weight limit, in which any wings are converted to whole weight using the wing to whole weight conversion factor of 2.27. For example, if the vessel possesses 100 lb (45.4 kg) of skate wings, the whole weight equivalent would be 227 lb (103.0 kg) of whole skates (100 lb (45.4 kg) × 2.27), and the vessel could possess up to 127 lb (57.6 kg) of skate carcasses (100 lb (45.4 kg) of skate wings × 1.27). A vessel may not possess and/or land skate carcasses and only whole skates.

* * * * *

(g) *Prohibitions on possession of skates.* A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land barndoor skates taken in or from the EEZ portion of the skate management unit when fishing under a bait letter of authorization as described in paragraph (c) of this section; when fishing under

a NE multispecies Category B DAS as described under paragraph (b) of this section; when fishing under the incidental skate possession limit for vessels not under a DAS as described in paragraph (b)(4) of this section; or when fishing in a NE multispecies DAS exemption program that allows the possession of skate or skate parts in an amount not to exceed 10 percent by weight of all other species on board, as specified in § 648.80(b)(3)(ii), without a NE multispecies or monkfish DAS.

(3) Discard any skate wings when in possession of barndoor skate wings.

(4) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[FR Doc. 2018–21192 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 189
Friday, September 28, 2018

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2018–0026]

RIN 1557–AE48

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1621]

RIN 7100—AF15

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064—AE90

Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are proposing to amend the regulatory capital rule to revise the definition of ''high volatility commercial real estate (HVCRE) exposure'' to conform to the statutory definition of ''high volatility commercial real estate acquisition, development, orconstruction (HVCRE ADC) loan,'' in accordance with section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Additionally, to facilitate the consistent application of the revised HVCRE exposure definition, the agencies propose to interpret certain terms in the revised HVCRE exposure definition generally consistent with their usage in other relevant regulations or the instructions to the Consolidated Reports of Condition and Income (Call Report), where applicable, and request comment on whether any other terms in the revised definition would also require interpretation.

DATES: Comments must be received by November 27, 2018.

ADDRESSES: Comments should be directed to: OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Regulatory Capital Treatment for High Volatility Commercial (HVCRE) Exposures to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0026'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2018–0026'' in your comment. In general, the OCC will enter all comments received into the docket and publish them on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter ''Docket ID OCC–2018–0026'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments can be filtered by clicking on ''View All'' and then using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. Supporting materials may be viewed by clicking on ''Open Docket Folder'' and then clicking on ''Supporting Documents.'' The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1621; RIN 7100–AF–15, by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket number and RIN in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove

any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN 3064–AE90, by any of the following methods:

- *Agency website: http://www.FDIC.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency website.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivered/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.* Include RIN 3064–AE90 on the subject line of the message.
- *Public Inspection:* All comments received must include the agency name and RIN 3064–AE90 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT:

OCC: Mark Ginsberg, Senior Risk Expert (202) 649–6983; or Benjamin Pegg, Risk Expert (202) 649–7146, Capital and Regulatory Policy; or Carl Kaminski, Special Counsel, or Rima Kundnani, Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Elizabeth MacDonald, Manager, (202) 475–6216; Andrew Willis, Senior Supervisory Financial Analyst, (202) 912–4323; Matthew McQueeney, Supervisory Financial Analyst (202) 452–2942; Sean Healey, Supervisory Financial Analyst, (202) 912–4611, Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel (202) 452–2036; David Alexander, Counsel, (202) 452–2877; Mary Watkins, Attorney (202) 452–3722, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section; *bbosco@fdic.gov;* David Riley, Senior Policy Analyst, Capital Policy Section; *dariley@fdic.gov;* Stephanie Lorek, Senior Policy Analyst, *slorek@fdic.gov;* Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Beverlea S. Gardner, Senior Examination Specialist, *bgardner@fdic.gov,* Policy and Program Development; Michael Phillips, Acting Supervisory Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* or Alexander Bonander, Attorney, *abonander@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Summary of Proposal
II. Proposed Rule
A. Revised Scope of an HVCRE Exposure
B. Exclusions From an HVCRE Exposure
1. One- to Four-Family Residential Properties
2. Community Development Investment
3. Agricultural Land
4. Loans on Existing Income Producing Properties That Qualify as Permanent Financings
5. Certain Commercial Real Property Projects
a. Contributed Capital
b. ''As Completed'' Value Appraisal
c. Project
6. Reclassification as a Non-HVCRE Exposure
III. Regulatory Analyses
A. Paperwork Reduction Act
B. Regulatory Flexibility Act Analysis
C. Plain Language
D. OCC Unfunded Mandates Reform Act of 1995 Determination
E. Riegle Community Development and Regulatory Improvement Act of 1994

I. Background and Summary of Proposal

In 2013, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) adopted a revised regulatory capital rule (capital rule) that, among other things, addressed weaknesses in the regulatory framework that became apparent in the financial crisis of 2007–08.[1] The capital rule strengthened the capital requirements applicable to banking organizations[2] supervised by the agencies by improving both the quality and quantity of regulatory capital and increasing risk-sensitivity. To better capture the risk of certain kinds of real estate exposures, the capital rule defines a ''high volatility commercial real estate (HVCRE) exposure'' as a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property. The HVCRE exposure definition generally excludes ADC credit facilities that finance one- to-four family residential properties, community development, or agricultural land exposures, and commercial real estate projects where the borrower meets certain contributed capital requirements and other prudential criteria.[3] HVCRE exposures were observed to have increased risk characteristics relative to other credit exposures,[4] and thus were assigned a heightened risk weight of 150 percent under the capital rule.

On May 24, 2018, EGRRCPA became law. Section 214 of EGRRCPA[5] amends

[1] The Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

[2] Banking organizations subject to the agencies' capital rule include national banks, state member banks, insured state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (12 CFR part 225, appendix C), excluding certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[3] See 12 CFR 217.2 (Board); 12 CFR 3.2 (OCC); 12 CFR 324.2 (FDIC).

[4] See 12 CFR part 217 (Board); 12 CFR part 3 (OCC); 12 CFR part 324 (FDIC).

[5] Public Law 115–174, 132 Stat. 1296 (2018). Section 214 of EGRRCPA adds a new Section 51 to the FDI Act, stating that the appropriate Federal banking agencies may only require a depository institution to assign a heightened risk weight to a high volatility commercial real estate (HVCRE) exposure (as such term is defined under 12 CFR 324.2, as of October 11, 2017, or if a successor regulation is in effect as of the date of the enactment of this section, such term or any successor term contained in such successor regulation) under any risk-based capital requirement if such exposure is an HVCRE ADC loan.

HVCRE ADC Loan is defined for the purposes of section 51 and with respect to a depository institution, as a credit facility secured by land or improved real property that, prior to being reclassified by the depository institution as a non-HVCRE ADC loan pursuant to subsection (d)—(A) primarily finances, has financed, or refinances the acquisition, development, or construction of real property; (B) has the purpose of providing financing

Continued

the Federal Deposit Insurance Act (FDI Act)[6] by adding a new section 51 to provide a statutory definition of a high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan. The statute states the agencies may only require a depository institution to assign a heightened risk weight to an HVCRE exposure, as defined under the capital rule, if such exposure is an HVCRE ADC loan under EGRRCPA. The statutory HVCRE ADC loan definition excludes any loan made prior to January 1, 2015. Section 214 was effective upon enactment of the statute.[7]

The agencies issued an interagency statement on July 6, 2018 (interagency statement) that provided information on rules and associated reporting requirements that the agencies jointly administer and that EGRRCPA immediately affected.[8] With respect to section 214, the interagency statement provides that institutions may use available information to reasonably estimate and report only HVCRE ADC loans in their Consolidated Reports of Condition and Income (Call Report)[9] and may refine these estimates in good faith as they obtain additional information. The interagency statement also states that institutions will not be required to amend previously filed regulatory reports as these estimates are adjusted. As an alternative to reporting HVCRE ADC loans, the interagency statement indicates that an institution may continue to report and risk-weight HVCRE exposures in a manner consistent with the current instructions to the Call Report, until the agencies take further action. Further, to avoid the regulatory burden associated with different definitions for HVCRE exposures within a single organization, the interagency statement confirms that the Board will not take action to require a bank holding company, savings and loan holding company, or intermediate holding company of a foreign bank to estimate and report HVCRE on the FR Y–9C[10] consistent with the existing regulatory reporting requirements and reporting form instructions if the holding company reports HVCRE in the same manner as its subsidiary institution(s).

In accordance with section 214 of EGRRCPA, the agencies are proposing to revise the HVCRE exposure definition in section 2 of the capital rule to conform to the statutory definition of an HVCRE ADC loan.[11] The revised definition of an HVCRE exposure would be applicable to the calculation of risk-weighted assets under both the standardized approach and the internal ratings-based (''advanced approaches'') approach.[12] A banking organization that calculates its risk-weighted assets under the advanced approaches of the capital rule would refer to the definition of an HVCRE exposure in section 2 of the capital rule for purposes of identifying wholesale exposure categories and wholesale exposure subcategories.[13] Other than the definition change, no change to the calculation of risk-weighted assets is being proposed. Loans that meet the revised definition of an HVCRE exposure would receive a 150 percent risk weight under the capital rule's standardized approach.[14]

Section 214 excludes from the statutory definition of HVCRE ADC loan any loan made prior to January 1, 2015.[15] Unless a lower risk weight would apply, banking organizations may apply a 100 percent risk weight to ADC loans originated prior to January 1, 2015, that were classified as an HVCRE exposure under the superseded HVCRE exposure definition provided the loans are not past due 90 days or more or on nonaccrual. For ADC exposures issued on or after January 1, 2015, banking organizations would follow the interagency statement that permits them to either apply the statute on a best efforts basis or classify HVCRE exposures according to the superseded definition until the final rule is effective.

Question 1: The agencies invite comment as to whether the final rule should require reevaluation of ADC loans originated on or after January 1, 2015 under the revised HVCRE exposure definition. What are the advantages and disadvantages of requiring reevaluation? What alternative treatments, if any, should the agencies consider?

By its terms, the statutory definition of an HVCRE ADC loan applies to depository institutions. The Board has considered the statutory definition of HVCRE ADC loan and the appropriateness of applying the definition to holding companies in addition to depository institutions. The application of separate definitions for HVCRE ADC loans at the depository institution and for HVCRE exposures at

---

to acquire, develop, or improve such real property into income-producing real property; and (C) is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility;

It does not include a credit facility financing—(A) the acquisition, development, or construction of properties that are—(i) one- to four-family residential properties; (ii) real property that would qualify as an investment in community development; (iii) agricultural land; (B) the acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the institution's applicable loan underwriting criteria for permanent financings; (C) improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the institution's applicable loan underwriting criteria for permanent financings; or (D) commercial real property projects in which—(i) the loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the appropriate Federal banking agency; (ii) the borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—(I) cash; (II) unencumbered readily marketable assets; (III) paid development expenses out-of-pocket; or (IV) contributed real property or improvements; and (iii) the borrower contributed the minimum amount of capital described under clause (ii) before the depository institution advances funds (other than the advance of a nominal sum made in order to secure the depository institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the credit facility has been reclassified by the depository institution as a non-HVCRE ADC loan under subsection (d); Further, it does not include any loan made prior to January 1, 2015; and does not include a credit facility reclassified as a non-HVCRE ADC loan under subsection (d).

Value of Contributed Real Property. The value of any real property contributed by a borrower as a capital contribution shall be the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

[6] *See* 12 U.S.C. 1811 *et seq.*

[7] On October 27, 2017, the agencies issued a proposal, titled, Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996. 82 FR 49984 (October 27, 2017). In connection with that proposal, the agencies requested comment on a definition, ''high volatility acquisition, development, or construction (HVADC) exposure,'' that would have replaced HVCRE in the capital rule. In light of section 214 of EGRRCPA, the agencies will take no further action regarding the HVADC aspect of the proposal. Other aspects of the October 2017 proposal, including simplifications to regulatory capital adjustments and deductions, are still under consideration.

[8] Board, FDIC, and OCC, *Interagency statement regarding the impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180706a1.pdf.* (last visited August 21, 2018).

[9] OMB Control Nos.: OCC, 1557–0081; Board, 7100–0036; and FDIC, 3064–0052.

[10] Consolidated Financial Statements for Holding Companies, OMB Control No.: Board, 7100–0128.

[11] *See* 12 CFR 217.2 (Board); 12 CFR 3.2 (OCC); 12 CFR 324.2 (FDIC).

[12] *See* 12 CFR 217 subparts D and E (Board); 12 CFR 3 subparts D and E (OCC); 12 CFR 324 subparts D and E (FDIC).

[13] *See* 12 CFR 217.131 (Board); 12 CFR 3.131 (OCC); 12 CFR 324.131 (FDIC).

[14] *See* 12 CFR 217.32(j) (Board); 12 CFR 3.32(j) (OCC); 12 CFR 324.32(j) (FDIC).

[15] On January 1, 2015, the heightened risk weight for HVCRE exposures became effective for all banking organizations.

the holding company levels within an organization could result in undue burden without contributing meaningfully to any regulatory objective. Accordingly, the proposal would apply the revised definition of an HVCRE exposure to all Board-regulated institutions that are subject to the Board's capital rule, including bank holding companies, savings and loan holding companies, and intermediate holding companies of foreign banking organizations. The Board would make conforming changes to the instructions for regulatory reports for holding companies that are Board-regulated institutions, including to Schedule HC–R, Part II of the FR Y–9C. Similarly, the agencies would make conforming changes to the Call Report instructions.

II. Proposed Rule

The agencies are revising the definition of an HVCRE exposure in the capital rule to conform to the statutory definition of an HVCRE ADC loan. Additionally, to facilitate the consistent application of the revised HVCRE exposure definition, the agencies propose to interpret terms not defined in the statutory definition of an HVCRE ADC loan. The agencies would generally look to substantially similar or the same terms in the agencies' regulations or the Call Report instructions.

A. Revised Scope of an HVCRE Exposure

Section 214 of EGRRCPA defines an HVCRE ADC loan as ''a credit facility secured by land or improved real property.'' [16] While the statute does not define ''a credit facility secured by land or improved real property,'' the Call Report instructions provide a definition for a ''loan secured by real estate.'' To ensure consistent reporting and because the two terms appear substantially similar, the agencies interpret the term ''credit facility secured by land or improved real property'' for the purpose of the revised HVCRE exposure definition in a manner that is consistent with the current Call Report definition for ''a loan secured by real estate.'' To meet the Call Report definition of ''a loan is secured by real estate,'' the estimated value of the real estate collateral at origination (after deducting all senior liens held by others) is greater than 50 percent of the principal amount of the loan at origination.[17] As a result, the agencies intend to interpret a ''credit facility secured by land or improved real property'' as a facility that meets this collateral criterion.

Section 214 of EGRRCPA provides that a credit facility that is secured by land or improved real property is required to meet three criteria before being classified as an HVCRE ADC loan. First, the credit facility must primarily finance or refinance the acquisition, development, or construction of real property. Second, the purpose of the credit facility must be to provide financing to acquire, develop, or improve such real property into income-producing real property. Finally, the repayment of the credit facility must depend upon future income or sales proceeds from, or refinancing of, such real property. The proposal will incorporate these criteria into the revised definition of an HVCRE exposure. Under the proposal, the determination of whether or not a loan is considered an HVCRE exposure under the revised definition would be made once, at the loan's origination.

In addition, the agencies' propose to interpret that other land loans (generally loans secured by vacant land except land known to be used for agricultural purposes) would be included in the scope of the revised HVCRE exposure definition. This approach would be consistent with the Call Report's inclusion of other land loans with construction and development loans.

Question 2: The agencies request comment on whether the terms ''secured by land or improved real property,'' ''primarily finances,'' and ''income-producing real property'' are clear or whether further discussion or interpretation would be needed. The agencies also request comment on whether their proposed interpretations of these terms are appropriate and whether loans secured by vacant land except agricultural land should be included in the scope of the revised HVCRE exposure definition.

B. Exclusions From an HVCRE Exposure

A loan secured by land or improved real property that meets the three criteria for the revised HVCRE exposure categorization may be excluded from a heightened risk weight if it meets one or more of the following statutory exclusions:

1. One- to Four-Family Residential Properties

Consistent with section 214, the revised definition of an HVCRE exposure would exclude credit facilities financing the acquisition, development, or construction of properties that are one- to four-family residential properties. The agencies are generally aligning the scope of exposures that finance acquisition, development, or construction of one- to four-family residential properties under the capital rule with the definition of a one- to four-family residential property provided in the codified interagency real estate lending standards.[18] The interagency real estate lending standards define a one- to four-family residential property as a property containing fewer than five individual dwelling units, including manufactured homes permanently affixed to the underlying property (when deemed to be real property under state law). The interagency real estate lending standards further state that the construction of condominiums and cooperatives are multifamily construction. Accordingly, loans to finance the construction of condominiums and cooperatives would generally not be included in the scope of the one- to four-family residential properties exclusion under the revised HVCRE exposure definition.[19] Additionally, the agencies are proposing that credit facilities for the purpose of the acquisition, development, or construction of properties that are one- to four-family residential properties would include both loans to construct one- to four-family residential structures and loans that combine the land acquisition, development, or construction of one- to four-family structures, including lot development loans. However, loans used solely to acquire undeveloped land would not be within the scope of one- to four-family residential properties exclusion regardless of how the land is zoned.

Question 3: The agencies invite comment on whether their proposed interpretations of the scope of the one- to four-family residential properties exclusion for purposes of the revised HVCRE exposure definition are appropriate and clear, including which types of townhomes, condominiums, cooperatives, and mobile home-related

[16] *See supra* fn. 6.

[17] *See* Federal Financial Institutions Examination Council, Instructions for Preparation of Consolidated Reports of Condition and Income: FFIEC 031 and FFIEC 041, GLOSSARY A–58 (2018); and FFIEC 051, GLOSSARY A–74 (2018).

[18] *See* Board, OCC, and FDIC, *Interagency Guidelines For Real Estate Lending Policies* (real estate lending standards), 12 CFR part 208 Appendix C (Board); 12 CFR part 34 Appendix A (OCC); 12 CFR part 365 Appendix A (FDIC).

[19] As an alternative to the interagency real estate lending standards, the agencies considered alignment with the definition of a one- to-four family residential property in the Call Report instructions for purposes of the HVCRE exposure exclusion. However, the Call Report's usage of the one- to-four family residential property definition—as a category of permanent financings—as well as the Call Report's distinct additional definition for ''residential construction loans'' are for different reporting purposes. *See* Call Report instructions for Schedule RC–C, Part I, Item 1.c (''Loans secured by 1–4 family residential properties'') and Item 1.a.(1) (''1–4 family residential construction loans'').

loans are excluded. The agencies also invite comment on whether it is appropriate to include one- to four-family lot development loans within the scope of this exclusion.

2. Community Development Investment

Consistent with section 214, the revised HVCRE exposure definition will exclude loans financing the acquisition, development, or construction of real property that would qualify as an investment in community development. For purposes of this exclusion, the proposal refers to the agencies' Community Reinvestment Act (CRA) regulations and the definition of community development investment in these regulations.[20] Accordingly, this exclusion would apply to credit facilities that finance the acquisition, development, or construction of real property projects for which the primary purpose is community development, as defined by the agencies' CRA regulations, which generally includes affordable housing, community services targeted to low- and moderate-income individuals, and various forms of economic development and small business financing. Under the agencies' CRA regulations, loans have to be evaluated to determine whether they meet the criteria for community development. For example, an ADC loan that is conditionally taken out with U.S. Small Business Administration section 504 financing would have to be evaluated against the criteria for community development in order to determine if the loan would qualify for this exclusion.

Question 4: The agencies invite comment on whether the proposed interpretation of the term ''community development'' in the revised definition of HVCRE exposure is appropriate and clear, or whether it requires further discussion or interpretation.

3. Agricultural Land

Consistent with section 214, the revised HVCRE exposure definition will exclude credit facilities financing the acquisition, development, or construction of agricultural land. The Call Report instructions include a definition for ''farmland,'' which excludes loans for farm property construction and land development purposes. As used in the Call Report, the term ''farmland'' includes all land known to be used or usable for agricultural purposes. To ensure consistent reporting, the agencies propose that ''agricultural land'' for the purpose of the revised HVCRE exposure definition would have the same meaning as ''farmland,'' as used in the Call Report instructions.[21]

Question 5: The agencies invite comment on whether their proposed interpretation of the term ''agricultural land'' in the revised definition of an HVCRE exposure is appropriate and clear, or whether it requires further discussion or interpretation.

4. Loans on Existing Income-Producing Properties That Qualify as Permanent Financings

In addition to the exclusions described above, the revised HVCRE exposure definition will exclude additional categories of exposures. Consistent with the statutory definition of an HVCRE ADC loan in section 214, the revised HVCRE exposure definition will exclude credit facilities for the acquisition or refinance of existing income-producing real property secured by a mortgage on such property, so long as the cash flow generated by the real property covers the debt service and expenses of the property in accordance with a depository institution's underwriting criteria for permanent loans. The revised HVCRE exposure definition similarly excludes credit facilities financing improvements to existing income-producing real property secured by a mortgage on such property. The agencies may review the reasonableness of a depository institution's underwriting criteria for permanent loans through the regular supervisory process.

Question 6: The agencies invite comment on whether the term ''permanent financings'' in the revised definition of an HVCRE exposure is clear or whether further discussion or interpretation would be appropriate.

5. Certain Commercial Real Property Projects

Consistent with section 214, the revised definition of an HVCRE exposure will exclude certain commercial real property projects that have been underwritten in accordance with supervisory underwriting standards, and when the borrower has contributed a specified amount of capital to the project. In order to qualify for this exclusion from the revised HVCRE exposure definition, a credit facility that finances a commercial real property project will be required to meet four distinct criteria. First, the loan-to-value ratio is less than or equal to the applicable supervisory maximum. Under the interagency real estate lending standards, maximum loan-to-value ratios vary from 65 to 85 percent, depending on the applicable loan category.[22] Second, the borrower has contributed capital of at least 15 percent of the real property's appraised ''as completed'' value to the project. Third, the 15 percent amount is contributed prior to the institution's advance of funds other than a nominal sum to secure the depository institution's lien on the real property. Fourth, the 15 percent amount of contributed capital is contractually required to remain in the project until the loan can be reclassified as a non-HVCRE exposure. Each of the four proposed criteria aligns with the corresponding statutory criterion under section 214 for exclusion from the statutory definition of an HVCRE ADC loan. The proposed interpretations of terms relevant to the four criteria for exclusion of a credit facility that finances a commercial real property project are discussed in further detail below.

a. Contributed Capital

Under section 214, cash, unencumbered readily marketable assets, paid development expenses out-of-pocket, and contributed real property or improvements count as forms of capital for purposes of the capital contribution criteria. The proposal will incorporate these forms of capital into the revised definition of an HVCRE exposure. The agencies consider costs incurred by the project and paid by the borrower prior to the advance of funds by the banking organization as paid development expenses out-of-pocket.

The statute provides that the value of contributed real property means the appraised value of real property contributed by the borrower as determined under the standards prescribed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339). The proposal will incorporate this criterion into the revised definition of an HVCRE exposure. The agencies would reduce the value of the real property that counts towards the 15 percent contributed capital requirement by the aggregate amount of any liens on the real property securing the HVCRE exposure.

Question 7: The agencies invite comment on whether their proposed interpretation of the 15 percent contributed capital exclusion is appropriate and clear or whether further discussion or interpretation would be

[20] 12 CFR part 24 (OCC); 12 CFR part 345 (FDIC); 12 CFR part 228 (Board).

[21] For the definition of loans secured by farmland, refer to the Call Report Instructions for Schedule RC–C, Part I, Item 1.b.

[22] *See supra* fn. 17.

appropriate. What other issues, if any, relating to the contributed capital exclusion require interpretation? What issues are there relating to the contribution of cash, unencumbered readily marketable assets, real property or improvements that require interpretation? What expenses should or should not qualify as development expenses and are there any other issues relating to paid development expenses that would require interpretation? The agencies also invite comment on whether it is appropriate and clear that the cross-collateralization of land in a project would not be included as contributed real property for purposes of the contributed capital exclusion.

b. ''As Completed'' Value Appraisal

Under the revised HVCRE exposure definition, the 15 percent capital contribution will be required to be calculated using the real property's appraised ''as completed'' value. However, an ''as completed'' value appraisal may not always be available, such as in the case of purchasing raw land without plans for development in the near term, which would typically have an ''as is'' value appraisal. Therefore, the agencies would permit the use of an ''as is'' appraisal, where applicable, for purposes of the 15 percent capital contribution. In addition, the agencies' regulations permit the use of an evaluation in place of an ''as completed'' value appraisal for a commercial real estate transaction under $500,000 that is not secured by a single one-to-four family residential property.[23] The agencies note that section 214 does not distinguish between credit exposures based on size; however, the agencies' appraisal regulations permit the use of evaluations under certain circumstances. The agencies thus would allow the use of an evaluation to replace the ''as completed'' appraised value, for purposes of the revised HVCRE exposure definition, for transactions under $500,000 that are not secured by a single one- to four-family residential property and for certain transactions with values of less than $400,000 involving real property or an interest in real property that is located in a rural area.[24]

Question 8: The agencies invite comment on whether the proposed interpretation on the required use of an as-completed value appraisal for purposes of the contributed capital exclusion is appropriate and clear and whether there are additional issues relating to the appraisal requirement for purposes of the contributed capital exclusion that need interpretation.

c. Project

Under the revised HVCRE exposure definition, when considering whether a credit facility is excluded as a ''certain commercial real property project'' as described above, the 15 percent capital contribution calculation and the ''as completed'' value appraisal are measured in relation to a ''project.'' The agencies recognize that some credit facilities for the acquisition, development, or construction of real property may have multiple phases as part of a larger construction or development project. The agencies are proposing that in the case of a project with multiple phases or stages, in order for a loan financing a phase or stage to be eligible for the contributed capital exclusion, the phase or stage must have its own appraised ''as completed'' value or an appropriate evaluation in order for it to be deemed a separate ''project'' for purposes of the 15 percent capital contribution calculation.

Question 9: The agencies invite comment on whether their proposed interpretation of the term ''project'' is appropriate and clear, and whether the term ''project'' requires further discussion or interpretation.

6. Reclassification as a Non-HVCRE Exposure

Consistent with section 214, under the proposal, a banking organization may reclassify an HVCRE exposure as a non-HVCRE exposure when the substantial completion of the development or construction on the real property has occurred and the cash flow generated by the property covers the debt service and expenses on that property in accordance with the banking organization's loan underwriting standards for permanent financings.

Question 10: The agencies invite comment on whether additional terms included in the text of section 214 of the statute that are not discussed above are ambiguous or need interpretation? The agencies invite comment on what, if any, operational challenges would banking organizations generally expect when determining whether an HVCRE exposure under the proposed revised definition can be reclassified as a non-HVCRE exposure?

Question 11: The agencies invite comment on the potential advantages and disadvantages of incorporating the agencies' interpretations of the terms used in the revised HVCRE exposure definition into the rule text or in another published format. What type of information should be included? What, if any, additional aspects of the revised HVCRE exposure definition, or its application and usage, should be included?

III. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and the 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 OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. These information collections will be extended for three years, with revision. The information collection requirements contained in this proposed rulemaking have been submitted by the OCC and FDIC to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, 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 the information collections 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.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in

[23] 83 FR 15019 (April 9, 2018).

[24] Section 103 of EGRRCPA provides an exclusion to the appraisal requirements for certain transactions with values of less than $400,000 involving real property or an interest in real property that is located in a rural area. This exclusion was effective upon EGRRCPA's enactment.

the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agencies Desk Officer.

Information Collection Proposed To Be Revised

Title of Information Collection: Recordkeeping and Disclosure Requirements Associated with Capital Adequacy.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents:

OCC: National banks and federal savings associations.

Board: State member banks (SMBs), bank holding companies (BHCs), U.S. intermediate holding companies (IHCs), savings and loan holding companies (SLHCs), and global systemically important bank holding companies (G–SIBs).

FDIC: State nonmember banks and state savings associations.

Current Actions: The proposal would amend the regulatory capital rule to conform the definition of HVCRE exposure to the statutory definition of HVCRE ADC loan. Because the agencies' regulatory capital rules require respondents to disclose and keep a record of their amount of HVCRE exposures, this definitional change revises respondents' disclosure and recordkeeping requirements associated with the agencies' regulatory capital rules. This amendment, however, will not result in changes to the burden. In an effort to be consistent across the agencies, the agencies are applying a conforming methodology for calculating the burden estimates. The agencies are also updating the number of respondents based on the current number of supervised entities. The agencies believe that any changes to the information collections associated with the proposed rule are the result of the conforming methodology and updates to the respondent count, and not the result of the proposed rule changes.

PRA Burden Estimates

OCC

OMB control number: 1557–0318.

Estimated number of respondents: 1,365 (of which 18 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (1,365 institutions affected).

Recordkeeping (Ongoing)—16.

Standardized Approach (1,365 institutions affected for ongoing).

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (18 institutions affected for ongiong).

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—280.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—35.

Estimated annual burden hours: 1,088.25 hours initial setup, 64,929.42 hours for ongoing.

Board

Agency form number: FR Q.

OMB control number: 7100–0313.

Estimated number of respondents: 1,431 (of which 17 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (1,431 institutions affected for ongoing).

Recordkeeping (Ongoing)—16.

Standardized Approach (1,431 institutions affected for ongoing).

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (17 institutions affected).

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—280.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—35.

Disclosure (Table 13 quarterly)—5.

Risk-based Capital Surcharge for GSIBs (21 institutions affected).

Recordkeeping (Ongoing)—0.5.

Estimated annual burden hours: 1,088 hours initial setup, 78,183 hours for ongoing.

FDIC

OMB control number: 3064–0153.

Estimated number of respondents: 3,604 (of which 2 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios (3,604 institutions affected).

Recordkeeping (Ongoing)—16.

Standardized Approach (3,604 institutions affected for ongoing).

Recordkeeping (Initial setup)—122.

Recordkeeping (Ongoing)—20.

Disclosure (Initial setup)—226.25.

Disclosure (Ongoing quarterly)—131.25.

Advanced Approach (2 institutions affected for ongoing).

Recordkeeping (Initial setup)—460.

Recordkeeping (Ongoing)—540.77.

Recordkeeping (Ongoing quarterly)—20.

Disclosure (Initial setup)—280.

Disclosure (Ongoing)—5.78.

Disclosure (Ongoing quarterly)—35.

Estimated annual burden hours: 1,088 hours initial setup, 131,802 hours for ongoing.

The proposed rule will also require changes to the Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051; OMB Nos. 1557–0081 (OCC), 7100–0036 (Board), and 3064–0052 (FDIC)) and Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB Nos. 1557–0239 (OCC), 7100–0319 (Board), and 3064–0159 (FDIC)), and Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), which will be addressed in separate **Federal Register** notices.

B. Regulatory Flexibility Act Analysis

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the SBA for purposes of the RFA to include commercial banks and savings institutions with total assets of $550 million or less and trust companies with total assets of $38.5 million of less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of June 30, 2018, the OCC supervises 886 small entities.[25]

Currently, 211 small OCC-supervised institutions hold HVCRE loans and thus will be directly impacted by the proposed rule. Therefore, the proposed rule potentially affects a substantial number of small entities. However, the OCC does not find that the impact of this proposal would be economically significant.

Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a

[25] The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $550 million and $38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or Federal savings association as a small entity.

substantial number of OCC-supervised small entities.

Board: The RFA requires an agency to either provide an initial regulatory flexibility analysis with a proposal or certify that the proposal will not have a significant impact on a substantial number of small entities. Under regulations issued by the SBA, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organization).[26] As of June 30, 2018, there were approximately 3,304 small bank holding companies, 216 small savings and loan holding companies, and 535 small SMBs.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial of number of small entities. Nevertheless, the Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered. The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

As discussed in the Supplemental Information, the proposal would revise the definition of HVCRE exposure to conform to the statutory definition of ''high volatility commercial real estate acquisition, development, or construction (HVCRE ADC) loan,'' in accordance with section 214 of EGRRCPA. To facilitate the consistent application of the revised HVCRE exposure definition, the proposal also provides that the Board would generally look to substantially similar terms in relevant regulations or the Call Report instructions for interpretation of undefined terms used in section 214, where applicable.

For purposes of the standardized approach, loans that meet the revised definition of an HVCRE exposure would receive a 150 percent risk weight under the capital rule's standardized approach. A banking organization that calculates its risk-weighted assets under the advanced approaches of the capital rule would refer to the definition of an HVCRE exposure in section 2 of the capital rule for purposes of identifying wholesale exposure categories and wholesale exposure subcategories. Based upon data reported on the FR Y–9C and on Call Report information, as of June 30, 2018, about 14 percent of state member banks, bank holding companies, and savings and loan holding companies report holdings of HVCRE exposures.

The proposal would apply to all state member banks, as well as all bank holding companies and savings and loan holding companies that are subject to the Board's capital rule. Certain bank holding companies, and savings and loan holding companies are excluded from the application of the Board's capital rule. In general, the Board's capital rule only applies to bank holding companies and savings and loan holding companies that are not subject to the Board's Small Bank Holding Company and Small Savings and Loan Holding Company Policy Statement, which applies to bank holding companies and savings and loan holding companies with less than $3 billion in total assets that also meet certain additional criteria.[27] Thus, most bank holding companies and savings and loan holding companies that would be subject to the proposed rule exceed the $550 million asset threshold at which a banking organization would qualify as a small banking organization.

The agencies anticipate updating the relevant reporting forms at a later date to the extent necessary to align with the capital rule. Given that the proposed rule does not impact the recordkeeping and reporting requirements that affected small banking organizations are currently subject to, there would be no change to the information that small banking organizations must track and report.

The Board does not believe that the proposed rule duplicates, overlaps, or conflicts with any other Federal rules. In addition, there are no significant alternatives to the proposed rule. In light of the foregoing, the Board does not believe that the proposed rule, if adopted in final form, would have a significant economic impact on a substantial number of small entities.

FDIC: The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities.[28] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million that are independently owned and operated or owned by a holding company with less than or equal to $550 million in total assets.[29] For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,604 depository institutions,[30] of which 2,804 are considered small entities for the purposes of RFA.[31] According to recent data, 2,472 small, FDIC-supervised institutions report holding some volume of acquisition, development, and construction loans, while 770 report holding some volume of HVCRE loans. Therefore, the FDIC estimates that the proposed rule is likely to affect a substantial number, 770 (27.5 percent), of small, FDIC-supervised institutions.[32]

This proposal would remove certain loans from the definition of an HVCRE exposure and therefore, would reduce the risk weight from 150 percent to 100 percent on some of the HVCRE loans held in portfolio by small FDIC-supervised institutions, resulting in a modest reduction in their risk-based capital requirements. Assuming all HVCRE loans reported by small, FDIC-supervised institutions were weighted at 100 percent and that covered institutions would maintain the same ratio of risk-based capital to risk-weighted assets after the proposal goes into effect, the maximum potential effect of the proposed rule would result in an estimated decline of $183 million (0.8 percent) in required risk-based capital for small, FDIC-insured institutions, or $237,000 per institution.[33]

[26] *See* 13 CFR 121.201. Effective July 14, 2014, the SBA revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

[27] *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

[28] 5 U.S.C. 601 *et seq.*

[29] The SBA defines a small commercial bank to have $550 million or less in total assets. *See* 13 CFR 121.201 (as amended, effective December 2, 2014). The SBA requires agencies to ''consider assets of affiliated and acquired financial institutions reported in the previous four quarters.'' *See* 13 CFR 121.104. Therefore, the FDIC utilizes merger-adjusted and affiliated assets, averaged over the previous four quarters, to identify whether a bank is a ''small entity'' for the purposes of RFA.

[30] FDIC-supervised institutions are set forth in 12 U.S.C. 1813(q)(2).

[31] FDIC Call Report, March 31st, 2018.

[32] *Id.*

[33] *Id.*

The proposed rule could pose some administrative costs for covered institutions. It is likely that covered institutions who hold some volume of HVCRE loans will incur some costs to evaluate their portfolios to determine if they are excluded from the proposed definition of HVCRE. It is difficult to accurately estimate the costs associated with evaluating each institution's portfolio of HVCRE because it depends on the characteristics of each institution's portfolio, the resources each institution has to manage these assets, and the labor decisions of senior management at each institution. However, the FDIC assumes that each institution will require 40 hours of labor on average to complete the review. Assuming an hourly cost of $75.82,[34] that amounts to $3,033 per institution or $2,335,410 for all small, FDIC-supervised institutions. These administrative costs amount to 0.15 percent of average non-interest expense for small, FDIC-supervised institutions directly affected by the proposed rule.[35]

The proposed rule is likely to reduce capital requirements for some loans currently classified as an HVCRE exposure, which could increase the volume of lending by small, FDIC-supervised institutions. The FDIC believes that this effect will likely be small given that the proposed amendments only affect a subset of HVCRE loans, which represent a small portion of total assets for small FDIC-supervised institutions. Finally, reductions in required capital could make institutions more vulnerable in the event of an economically stressful scenario. Since the changes affect only a narrowly defined segment of institutions' loan portfolios, the FDIC believes any increase in risk resulting from the changes is unlikely to be material.

Based on this supporting information, the FDIC does not believe that the rule will have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, how long would it take for small institutions to review their HVCRE portfolios to identify loans that qualify for a lower risk weight? Also, would this rule have any significant effects on small entities that the FDIC has not identified?

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[36] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the agencies incorporate to make the regulation easier to understand?

D. OCC Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted for inflation). The OCC has determined that this proposed rule would not result in expenditures by State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a written statement to accompany this proposal.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[37] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[38]

The agencies note that comment on these matters has been solicited in other sections of this **SUPPLEMENTARY INFORMATION** section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that further will inform the agencies' consideration of RCDRIA.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset risk—weighting methodologies, Reporting and recordkeeping requirements, National banks, Federal savings associations, Risk.

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset risk—weighting methodologies, Reporting and recordkeeping requirements, Holding companies, State member banks, Risk.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Capital adequacy, Capital requirements, Asset risk—weighting methodologies,

[34] Estimated total hourly compensation of Financial Analysts in the Depository Credit Intermediation sector as of March 2018. The estimate includes the May 2017 90th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2017 and March 2018 (2.28 percent) and grossed up by 55.03 percent to account for non-monetary compensation as reported by the March 2018 Employer Costs for Employee Compensation Data.

[35] FDIC Call Report, March 31st, 2018.

[36] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[37] 12 U.S.C. 4802(a).

[38] *Id.*

Reporting and recordkeeping requirements, State savings associations, State non-member banks, Risk.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR part 3 as follows.

PART 3—CAPITAL ADEQUACY STANDARDS

■ 1. The authority citation for Part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Amend § 3.2 by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' as follows:

§ 3.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the depository institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility;

(2) Does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the OCC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the national bank or Federal savings association advances funds (other than the advance of a nominal sum made in order to secure the national bank's or Federal savings association's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the national bank or Federal savings association as a non-HVCRE exposure under paragraph (6) of this definition;

(3) Does not include any loan made prior to January 1, 2015; and

(4) Does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6) of this definition.

(5) *Value Of Contributed Real Property.*—For the purposes of this HVCRE exposure definition, the value of any real property contributed by a borrower as a capital contribution shall be the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) *Reclassification As A Non-HVCRE exposure.*—For purposes of this HVCRE exposure definition and with respect to a credit facility and a national bank or Federal savings association, a national bank or Federal savings association may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the national bank's or Federal savings association's applicable loan underwriting criteria for permanent financings.

* * * * *

Board of Governors of the Federal Reserve System

For the reasons set out in the joint preamble, part 217 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q)

* * * * *

Subpart A—General Provisions

■ 3. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909,4808, 5365, 5368, 5371.

■ 4. Section 217.2 is amended by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' as follows:

§ 217.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the Board-regulated institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition—

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility; provided that:

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the Board;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the Board-regulated institution advances funds (other than the advance of a nominal sum made in order to secure the Board-regulated institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is contractually required to remain in the project until the HVCRE exposure has been reclassified by the Board-regulated institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6).

(5) *Value of contributed real property.* For the purposes of this definition of HVCRE exposure, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (*12 U.S.C. 3339*), in connection with the extension of the credit facility or loan to such borrower.

(6) *Reclassification as a non-HVCRE exposure.* For purposes of this definition of HVCRE exposure and with respect to a credit facility and an Board-regulated institution, an Board-regulated institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the Board-regulated institution's applicable loan underwriting criteria for permanent financings.

* * * * *

12 CFR Part 324

Federal Deposit Insurance Corporation

For the reasons set out in the joint preamble, the FDIC proposes to amend 12 CFR part 324 as follows.

PART 324—CAPITAL ADEQUACY OF FDIC--SUPERVISED INSTITUTIONS

Subpart A—General Provisions

■ 5. The authority citation for part 324 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; 5371; 5412; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note); Pub. L. 111–203, 124 Stat. 1376, 1887 (15 U.S.C. 78o–7 note).

■ 6. Section 324.2 is amended by revising the definition of a ''high volatility commercial real estate (HVCRE) exposure'' as follows:

§ 324.2 Definitions.

* * * * *

High volatility commercial real estate (HVCRE) exposure means:

(1) A credit facility secured by land or improved real property that, prior to being reclassified by the FDIC-supervised institution as a non-HVCRE exposure pursuant to paragraph (6) of this definition —

(i) Primarily finances, has financed, or refinances the acquisition, development, or construction of real property;

(ii) Has the purpose of providing financing to acquire, develop, or improve such real property into income-producing real property; and

(iii) Is dependent upon future income or sales proceeds from, or refinancing of, such real property for the repayment of such credit facility; provided that:

(2) An HVCRE exposure does not include a credit facility financing—

(i) The acquisition, development, or construction of properties that are—

(A) One- to four-family residential properties;

(B) Real property that would qualify as an investment in community development; or

(C) Agricultural land;

(ii) The acquisition or refinance of existing income-producing real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings;

(iii) Improvements to existing income-producing improved real property secured by a mortgage on such property, if the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings; or

(iv) Commercial real property projects in which—

(A) The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the FDIC;

(B) The borrower has contributed capital of at least 15 percent of the real property's appraised, 'as completed' value to the project in the form of—

(*1*) Cash;

(*2*) Unencumbered readily marketable assets;

(*3*) Paid development expenses out-of-pocket; or

(*4*) Contributed real property or improvements; and

(C) The borrower contributed the minimum amount of capital described under paragraph (2)(iv)(B) of this definition before the FDIC-supervised institution advances funds (other than the advance of a nominal sum made in order to secure the FDIC-supervised institution's lien against the real property) under the credit facility, and such minimum amount of capital contributed by the borrower is

contractually required to remain in the project until the HVCRE exposure has been reclassified by the FDIC-supervised institution as a non-HVCRE exposure under paragraph (6) of this definition;

(3) An HVCRE exposure does not include any loan made prior to January 1, 2015;

(4) An HVCRE exposure does not include a credit facility reclassified as a non-HVCRE exposure under paragraph (6).

(5) Value Of contributed real property.—For the purposes of this definition of HVCRE exposure, the value of any real property contributed by a borrower as a capital contribution is the appraised value of the property as determined under standards prescribed pursuant to section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3339), in connection with the extension of the credit facility or loan to such borrower.

(6) Reclassification as a non-HVCRE exposure.—For purposes of this definition of HVCRE exposure and with respect to a credit facility and an FDIC-supervised institution, an FDIC-supervised institution may reclassify an HVCRE exposure as a non-HVCRE exposure upon—

(i) The substantial completion of the development or construction of the real property being financed by the credit facility; and

(ii) Cash flow being generated by the real property being sufficient to support the debt service and expenses of the real property, in accordance with the FDIC-supervised institution's applicable loan underwriting criteria for permanent financings.

* * * * *

Dated: September 11, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, September 18, 2018.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on September 12, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–20875 Filed 9–27–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 103, 120 and 121

RIN 3245–AG74

Express Loan Programs; Affiliation Standards

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is proposing to amend various regulations governing its business loan programs, including the SBA Express and Export Express Loan Programs and the Microloan and Development Company (504) loan programs.

DATES: SBA must receive comments to the proposed rule on or before November 27, 2018.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG74, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Kimberly Chuday or Thomas Heou, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Kimberly Chuday or Thomas Heou, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Kimberly Chuday or Thomas Heou, Office of Financial Assistance, Office of Capital Access, 409 Third Street SW, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter, Acting Chief, 7(a) Program and Policy Branch, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416; telephone: (202) 205–7654; *email://robert.carpenter@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBA Express Loan Program (SBA Express) is established in section 7(a)(31) of the Small Business Act (the Act) (15 U.S.C. 636(a)(31)). Under SBA Express, designated Lenders (SBA Express Lenders) are permitted to use, to the maximum extent practicable, their own analyses, procedures, and documentation in making, closing, servicing, and liquidating SBA Express loans. They also have reduced requirements for submitting documentation to SBA and obtaining the Agency's prior approval. These loan analyses, procedures, and documentation must meet prudent lending standards; be consistent with those the Lenders use for their similarly-sized, non-SBA guaranteed commercial loans; and conform to all requirements imposed upon Lenders generally and SBA Express Lenders in particular by Loan Program Requirements (as defined in 13 CFR 120.10), as such requirements are issued and revised by SBA from time to time, unless specifically identified by SBA as inapplicable to SBA Express loans. In exchange for the increased authority and autonomy provided under the SBA Express Program, SBA Express Lenders agree to accept a maximum guaranty of 50 percent.

The Export Express Loan Program (Export Express) is established in section 7(a)(34) of the Act (15 U.S.C. 636(a)(34)). This program is designed to help SBA meet the export financing needs of small businesses. Although it is a separate program, Export Express is generally subject to the same loan processing, making, closing, servicing, and liquidation requirements as well as the same interest rates and applicable fees as SBA Express. However, Export Express loans have a higher maximum loan amount than is available under SBA Express, and a maximum guaranty percentage of 75 or 90 percent, depending on the amount of the Export Express loan.

A. Proposed Amendments

This proposed rule would:

1. Incorporate into the regulations governing the 7(a) Loan Program the requirements specifically applicable to the SBA Express and Export Express Loan Programs in order to provide additional clarity for SBA Express and Export Express Lenders;

2. Add a new regulation to require certain owners of the small business Applicant to inject excess liquid assets into the business to reduce the amount of SBA-guaranteed funds that otherwise would be needed;

3. Revise the regulations concerning allowable fees for the 7(a) Loan Program to limit the fees payable by the small business Applicant and to clarify what SBA considers reasonable with respect to such fees;

4. Amend the regulation that explains the Agency's policy governing SBA-guaranteed loans to qualified employee trusts to require that all such applications be processed under non-delegated procedures;

5. Incorporate a change to implement SBA's long-standing policy regarding the responsibility of a Lender for the contingent liabilities (including repairs and denials) for Lenders purchasing 7(a) loans from the Federal Deposit Insurance Corporation (FDIC) (as receiver, conservator, or other liquidator of a failed insured depository institution), whether such loans are acquired through a loan sale where SBA has not already purchased the guaranty or through a whole bank transfer;

6. Revise the regulations governing the use of microloan grant funds by Microloan Intermediaries and extend the maximum maturity of a microloan;

7. Modify the affiliation principles applicable to SBA's financial assistance programs to include additional circumstances when a small business Applicant will be deemed to be affiliated with another entity for purposes of determining the small business Applicant's size;

8. Amend the regulation identifying when the size status of an Applicant for financial assistance is determined with respect to applications under the SBA Express and Export Express Loan Programs; and

9. Make technical corrections to the regulation identifying prohibited fees in the 7(a) Loan Program and the regulation discussing the application for the Accredited Lenders Program (ALP) in the 504 Loan Program, as well as conforming amendments to two existing regulations for consistency with the proposed regulations governing SBA Express and Export Express, and a conforming amendment to one existing regulation for consistency with the proposed changes to the allowable fees that may be charged in connection with a 7(a) loan.

B. Affected Programs

The SBA programs affected by this proposed rule are:

1. The 7(a) Loan Program authorized pursuant to Section 7(a) of the Act (15 U.S.C. 636(a));

2. The Business Disaster Loan Programs (collectively, the Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Physical Disaster Business Loans) authorized pursuant to Section 7(b) of the Act;

3. The Microloan Program authorized pursuant to Section 7(m) of the Act (15 U.S.C. 636(m));

4. The Intermediary Lending Pilot (ILP) Program authorized pursuant to Section 7(l) of the Act (15 U.S.C. 636(l));

5. The Surety Bond Guarantee Program authorized pursuant to Part B of Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694b *et seq.*); and

6. The Development Company Program (the 504 Loan Program) authorized pursuant to Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*).

(The 7(a), Microloan, ILP, and 504 Loan Programs are collectively referred to as the Business Loan Programs.)

The Agency requests comments on all aspects of the regulatory revisions in this proposed rule and on any related issues affecting the Business Loan, Surety Bond Guarantee, and Business Disaster Loan Programs.

II. Summary of Proposed Changes

A. Business Loan Programs

1. SBA Express and Export Express Loan Programs

Sections 120.441 through 120.447 SBA Express and Export Express Loan Programs

SBA proposes adding a new undesignated center heading entitled ''SBA Express and Export Express Loan Programs'' and several new regulations that describe the two loan programs and the specific requirements applicable to them, as described more fully below. These proposed regulations are drafted based on the current statutory limits applicable to the SBA Express and Export Express Loan Programs. In the event that the SBA Express or Export Express statutory loan limits are increased by Congress, SBA will revise the regulations, including making necessary changes to mitigate any additional risk associated with an increase in loan size.

Section 120.441 SBA Express and Export Express Loan Programs. SBA proposes adding a regulation providing general descriptions of the SBA Express and Export Express Loan Programs.

Section 120.442 Process to obtain or renew SBA Express or Export Express authority. SBA proposes adding a regulation that sets forth the criteria and process to obtain or renew SBA Express or Export Express authority. In evaluating an existing 7(a) Lender's application for SBA Express or Export Express authority, SBA will consider the delegated authority criteria and follow the procedures set forth in § 120.440. Lending institutions that do not currently participate with SBA may apply to be SBA Express and/or Export Express Lenders, but must become 7(a) Lenders in order to participate in SBA Express and/or Export Express. Such institutions may request SBA 7(a) lending and SBA Express and/or Export Express authority simultaneously. In evaluating such institutions, in addition to the criteria set forth in §§ 120.410 (requirements for all participating Lenders) and 120.440 (delegated authority criteria), SBA will consider whether the institution has acceptable experience making small commercial loans, and whether its employees have received appropriate training on SBA's policies and procedures. Currently, SBA considers a Lender to have acceptable experience making small commercial loans when the Lender has at least 20 commercial loans of $350,000 or less with acceptable performance.

As set forth in § 120.440, the decision to grant SBA Express or Export Express authority will be made by the appropriate SBA official in accordance with Delegations of Authority, and is final. If SBA Express or Export Express authority is approved, SBA will provide the Lender with the appropriate supplemental guarantee agreement, which the Lender must execute and return to SBA before the Lender's SBA Express or Export Express authority will become effective.

In renewing a Lender's SBA Express or Export Express authority and determining the term of the renewal, SBA will consider the criteria and follow the process set forth in § 120.440. Currently, in renewing a Lender's Export Express authority, SBA also will consider whether the Export Express Lender can effectively process, make, close, service, and liquidate Export Express loans; has received a major substantive objection regarding renewal from the Field Office(s) covering the territory where the Lender generates significant numbers of Export Express loans; and has received acceptable review results on the Export Express portion of any SBA-administered Lender reviews. In this rule, SBA proposes to incorporate the additional considerations identified above for Export Express authority, but modify them to apply to both SBA Express and Export Express authority. Thus, in addition to the criteria set out in § 120.440, SBA also would consider whether the Lender can effectively process, make, close, service, and liquidate SBA Express or Export Express

loans, as applicable; has received a major substantive objection regarding renewal from the Field Office(s) covering the territory where the Lender generates significant numbers of SBA Express or Export Express loans, as applicable; and has received acceptable review results on the SBA Express or Export Express portion, as applicable, of any SBA-administered Lender reviews.

SBA may approve a Lender's initial application for authority to participate in SBA Express or Export Express for a maximum term of two years. SBA may approve a lesser term or limit a Lender's maximum SBA Express or Export Express loan volume if, in SBA's sole discretion, a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant (*e.g.,* Lenders with little or no experience with SBA lending).

SBA is proposing to include in the regulations that the Agency may renew a Lender's authority to participate in SBA Express for a maximum term of three years if, in SBA's sole discretion, a Lender's qualifications, performance, SBA experience, or other factors so warrant. Although renewals of other types of delegated authority (*e.g.,* Preferred Lender Program (PLP)) are for a maximum term of two years, SBA is proposing a longer renewal term for Lenders participating in SBA Express because SBA Express Lenders have accepted more of the risk in their SBA Express loans than other SBA Lenders, including Export Express Lenders.

SBA may renew a Lender's authority to participate in Export Express for a maximum term of two years. SBA may approve a shorter renewal term or limit a Lender's maximum SBA Express or Export Express loan volume if, in SBA's sole discretion, a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant.

SBA is proposing a conforming amendment to the delegated authority criteria regulation at § 120.440(c) to clarify that a Lender's authority to participate in SBA Express may be renewed for a maximum term of three years. In addition, SBA is proposing some technical corrections to § 120.440(c).

Section 120.443 SBA Express and Export Express loan processing requirements. SBA proposes adding a regulation that sets forth the requirements for loan processing under the SBA Express and Export Express loan programs. The regulations applicable to all Business Loans in Subparts A and B of Part 120, and 7(a) Loans specifically, govern the making of SBA Express and Export Express loans, unless specifically identified by SBA as inapplicable. For example, the same types of businesses that are ineligible for 7(a) loans under § 120.110 also are ineligible for SBA Express and Export Express loans. SBA Express and Export Express Lenders must follow all 7(a) eligibility requirements and maintain appropriate documentation supporting their eligibility determination in the loan file.

Certain types of loans and loan programs are not eligible for processing under a Lender's delegated authority (including under a Lender's SBA Express or Export Express authority), as described in SBA's Standard Operating Procedure (SOP) 50 10 (Lender and Development Company Loan Programs). These loans currently include, but are not limited to: Special purpose loans (*e.g.,* Disabled Assistance Loans, loans to Employee Stock Ownership Plans or equivalent trusts, Pollution Control Loans, or CAPLines); a loan that would reduce an SBA Express or Export Express Lender's existing credit exposure for a single Borrower, including its affiliates as defined in 13 CFR 121.301(f); a loan to a business that has an outstanding 7(a) loan where the Applicant is unable to certify that the loan is current at the time the SBA Express or Export Express Lender approves the SBA Express or Export Express loan; a loan that would have as its primary collateral real estate or personal property that will not meet SBA's environmental requirements; and complex loan structures or eligibility situations.

For all other loans, SBA has authorized SBA Express and Export Express Lenders to make the credit decision without prior SBA review (*i.e.,* using the Lender's delegated authority). As with all 7(a) loans, Lenders must not make an SBA-guaranteed loan that would be available on reasonable terms from either the Lender itself or another non-federal source without an SBA guaranty. In addition, the Lender's credit analysis must demonstrate that there is reasonable assurance of repayment. SBA Express and Export Express Lenders must use appropriate and prudent credit analysis processes and procedures that are generally accepted in the commercial lending industry and consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. As part of their prudent credit analysis, SBA Express and Export Express Lenders may use a business credit scoring model (such a model cannot rely solely on consumer credit scores) to assess the credit history of the Applicant and/or repayment ability if they do so for their similarly-sized, non-SBA guaranteed commercial loans. If used, the business credit scoring results must be documented in each loan file and available for SBA review. Lenders that do not use credit scoring for their similarly-sized, non-SBA guaranteed commercial loans may not use credit scoring for SBA Express or Export Express. Although Small Business Lending Companies (SBLCs), as defined in § 120.10, do not make non-SBA guaranteed loans, SBA has determined that they may use credit scoring as part of their prudent credit analysis for their SBA Express or Export Express loans.

All SBA Express and Export Express Lenders must validate (and document) with appropriate statistical methodologies that their credit analysis procedures are predictive of loan performance, and they must provide that documentation to SBA upon request. SOP 50 10 includes the requirement that SBLCs provide credit scoring model validation to SBA for review and approval on an annual basis.

The credit decision, including for example, how much to factor in a past bankruptcy and whether to require an equity injection (outside of any injection of excess personal resources under the proposed new § 120.102, as discussed below), is left to the business judgment of the SBA Express or Export Express Lender. Also, if the SBA Express or Export Express Lender requires an equity injection and, as part of its standard processes for its similarly-sized, non-SBA guaranteed loans verifies the equity injection, it must do so for its SBA Express or Export Express loans. SBLCs must follow the written policies and procedures that have been reviewed by SBA. While the credit decision is left to the business judgment of the SBA Express or Export Express Lender, early loan defaults will be reviewed by SBA pursuant to SOP 50 57 (7(a) Loan Servicing and Liquidation).

SBA Express and Export Express Lenders are responsible for all loan decisions, including eligibility for 7(a) loans (including size), creditworthiness and compliance with all Loan Program Requirements (as defined in § 120.10). SBA Express and Export Express Lenders also are responsible for confirming that all loan closing decisions are correct and that they have complied with all requirements of law and Loan Program Requirements.

SBA Express and Export Express Lenders must ensure all required forms are obtained and are complete and properly executed. Appropriate documentation must be maintained in the Lender's loan file, including

adequate information to support the eligibility of the Applicant and the loan.

Section 120.444 Eligible uses of SBA Express and Export Express loan proceeds. SBA is proposing to add a regulation to identify the eligible uses of loan proceeds for SBA Express and Export Express loans. Under SBA Express, loan proceeds must be used exclusively for eligible business-related purposes, as described in 13 CFR 120.120 and 120.130, which set forth the eligible uses of loan proceeds for 7(a) loans. In addition, it is the SBA Express Lender's responsibility to take reasonable steps to ensure and document that the loan proceeds are used exclusively for business-related purposes.

Notwithstanding 13 CFR 120.130(c), revolving lines of credit are eligible for SBA Express, subject to certain conditions related to maturities and disbursement as set forth in SOP 50 10. Currently, SBA Express revolving loans have a maximum maturity of 10 years and must be structured with a term-out period that is not less than the draw period, with no draws permitted during the term-out period. For example, an SBA Express loan can have an eight year maturity with a two year draw period and a term-out period of six years. Conversely, a loan with an eight year maturity cannot have a draw period of six years and term-out period of two years. Further, as set forth in 13 CFR part 120, subpart F, revolving loans cannot be sold on the secondary market. (SBA is proposing a conforming amendment to § 120.130(c) (''Restrictions on uses of proceeds'') to include a reference to this new § 120.444 to clarify that revolving lines of credit are an eligible use of 7(a) loan proceeds under SBA Express and Export Express.)

SBA Express and Export Express Lenders may refinance certain outstanding debts with SBA Express or Export Express loans, under the conditions set forth in SOP 50 10. An SBA Express Lender may refinance an existing non-SBA guaranteed loan held by another lender with an SBA Express loan if the Lender determines that the existing debt no longer meets the needs of the Applicant and, for certain types of debt, the new loan will provide a 10 percent improvement in the debt service coverage ratio. An SBA Express Lender may refinance its own non-SBA guaranteed debt, provided that: (1) The Lender determines that the existing debt no longer meets the needs of the Applicant; (2) the new loan will provide a 10 percent improvement in the debt service coverage ratio (for certain types of loans as explained in SOP 50 10); (3) the debt to be refinanced is, and has been, current for the past 36 months (''current'' means no required payment has been more than 29 days past due); and (4) the Lender's credit exposure to the Applicant will not be reduced. Existing SBA-guaranteed loans may not be refinanced under SBA Express, unless: (1) The transaction is the purchase of an existing business that has an existing SBA loan that is not with the requesting SBA Express Lender; or (2) the Applicant needs additional financing and the existing Lender is unable or unwilling to increase the existing SBA loan or make a second loan, and (3) the new loan will provide a 10 percent improvement in debt service coverage. An SBA Express Lender may not refinance its own existing SBA-guaranteed debt under SBA Express.

Export Express loans must be used for an export development activity, which is defined in section 7(a)(34)(A)(i) of the Act and includes the following:

(1) Obtaining a Standby Letter of Credit when required as a bid bond, performance bond, or advance payment guarantee;

(2) Participation in a trade show that takes place outside the United States;

(3) Translation of product brochures or catalogues for use in markets outside the United States;

(4) Obtaining a general line of credit for export purposes;

(5) Performing a service contract for buyers located outside the United States;

(6) Obtaining transaction-specific financing associated with completing export orders;

(7) Purchasing real estate or equipment to be used in the production of goods or services for export;

(8) Providing term loans and other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(9) Acquiring, constructing, renovating, modernizing, improving or expanding a production facility or equipment to be used in the United States in the production of goods or services for export.

As noted above, Export Express loans may be used to refinance certain outstanding debts, under the conditions set forth in SOP 50 10. Specifically, Export Express loans may be used to refinance existing non-SBA guaranteed debt, whether held by another lender or by the Export Express Lender, if the Export Express Lender follows the guidance for refinancing under SBA Express and verifies and documents that the new loan will be used to finance an export development activity. Export Express loans may be used to refinance an existing Export Express loan held by another Export Express Lender only if the original Export Express Lender is unable or unwilling to increase or make a second Export Express loan, which must be documented in the loan file. An Export Express Lender may not refinance one of its own Export Express loans with a new Export Express loan.

Export Express loans may not be used to finance overseas operations, except for the marketing and/or distribution of products/services exported from the United States.

Export Express Lenders are responsible for ensuring that U.S. companies are authorized to conduct business with the Persons and countries to which the Borrower will be exporting. Specific guidance as to how Export Express Lenders will be expected to do so will be included in SOP 50 10.

Specific documentation requirements related to the use of proceeds for Export Express loans are described more fully in SOP 50 10.

Section 120.445 Terms and conditions of SBA Express and Export Express loans. While generally the terms and conditions applicable to 7(a) loans also apply to SBA Express and Export Express loans, there are some differences. SBA is proposing to add a new regulation to identify those terms and conditions of SBA Express and Export Express loans that are unique to these two programs, including maximum loan amounts and guaranty percentages, maturities, interest rates, collateral and insurance requirements, allowable fees and requirements concerning loan increases. With respect to the maximum loan amounts, the proposed rule refers to the maximum loan amount for each program as set forth in the applicable section of the Small Business Act (sections 7(a)(31)(D) and 7(a)(34)(C)(i), respectively). Currently, the maximum loan amount for SBA Express is $350,000 and the maximum loan amount for Export Express is $500,000.

With respect to collateral, currently, for loans of $25,000 or less, SBA Express and Export Express Lenders are not required to take collateral to secure the loan. For loans over $25,000, SBA Express and Export Express Lenders must, to the maximum extent practicable, follow the written collateral policies and procedures that they have established and implemented for their similarly-sized, non-SBA guaranteed commercial loans, except for Export Express lines of credit over $25,000 used to support the issuance of a

standby letter of credit. Export Express lines of credit over $25,000 used to support the issuance of a standby letter of credit must have collateral (cash, cash equivalent or project) that will provide coverage for at least 25% of the issued standby letter of credit amount.

SBA proposes to incorporate these collateral requirements into new § 120.445(e), with the exception of the dollar thresholds. Rather than include the current thresholds in the proposed rule, SBA is proposing to include language in the regulation giving the Agency the ability to establish a threshold below which SBA Express and Export Express Lenders will not be required to take collateral to secure an SBA Express or Export Express loan. The threshold would be described more fully in SOP 50 10. This will provide the Agency with the flexibility to adjust the threshold if necessary.

Additionally, this proposed regulation provides that SBA Express and Export Express Lenders may sell the guaranteed portions of SBA Express and Export Express term loans on the secondary market in accordance with 13 CFR subpart F, but may not sell the guaranteed portions of SBA Express or Export Express revolving lines of credit on the secondary market.

SBA Express and Export Express Lenders must pay the same fees to SBA that all 7(a) Lenders pay, which are identified in § 120.220. The fees and expenses that 7(a) Lenders may collect from an Applicant or Borrower are set forth in the regulation at § 120.221. Currently, with the exception of renewal fees, SBA Express and Export Express Lenders may charge an Applicant or Borrower on an SBA Express or Export Express loan the same types of fees they charge on their similarly-sized, non-SBA guaranteed commercial loans, provided that the fees are directly related to the service provided and are reasonable and customary for the services performed. The fees charged on SBA Express or Export Express loans may not be higher than those charged on the Lender's similarly-sized, non-SBA guaranteed commercial loans. In this rule, SBA proposes to require SBA Express and Export Express Lenders to comply with the same rules that apply to all other 7(a) Lenders with respect to the fees that may be collected from an Applicant or Borrower on SBA Express and Export Express loans. As noted above, the regulation at § 120.221 sets forth the fees and expenses that 7(a) Lenders may collect from an Applicant or Borrower. In addition, 13 CFR part 103 of the regulations governs Agents, including their fees and provision of services. As discussed more fully in Section 3 below, SBA is proposing changes to §§ 120.221, 103.4(g), and 103.5 with respect to the fees that may be collected from an Applicant or Borrower by a 7(a) Lender or Agent. These changes will be applicable to all 7(a) loans, including SBA Express and Export Express loans.

Consistent with SBA Loan Program Requirements, if an SBA Express or Export Express Lender requests that SBA honor its guaranty, the Agency will not purchase any portion of the loan balance that consists of fees charged to the borrower, with the exception of the SBA guaranty fee. Also, as set forth in § 120.222, SBA Express and Export Express Lenders and their Associates are prohibited from sharing any premium received from the sale of an SBA guaranteed loan in the secondary market with a Service Provider, packager, or other loan-referral source. Lenders may be subject to enforcement or other appropriate action, including suspension or revocation of their privilege to sell loans in the secondary market, in the event of a violation of this prohibition.

Because SBA will require SBA Express and Export Express Lenders to comply with the same rules that apply to all other 7(a) Lenders with respect to the fees and expenses that may be collected from an Applicant or Borrower in connection with an SBA-guaranteed loan (including SBA Express and Export Express loans), SBA is not including language regarding fees in proposed § 120.445.

Section 120.446 SBA Express and Export Express loan closing, servicing, liquidation, and litigation requirements. SBA proposes to add a new regulation providing that SBA Express and Export Express Lenders must close, service, liquidate, and litigate their SBA Express and Export Express loans using the same documentation and procedures they use for their similarly-sized, non-SBA guaranteed commercial loans, which must comply with law, prudent lending practices, and Loan Program Requirements. Additionally, the proposed regulation provides that SBA Express and Export Express Lenders must comply with the loan servicing and liquidation responsibilities set forth for 7(a) Lenders in 13 CFR part 120, subpart E and other Loan Program Requirements. Additional guidance on loan closing, servicing, liquidation and litigation is provided in SOPs 50 10 and 50 57.

The proposed regulation also describes the circumstances under which SBA will honor the guaranty on SBA Express and Export Express Loans. As is true for 7(a) loans generally, SBA will purchase the guaranteed portion of an SBA Express or Export Express loan in accordance with § 120.520 and other Loan Program Requirements, in particular SOP 50 57. In accordance with § 120.520(a)(1), for loans approved on or after May 14, 2007, unless the Borrower filed for bankruptcy, the SBA Express or Export Express Lender may request that SBA honor the guaranty on the loan if there is an uncured payment default of more than 60 days and the Lender has liquidated the business personal property collateral securing the defaulted loan. In accordance with § 120.520(a)(2) and SOP 50 57, for loans approved before May 14, 2007, an SBA Express Lender must liquidate all collateral for the loan and pursue all cost-effective means of recovery to collect the debt before the Lender can request that SBA honor its guaranty. For Export Express loans, however, the Lender does not have to liquidate all of the collateral and pursue all cost-effective means of recovery prior to requesting that SBA honor its guaranty if the outstanding principal balance is $50,000 or less or there is protracted litigation or other circumstances that will extend the liquidation process. It is important to note that, while non-financial default provisions are allowed under SBA Express and Export Express under certain conditions set forth in SOP 50 10, an SBA Express or Export Express Lender may not request purchase of the guaranty based solely on a violation of a non-financial default provision.

SBA will be released of its liability on an SBA Express or Export Express loan guaranty in accordance with § 120.524.

Section 120.447 Lender oversight of SBA Express and Export Express Lenders. SBA proposes to add a new regulation explaining that SBA Express and Export Express Lenders are subject to the same risk-based lender oversight as 7(a) Lenders, including supervision and enforcement provisions, in accordance with 13 CFR part 120, subpart I. Additional guidance concerning Lender supervision and enforcement is provided in SOPs 50 53 (Lender Supervision and Enforcement) and 51 00 (On-Site Lender Reviews/Examinations).

2. Credit Elsewhere and the Personal Resources of Owners of the Small Business Applicant

Section 120.102 Funds not available from alternative sources, including the personal resources of owners. Effective April 21, 2014, SBA removed § 120.102 from the regulations, thereby eliminating what was commonly known as the ''personal resources test'' from the

requirements to determine eligibility for the Business Loan Programs. This regulation required certain owners of the Applicant business to inject personal liquid assets into the business to reduce the amount of SBA-guaranteed funds that would otherwise be needed. The Agency eliminated this requirement in 2014 because it was concerned, at that time, that even borrowers whose principals had significant personal resources may have been unable to obtain long-term fixed asset financing from private sources at reasonable rates. The Agency also questioned whether the existence of personal resources directly correlated to the ability to obtain commercial credit on reasonable terms. In addition, the Agency determined that financing more robust borrowers in the program would offset some of the risks to SBA. However, SBA is now concerned that borrowers with large amounts of personal assets are receiving government-backed loans. In order to ensure that SBA financial assistance is provided only to those small businesses that are unable to obtain credit from alternative sources without a government guaranty, including the personal resources of the owners of the small business, SBA proposes to reinstitute a personal resources test.

SBA proposes to add a regulation that would require SBA Lenders (*i.e.,* both 7(a) Lenders and Certified Development Companies (CDCs)) to analyze the resources of individuals and entities that own 20 percent or more of the Applicant business in order to determine if any of the owners have liquid assets available that can provide some or all of the desired financing. (The resources of an owner who is an individual include the resources of the owner's spouse and minor children.) When an owner of 20 percent or more has liquid assets that exceed stated thresholds, SBA is proposing to require an injection of cash from any such owner to reduce the SBA loan amount. Specifically, when the total financing package (*i.e.,* any SBA loans and any other financing, including loans from any other source, requested by the Applicant business at or about the same time):

(1) Is $350,000 or less, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one and three-quarter times the total financing package, or $200,000, whichever is greater;

(2) Is between $350,001 and $1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one and one-half times the total financing package, or $1,000,000, whichever is greater;

(3) Exceeds $1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one times the total financing package, or $2,500,000, whichever is greater.

SBA, in its sole discretion, may permit exceptions to the required injection of an owner's excess liquid assets only in extraordinary circumstances, such as when the excess funds are needed for medical expenses of a family member or education/college expenses for children.

3. Permissible Fees That a Lender or Agent May Collect From an Applicant or Borrower in Connection With a 7(a) Loan Application.

The regulations governing permissible fees a Lender may collect from a loan Applicant or Borrower in connection with an SBA-guaranteed loan are set forth in § 120.221. In addition, the regulations governing Agents, including their fees and provision of services, are set forth in 13 CFR part 103. Based on feedback obtained when conducting lender oversight activities and the numerous questions SBA receives concerning permissible fees, it is apparent that there is a significant amount of confusion surrounding who may charge an Applicant fees in connection with an SBA-guaranteed loan, what fees may be charged to the Applicant, what fees may be charged to the Lender, and what is a ''reasonable fee.'' In addition, in many cases, Applicants are being charged multiple fees by multiple providers (*e.g.,* the Lender and a third party), on the same loan. On numerous occasions, SBA has had to require that a Lender or Agent refund amounts to an Applicant or Borrower that the Agency deemed were unreasonable or prohibited.

The regulations governing Agents, including their fees and provision of services to either an Applicant or a Lender are set forth in Part 103, not in Part 120 of the regulations. The regulations in Part 103 provide key definitions, including but not limited to Agents, Lender Service Providers, Packagers and Referral Agents. (See § 103.1.) The definition of a Referral Agent in § 103.1(f) states that a Referral Agent may be compensated by either an Applicant or a Lender. Thus, Agents are permitted to charge an Applicant a referral fee, while Lenders are not. In addition, while SBA permits Lenders to engage with Lender Service Providers (LSPs) (as defined in § 103.1(d)) to assist the Lender with lender functions in connection with SBA-guaranteed loans, the cost of the LSP services may not be charged to the Applicant or Borrower. (*See* § 103.5(c).) To further complicate matters, the regulation at § 103.4(g) states that a Lender Service Provider may not act as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receive compensation for such activity from both the Applicant and Lender. However, that regulation provides a limited exception to this ''two master'' prohibition when an Agent acts as a Packager and is compensated by the Applicant for packaging services, and the same Agent also acts as a Referral Agent and is compensated by the Lender for referral activities in connection with the same loan application, provided the packaging services are disclosed to the Lender and the referral services are disclosed to the Applicant.

In order to simplify who may charge fees to the Applicant and/or the Lender, and to limit the total amount of fees that an Applicant may be charged in order to obtain an SBA-guaranteed loan, SBA proposes to revise certain portions of the regulations at §§ 120.221, 103.4, and 103.5.

Section 120.221 Fees and expenses which the Lender may collect from a loan Applicant or Borrower. Currently, § 120.221(a) permits a Lender to charge an Applicant reasonable fees (customary for similar Lenders in the geographic area where the loan is being made) for packaging and other services. Under the current regulation, SBA permits Lenders to charge an Applicant a reasonable fee to assist the Applicant with the preparation of the application and supporting materials. However, SBA does not permit Lenders (or their Associates) to charge an Applicant a commitment, broker, referral, or similar fee.

SBA proposes to amend § 120.221(a) to limit the total fees an Applicant can be charged by a Lender for assistance in obtaining an SBA-guaranteed loan. Regardless of what the fee is called (*e.g.,* a packaging fee, application fee, etc.), the Lender would be permitted to collect a fee from the Applicant that is no more than $2,500 for a loan up to and including $350,000 and no more than $5,000 for a loan over $350,000. With the exception of necessary out-of-pocket costs, such as filing or recording fees permitted in § 120.221(c), this is the only fee that a Lender may collect directly or indirectly from an Applicant for assistance with obtaining an SBA-guaranteed loan. In addition, the Lender may not split a loan into two loans for the purpose of charging an additional fee to an Applicant. If there is a

legitimate business need for the Applicant's loan request to be split into two loans (*e.g.,* a term loan and a line of credit), the Lender may only charge the Applicant one fee within the maximums set forth above, based on the combined loan amounts. For example, if the Applicant needs a $2 million term loan to purchase real estate and a building and a $350,000 line of credit for working capital, the Lender may charge one fee for both loans not to exceed $5,000.

SBA considers these fees to be reasonable for the services provided by a Lender to an Applicant for assistance with obtaining an SBA-guaranteed loan. SBA will monitor these fees and, if adjustments are necessary, SBA may revise these amounts from time to time.

If the Lender charges the Applicant a fee for assistance with obtaining an SBA-guaranteed loan, the Lender must disclose the fee to the Applicant and SBA by completing the Compensation Agreement (SBA Form 159) in accordance with the regulation at § 103.5 and the procedures set forth in SOP 50 10.

SBA also proposes to amend § 120.221(b) to permit extraordinary servicing fees in excess of 2 percent for Export Working Capital Program (EWCP) loans and Working Capital CAPLines that are disbursed based on a Borrowing Base Certificate. In these programs, the fees charged must be reasonable and prudent based on the level of extraordinary effort required, and cannot be higher than the fees charged on the Lender's similarly-sized, non-SBA guaranteed commercial loans. In addition, the fees charged cannot exceed the actual cost of the extra service provided. (SBA is proposing a conforming amendment to § 120.344(b) to ensure extraordinary servicing fees charged on EWCP loans are reasonable and prudent.)

The remaining sections of § 120.221 (sections (c) through (e)) remain unchanged. Thus, in appropriate circumstances as set forth in current §§ 120.221(c) through (e) and further clarified in SOP 50 10, a Lender may charge an Applicant or Borrower out of pocket expenses, a late payment fee, and for legal services charged on an hourly basis.

Section 103.4 What is ''good cause'' for suspension or revocation? As noted above, the regulation at § 103.4(g) currently permits a limited exception to the ''two master'' prohibition when an Agent acts as a Packager and is compensated by the Applicant for packaging services, and the same Agent also acts as a Referral Agent and is compensated by the Lender for those activities in connection with the same loan application. SBA believes there is, at a minimum, an appearance of a conflict of interest when an Agent represents both the Applicant and the SBA Lender on the same loan application. In addition, the definition of an ''Associate'' of a SBA Lender set forth in § 120.10 includes ''an agent involved in the loan process.'' Therefore, an LSP or Referral Agent acting on behalf of the SBA Lender meets the definition of an Associate of the SBA Lender and is prohibited under current Loan Program Requirements from charging the Applicant certain fees or expenses in connection with an SBA-guaranteed loan. Further, when conducting Lender oversight activities, SBA has observed numerous instances where Applicants have been erroneously charged for services that were provided for the SBA Lender, not the Applicant. In order to prevent any conflicts of interest from arising and to ensure the Applicants are not improperly charged for services provided to the SBA Lender, SBA proposes to eliminate the limited exception to the ''two master prohibition'' and prevent an Agent, including an LSP, from providing services to both the Applicant and the SBA Lender and being compensated by both parties in connection with the same loan application. SBA proposes to use the defined term ''SBA Lender'' in the revised regulation to clarify that it applies to both 7(a) Lenders and CDCs. SBA also proposes to revise the remaining text of § 103.4(g) for clarity.

Section 103.5 How does SBA regulate an Agent's fees and provision of service? The regulation at § 103.5 sets forth, among other things, the requirement for all Agents to disclose to SBA the compensation received for services provided to an Applicant and requires that fees charged must be considered reasonable by SBA. In an effort to clarify what SBA considers reasonable and to prevent Applicants from being overcharged by Agents, SBA proposes to amend this section to limit the total fees that an Agent may charge an Applicant in connection with obtaining an SBA-guaranteed loan.

SBA proposes the following limitations on the fees that an Agent may charge an Applicant:

(1) For loans up to and including $350,000: A maximum of up to 2.5% of the loan amount, or $7,000, whichever is less;

(2) For loans $350,001-$1,000,000: A maximum of up to 2% of the loan amount, or $15,000, whichever is less; and

(3) For loans over $1,000,000: A maximum of up to 1.5% of the loan amount, or $30,000, whichever is less.

If an Agent provides more than one service (*e.g.,* packaging and referral services), only one fee would be permitted for all services performed by the Agent. Further, if more than one Agent (*e.g.,* a Packager and a Referral Agent) provides assistance to the Applicant in obtaining the loan, the amount of all fees that the Applicant may be required to pay would be combined to meet the maximum allowable fee set by SBA. (However, a fee charged to the Applicant by the Lender in accordance with proposed § 120.221(a) will not be counted toward the maximum allowable fee for an Agent or Agents.) These maximum limits would apply regardless of whether the Agent's fee is based on a percentage of the loan amount or on an hourly basis.

SBA considers these fees to be reasonable for the services provided by an Agent or Agents to an Applicant in connection with obtaining an SBA-guaranteed loan. SBA will monitor these fees and, if adjustments are necessary, SBA may revise these amounts from time to time by publishing a notice with request for comments in the **Federal Register**.

If an Agent or Agents charge an Applicant fees in connection with obtaining an SBA-guaranteed loan, the Agent or Agents must disclose the fees to SBA by completing a Compensation Agreement (SBA Form 159) in accordance with the regulation at § 103.5 and must provide supporting documentation as set forth in SOP 50 10.

Additionally, SBA proposes to remove the word ''directly'' from the last sentence of § 103.5(c) to clarify that compensation paid by the Lender to a Lender Service Provider may not be charged to Applicants, either directly or indirectly.

4. Loans to Qualified Employee Trusts

The regulations governing SBA-guaranteed loans to qualified employee trusts or ''ESOPs'' are set forth in §§ 120.350 through 120.354. Currently, the regulation at § 120.350 describes the Agency's policy concerning such loans and states that SBA is authorized under section 7(a)(15) of the Act to provide guaranteed loans to ESOPs to help finance the growth of the employer small business or to purchase ownership or voting control of the employer. Because of the complex nature of these transactions, SBA is proposing to amend the regulation at § 120.350 to require such applications to

be processed only on a non-delegated basis.

5. A Lender's Responsibility When Purchasing 7(a) Loans From the FDIC as Receiver, Conservator, or Other Liquidator of a Failed Financial Institution

Generally, when the FDIC takes over a failed insured depository institution, it sells the 7(a) loan assets of the institution to either an Assuming Institution (through a purchase and assumption transaction) or to an investor in one or more FDIC loan sales. SBA has a long-standing policy of holding Assuming Institutions and investors responsible for the contingent liabilities (including repairs and denials) associated with 7(a) loans originated by failed insured depository institutions, whether the 7(a) loans are purchased by a Lender through an FDIC loan sale where SBA has not already purchased the guaranty or to an Assuming Institution through a whole bank transfer.

Under § 120.432(a), for 7(a) loan sales that do not involve the FDIC (*i.e.,* the sale of a Lender's entire interest in a 7(a) loan to another Lender), SBA holds a purchasing Lender responsible for the contingent liabilities associated with the 7(a) loans acquired (even if the guaranteed portion of the loan has already been sold on the secondary market). SBA is proposing to amend the regulation at § 120.432(a) to implement its long-established policy for 7(a) loans acquired by Lenders from the FDIC (as receiver, conservator, or other liquidator of a failed insured depository institution).

6. Microloan Program

Section 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers? In order to provide more flexibility for the Microloan borrower, SBA proposes to revise the regulation at § 120.707(b) to increase the maximum maturity of a loan from an Intermediary to a Microloan borrower from six years to seven years. This change would allow for a longer repayment period for these small loans.

Section 120.712 How does an Intermediary get a grant to assist Microloan borrowers? SBA proposes to revise the regulation at § 120.712(b) to incorporate recent statutory changes to the percentage of grant funds that may be used by the Intermediary for marketing, managerial, and technical assistance to prospective Microloan borrowers from 25 percent to 50 percent. The balance of grant funds must be used to provide technical assistance to actual borrowers (*i.e.,* small businesses that have received loan funds from the Intermediary). In § 120.712(d), SBA proposes to incorporate an identical recent statutory change to the percentage of grant funds the Intermediary may use to contract with third parties to provide technical assistance to Microloan borrowers. In addition, SBA proposes to revise § 120.712(b) to limit the amount of grant funds that an Intermediary may use to market or advertise the Microloan program to prospective borrowers to no more than 5 percent of the amount of the grant. None of the grant funds may be used by the Intermediary to market or advertise its non-SBA products or services. Furthermore, in accordance with the Office of Management and Budget guidance for grants and agreements set forth in 2 CFR 200.403 and 200.404, the amount of grant funds used by the Intermediary to market or advertise the Microloan program to prospective borrowers must be reasonable.

7. Technical Corrections

Section 120.222 Prohibition on sharing premiums for secondary market sales. SBA proposes a technical correction to § 120.222 to remove an extra word (''in'') that was inserted in error.

Section 120.840 Accredited Lenders Program (ALP). In § 120.840(b), SBA is proposing to replace the reference to the Director, Office of Financial Assistance with ''appropriate SBA official in accordance with Delegations of Authority.''

B. Affiliation Principles for the Business Loan, Business Disaster Loan, and Surety Bond Guarantee Programs

Section 121.301 What size standards and affiliation principles are applicable to financial assistance programs? SBA proposes to amend the affiliation principles applicable to Applicants for assistance in the financial assistance programs set forth in § 121.301(f). Specifically, SBA proposes to expand the principle of affiliation arising from ''identity of interest'' to include common investments and economic dependence through contractual or other relationships between any two or more individuals or businesses, reinstate the ''newly organized concern'' rule, reinstate the ''totality of the circumstances'' analysis when determining affiliation between an Applicant for financial assistance and other entities, and clarify affiliation based on a franchise or license agreement.

Currently, the regulation at § 121.301(f)(4) defines affiliation based on ''identity of interest'' for the Business Loan, Business Disaster Loan, and Surety Bond Guarantee Programs as arising only when there are ''close relatives'' with identical or substantially identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area). Prior to 2016, this regulation also defined affiliation to include identity of interest based on other grounds, including common investments or economic dependence among other parties (not just close relatives). The current regulation also differs from the principles of affiliation SBA uses for all its other programs, all of which include common investments and economic dependence as grounds for affiliation. By limiting the regulation to close relatives only, SBA has allowed businesses that are economically dependent on one another to be treated as independent businesses (*i.e.,* not affiliated) for the purposes of the programs referenced in this paragraph. SBA has also allowed individuals with multiple common investments to have their ownership interests be considered separately in the Business Loan Programs, whereas other SBA programs would find those individuals to have an identity of interest. SBA believes the 2016 regulatory change should be reversed in order to better reflect the controlling effect of an identity of interest through common investments or economic dependence and to conform more closely to other SBA programs. Accordingly, SBA is now proposing to expand this regulation to include affiliation between individuals or firms that have identical or substantially identical business or economic interests (individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships).

Under the proposed rule, SBA would find affiliation based on common investments under the identity of interest rule when multiple entities are owned by the same individuals or firms, and the entities owned by such investors conduct business with each other or share resources. In order to find an identity of interest between investors, the common investments would need to be substantial, either in number of investments or total value. As an example, in the *Size Appeal of W. Harris, Government Services Contractor, Inc.,* SBA No. SIZ–5717 (2016), SBA found two individuals to have an identity of interest based on common

investments where they each owned 50% of one firm, and split the ownership of a second firm on a 55%/45% basis. While there were only two common investments, based on the fact that the two individuals' combined ownership of the two firms was 100%, their common investments were deemed to be substantial in value. Because of the substantial common investments, the two firms were affiliated with each other and with a firm wholly owned by one of the individuals. The proposed rule adopts the standard in *W. Harris* with the following modification: Under the proposed rule, SBA would consider businesses to be affiliated based on common investments only if they conduct business with each other, or share resources, equipment, locations or employees; or provide loan guaranties or other financial or managerial support to each other.

As a hypothetical example, ABC Company is owned by four unrelated individuals: Ann owns 60% of the business; Barbara owns 15%; Charlie owns 15%; and David owns 10%. ABC Company applies for a 504 loan to acquire land and build a hotel. XYZ Company is owned by the same four unrelated individuals, but in different ownership percentages: Ann owns 10% of the business; Barbara owns 60%; Charlie owns 15%; and David owns 15%. XYZ Company, a management company, applies for a 7(a) loan for working capital. DEF Company also is owned by the same four unrelated individuals in different ownership percentages, but with a new member as well: Ann owns 5% of the business; Barbara owns 10%; Charlie owns 55%; David owns 15%; and Ella owns 15%. DEF Company applies for a 504 loan to acquire land and build a hotel. XYZ Company has agreements with ABC Company and DEF Company to manage both of the hotels. Under the proposed rule, SBA will consider Ann, Barbara, Charlie and David to have an identity of interest because of their substantial common investments in the three companies, and the fact that XYZ Company manages the hotels owned by ABC Company and DEF Company. Any firm in which Ann, Barbara, Charlie, or David individually or collectively own more than 50% also will be considered affiliated with ABC Company, XYZ Company, and DEF Company, if the business owned by Ann, Barbara, Charlie, or David conducts business or shares resources with, or provides financial or managerial support to, any of the co-owned firms. Any other businesses in which Ella may have an ownership interest, however, will not be considered affiliated because Ella only has a small ownership percentage in DEF Company.

Also under the proposed identity of interest rule, if a small business Applicant derived more than 85% of its revenue from another business over the previous three fiscal years, SBA would find that the small business Applicant is economically dependent on the other business and, therefore, that the two businesses are affiliated. For example, Company A manufactures tires and has a contract with Company B to supply the vast majority of Company B's tires. The sales to Company B accounted for 86%–88% of Company A's revenues over the previous three fiscal years. Under the proposed rule, Company A would be economically dependent on Company B and the two businesses would be deemed affiliated. The proposed rule departs from SBA's other programs in using a higher threshold of 85% of the Applicant's revenues to establish economic dependence, rather than 70%. SBA believes the higher threshold is more appropriate to establish affiliation in the programs discussed in this Section II.B. As in SBA's other programs, this basis of affiliation would include an exception for a business that is new or a start-up. New or start-up businesses may only have a few customers or obtained a few contracts, and do not have as many partners and clients as established businesses. In order to be eligible for the exception for new or start-up businesses, these businesses would need to have a plan to diversify and become less dependent on one entity. For example, in the matter of *Size Appeal of Argus And Black, Inc.,* SBA No. SIZ–5204, 2011 WL 1168302 (February 22, 2011), the SBA Office of Hearings and Appeals held that where a small business has only recently begun operations either initially or after a period of dormancy, and is dependent upon its alleged affiliate for only one small contract of short duration, which by itself could not sustain a business, a finding of economic dependence is not warranted.

SBA recognizes that, if the proposed identity of interest rule is adopted as final, SBA Lenders may need assistance in applying the rule to certain agricultural business relationships or agreements. In particular, the agreement between a poultry farmer and a large poultry producer (integrator) may be critical to the determination of whether the farmer is an independent small business but, due to the complexity of the typical integrator agreement, SBA Lenders may be uncertain as to the correct outcome of the affiliation analysis for such a business relationship. SBA is considering reviewing these agreements and making the affiliation determination itself so that SBA Lenders will not be reluctant to make loans to small poultry farmers operating under such agreements. SBA will provide further information on this in the final rule, if necessary.

Additionally, SBA proposes to add the newly organized concern rule to § 121.301(f), which will create uniformity among SBA's various affiliation rules. The newly organized concern rule applied to the Business Loan Programs prior to the 2016 rule change, but was removed at SBA's own initiative. Under the proposed newly organized concern rule, a newly organized spin-off company may be found affiliated with the original company where all of the following conditions are met: (1) Former or current officers, directors, principal stockholders, managing members, general partners, or key employees of one concern organize a new concern; (2) the new concern is in the same or related industry or field of operation; (3) the individuals who organized the new concern serve as the new concern's officers, directors, principal stockholders, managing members, general partners, or key employees; and (4) the original concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. The proposed rule would define a key employee to be an employee who, because of his or her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. The proposed rule further defines a ''newly organized'' concern to be one that has been actively operating continuously for two years or less. The proposed newly organized concern basis of affiliation would be a rebuttable presumption that may be rebutted if there is a clear line of fracture between the new concern and the other firm.

Finally, SBA proposes to amend § 121.301(f) by adding a new paragraph 6 to explain that, when making affiliation determinations, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation. The totality of the circumstances criterion for determining affiliation was removed in 2016 in response to comments received on the proposed revisions to the affiliation rules. Commenters requested that SBA either eliminate the criterion

or provide examples of when it would be used. SBA stated that, generally, examples of when this criterion was used involved negative control or control through management agreements. Rather than include examples in the rule, SBA provided additional specific guidance in §§ 121.301(f)(1) and (f)(3) to address negative control and control through management agreements. However, SBA now believes that there are other examples of when affiliation may be present and, therefore, is reinstating the totality of the circumstances criterion.

Examples of affiliation between small businesses based on the totality of the circumstances include:

(1) SBA found a newly established firm to be affiliated with the firm owned by its 40% owner where both firms were construction companies; they had similar names (Specialized Services, Inc. and Specialized Veterans, LLC); the 40% owner provided a $300,000 initial capital contribution compared to the 60% owner's $1,000 contribution; the majority owner was previously the Chief Operating Officer of the affiliate; the majority owner had no construction experience; and the affiliate provided indemnification to the firm's surety. (*Size Appeal of Specialized Veterans, LLC,* SBA No. SIZ–5138 (2010).)

(2) SBA found a newly established firm to be affiliated with its minority owner, an entity in the same line of business, where the other owners were previously key employees of the affiliate; the affiliate provided guarantees for the firm's financing and required the firm to seek the affiliate's approval before undertaking long-term commitments; the affiliate supplied the firm with machines and equipment for free; the affiliate promised the firm a large amount of business; and the sales the firm made to the affiliate accounted for the vast majority, 86%–88%, of its revenues. (*Size Appeal of Pointe Precision, LLC,* SBA No. SIZ–4466 (2001).)

SBA notes that a business found affiliated under the totality of the circumstances test (or any other ground of affiliation) in the Business Loan Programs may challenge the determination by requesting a formal size determination from SBA's Office of Government Contracting in accordance with 13 CFR 121.1001(b)(1)(i). A business can appeal a formal size determination to SBA's Office of Hearings and Appeals in accordance with 13 CFR 121.1101.

Finally, SBA proposes to revise § 121.301(f)(5) to clarify that the term ''franchise'' has the meaning given by the Federal Trade Commission (FTC) in its definition of ''franchise'' as set forth in 16 CFR 436. SBA proposes to cross reference the FTC definition of ''franchise'' in the regulation to clarify that the regulation applies to all agreements or relationships, whatever they may be called, that meet the FTC definition of a franchise. All such agreements will be referred to in the regulation as ''franchise agreements'' and the parties to such agreements will be referred to as ''franchisor'' and ''franchisee.'' Further, SBA proposes to add to this regulation a statement that SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance. SBA will make this centralized list available to SBA Lenders and the public. The proposed changes discussed in this paragraph are consistent with SBA's current policy and procedure.

Although not included in the regulations, SBA is providing below a description of the franchise procedures currently in effect for lending to franchisees in the Business Loan Programs. As of January 1, 2018, SBA created the SBA Franchise Directory (the ''Directory'') of all franchise and other brands reviewed by SBA that are eligible for SBA financial assistance. The Directory only includes business models that SBA determines are eligible under SBA's affiliation rules and other eligibility criteria. If the Applicant's brand meets the FTC definition of a franchise, it must be on the Directory in order to obtain SBA financing. (To help minimize confusion over brands that may appear to be franchises but that do not meet the FTC definition, SBA includes such brands on the Directory at their request if they are eligible in all other respects.) SBA Lenders are able to rely on the Directory and no longer need to review franchise or other brand documentation for affiliation or eligibility.

The Directory will continue to be maintained on SBA's website at *www.sba.gov.* It will contain the following information:

(1) Whether the brand meets the FTC definition of a franchise;

(2) The SBA Franchise Identifier Code, if applicable (a code will only be issued if the agreement meets the FTC definition of a franchise);

(3) Whether an addendum is needed in order to resolve any affiliation issues as a result of provisions in the franchise agreement and, if so, whether the franchisor will use the SBA Addendum to Franchise Agreement (SBA Form 2462) or an SBA Negotiated Addendum (with respect to an SBA Negotiated Addendum, the Directory will reference the addendum most recently negotiated with SBA, which will not be earlier than 2015); and

(4) Whether there are additional issues the Lender must consider with respect to the brand (*e.g.,* documentation that the business will be open to all, review of any third party management agreement to ensure Applicant is not a passive business or affiliated with the management company).

For applications involving a franchise or similar relationship that meets the FTC definition of a franchise, before submitting the application to SBA for non-delegated processing or approving the loan under the SBA Lender's delegated authority, the SBA Lender must check the Directory to determine if it includes the Applicant's brand. If the Applicant's brand is on the Directory, the SBA Lender may proceed with submitting the application to SBA for non-delegated processing, or approving the loan under its delegated authority. If the Applicant's brand is not on the Directory, the SBA Lender cannot submit the application to SBA for non-delegated processing, or approve the loan under its delegated authority. (See, SOP 50 10 for a full discussion of the procedures for processing franchise loans.)

Section 121.302 When does SBA determine the size status of an applicant? SBA proposes to incorporate the SBA Express and Export Express programs into this regulation to clarify that, with respect to applications for financial assistance under these programs, size is determined as of the date of approval of the loan by the SBA Express or Export Express Lender.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant'' regulatory action for the purposes of Executive Order 12866. However, SBA has drafted a Regulatory Impact Analysis in the next section. This is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The Agency believes it is necessary to provide regulatory guidance for SBA Express and Export Express loans, which are authorized by statute. Current

regulatory guidance provides an extensive framework for the delivery of SBA's 7(a) guaranteed loans through participating private sector lenders. However, currently there are not regulations identifying the specific Loan Program Requirements applicable to SBA Express and Export Express. Congress has authorized SBA to permit qualified lenders to make SBA Express and Export Express loans using, to the maximum extent practicable, their own analyses, procedures, and documentation. It is necessary to provide clear and succinct regulatory guidance for lenders to encourage participation in extending these smaller dollar loans, and to enable these lenders to extend credit with confidence in their ability to rely on payment by SBA of the guaranty if necessary.

The Small Business 7(a) Lending Oversight Reform Act of 2018 was signed into law on June 21, 2018. As part of this legislation, Congress has authorized the Agency to direct the methods by which Lenders determine whether a borrower is able to obtain credit elsewhere. SBA will be implementing that legislation in a separate rulemaking, but in this rule SBA proposes to reinstate a personal resources test in an effort to provide clear direction to SBA Lenders when analyzing whether a borrower has credit available elsewhere on reasonable terms from non-Federal or alternative sources.

The statutory changes in the Consolidated Appropriations Act of 2018 (Pub. L. 115–141) regarding the Microloan Program require amendments to existing regulations for the percentage of grant funds that may be used by the Microloan Intermediary for marketing, managerial, and technical assistance to prospective Microloan borrowers. Existing regulations must be revised as proposed to reflect the statutory changes.

Further, the Agency believes it needs to streamline and reduce regulatory burdens to facilitate robust participation in the business loan programs that assist small and underserved U.S. businesses. For that reason, SBA is proposing the changes to the regulatory provisions related to allowable fees that a Lender or Agent may collect from an Applicant for financial assistance. The proposed changes are needed to simplify the regulations regarding fees that may be collected from an Applicant. The proposal would establish clear limits on the amount of fees that may be charged by a Lender and/or an Agent. In addition, the proposed changes to the affiliation principles applicable to the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs are needed in order to simplify and clarify the determination of eligibility of a business as a small concern.

2. What are the potential benefits and costs of this regulatory action?

SBA does not anticipate any additional costs or impact on the subsidy to operate the business loan programs under these proposed regulations. SBA anticipates that providing clear regulatory guidance for the SBA Express and Export Express Loan Programs will result in an increase in the number of participating lenders and loans in both programs, which would mean increased access to capital for small businesses. SBA does not anticipate any additional cost from the addition of the SBA Express and Export Express regulations because both programs have been in use and performing for over 5 years. Additionally, portfolio performance of both programs, including prepayment, default and recovery behaviors is already being captured in the 7(a) program's annual subsidy calculation.

In return for the additional autonomy and authority granted under SBA Express, Lenders who participate in the SBA Express program agree to receive a maximum guaranty of 50% on loans of $350,000 or less. The ability for SBA Express Lenders to use the same forms, procedures and policies that they already follow for their similarly-sized, non-SBA guaranteed commercial loans removes an additional layer of documents and permits a lender to move more quickly to a decision and funding of small dollar small business loans. This reduces the time and costs, as well as the paperwork involved in making these smaller loans (up to $350,000 for SBA Express and up to $500,000 for Export Express).

The Export Express Loan Program provides lenders with a maximum guaranty of 90% for loans of $350,000 or less and 75% for loans over $350,000 up to $500,000, as well as the authority to use their own forms, procedures and policies to the maximum extent possible. As with SBA Express, the increased autonomy and authority reduces redundancy in documentation, time and costs associated with underwriting smaller export loans.

Cost to deliver is an important consideration for lenders when assessing the benefits of participating with SBA programs. Streamlined rules result in increased lender participation, particularly for community banks, credit unions and other mission-based lenders who generally serve more rural communities and underserved populations with smaller dollar loans. While SBA does not have specific statistics, cost savings to the lender generally trickle down to the small business Applicant. Further, providing plain language regulatory guidance for the SBA Express and Export Express Loan Programs will reduce improper payment risk for lenders and SBA by ensuring that lenders are fully informed and understand the program requirements.

3. What alternatives have been considered?

SBA has provided guidance on the SBA Express and Export Express Loan Programs in SOP 50 10, Lender and Development Company Programs, SOP 50 57, 7(a) Loan Servicing and Liquidation, SOP 50 53, Lender Supervision and Enforcement, and 51 00, On-Site Reviews and Examinations, and official Agency notices. The Agency recognizes, however, that regulations are important for the proper implementation of the two programs.

Executive Order 13563

This executive order supplements and reaffirms the principles and requirements in E.O. 12866, including the requirement to provide the public with an opportunity to participate in the regulatory process. In compliance with the executive order, a description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts are included above in the Regulatory Impact Analysis. The Agency has participated in public forums and meetings, which have included outreach to many of its program participants to seek valuable insight, guidance, and suggestions for program reform. Some of the proposed changes in this rule are a direct result of the feedback SBA has received from program participants.

Executive Order 13771

This proposed rule is not expected to be an E.O. 13771 regulatory action because this proposed rule is not significant under E.O. 12866.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this proposed rule would not have substantial, direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

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

SBA has determined that this proposed rule would impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA). Applicants for SBA Express and Export Express loans, as well as SBA Express and Export Express Lenders, use the same forms as all other 7(a) loans in order to apply for an SBA guaranteed loan. These forms include: SBA Form 1919, Borrower Information Form; SBA Form 1920, Lender's Application for Guaranty; SBA Form 1971, Religious Eligibility Worksheet (for those businesses that may have a religious aspect); and SBA Form 2237 (to request modifications to an approved loan). These forms are all OMB-approved forms under OMB Control number 3245–0348. SBA Form 1920 would need to be revised due to the proposed new regulation at § 120.102, which would require Lenders to analyze the personal resources of certain owners of the Applicant business to determine if they have liquid assets that can provide some or all of the desired financing. The change would have a *de minimis* impact on Lenders since the personal resource analysis is already part of the credit analysis Lenders currently conduct in determining an Applicant's eligibility for SBA financial assistance. SBA Form 1920 is completed by the Lender, not by the Applicant.

The rule also proposes changes that would require revisions to SBA Form 159, Fee Disclosure and Compensation Agreement (OMB Control number 3245–0201), which is used to collect information from Lenders and Agents on the fees that they charge to Applicants for assistance with obtaining an SBA-guaranteed loan. SBA Form 159 is also used to collect information from Lenders on referral fees that it pays to Referral Agents in connection with an SBA-guaranteed loan. The specific proposed revisions to SBA Form 159 would implement the proposed changes to §§ 120.221, 103.4(g), and 103.5 that limit the amount and types of fees that may be charged to an Applicant. The proposed revisions to SBA Form 159 would reduce the hour burden for Lenders because they will no longer have to itemize the fees charged to Applicants in excess of $2,500, but merely disclose the amount charged. The revisions would have no material effect on the reporting burden for Agents. They will continue to report on all fees imposed on Applicants as they do now. The proposed changes to SBA Forms 1920 and 159 will be submitted to OMB as part of a broader, comprehensive revision of the forms that is not affected by this proposed rule, but is part of the Agency's efforts to streamline and simplify the information collected from Applicants and Lenders. SBA will make it clear in the final rule that the specific revisions affected by this proposed rule will not take effect until the rule is finalized. SBA invites comments on the proposed changes to the underlying regulations that would impact these forms by the deadline for comments noted in the **DATES** section.

Finally, this proposed rule proposes to put into the regulations the existing requirement for SBLCs to submit to SBA for review and approval on an annual basis the validation of any credit scoring model they are using in connection with SBA Express and Export Express loans. This reporting requirement will be included in OMB-approved collection, SBA Lender Reporting Requirements (OMB Approval Number 3245–0365). This information collection expires September 30, 2018 and will be submitted to OMB for renewal prior to that date. The proposed regulatory change does not impact that requirement; it merely codifies the requirement in the regulation instead of the SOP.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although the rulemaking will impact all of the approximately 4,500 7(a) Lenders, all of the approximately 214 CDCs, all of the approximately 146 Microloan Intermediaries, all of the approximately 33 ILP Intermediaries, and all of the approximately 32 Sureties that participate in the SBG Program, SBA does not believe the impact will be significant because this proposal modifies existing regulations and procedures to provide bright-line guidance.

SBA has determined that by proposing a limit to fees that a Lender or an Agent may charge to a small business Applicant or Borrower for SBA 7(a) loans, small business borrowers will be protected from incurring excessive expense to obtain a loan. SBA issued guaranties on 288,398 7(a) loans from fiscal year 2013 through fiscal year 2017. Fees charged to the Borrower or Applicant for packaging or other services were disclosed on 21% of the total 7(a) loans approved in that period. Applicants or Borrowers were charged fees that exceed the limits proposed in this rulemaking on 3.8% of total 7(a) loans approved.

Based on the analysis above, SBA has determined that the proposed fee limits will not cause undue financial burden to the Lenders or Agents. Having this bright-line test, Lenders, Borrowers, and Agents will, in fact, save time and costs in analyzing and documenting that fees charged to the Applicant are reasonable.

SBA's proposal to reinstate a personal resources test will have no impact, either directly or indirectly, to Applicants for 7(a) or 504 loans. Currently, the regulation (13 CFR 120.101) and program guidance require SBA Lenders to analyze the ability of the business to obtain credit from non-federal sources, including the personal resources of individuals and entities that own 20 percent or more of the Applicant business. The proposed change reinstates a bright-line test for SBA Lenders to appropriately consider the personal resources of the principals.

SBA's proposal to presume affiliation between a small business Applicant and another business from which the Applicant has derived more than 85% of its revenue over the previous three fiscal years includes an exception for new or start-up businesses. The exception will require the new or start-up Applicant to prepare a diversification plan demonstrating how it plans to become less dependent on any single source of income. This requirement to create a diversification plan may create an additional regulatory burden on those Applicants eligible for the exception. However, SBA considers this impact to be *de minimis* to the overall cost and time burden of the Applicant in preparing an application and business plan.

SBA believes that this proposed rule encompasses best practice guidance that aligns with the Agency's mission to increase access to capital for small businesses and facilitate American job preservation and creation with the

removal of unnecessary regulatory requirements. For these reasons, SBA has determined that there is no significant economic impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact on sureties, microloan intermediaries, participant lenders, CDCs, or small businesses.

List of Subjects

13 CFR Part 103

Administrative practice and procedure.

13 CFR Part 120

Community development, Environmental protection, Equal employment opportunity, Exports, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 103, 120 and 121 as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 15 U.S.C. 634, 642.

■ 2. Amend § 103.4 by revising paragraph (g) to read as follows:

§ 103.4 What is "good cause" for suspension or revocation?

* * * * *

(g) Acting as an Agent (including a Lender Service Provider) for an SBA Lender and an Applicant on the same SBA business loan and receiving compensation from both the Applicant and SBA Lender.

* * * * *

■ 3. Amend § 103.5 by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

* * * * *

(b) Total compensation charged by an Agent or Agents to an Applicant for services rendered in connection with obtaining an SBA-guaranteed loan must be reasonable. In cases where the compensation exceeds the amount SBA deems reasonable, the Agent(s) must reduce the charge and refund to the Applicant any sum in excess of the amount SBA deems reasonable. SBA considers the following amounts to be reasonable for the total compensation that an Applicant can be charged by an Agent or Agents:

(1) For loans up to and including $350,000: A maximum of up to 2.5% of the loan amount, or $7,000, whichever is less;

(2) For loans $350,001–$1,000,000: A maximum of up to 2% of the loan amount, or $15,000, whichever is less; and

(3) For loans over $1,000,000: A maximum of up to 1.5% of the loan amount, or $30,000, whichever is less.

(c) * * * However, such compensation may not be charged to an Applicant or Borrower.

PART 120—BUSINESS LOANS

■ 4. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h) and (m), 650, 687(f), 696(3), and 697(a) and (e); Pub. L. 111–5, 123 Stat. 115; Pub. L. 111–240, 124 Stat. 2504.

■ 5. Add § 120.102 to read as follows:

§ 120.102 Funds not available from alternative sources, including the personal resources of owners.

(a) An Applicant for a business loan must show that the desired funds are not available from the resources of any individual or entity owning 20 percent or more of the Applicant. SBA will require the use of liquid assets from any such owner as an injection to reduce the SBA loan amount when that owner's liquid assets exceed the amounts specified in paragraphs (a)(1) through (3) of this section. When the total financing package (*i.e.,* any SBA loans and any other financing, including loans from any other source, requested by the Applicant business at or about the same time):

(1) Is $350,000 or less, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one and three-quarter times the total financing package, or $200,000, whichever is greater;

(2) Is between $350,001 and $1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one and one-half times the total financing package, or $1,000,000, whichever is greater;

(3) Exceeds $1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one times the total financing package, or $2,500,000, whichever is greater.

(b) Any liquid assets in excess of the applicable amount set forth in paragraph (a) of this section must be used to reduce the SBA loan amount. These funds must be injected prior to the disbursement of the proceeds of any SBA financing. In extraordinary circumstances, SBA may, in its sole discretion, permit exceptions to the required injection of an owner's excess liquid assets.

(c) For purposes of this section, ''liquid assets'' means cash or cash equivalents, including savings accounts, CDs, stocks, bonds, or other similar assets. Equity in real estate holdings and other fixed assets are not to be considered liquid assets. In addition, the liquid assets of any 20 percent owner who is an individual include the liquid assets of the owner's spouse and any minor children.

(d) SBA Lenders must document their analysis and determination in the loan file.

■ 6. Amend § 120.130 by revising paragraph (c) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(c) Floor plan financing or other revolving line of credit, except under § 120.340, § 120.390, or § 120.444;

* * * * *

■ 7. Amend § 120.221 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 120.221 Fees and expenses that the Lender may collect from an Applicant or Borrower.

* * * * *

(a) *Fees that can be collected from the Applicant for assistance in obtaining a loan.* The Lender may collect a fee from an Applicant for assistance with obtaining an SBA-guaranteed loan. The fee may not exceed $2,500 for a loan up to and including $350,000 and may not exceed $5,000 for a loan over $350,000. The Lender must advise the Applicant in writing that the Applicant is not required to obtain or pay for unwanted services. In cases where the compensation exceeds what SBA deems reasonable, the Lender must reduce the charge and refund to the Applicant any amount in excess of what SBA deems reasonable. If the Lender charges the Applicant a fee for assistance with obtaining an SBA-guaranteed loan, the fee must be disclosed to SBA in accordance with § 103.5 and documented in accordance with Loan Program Requirements.

(b) *Extraordinary servicing.* Subject to prior written SBA approval, if all or part of a loan will have extraordinary servicing needs, the Lender may charge extraordinary servicing fees in excess of 2 percent per year on the outstanding

balance of the part requiring special servicing for certain revolving lines of credit made under § 120.390 and on Export Working Capital Program loans (as allowed under § 120.344(b)), provided the fees are reasonable and prudent.

* * * * *

§ 120.222 [Amended]

■ 8. Amend § 120.222 by removing the word ''in'' before the words ''any premium received''.

§ 120.344 [Amended]

■ 9. Amend § 120.344(b) by removing the period at the end of the paragraph and adding '', provided the fees are reasonable and prudent.''

■ 10. Revise § 120.350 to read as follows:

§ 120.350 Policy.

(a) Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a qualified employee trust (''ESOP'') to:

(1) Help finance the growth of the employer small business; or

(2) Purchase ownership or voting control of the employer.

(b) Applications for SBA-guaranteed loans to a qualified employee trust may not be processed under a Lender's delegated authority.

■ 11. Amend § 120.432 by adding a sentence at the end of paragraph (a) to read as follows:

§ 120.432 Under what circumstances does this subpart permit sales of, or sales of participating interests in, 7(a) loans?

(a) * * * This paragraph applies to all 7(a) loans purchased from the FDIC (as receiver, conservator, or other liquidator of a failed insured depository institution), whether through a loan sale where SBA has not already purchased the guarantee or through a whole bank transfer.

* * * * *

■ 12. Amend § 120.440 by revising paragraph (c) to read as follows:

§ 120.440 How does a 7(a) Lender obtain delegated authority?

* * * * *

(c) If delegated authority is approved or renewed, Lender must execute a supplemental guarantee agreement, which will specify a term not to exceed two years. As provided in § 120.442(c)(2)(i), when SBA renews a Lender's authority to participate in SBA Express, SBA may grant a longer term, but not to exceed three years. For approval or renewal of any delegated authority, SBA may grant shortened approvals or renewals based on risk or any of the other delegated authority criteria. Lenders with less than three years of SBA lending experience will be limited to an initial term of one year or less.

■ 13. Add a new undesignated center heading after § 120.440 to read as follows:

''SBA EXPRESS AND EXPORT EXPRESS LOAN PROGRAMS''.

■ 14. Add §§ 120.441 through 120.447 to read as follows:

§ 120.441 SBA Express and Export Express Loan Programs.

(a) *SBA Express.* Under the SBA Express Loan Program (SBA Express), designated Lenders (SBA Express Lenders) process, close, service, and liquidate SBA-guaranteed 7(a) loans using their own loan analyses, procedures, and documentation to the maximum extent practicable, with reduced requirements for submitting documentation to, and prior approval by, SBA. These loan analyses, procedures, and documentation must meet prudent lending standards; be consistent with those an SBA Express Lender uses for its similarly-sized, non-SBA guaranteed commercial loans; and conform to all requirements imposed upon Lenders generally and SBA Express Lenders in particular by Loan Program Requirements, as such requirements are issued and revised by SBA from time to time, unless specifically identified by SBA as inapplicable to SBA Express loans. In return for the expanded authority and autonomy provided by the program, SBA Express Lenders agree to accept a maximum SBA guaranty of 50 percent of the SBA Express loan amount.

(b) *Export Express.* The Export Express Loan Program (Export Express) is designed to help current and prospective small exporters. It is subject to the same loan processing, making, closing, servicing, and liquidation requirements, as well as the same interest rates and applicable fees, as SBA Express, except as otherwise provided in Loan Program Requirements.

§ 120.442 Process to obtain or renew SBA Express or Export Express authority.

The decision to grant or renew SBA Express or Export Express authority will be made by the appropriate SBA official in accordance with Delegations of Authority, and is final. If SBA Express or Export Express authority is approved or renewed, the Lender must execute a supplemental guarantee agreement before the Lender's SBA Express or Export Express authority will become effective.

(a) *Criteria and process for initial approval of SBA Express or Export Express authority.* A Lender that wishes to participate in SBA Express or Export Express must submit a written request to SBA.

(1) *Existing 7(a) Lenders.* In evaluating an existing 7(a) Lender's application for SBA Express or Export Express authority, SBA will consider the criteria and follow the procedures set forth in § 120.440.

(2) *Lending institutions that do not currently participate with SBA.* Lending institutions that do not currently participate with SBA must become 7(a) Lenders to participate in SBA Express and/or Export Express. Such institutions may request SBA 7(a) lending and SBA Express and/or Export Express authority simultaneously. In evaluating such institutions, in addition to the criteria set forth in §§ 120.410 and 120.440, SBA will consider whether the institution:

(i) Has acceptable experience with small commercial loans, including an acceptable number of performing small commercial loans outstanding at its most recent fiscal year end; and

(ii) Has received appropriate training on SBA's policies and procedures.

(b) *Criteria and process for renewal of SBA Express or Export Express authority.* In renewing a Lender's SBA Express or Export Express authority and determining the term of the renewal, SBA will consider the criteria and follow the process set forth in § 120.440 and also will consider whether the Lender:

(1) Can effectively process, make, close, service, and liquidate SBA Express or Export Express loans, as applicable;

(2) Has received a major substantive objection regarding renewal from the Field Office(s) covering the territory where the Lender generates significant numbers of SBA Express or Export Express loans, as applicable; and

(3) Has received acceptable review results on the SBA Express or Export Express portion, as applicable, of any SBA-administered Lender reviews.

(c) *Term.*—(1) *Initial Approval.* SBA may approve a Lender's authority to participate in SBA Express or Export Express for a maximum term of two years. SBA may approve a shorter term or limit a Lender's maximum SBA Express or Export Express loan volume if, in SBA's sole discretion, a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant.

(2) *Renewal.*—(i) *SBA Express.* SBA may renew a Lender's authority to participate in SBA Express for two years or, in SBA's sole discretion, a maximum of three years if a Lender's qualifications, performance, experience

with SBA lending, or other factors so warrant.

(ii) *Export Express.* SBA may renew a Lender's authority to participate in Export Express for a maximum term of two years.

(iii) SBA may renew a Lender's authority to participate in SBA Express or Export Express for a shorter term or limit a Lender's maximum SBA Express or Export Express loan volume if, in SBA's sole discretion, a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant.

§ 120.443 SBA Express and Export Express loan processing requirements.

(a) SBA Express and Export Express loans are subject to all of the requirements set forth in Subparts A and B of this part, unless such requirements are specifically identified by SBA as inapplicable.

(b) Certain types of loans and loan programs are not eligible for SBA Express or Export Express, as detailed in official SBA policy and procedures, including but not limited to:

(1) A loan that would reduce the Lender's existing credit exposure to a single Borrower, including its affiliates as defined in § 121.301(f) of this chapter;

(2) A loan to a business that has an outstanding 7(a) loan where the Applicant is unable to certify that the loan is current at the time of approval of the SBA Express or Export Express loan;

(3) A loan that would have as its primary collateral real estate or personal property that do not meet SBA's environmental requirements; and

(4) Complex loan structures or eligibility situations.

(c) SBA has authorized SBA Express and Export Express Lenders to make the credit decision without prior SBA review. Lenders must not make an SBA guaranteed loan that would be available on reasonable terms from either the Lender itself or another source without an SBA guaranty. The credit analysis must demonstrate that there is reasonable assurance of repayment. SBA Express and Export Express Lenders must use appropriate and prudent credit analysis processes and procedures that are generally accepted in the commercial lending industry and are consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. As part of their prudent credit analysis, SBA Express and Export Express Lenders may use a business credit scoring model (such a model cannot rely solely on consumer credit scores) to assess the credit history of the Applicant and/or repayment ability if they do so for their similarly-sized, non-SBA guaranteed commercial loans. SBA Express and Export Express Lenders must validate (and document) with appropriate statistical methodologies that their credit analysis procedures are predictive of loan performance, and they must provide that documentation to SBA upon request. SBLCs must provide such credit scoring model validation and documentation to SBA for review and approval on an annual basis.

(d) SBA Express and Export Express Lenders are responsible for all loan decisions, including eligibility for 7(a) loans (including size), creditworthiness and compliance with Loan Program Requirements. SBA Express and Export Express Lenders also are responsible for confirming that all loan closing decisions are correct and that they have complied with all requirements of law and Loan Program Requirements.

(e) SBA Express and Export Express Lenders must ensure all required forms are obtained and are complete and properly executed. Appropriate documentation must be maintained in the Lender's loan file, including adequate information to support the eligibility of the Applicant and the loan.

§ 120.444 Eligible uses of SBA Express and Export Express loan proceeds.

(a) *SBA Express.*—(1) SBA Express loan proceeds must be used exclusively for eligible business-related purposes, as described in §§ 120.120 and 120.130.

(2) Revolving lines of credit are eligible for SBA Express, provided they comply with official SBA policy and procedures.

(b) *Export Express.* (1) Export Express loans must be used for an export development activity, which includes the following:

(i) Obtaining a Standby Letter of Credit when required as a bid bond, performance bond, or advance payment guarantee;

(ii) Participation in a trade show that takes place outside the United States;

(iii) Translation of product brochures or catalogues for use in markets outside the United States;

(iv) Obtaining a general line of credit for export purposes;

(v) Performing a service contract for buyers located outside the United States;

(vi) Obtaining transaction-specific financing associated with completing export orders;

(vii) Purchasing real estate or equipment to be used in the production of goods or services for export;

(viii) Providing term loans and other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(ix) Acquiring, constructing, renovating, modernizing, improving or expanding a production facility or equipment to be used in the United States in the production of goods or services for export.

(2) Revolving lines of credit for export purposes are eligible for Export Express, provided they comply with official SBA policy and procedures.

(3) Export Express loans may not be used to finance overseas operations, except for the marketing and/or distribution of products/services exported from the U.S.

(4) Export Express Lenders are responsible for ensuring that U.S. companies are authorized to conduct business with the Persons and countries to which the Borrower will be exporting.

(c) An SBA Express or Export Express Lender may use loan proceeds to refinance certain outstanding debts, subject to official SBA policy and procedures. However, an SBA Express or Export Express Lender may not refinance its own existing SBA-guaranteed debt under SBA Express or Export Express.

§ 120.445 Terms and conditions of SBA Express and Export Express loans.

SBA Express and Export Express loans are subject to the same terms and conditions as other 7(a) loans except as set forth in this section:

(a) *Maximum loan amount and maximum aggregate loan amount.*

(1) *SBA Express.* The maximum loan amount for an SBA Express loan is set forth in section 7(a)(31)(D) of the Small Business Act. The aggregate amount of all outstanding SBA Express loans to a single Borrower, including the Borrower's affiliates as defined in § 121.301(f) must not exceed the statutory maximum.

(2) *Export Express.* The maximum loan amount for an Export Express loan is set forth in section 7(a)(34)(C)(i) of the Small Business Act. The aggregate amount of all outstanding Export Express loans to a single Borrower, including the Borrower's affiliates as defined in § 121.301(f), must not exceed the statutory maximum.

(b) *Maximum SBA guarantee.*—(1) *SBA Express.* The maximum SBA guarantee on an SBA Express loan is 50 percent of the SBA Express loan amount. In addition, the guaranteed amount of all SBA Express loans to a single Borrower, including the Borrower's affiliates, counts toward the

maximum guaranty amount as described in § 120.151.

(2) *Export Express.* The maximum SBA guarantee on an Export Express loan of $350,000 or less is 90 percent and for a loan over $350,000 is 75 percent of the Export Express loan amount. In addition, the guaranteed amount of all Export Express loans to a single Borrower, including the Borrower's affiliates, counts toward the maximum guaranty amount as described in § 120.151.

(c) *Maturity.*—(1) *SBA Express.* SBA Express loans must have a stated maturity and the maximum maturities are the same as any other 7(a) loan, except that revolving SBA Express loans are limited to a maximum of 10 years, as described more fully in official SBA policy and procedures.

(2) *Export Express.* Export Express loans must have a stated maturity and the maximum maturities are the same as any other 7(a) loan, except that revolving Export Express loans are limited to a maximum maturity of 7 years, as described more fully in official SBA policy and procedures.

(d) *Interest rates.*—(1) SBA Express and Export Express Lenders may charge up to 4.5% over the prime rate on loans over $50,000 and up to 6.5% over the prime rate for loans of $50,000 or less, regardless of the maturity of the loan. The prime rate will be that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day.

(2) For variable interest rate loans, SBA Express and Export Express Lenders are not required to use the base rate identified in § 120.214(c). SBA Express and Export Express Lenders may use the same base rate of interest they use on their similarly-sized, non-SBA guaranteed commercial loans, as well as their established change intervals, payment accruals, and other interest rate terms. However, the interest rate must never exceed the maximum allowable interest rate stated in paragraph (d)(1) of this section. Additionally, the loan may be sold on the Secondary Market only if the base rate is one of the base rates allowed in § 120.214(c).

(3) The amount of interest SBA will pay to a Lender following default of an SBA Express or Export Express loan is capped at the maximum interest rates for the standard 7(a) loan program set forth in §§ 120.213 through 120.215.

(e) *Collateral.*—(1) With the exception of paragraphs (e)(2) and (e)(3) of this section, to the maximum extent practicable, SBA Express and Export Express Lenders must follow the same collateral policies and procedures that they have established and implemented for their similarly-sized, non-SBA guaranteed commercial loans, including those concerning identification of collateral. Such policies and procedures must be commercially reasonable and prudent.

(2) SBA may establish a threshold below which SBA Express and Export Express Lenders will not be required to take collateral to secure an SBA Express or Export Express loan. Such a threshold will be described more fully in official SBA policy and procedures.

(3) Export Express lines of credit over $25,000 used to support the issuance of a standby letter of credit must have collateral (cash, cash equivalent or project) that will provide coverage for at least 25% of the issued standby letter of credit amount.

(f) *Insurance.* SBA Express and Export Express Lenders must follow the same policies they have established and implemented for their similarly-sized, non-SBA guaranteed commercial loans.

(g) *Sale on the secondary market.* SBA Express and Export Express Lenders may sell the guaranteed portion of an SBA Express or Export Express term loan on the secondary market under the policies and procedures described in Subpart F of this part. SBA Express or Export Express Lenders may not sell the guaranteed portion of an SBA Express or Export Express revolving line of credit on the secondary market.

(h) *Loan increases.* With SBA's prior written consent, an SBA Express or Export Express Lender may increase an SBA Express or Export Express loan based on the needs of the Borrower and its credit situation, as further specified in Loan Program Requirements.

§ 120.446 SBA Express and Export Express loan closing, servicing, liquidation and litigation requirements.

(a) *Closing.* Except as set forth in this paragraph, SBA Express and Export Express Lenders must close their SBA Express and Export Express loans using the same documentation and procedures that they use for their similarly-sized, non-SBA guaranteed commercial loans. Such documentation and procedures must comply with law, prudent lending practices, and Loan Program Requirements. When closing an SBA Express or Export Express loan, the Lender must require the Borrower to execute a promissory note that is legally enforceable and assignable. Before the first disbursement of any SBA Express or Export Express loan proceeds, the Lender must obtain all required collateral, including obtaining valid and enforceable security interests in such collateral, and also must meet all other required pre-closing loan conditions as set forth in official SBA policy and procedures.

(b) *Servicing, Liquidation, and Litigation.* Servicing, liquidation, and litigation responsibilities for SBA Express and Export Express Lenders are set forth in Subpart E of this Part.

(c) *SBA's purchase of the guaranteed portion of an SBA Express or Export Express loan.* (1) SBA will purchase the guaranteed portion of an SBA Express or Export Express loan in accordance with § 120.520 and official SBA policy and procedures. An SBA Express or Export Express Lender may not request purchase of the guaranty based solely on a violation of a non-financial default provision.

(2) *How much SBA will pay upon purchase*?—(i) *SBA Express.* SBA will pay a maximum of 50 percent of the total principal balance of the SBA Express loan outstanding after liquidation, including up to 120 days of interest at the rate in effect at the time of the earliest uncured default (if liquidation proceeds collected by the SBA Express Lender were insufficient for the Lender to recover a full 120 days of interest).

(ii) *Export Express.* SBA will pay a maximum of 75 or 90 percent (as applicable) of the total principal balance of the Export Express loan outstanding after liquidation, including up to 120 days of interest at the rate in effect at the time of the earliest uncured default (if liquidation proceeds collected by the Export Express Lender were insufficient for the Lender to recover a full 120 days of interest).

(3) *Release of SBA liability under its guarantee.* SBA will be released from its liability to purchase the guaranteed portion of an SBA Express or Export Express loan, either in whole or in part, in SBA's sole discretion, under any of the circumstances described in § 120.524.

§ 120.447 Lender oversight of SBA Express and Export Express Lenders.

SBA Express and Export Express Lenders are subject to the same risk-based lender oversight as 7(a) Lenders, including the supervision and enforcement provisions, in accordance with Subpart I of this Part.

§ 120.707 [Amended]

■ 15. Amend the last sentence of § 120.707(b) by removing the word ''six'' and add in its place ''seven''.

■ 16. Amend § 120.712 as follows:

■ a. Revise paragraph (b)(1); and

■ b. In paragraph (d) remove the number ''25'' and add in its place the number ''50''.

The revision and addition read as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 50 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; provided, however, that no more than 5 percent of the grant funds may be used to market or advertise the products and services of the Microloan Intermediary directly related to the Microloan Program; and

* * * * *

§ 120.840 [Amended]

■ 17. Amend § 120.840 by removing the term ''D/FA'' from the second sentence of paragraph (b) and adding in its place the phrase ''appropriate SBA official in accordance with Delegations of Authority''.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 18. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 649a(9).

■ 19. Amend § 121.301 by:

■ a. Revising paragraph (f)(4);

■ b. Redesignating paragraphs (f)(5), (f)(6), and (f)(7) as paragraphs (f)(7), (f)(8), and (f)(9) respectively;

■ c. Adding new paragraphs (f)(5) and (f)(6) and revising the redesignated (f)(7).

The revisions and additions read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(f) * * *

(4) *Affiliation based on identity of interest.* (i) Affiliation may arise among two or more individuals or firms with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as close relatives, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(ii) Affiliation arises when there is an identity of interest between close relatives, as defined in § 120.10 of this chapter, with identical or substantially identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area).

(iii) Affiliation arises through common investments where the same individuals or firms together own a substantial portion of multiple concerns, and concerns owned by such investors conduct business with each other (such as subcontracts or joint ventures), or share resources, equipment, locations or employees with one another, or provide loan guaranties or other financial or managerial support to each other.

(iv) SBA will find affiliation based upon economic dependence if the concern in question derived more than 85% of its receipts from another concern over the previous three fiscal years, unless the concern has been in business for a short amount of time and has a plan to lessen its dependence on the other concern.

(5) *Affiliation based on the newly organized concern rule.* Affiliation may arise where current or former officers, directors, principal stockholders, managing members, or key employees of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, principal stockholders, managing members, or key employees, and the original concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. For the purpose of this rule, a ''key employee'' is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. A concern will be considered ''new'' for the purpose of this rule if it has been actively operating continuously for two years or less.

(6) *Affiliation based on totality of the circumstances.* In determining whether affiliation exists, SBA will consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation.

(7) *Affiliation based on franchise agreements.* (i) The restraints imposed on a franchisee by its franchise agreement generally will not be considered in determining whether the franchisor is affiliated with an applicant franchisee provided the applicant franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. SBA will only consider the franchise agreements of the applicant concern. SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, which will identify any additional documentation necessary to resolve any eligibility or affiliation issues between the franchisor and the small business applicant.

(ii) For purposes of this section, ''franchise'' means any continuing commercial relationship or arrangement, whatever it may be called, that meets the Federal Trade Commission definition of ''franchise'' in 16 CFR 436.

* * * * *

■ 20. Amend § 121.302 by revising paragraphs (a) and (b) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the SBA Express Loan Program (SBA Express), the Export Express Loan Program (Export Express), the Disaster Loan Program, the SBIC Program, and the New Markets Venture Capital (NMVC) Program.

(b) For PLP, SBA Express, and Export Express, size is determined as of the date of approval of the loan by the Lender.

* * * * *

Dated: September 18, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–20869 Filed 9–27–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0803; Product Identifier 2018–NM–098–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 727 airplanes. This proposed AD was prompted by a report of cracking in the inboard lower flange and adjacent web near the forward attachment of the outboard flap track at a certain position on a Model 737–300 airplane. The flap tracks of Model 737–300 airplanes are similar to the flap tracks of Model 727 airplanes. This proposed AD would require repetitive detailed inspections and surface high frequency eddy current (HFEC) inspections of each outboard flap track at certain positions for any crack and discrepancy, and applicable on-condition actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 13, 2018.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0803.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0803; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Muoi Vuong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0803; Product Identifier 2018–NM–098–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report indicating cracking in the inboard lower flange and adjacent web near the forward attachment of the outboard flap track at position 8, which was found during a tear down of a Model 737–300 airplane. The flap tracks of Model 737–300 airplanes are similar to the flap tracks of Model 727 airplanes. This condition, if not addressed, could result in the inability of a principal structural element to sustain required flight load, which could result in loss of the outboard trailing edge flap and reduced controllability of the airplane.

Related Rulemaking

We have issued AD 2018–18–13, Amendment 39–19392 (83 FR 46380, September 13, 2018) (''AD 2018–18–13''), for The Boeing Company Model 737–100, –200, –200C, –300, –400, –500 series airplanes. AD 2018–18–13 requires an inspection to determine the part number of the wing outboard flap track assembly; repetitive inspections of each affected wing outboard flap track for discrepancies, and applicable on-condition actions; and repetitive overhaul of each wing outboard flap track. AD 2018–18–13 addresses cracking of the rear spar attachment, and cracking of the wing outboard flap tracks. Cracking in the area between the forward and rear spar attachments of the wing outboard flap tracks could lead to the inability of a principal structural element to sustain required flight load, and result in loss of the outboard trailing edge flap and consequent reduced controllability of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018. The service information describes procedures for repetitive detailed inspections for discrepancies and surface HFEC inspections for cracks of each outboard flap track at positions 1, 2, 7, and 8, and applicable on-condition actions. On-condition actions include repairs and installation of a new or serviceable flap track. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0803.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directives Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with

an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

We estimate that this proposed AD affects 16 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	113 work-hours × $85 per hour = $9,605 per inspection cycle.	$0	$9,605 per inspection cycle.	$153,680 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2018–0803; Product Identifier 2018–NM–098–AD.

(a) Comments Due Date

We must receive comments by November 13, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727, 727–100, 727–100C, 727–200, 727–200F, and 727C series airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracking in the inboard lower flange and adjacent web near the forward attachment of the outboard flap track at position 8 on a Model 737–300 airplane. The flap tracks of Model 737–300 airplanes are similar to the flap tracks of Model 727 airplanes. We are issuing this AD to address the inability of a principal structural element to sustain required flight load, which could result in loss of the outboard trailing edge flap and reduced controllability of the airplane.

(f) Compliance

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

(g) Required Actions

Except as required by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018.

Note 1 to paragraph (g) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 727–57A0188, dated May 31, 2018, which is referred to in Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, uses the phrase ''the original issue date of Requirements Bulletin 727–57A0188 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, specifies contacting Boeing for repair instructions, this AD requires repair before further flight using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, a wing outboard flap track having a part number listed in paragraph 1.B. of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, unless the inspections and applicable on-condition actions specified in the Accomplishment Instructions of Boeing Alert Requirements Bulletin 727–57A0188 RB, dated May 31, 2018, are accomplished concurrently with the installation of the part on the airplane.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

(1) For more information about this AD, contact Muoi Vuong, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5205; fax: 562–627–5210; email: *muoi.vuong@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 14, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20920 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0802; Product Identifier 2018–NM–082–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by reports of electrical arcing between the auxiliary power unit (APU) starter motor positive terminal and the APU fuel drain line. This proposed AD would require the removal of certain clamps and replacement of the flexible APU fuel drain line. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by November 13, 2018.

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

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

For service information identified in this NPRM, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0802; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0802; Product Identifier 2018–NM–082–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0008, dated January 16, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

Reports were received of electrical arcing between the auxiliary power unit (APU) starter motor positive terminal and the APU

fuel drain line. Investigation showed that these events were due to contact between the metal braiding on the APU fuel drain line and the positive terminal of the APU starter motor.

This condition, if not corrected, could lead to a fire during APU start, possibly resulting in damage to the aeroplane.

In response to these findings, Fokker issued Service Bulletin (SB) SBF100–49–023, later amended by SB Change Notification (SBCN), with instructions to install two additional clamps on the APU fuel supply line and the flexible APU fuel drain line. Consequently, CAA–NL [Civil Aviation Authority—the Netherlands] issued the Netherlands AD 92–139 [which corresponds to FAA AD 95–21–20, Amendment 39–9407 (60 FR 53857, October 18, 1995) (''AD 95–21–20'')] to require the actions described in Fokker SBF100–49–023.

Since that [the Netherlands] AD was issued, following reports of arcing and chafing damage to the APU fuel drain line, the investigation revealed that the two additional clamps and the instructions in SBF100–49–023 would not meet the intent of ensuring sufficient clearance between the APU fuel drain line and the positive terminal of the APU starter motor.

To address this potential unsafe condition, Fokker Services [B.V.] published SBF100–49–037 to introduce a new flexible APU fuel drain line that is one inch shorter and has one elbow flange, thus enabling to restore sufficient clearance with the positive terminal of the APU starter motor.

For the reasons described above, this AD supersedes CAA–NL [the Netherlands] AD 92–139 and requires replacement of the flexible APU fuel drain line, removal of the additional clamps introduced by SBF100–49–023, and a check to verify sufficient clearance between the APU fuel drain line and the positive terminal of the APU starter motor.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0802.

Relationship Between Proposed AD and AD 95–21–20

This NPRM would not propose to supersede AD 95–21–20. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require the removal of certain clamps and replacement of the flexible APU fuel drain line. Accomplishment of the proposed actions would then terminate all requirements of AD 95–21–20.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–49–037, dated October 31, 2016. This service information describes procedures for removing certain clamps and replacing the flexible APU fuel drain line (which includes making sure there is sufficient clearance between the new APU fuel drain line and the positive terminal of the APU starter motor and that the earth lead is not chafing against the fuel supply or the fuel drain line). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 5 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$963	$1,048	$5,240

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2018–0802; Product Identifier 2018–NM–082–AD.

(a) Comments Due Date

We must receive comments by November 13, 2018.

(b) Affected ADs

This AD affects AD 95–21–20, Amendment 39–9407 (60 FR 53857, October 18, 1995) (''AD 95–21–20'').

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 49, Airborne auxiliary power.

(e) Reason

This AD was prompted by reports of electrical arcing between the auxiliary power unit (APU) starter motor positive terminal and the APU fuel drain line. We are issuing this AD to address this unsafe condition, which could lead to a fire during APU start and possibly result in damage to the airplane.

(f) Compliance

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

(g) Modification

Within 12 months after the effective date of this AD: Remove the two additional clamps, part number (P/N) MS21919WCH5 and P/N MS21919WCH13, and replace APU fuel drain line P/N D67066–409 with a new APU fuel drain line P/N W67066–401, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–49–037, dated October 31, 2016.

(h) Terminating Actions for AD 95–21–20

Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 95–21–20.

(i) Parts Installation Prohibition

No person may install APU fuel drain line P/N D67066–409 after modification of an airplane as required by paragraph (g) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Section, Transport Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0008, dated January 16, 2017, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0802.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on September 14, 2018.

John P. Piccola,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–20919 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. FDA–2007–N–0465]

Label Requirement for Food That Has Been Refused Admission Into the United States

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the withdrawal of a proposed rule that published in the **Federal Register**. This proposed rule is not currently considered a viable candidate for final action. FDA is taking this action because this proposed rule does not reflect current technology and industry practice.

DATES: The proposed rule published September 18, 2008, at 73 FR 54106 is withdrawn as of September 28, 2018.

ADDRESSES: For access to the docket, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Holli Kubicki, Office of Regulatory Affairs, Office of Strategic Planning and Operational Policy, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–4557, *holli.kubicki@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1990, FDA began a process of periodically conducting comprehensive reviews of its regulation process, including reviewing the backlog of proposed rulemakings that had not been finalized. As FDA removed many proposed rules not finalized, the Agency implemented a process of reviewing existing proposed rules every 5 years.

As part of this process and the Administration's regulatory reform initiative, we continue to conduct reviews of existing proposed rules. The review determines if the proposals are outdated, unnecessary, or can be revised to reduce regulatory burden while allowing FDA to achieve our public health mission and fulfill statutory obligations.

As part of these efforts, FDA is withdrawing the proposed rule entitled ''Label Requirement for Food That Has Been Refused Admission Into the

United States'' (September 18, 2008, 73 FR 54106).

The proposed rule does not reflect current technology and industry practice. For example, the proposed rule directed owners or consignees to affix labels to physical documents such as invoices, packing lists, bills of lading, and any other documents accompanying refused food. Many of these documents are now electronic. Therefore, since implementation of the proposed rule would not adequately address how to permanently mark electronic documentation accompanying refused food, it would not achieve the public health and efficiency benefits discussed in the notice of proposed rulemaking. As directed by section 304 of the FDA Food Safety Modernization Act (Pub. L. 111–353) that was enacted after FDA issued the proposed rule, FDA now requires, as part of its prior notice regulations, notice to FDA of the name of any country to which imported food has been refused entry. (See 21 CFR 1.281(a)(18).) This includes situations where the United States has refused entry, and it therefore provides FDA with information related to what the proposed marking rule would require.

FDA may reassess how to effectively implement the labeling of documentation accompanying refused food and consider whether to issue a revised proposed rule in the future.

The withdrawal of the proposal identified in this document does not preclude the Agency from reinstituting rulemaking concerning the issues addressed. Should we decide to undertake such a rulemaking in the future, we will re-propose the action and provide a new opportunity for comment. Furthermore, this proposed rule withdrawal is only intended to address the specific actions identified in this document, and not any other pending proposals that the Agency has issued or is considering. If you need additional information about the subject matter of the withdrawn proposed rule, you may review the Agency's website (*https://www.fda.gov*) for any current information on the matter.

Dated: September 25, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21145 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket Nos. FDA–2005–N–0033, FDA–2008–N–0115]

Use of Materials Derived From Cattle in Medical Products Intended for Use in Humans and Drugs Intended for Use in Ruminants; Reporting Information Regarding Falsification of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA, Agency, we) is announcing the withdrawal of two proposed rules that published in the **Federal Register**. These proposed rules are not currently considered viable candidates for final action. FDA is taking this action because the regulatory requirements set forth in the proposed rules are not needed at this time to protect the public health.

DATES: As of September 28, 2018, the proposed rules published on January 12, 2007, at 72 FR 1582, and February 19, 2010, at 75 FR 7412 are withdrawn.

ADDRESSES: For access to the docket, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this document into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian Pendleton, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4250, Silver Spring, MD 20993–0002, 301–796–4614, *brian.pendleton@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1990, FDA began a process of periodically conducting comprehensive reviews of its regulation process, including reviewing the backlog of proposed rulemakings that had not been finalized. As FDA removed many proposed rules not finalized, the Agency implemented a process of reviewing existing proposed rules every 5 years.

As part of this process and the Administration's regulatory reform initiative, we continue to conduct reviews of existing proposed rules. The review determines if the proposals are outdated, unnecessary, or can be revised to reduce regulatory burden while allowing FDA to achieve our public health mission and fulfill statutory obligations.

As part of these efforts, FDA is withdrawing the following proposed rules:

Title of proposed rule	Publication date, **Federal Register** citation	Docket No.	Reason for withdrawal
1. *Use of Materials Derived from Cattle in Medical Products Intended for Use in Humans and Drugs Intended for Use in Ruminants.*	January 12, 2007, 72 FR 1582.	FDA–2005–N–0033	We are withdrawing the proposed rule because the risk to public health posed by the potential use of materials derived from cattle in medical products has been significantly diminished since the issuance of the proposed rule, and we believe we can address any potential concerns through application of our premarketing review authority.
2. *Reporting Information Regarding Falsification of Data.*	February 19, 2010, 75 FR 7412.	FDA–2008–N–0115	The rule is not needed to protect research subjects or to help ensure the integrity of clinical trial data submitted to FDA in support of marketing applications and petitions for product approvals. Existing regulations require study sponsors to notify FDA when they end an investigator's participation in an investigation (21 CFR 312.56(b)), and institutional review boards must notify us when they suspend or terminate their approval of research (21 CFR 56.113). Based on our review of recent data, we conclude that we are receiving adequate notice of falsification of data, and we do not believe that adopting the proposed requirements would provide us with substantial additional information.

The withdrawal of the proposed rules does not preclude the Agency from reinstituting rulemaking concerning the issues addressed in the proposed rules listed in the table. Should we decide to undertake such rulemakings in the future, we will re-propose the actions and provide new opportunities for comment. Furthermore, these proposed rules' withdrawal is only intended to address the specific actions identified in this document, and not any other pending proposals that the Agency has issued or is considering. If you need additional information about the subject

matter of the withdrawn proposed rules, you may review the Agency's website (*https://www.fda.gov*) for any current information on the matter.

Dated: September 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21133 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0883]

RIN 1625–AA08

Special Local Regulation; Manasquan Inlet, Manasquan, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation for certain waters of the Manasquan Inlet between Manasquan, NJ, and Point Pleasant Beach, NJ. This action is necessary to protect event participants, spectators, and vessels transiting the area from potential hazards during the Manasquan Inlet Intercoastal Tug marine event. During the enforcement period, unauthorized persons or vessels would be prohibited from entering into, remaining within, transiting through, or anchoring in the regulated area unless authorized by the Captain of the Port Delaware Bay or a designated representative of the Captain of the Port. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 5, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0883 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Thomas Welker, U.S. Coast Guard; Sector Delaware Bay, Waterways Management Division; telephone (215) 271–4814, email *Thomas.J.Welker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

The Manasquan Beach and Recreation Department notified the Coast Guard that it will be conducting a tug of war event from 11 a.m. to 1:30 p.m. on October 20, 2018. The tug of war will consist of teams on opposing sides of the Manasquan Inlet with a rope extended between the sides. The event will span the entire width of the inlet. Vessel operation in the area of the event could be hazardous to both event participants and vessels. The Captain of the Port Delaware Bay (COTP) has determined that a safety concern exists for non-participant vessels within 400 feet of the tug of war rope.

The purpose of this rulemaking is to ensure the safety of participants and vessels transiting the regulated area during the event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a temporary special local regulation to be in effect from 11 a.m. to 1:30 p.m. on October 20, 2018. The regulated area would cover all waters within 400 feet of the event located between approximate locations 40°6′9.22″ N, 74°2′7.8″ W and 40°6′9.22″ N, 74°2′8.2″ W. During the event, the inlet would be closed to all non-participant vessel traffic. There is a 30-minute break tentatively planned for midway through the event. If circumstances permit, during the break the rope will be removed from navigable waters and vessels may be allowed to transit through the area at the discretion of the COTP or COTP's designated representative. The regulation is intended to ensure the safety of event participants and vessels during the scheduled 11 a.m. to 1:30 p.m. tug of war event. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative of the Captain of the Port. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the regulated area. While this regulated area would impact a designated area of the Manasquan River Inlet for 2 and ½ hours, the event sponsor has organized a 30 minute time period during the event where vessels would be able to transit through the inlet. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone during the 30 minute time period during the event.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see

ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area lasting 2 and ½ hours that would prohibit entry within 400 feet of a tug of war event across an inlet. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

List of Subjects in 33 CFR Part 100

Maritime safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0883 to read as follows.

§ 100.T05–0883 Special Local Regulation; Manasquan River; Manasquan, NJ.

(a) *Location.* The following area is a regulated area: All waters of the Manasquan River within the Manasquan Inlet within 400 feet of the event located between approximate locations 40°6′9.22″ N, 74°2′7.8″ W and 40°6′9.22″ N, 74°2′8.2″ W. All coordinates are based on World Geodetic System 1984.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or on board a federal, state, or local law enforcement vessel assisting the Captain of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) All non-participant persons and vessels are prohibited from entering into, remaining within, transiting through, or anchoring in the regulated area unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter or remain in the zone, contact the COTP or the COTP's designated representative

via VHF–FM channel 16 or by telephone at 215–271–4807.

(3) If authorization to enter into, remain within, transit through, or anchor in the regulated area is granted, all persons and vessels receiving such authorization shall comply with the instructions of the COTP or the COTP's designated representative.

(4) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Marines, or by on-scene designated representatives.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement period.* This zone will be enforced from approximately 11 a.m. through 1:30 p.m. on October 20, 2018.

K.A. Clarke,

Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.

[FR Doc. 2018–21202 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0711]

RIN 1625–AA00

Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA; Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on a portion of the Delaware River in Philadelphia, PA. This action is necessary to protect the surrounding public and vessels on these navigable waters adjacent to Penn's Landing, Philadelphia, PA, during a fireworks display on October 19, 2018. This proposed rulemaking would prohibit persons and vessels from entering, transiting, or remaining within the safety zone unless authorized by the Captain of the Port Delaware Bay or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 5, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0711 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Thomas Welker, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division; telephone 215–271–4814, email *Thomas.j.welker@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On June 18, 2018, a wedding party notified the Coast Guard that it will be conducting a fireworks display from 11:15 p.m. to 11:45 p.m. on October 19, 2018. The fireworks are to be launched from a barge in the Delaware River adjacent to Penn's Landing in Philadelphia, PA. Hazards from firework display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-foot radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 11:00 p.m. through 11:59 p.m. on October 19, 2018. The safety zone would cover all navigable waters within 500 feet of a fireworks barge in the Delaware River adjacent to Penn's Landing in Philadelphia, PA. The barge will be anchored in approximate position 39°57′05.26″ N Latitude 075°08′10.85″ W Longitude. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 11:15 p.m. to 11:45 p.m. fireworks display. No vessel or person would be permitted to enter, transit, or remain within the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Delaware River for one hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the

reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting one hour that would prohibit entry within 500 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0711 to read as follows:

§ 165.T05–0711 Safety Zone; Safety Zone; Delaware River; Penn's Landing; Philadelphia, PA; Fireworks Display.

(a) *Location.* The following area is a safety zone: All waters of the Delaware River within a 500-foot radius of the fireworks barge, which will be anchored in approximate position 39°57′05.26″ N Latitude 075°08′10.85″ W Longitude. All coordinates are based on Datum NAD 1983.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard petty officer, warrant or commissioned officer on board a Coast Guard vessel or

on board a federal, state, or local law enforcement vessel assisting the Captain of the Port, Delaware Bay in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part—(a) you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative; and (b) all persons and vessels in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(2) To request permission to enter the safety zone, contact the COTP or the COTP's representative on marine band radio VHF–FM channel 16 (156.8 MHz) or 215–271–4807.

(3) No vessel may take on bunkers or conduct lightering operations within the safety zone during the enforcement period.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement period.* This zone will be enforced from 11:15 p.m. through 11:45 p.m. on October 19, 2018.

K.A. Clarke,

Captain, U.S. Coast Guard, Acting Captain of the Port Delaware Bay.

[FR Doc. 2018–21203 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0868]

RIN 1625–AA00

Safety Zone; Annual Fireworks Displays Within the Sector Columbia River Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the regulations establishing safety zones for annual fireworks displays in the Captain of the Port Zone Columbia River. This action would include updating 3 existing safety zones, adding 1 safety zone for a fireworks display that was previously published under a temporary regulation, and removing 10 safety zones for inactive fireworks displays. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before October 29, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0868 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Dixon Whitley, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

Our regulation for safety zones for fireworks displays in Captain of the Port Zone Columbia River, 33 CFR 165.1315, was revised (82 FR 28556, June 23, 2017) in 2017. This proposed rule would remove 10 safety zones for inactive fireworks displays, add 1 safety zone for a new, recurring fireworks display that was previously published as a temporary safety zone, and update the date or location for 3 existing fireworks displays. The purpose of this revision would provide the public accurate information regarding safety zones for annual fireworks displays in Captain of the Port Zone Columbia River.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231. The Captain of the Port Sector Columbia River has determined that fireworks displays create hazardous conditions for the maritime public because of the large number of vessels near the displays, as well as the noise, falling debris, and explosions that occur during the event. Because firework discharge sites pose a potential hazard to the maritime public, these safety zones are necessary in restricting vessel movement and to reduce vessel congregation in the proximity of the firework discharge sites.

III. Discussion of Proposed Rule

The Coast Guard proposes to remove 10 fireworks display safety zones in 33 CFR 165.1315 that are listed in Table 1 below because the Coast Guard has not received an application to conduct these fireworks displays within the past 3 years.

TABLE 1—LIST OF SAFETY ZONE WE PROPOSE TO REMOVE FROM 33 CFR 165.1315

Cinco de Mayo Fireworks	Portland, OR	One day in May	45°30′58″ N	122°40′12″ W
Newport High School Graduation Fireworks	Newport, OR	One day in June	44°36′48″ N	124°04′10″ W
Celebrate Milwaukie	Milwaukie, OR	One day in July	45°26′33″ N	122°38′44″ W
Arlington 4th of July	Arlington, OR	One day in July	45°43′23″ N	120°12′11″ W
East County 4th of July Fireworks	Gresham, OR	One day in July	45°33′32″ N	122°27′10″ W
Rufus 4th of July Fireworks	Rufus, OR	One day in July	45°41′39″ N	120°45′16″ W
Maritime Heritage Festival	St. Helens, OR	One day in July	45°51′54″ N	122°47′26″ W
Lynch Picnic	West Linn, OR	One day in July	45°23′37″ N	122°37′52″ W
First Friday Milwaukie	Milwaukie, OR	One day in September	45°26′33″ N	122°38′44″ W
Willamette Falls Heritage Festival	Oregon City, OR	One day in October	45°21′44″ N	122°36′21″ W

Additionally, the Coast Guard proposes to add a new fireworks display safety zone. This safety zone was previously listed as a temporary safety zone (83 FR 30869, July 2, 2018), and after conferring with the event sponsor,

it will become a recurring fireworks display. This safety zone would cover all navigable waters within a 450 yard radius of the fireworks barge in the Willamette River located at 45°24′37″ N, 122°39′30″ W in the vicinity of George Rogers Park in Lake Oswego, OR. The following would be added to the table in 33 CFR 165.1315:

City of Lake Oswego 4th of July Fireworks	Lake Oswego, OR	One day in July	45°24′37″ N	122°39′30″ W

Finally, the Coast Guard proposes to revise three existing fireworks display safety zones. These revisions include updating the date for 4th of July at Pekin Ferry to more precisely describe when the fireworks display would occur, correcting the wrong state listed for the Independence Day at the Port and updating the location for the Leukemia and Lymphoma Light the Night Fireworks.

These updates would eliminate any confusion caused by the fireworks display safety zones listed in the 33 CFR165.1315 table and any subsequent temporary safety zones resulting from changes. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around these safety zones which would impact small designated areas of the Oregon coast, Tillamook Bay, the Columbia River and its tributaries, and the Clatskanie River for approximately 2 hours during the evening when commercial vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves safety zones lasting approximately two hours in duration and would prohibit entry within 450 yards of the launch sites. Normally such

actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.1315, revise paragraph (a) to read as follows:

(a) *Safety zones.* The following areas are designated safety zones: Waters of the Columbia River and its tributaries, waters of the Siuslaw River, Yaquina River, Umpqua River, Clatskanie River, Tillamook Bay and waters of the Washington and Oregon Coasts, within a 450 yard radius of the launch site at the approximate locations listed in the following table:

Event name (typically)	Event location	Date of event	Latitude	Longitude
Portland Rose Festival Fireworks	Portland, OR	One day in May or June	45°30′58″ N	122°40′12″ W
Tri-City Chamber of Commerce Fireworks/ River of Fire Festival.	Kennewick, WA	One day in July	46°13′37″ N	119°08′47″ W
Astoria-Warrenton 4th of July Fireworks	Astoria, OR	One day in July	46°11′34″ N	123°49′28″ W
Waterfront Blues Festival Fireworks	Portland, OR	One day in July	45°30′42″ N	122°40′14″ W
Florence Independence Day Celebration	Florence, OR	One day in July	43°58′09″ N	124°05′50″ W
Oaks Park Association 4th of July	Portland, OR	One day in July	45°28′22″ N	122°39′59″ W
City of Rainier/Rainier Days	Rainier, OR	One day in July	46°05′46″ N	122°56′18″ W
Ilwaco July 4th Committee Fireworks/Independence Day at the Port.	Ilwaco, WA	One day in July	46°18′17″ N	124°02′00″ W
Splash Aberdeen Waterfront Festival	Aberdeen, WA	One day in July	46°58′40″ N	123°47′45″ W
City of Coos Bay July 4th Celebration/Fireworks Over the Bay.	Coos Bay, OR	One day in July	43°22′06″ N	124°12′24″ W
Port of Cascade Locks 4th of July Fireworks	Cascade Locks, OR	One day in July	45°40′15″ N	121°53′43″ W
Clatskanie Heritage Days Fireworks	Clatskanie, OR	One Day in July	46°6′17″ N	123°12′02″ W
Washougal 4th of July	Washougal, WA	One day in July	45°34′32″ N	122°22′53″ W
City of St. Helens 4th of July Fireworks	St. Helens, OR	One day in July	45°51′54″ N	122°47′26″ W
Waverly Country Club 4th of July Fireworks	Milwaukie, OR	One day in July	45°27′03″ N	122°39′18″ W
Hood River 4th of July	Hood River, OR	One day in July	45°42′58″ N	121°30′32″ W
Winchester Bay 4th of July Fireworks	Winchester Bay, OR	One day in July	43°40′56″ N	124°11′13″ W
Brookings, OR July 4th Fireworks	Brookings, OR	One day in July	42°02′39″ N	124°16′14″ W
Yachats 4th of July	Yachats, OR	One day in July	44°18′38″ N	124°06′27″ W
Lincoln City 4th of July	Lincoln City, OR	One day in July	44°55′28″ N	124°01′31″ W
July 4th Party at the Port of Gold Beach	Gold Beach, OR	One day in July	42°25′30″ N	124°25′03″ W
Gardiner 4th of July	Gardiner, OR	One day in July	43°43′55″ N	124°06′48″ W
Huntington 4th of July	Huntington, OR	One day in July	44°18′02″ N	117°13′33″ W
Toledo Summer Festival	Toledo, OR	One day in July	44°37′08″ N	123°56′24″ W
Port Orford 4th of July	Port Orford, OR	One day in July	42°44′31″ N	124°29′30″ W
The Dalles Area Fourth of July	The Dalles, OR	One day in July	45°36′18″ N	121°10′23″ W
Roseburg Hometown 4th of July	Roseburg, OR	One day in July	43°12′58″ N	123°22′10″ W
Newport 4th of July	Newport, OR	One day in July	44°37′40″ N	124°02′45″ W
Cedco Inc./The Mill Casino Independence Day	North Bend, OR	One day in July	43°23′42″ N	124°12′55″ W
Waldport 4th of July	Waldport, OR	One day in July	44°25′31″ N	124°04′44″ W
Westport 4th of July	Westport, WA	One day in July	46°54′17″ N	124°05′59″ W
The 4th of July at Pekin Ferry	Ridgefield, WA	Saturday before July 4th	45°52′07″ N	122°43′53″ W
Bandon 4th of July	Bandon, OR	One day in July	43°07′29″ N	124°25′05″ W
Garibaldi Days Fireworks	Garibaldi, OR	One day in July	45°33′13″ N	123°54′56″ W

Event name (typically)	Event location	Date of event	Latitude	Longitude
Bald Eagle Days	Cathlamet, WA	One day in July	46°12′14″ N	123°23′17″ W
Independence Day at the Fort Vancouver	Vancouver, WA	One Day in July	45°36′57″ N	122°40′09″ W
Oregon Symphony Concert Fireworks	Portland, OR	One day in August or September.	45°30′42″ N	122°40′14″ W
Astoria Regatta	Astoria, OR	One day in August	46°11′34″ N	123°49′28″ W
Leukemia and Lymphoma Light the Night Fireworks	Portland, OR	One day in October	45°30′23″ N	122°40′4″ W
Veterans Day Celebration	The Dalles, OR	One day in November	45°36′18″ N	121°10′34″ W

* * * * *

Dated: September 24, 2018.

J.C. Smith,

Captain, U.S. Coast Guard, Captain of the Port Columbia River.

[FR Doc. 2018–21186 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2018–OESE–0069]

Proposed Priorities, Requirements, Definitions, and Performance Measures—Comprehensive Centers Program Catalog of Federal Domestic Assistance (CFDA) Number: 84.283B

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary), U.S. Department of Education (Department) proposes priorities, requirements, definitions, and performance measures under the Comprehensive Centers program. The Assistant Secretary may use these priorities, requirements, definitions, and performance measures for competitions in fiscal year (FY) 2019 and later years. We intend to use the priorities, requirements, and definitions to award grants to eligible applicants seeking to provide capacity-building services to State educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

DATES: We must receive your comments on or before October 29, 2018.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How to Use *Regulations.gov*.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this notice of proposed priorities, requirements, definitions, and performance measures, address them to Kim Okahara, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E204, Washington, DC 20202–6132.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kim Okahara, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E204, Washington, DC 20202–6135. Telephone: (202) 453–6930. Email: *kim.okahara@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and performance measures. To ensure that your comments have maximum effect in developing the final priorities, requirements, definitions, and performance measures, we urge you to identify clearly the specific section or sections of the proposed priorities, requirements, definitions, and performance measures that each of your comments addresses and to arrange your comments in the same order as the proposed priorities, requirements, definitions, and performance measures.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and performance measures. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities, requirements, definitions, and performance measures by accessing *Regulations.gov.* You may also inspect the comments in person in Room 3E204, 400 Maryland Avenue SW, Washington, DC, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities, requirements, definitions, and performance measures. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The Comprehensive Centers program supports the establishment of not less than 20 Comprehensive Centers to provide capacity-building services to SEAs, REAs, LEAs, and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

Program Authority: Section 203 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9601 *et seq.*).

Background: The Elementary and Secondary Education Act of 1965

(ESEA), as amended by the Every Student Succeeds Act (ESSA),[1] holds States accountable for closing achievement gaps and ensuring that all children, regardless of race, ethnicity, family income, English language proficiency, or disability, receive a high-quality education and meet challenging State academic standards.

The ETAA authorizes support for not less than 20 grants to local entities, or consortia of such entities, with demonstrated expertise in providing capacity-building services in reading, mathematics, science, and technology, especially to low-performing schools and districts, including the administration and implementation of programs authorized under the ESEA. Under section 203(a)(2) of the ETAA, the Department is required to establish at least one Center in each of the 10 geographic regions served by the Department's Regional Educational Laboratories (RELs) authorized under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The proposed funding for Regional Centers established under the ETAA must take into consideration the school-age population, proportion of economically disadvantaged students, increased cost burdens of service delivery in rural areas, and number of schools identified for improvement under ESEA section 1111(d). Accordingly, the regions for the proposed Regional Centers take into account total SEAs, LEAs, REAs, SEAs, and LEAs eligible for the Small, Rural School Achievement Program and the Rural Low-Income School Program, schools, and the associated RELs.

The Department conducted a competition in 2012 and made five-year awards to 15 Regional Centers and seven Content Centers. The 15 Regional Centers provided direct technical assistance to SEAs within their assigned geographic region through a variety of approaches, such as identifying best practices and resources, providing training, and helping States plan strategically and engage key stakeholders. In addition, seven Content Centers provided specialized support in the following key areas: Standards and assessments implementation, great teachers and leaders, school turnaround, enhancing early learning outcomes, college- and career-readiness and success, building State capacity and productivity, and innovations in learning. Content Centers developed materials, such as guides, tools, and training modules, and they provided direct technical assistance to States in collaboration with Regional Centers.[2]

On March 13, 2017, the Department granted waivers to extend the performance period of the Comprehensive Centers from October 1, 2017, through September 30, 2019 (82 FR 13452). The Department concluded it would be in the public interest to hold a competition only after all new statutory requirements under the reauthorized ESEA went into effect. Delaying the competition until after the Department and States began to implement the new provisions under the ESEA allowed applicants to familiarize themselves with the new statutory requirements and submit applications that better serve States under the new law.

Additionally, pursuant to authority granted to the Secretary in Title III of Division H of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113), and subsequent Consolidated Appropriations Acts, Comprehensive Center services may be provided to the Bureau of Indian Education (BIE) and schools within its jurisdiction.

Proposed Priorities

We propose two priorities. The Assistant Secretary may use one or more of these priorities for the FY 2019 Comprehensive Centers program competition or for any subsequent competition.

Background: In accordance with ETAA section 206, the Secretary established 10 Regional Advisory Committees (RACs) to identify each region's most critical educational needs and develop recommendations for technical assistance to meet those needs. The RACs met and engaged their respective constituencies between July 19, 2016, and August 26, 2016. Final RAC reports were published in October 2016.[3]

While specific needs and recommendations varied by region, the three highest needs identified across all 10 RACs were: College and career readiness; ensuring equity and addressing issues of disproportionality; and supporting the lowest performing schools.[4] Education stakeholders noted that identified needs were not mutually exclusive and there is considerable overlap between implementing the ESEA, ensuring equity, equitable distribution of highly effective teachers and leaders, and improving assessments and accountability systems.[5] Key recommendations for services to meet those needs included: Engage stakeholders from different groups in the SEAs' decision-making processes; facilitate cross-group collaboration to strengthen partnerships; create or compile resources, tools, and best practice guides that incorporate specific contexts (*e.g.,* rural populations or particular subgroups); disseminate evidence-based (as defined in 34 CFR 77.1) research and guides; develop or identify training and professional development; and promote community and stakeholder engagement.[6]

Consistent with the RAC findings and recommendations and the requirements of both the ESEA and the ETAA, the Department believes that the best way to assist State-led reform efforts is to focus Comprehensive Centers on implementing and scaling evidence-based programs, practices, and interventions that directly benefit those eligible to receive Comprehensive Center services (recipients): (1) Recipients that have high percentages or numbers of students from low-income families; (2) recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities; and (3) recipients in rural areas.

In order for States to effectively implement and scale-up evidence-based programs, practices, and interventions, we propose that Regional Centers deliver intensive services to help their assigned States advance through the following phases of implementation: Conducting needs assessments, developing logic models, selecting appropriate evidence-based practices, planning for the implementation of evidence-based practices, implementing evidence-based practices, and evaluating the implementation of evidence-based practices. We also propose that the National Center deliver universal services to help all States address common high-leverage problems, common implementation challenges, and emerging education trends.

[1] Throughout this document, unless otherwise indicated, citations to the ESEA refer to the ESEA, as amended by the ESSA.

[2] In 2016, the Department established a National Comprehensive Center on Improving Literacy for Students with Disabilities pursuant to provisions included in the ESSA. The Center is authorized as part of the Comprehensive Centers program and managed by the Office of Special Education and Rehabilitative Services. See *https://improvingliteracy.org/* for more information.

[3] The full reports are available at: *https://www2.ed.gov/about/bdscomm/list/rac/index.html.*

[4] See page 5, *A Cross-Regional Advisory Committee Analysis* at: *https://www2.ed.gov/about/bdscomm/list/rac/index.html.*

[5] Ibid.

[6] Ibid., pages 5–8.

By delineating which Centers will deliver universal, targeted, and intensive services, the proposed model minimizes duplication of Comprehensive Center resources and enables more coherent, coordinated, and efficient service delivery to all States.

The FY 2019 Comprehensive Centers program logic model provided in this document outlines the expected inputs, types of services, outputs, and outcomes that, when taken together, we believe are more likely to result in organizational structures and systems that ensure high-quality services and supports for disadvantaged students and students from low-income families.

Priority 1: Regional Centers

Regional Centers must provide high-quality intensive capacity-building services to State clients and recipients to identify, implement, and sustain effective evidence-based practices that support improved educator and student outcomes. As appropriate, capacity-building services must assist clients and recipients in: (1) Carrying out approved ESEA Consolidated State Plans with preference given to the implementation and scaling up of evidence-based programs, practices, and interventions that directly benefit recipients that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA secs. 1113(a)(5) and 1111(d)) and recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); (2) implementing and scaling-up evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations; (3) carrying out corrective actions (*e.g.,* addressing audit findings as a result of monitoring conducted by the Department); and (4) working with the National Center to identify trends and best practices, and develop cost-effective strategies to make their work available to as many REAs, LEAs, and schools in need of support as possible.

Applicants must propose to operate a Regional Center in one of the following regions:

Region 1: Massachusetts, Maine, New Hampshire, Vermont
Region 2: Connecticut, New York, Rhode Island
Region 3: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Region 4: Kentucky, Tennessee, Virginia, West Virginia
Region 5: Georgia, North Carolina, South Carolina
Region 6: Alabama, Florida, Mississippi, Puerto Rico, Virgin Islands
Region 7: Indiana, Michigan, Ohio
Region 8: Illinois, Iowa
Region 9: Minnesota, Wisconsin
Region 10: North Dakota, South Dakota, Wyoming
Region 11: Colorado, Nebraska
Region 12: Kansas, Missouri
Region 13: Arizona, Bureau of Indian Education, New Mexico, Oklahoma
Region 14: Arkansas, Louisiana, Texas
Region 15: California, Nevada, Utah
Region 16: Alaska, Oregon, Washington
Region 17: Idaho, Montana
Region 18: Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Palau
Region 19: American Samoa, Hawaii, Republic of the Marshall Islands

Priority 2: National Center

The National Center must provide high-quality universal (*e.g.,* policy briefs) and targeted (*e.g.,* peer-to-peer exchanges and communities of practice that convene SEAs, REAs, LEAs, and schools on a particular topic) capacity-building services to address the following: Common high-leverage problems identified in Regional Center State service plans (as outlined in Program Requirement (a)(1)), common findings from finalized Department monitoring reports or audit findings, common implementation challenges faced by States and Regional Centers, and emerging national education trends. As appropriate, universal and targeted capacity-building services must assist Regional Center clients and recipients to: (1) Implement approved ESEA Consolidated State Plans, with preference given to implementing and scaling evidence-based programs, practices, and interventions that directly benefit entities that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA sec. 1113(a)(5) and 1111(d)) and recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); and (2) implement and scale evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations. The work of the National Center must include the implementation of effective strategies for reaching and supporting as many SEAs, REAs, LEAs, and schools in need of services as possible.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect. See *Proposed Definitions* for all definitions proposed to be used in these requirements.

Background: The Comprehensive Centers will provide capacity-building services at a time when States, districts, and schools are moving forward with implementing approved ESEA Consolidated State Plans and have greater flexibility in supporting and growing local innovations, including evidence-based interventions. In this period of transition, Centers must be responsive to State contexts (*e.g.,* strengths, needs, priorities, and initiatives), knowledgeable of existing State strengths and resources (*e.g.,* business and industry partners), and able to promote self-sufficiency and sustainability.

The Department believes leadership support throughout the SEA is critical to ensuring that Centers provide services that advance State-led efforts to implement and scale-up evidence-based programs, practices, and interventions. When proposing annual service plans to the Department, we propose to require Regional Centers to demonstrate that they consulted with and garnered commitment from Chief State School Officers (CSSOs) or their designees

(clients) prior to carrying out capacity-building services. We also propose to require Centers to identify recipients of capacity-building services, such as SEAs, REAs, LEAs, and school teams, in consultation with the CSSO.

In addition to maintaining strong relationships with SEA leadership, under the proposed requirements, Centers must conduct routine exploration of client and recipient needs. This exploration process must utilize multiple perspectives from the Center, State clients and recipients, and multiple data sources, such as key Federal and State documents. The Department believes that frequent communication with State clients and recipients is necessary for Centers to identify high-leverage problems; assemble and deploy interdisciplinary teams with appropriate subject-matter expertise; meaningfully collaborate with Department-funded technical assistance providers carrying out projects in States; serve as credible partners to national organizations, businesses, and industry; periodically assess client satisfaction; and monitor progress on agreed-upon outcomes, outputs, and milestones. To that end, Centers are encouraged to develop cost-effective strategies for continuous and timely input from their full range of clients on both State and local needs and the quality of services provided.

In order for Regional Centers and the National Center to be credible partners and valued service providers to States, we believe that each Center must implement a robust personnel management system that enables timely access to nationally recognized experts in the content areas (*e.g.,* improving accountability systems, improving standards and assessments, and improving educator talent) identified through routine needs assessments, as well as enduring access to professional staff (*e.g.,* staff with expertise in organizational development, project management, coaching, communications and outreach, and program evaluation).

Note: The details and parameters of the Department's expectations and involvement will be included in the cooperative agreement with each grantee.

(a) *Program Requirements for Regional Centers:*

(1) Develop a service plan annually in consultation with each State's CSSO that includes the following elements: High-leverage problems to be addressed, phase of implementation (*e.g.,* needs assessment), capacity-building services to be delivered, key personnel responsible, key Department-funded technical assistance partners, milestones, outputs, outcomes, and, if appropriate, fidelity measures. The annual service plan must be an update to the Center's five-year plan submitted as part of the Center's application. The annual service plan elements must also correspond to the relevant sections of the program logic model.

(2) Develop and implement an effective personnel management system that enables the Center to efficiently obtain and retain the services of nationally recognized content experts and other consultants with direct experience working with SEAs, REAs, and LEAs. Personnel must demonstrate that they have the appropriate expertise to deliver quality, intensive services that meet client and recipient needs similar to those in the region to be served.

(3) Develop and implement an effective communications system that enables routine and ongoing exploration of client and recipient needs as well as feedback on services provided. The system must enable routine monitoring of progress toward agreed-upon outcomes, outputs, and milestones; periodic assessment of client satisfaction; and timely identification of changes in State contexts that may impact success of the project. The communications system must include processes for outreach activities (*e.g.,* regular promotion of services and products to clients and potential and current recipients, particularly at the local level), regular engagement and coordination with the National Center and partner organizations (*e.g.,* other federally funded technical assistance providers), use of feedback loops across organizational levels (Federal, State, and local), and regular engagement of stakeholders involved in or impacted by proposed services.

(4) Collaborate with the National Center to support client and recipient participation in learning opportunities (*e.g.,* multi-State and cross-regional peer-to-peer exchanges on high-leverage problems) and support participation of Regional Center staff in learning opportunities (*e.g.,* peer-to-peer exchanges on effective coaching systems), with the goal of reaching as many REAs, LEAs, and schools in need of services as possible while also providing high-quality services.

(5) Identify and enter into partnership agreements with regional educational laboratories, national organizations, businesses, and industry for the purpose of supporting States in the implementation and scale-up of evidence-based programs, practices, and interventions as well as reducing duplication of services to States.

(6) Be located in the region the Center serves. The Project Director must be full-time (1.0) and located in the region that the Center serves. Key personnel must also be able to provide onsite services at the intensity, duration, and modality appropriate to achieving agreed-upon milestones, outputs, and outcomes described in State service plans.

(7) Within 90 days of receiving funding for an award under this document, demonstrate that it has secured client and partner commitments to carry out proposed service plans.

(b) *Program Requirements for the National Center:*

(1) Develop a service plan annually in consultation with the Department and Regional Centers. The service plan must take into account commonalities in identified high-leverage problems in Regional Center State service plans, finalized Department monitoring and audit findings, implementation challenges faced by Regional Centers and States, and emerging national education trends. The annual service plan must be an update to the Center's five-year plan submitted as part of the Center's application. The annual service plan must include, at a minimum, the following elements: High-leverage problems to be addressed, capacity-building services to be delivered, key personnel responsible, milestones, outputs, and outcome measures. The annual service plan must also include evidence that the Center involved Regional Centers in identifying targeted and universal services that complement Regional Center services to improve client and recipient capacity.

(2) Maintain the Comprehensive Center network website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility.

(3) Develop and implement an effective personnel management system that enables the Center to retain and efficiently obtain the services of education practitioners, researchers, policy professionals, and other consultants with direct experience with SEAs, REAs, and LEAs. Personnel must have a proven record of publishing in peer-reviewed journals, presenting at national conferences, or delivering quality adult learning experiences that meet client and recipient needs.

(4) Disseminate information (*e.g.,* instructional videos, toolkits, and briefs) and evidence-based practices to a variety of education stakeholders, including the general public, via multiple mechanisms such as the Comprehensive Center network website,

social media, and other channels as appropriate.

(5) Disseminate Regional Center State service plans, Center annual performance reports, and other materials through the Comprehensive Center network website and other channels as appropriate.

(6) Collaborate with Regional Centers to implement learning opportunities for recipients (*e.g.,* multi-State and cross-regional peer-to-peer exchanges on high-leverage problems) and develop learning opportunities for Regional Center staff to address implementation challenges (*e.g.,* peer-to-peer exchanges on effective coaching systems for district teams).

(7) Develop and implement an effective communications system that enables routine and ongoing exploration of Regional Center client and recipient needs. The system must enable routine monitoring of progress toward agreed-upon outcomes, outputs, and milestones; periodic assessment of client satisfaction; and timely identification of changes in Federal or State contexts that may impact success of the project. The communications system must include processes for outreach activities (*e.g.,* regular promotion of services and products to clients and potential and current recipients), use of feedback loops across organizational levels (Federal, State, and local), regular engagement and coordination with the Department, Regional Centers, and partner organizations (*e.g.,* federally funded technical assistance providers), and engagement of stakeholders involved in or impacted by proposed school improvement activities.

(8) Identify potential partners and enter into partnership agreements with other federally funded technical assistance providers, industry, national associations, and other organizations to support the implementation and scaling-up of evidence-based programs, practices, and interventions.

(9) Identify a full-time (1.0 FTE) project director capable of managing all aspects of the Center.

(10) Within 90 days of receiving funding for an award under this document, demonstrate that it has secured client and partner commitments to carry out proposed service plans.

(c) *Application Requirements for All Centers:*

(1) Present applicable State, regional, and local data demonstrating the current needs related to building capacity to implement and scale up evidence-based programs, practices, and interventions. Reference, as appropriate, information related to the Department's finalized monitoring and audit findings.

(2) Demonstrate expert knowledge of statutory requirements, regulations, and policies related to programs authorized under ESEA and current education issues and policy initiatives for supporting the implementation and scaling up of evidence-based programs, practices, and interventions.

(3) Consistent with the priorities and requirements for this program, demonstrate expertise and experience in the following areas:

(i) Managing budgets; selecting, coordinating, and overseeing multiple consultant and sub-contractor teams; and leading large-scale projects to deliver tools, training, and other services to governments, agencies, communities, businesses, schools, or other organizations.

(ii) Designing and implementing performance management processes with staff, subcontractors, and consultants that enable effective hiring, developing, supervising, and retaining a team of subject-matter experts and professional staff.

(iii) Identifying problems and conducting root-cause analysis; developing and implementing logic models, organizational assessments, strategic plans, and process improvements; and sustaining the use of evidence-based programs, practices, and interventions.

(iv) Monitoring and evaluating activities, including, but not limited to: Compiling data, conducting interviews, developing tools to enhance capacity-building approaches, conducting data analysis using statistical software, interpreting results from data using widely acceptable quantitative and qualitative methods, and developing evaluation reports.

(3) Provide copies of memoranda of understanding (MOU) with Department-funded technical assistance providers, including the REL(s) in the region that the Center serves, that are charged with supporting comprehensive, systemic changes in States or Department-funded technical assistance providers with particular expertise (*e.g.,* early learning) that can augment the applicant's ability to align complementary work and jointly develop and implement products and services to meet the purposes of the Centers.

(4) Describe the current research on adult learning principles, coaching, and implementation science that will inform the applicant's capacity-building services, including how the applicant will promote self-sufficiency and sustainability of State-led school improvement activities.

(5) Present a proposed communications plan for working with appropriate levels of the education system (*e.g.,* SEAs, REAs, LEAs, schools) to ensure there is communication between each level and that there are processes in place to support, and continuously assess, the implementation of evidence-based programs, practices, and interventions. The applicant must describe how it will engage in meaningful consultation with a broad range of stakeholders (*e.g.,* principals, teachers, families, community members, etc.). The ideal applicant will propose effective strategies for receiving ongoing and timely input on the needs of its clients and the usefulness of its services.

(6) Present a proposed evaluation plan for the project. The evaluation plan must describe the criteria for determining the extent to which: Milestones were met; outputs were met; recipient outcomes (short-term, mid-term, and long-term) were met; and capacity-building services proposed in State service plans were implemented as intended.

(7) Present a logic model informed by research or evaluation findings that demonstrates a rationale (as defined in 34 CFR 77.1) explaining how the project is likely to improve or achieve relevant and expected outcomes. This logic model must align with the Comprehensive Centers program logic model, communicate how the project will achieve its expected outcomes (short-term, mid-term, and long-term) and provide a framework for both the formative and summative evaluations of the project consistent with the applicant's evaluation plan.[7] Include a description of underlying concepts, assumptions, expectations, beliefs, and theories, as well as the relationships and linkages among these variables, and any empirical support for this framework.

(8) Include an assurance that, if awarded a grant, the applicant will assist the Department with the transfer of pertinent resources and products and maintain the continuity of services to States during the transition to this new award period, as appropriate, including by working with the FY 2012 Comprehensive Center on Building State Capacity and Productivity to migrate products, resources, and other relevant project information to the National Center's Comprehensive Center network website.

(d) *Application Requirements for Regional Centers:* In addition to meeting the application requirements for all

[7] See Figure 1—Comprehensive Centers program logic model (as defined in 34 CFR 77.1) in this document.

Centers in paragraph (c) a Regional Center applicant must—

(1) Describe the proposed approach to intensive capacity-building services, including identification of intended recipients and alignment of proposed capacity-building services to meet client needs. The applicant must also describe how it intends to measure the readiness of clients and recipients to work with the applicant; measure client and recipient capacity across the four capacity-building dimensions, including available resources; and measure the ability of the client and recipients to build capacity at the local level.

(e) *Application Requirements for the National Center:* In addition to meeting the application requirements for all Centers in paragraph (c), a National Center applicant must:

(1) Demonstrate expertise and experience in leading digital engagement strategies to attract and sustain involvement of education stakeholders, including, but not limited to: Implementing a robust web and social media presence, overseeing customer relations management, providing editorial support, and collecting and analyzing web analytics.

(2) Describe the intended recipients of and the proposed approach to targeted capacity-building services, including how the applicant intends to collaborate with Regional Centers to identify potential recipients and how many it has the capacity to reach; measure the readiness and capacity of potential recipients across the four dimensions; and continuously engage potential recipients over the five-year period.

(3) Describe the intended recipients of and the proposed approach to universal capacity-building services, including how the applicant intends to: Measure the quality of the products and services developed to address common high-leverage problems; how many recipients it plans to reach; support recipients in the selection, implementation, and monitoring of evidence-based practices and interventions; and improve knowledge of emerging national education trends.

Proposed Definitions

Background: The Department proposes the establishment of the following definitions for the Comprehensive Centers program. The proposed definitions are intended to (1) clarify expectations for Centers and (2) uniformly apply and utilize terms and definitions from the Department and other federally funded technical assistance Centers.

Proposed Definitions: The Assistant Secretary proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect. The proposed definitions are:

Capacity-building services means assistance that strengthens an individual's or organization's ability to engage in continuous improvement and achieve expected outcomes.

The four dimensions of capacity-building services are:

(1) Human capacity: Development or improvement of individual knowledge, skills, technical expertise, and ability to adapt and be resilient to policy and leadership changes.

(2) Organizational capacity: Structures that support clear communication and a shared understanding of an organization's visions and goals, and delineated individual roles and responsibilities in functional areas.

(3) Policy capacity: Structures that support alignment, differentiation, or enactment of local, State, and Federal policies and initiatives.

(4) Resource capacity: Tangible materials and assets that support alignment and use of Federal, State, private, and local funds.

The three tiers of capacity-building services are:

(1) Intensive: Assistance often provided on-site and requiring a stable, ongoing relationship between the Regional Center staff and their clients and recipients, as well as periodic evaluations and feedback strategies. This category of capacity-building services should support increased recipient capacity in more than one capacity dimension and improved outcomes at one or more system levels.

(2) Targeted: Assistance based on needs common to multiple clients and recipients and not extensively individualized. A relationship is established between the recipient(s), Regional Center(s), and the National Center. This category of capacity-building services includes one-time, labor-intensive events, such as facilitating strategic planning or hosting national or regional conferences. It can also include less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted capacity-building services.

(3) Universal capacity-building services: Assistance and information provided to independent users through their own initiative, involving minimal interaction with National Center staff and including one-time, invited or offered conference presentations by National Center staff. This category of capacity-building services also includes information or products, such as newsletters, guidebooks, policy briefs, or research syntheses, downloaded from the Center's website by independent users. Brief communications by National Center staff with recipients, either by telephone or email, are also considered universal services.

High-leverage problems means problems that (1) if addressed could result in substantial improvements for many students or for key subgroups of students as defined in ESEA section 1111(c) and (d); (2) are priorities for education policymakers, particularly at the State level; and (3) require intensive capacity-building services to achieve outcomes that address the problem.

Milestone means an activity that must be completed. Examples include: Identification of key district administrators responsible for professional development, sharing key observations from needs assessment with district administrators and identified stakeholders, logic model, plan for State-wide professional development, identification of subject matter experts, and conducting train-the-trainer sessions.

Outcomes means effects of receiving capacity-building services. Examples include: 95 percent of district administrators reported increased knowledge; 2 districts reported improved cross-agency coordination; and 3 districts reported identification of 2.0 FTE responsible for professional development.

Outputs means products and services that must be completed. Examples include: Needs assessment, logic model, training modules, evaluation plan, and 12 workshop presentations.

Note: A product output under this program would be considered a deliverable under the open licensing regulations at 2 CFR 3474.20.

Regional educational agency, for the purposes of the Comprehensive Centers program, means ''Tribal Educational Agency'' as defined in ESEA section 6132(b)(3), as well as other educational agencies that serve regional areas.

Service plan project means a series of interconnected capacity-building services designed to achieve recipient outcomes and outputs. A service plan project includes, but is not limited to, a well-defined high-leverage problem, an approach to capacity-building services, intended recipients, key personnel, expected outcomes, expected outputs, and milestones.

Proposed Performance Measures

Background: While we are not required to seek comment on the

Department's Government Performance and Results Act of 1993 (GPRA) performance measures, the Department believes the development of effective performance measures can benefit from public input and invites public comment to help inform the final performance measures for the Comprehensive Centers program. Although the Department will consider the public comments, the Department is not limited by the terms of the proposed performance measures or public comment on those measures in establishing final performance measures. The Department recognizes that the Centers strive to provide useful, high-quality services, while also attempting to reach as many recipients in need of support as possible. We are particularly interested in receiving input on measures that address usefulness to the recipients and the reach and scope of the services provided.

The proposed performance measures are intended to assess the extent to which Comprehensive Centers: (1) Achieved high client [8] satisfaction; (2) served a wide range of recipients; [9] (3) implemented capacity-building activities with fidelity; and (4) achieved recipient outcomes.

Proposed Performance Measures

Measure 1: The extent to which Comprehensive Center clients are satisfied with the quality, usefulness, and relevance of services provided.

Measure 2: The extent to which Comprehensive Centers provide services and products to a wide range of recipients.

Measure 3: The extent to which Comprehensive Centers demonstrate that capacity-building services were implemented as intended.

Measure 4: The extent to which Comprehensive Centers demonstrate recipient outcomes were met.

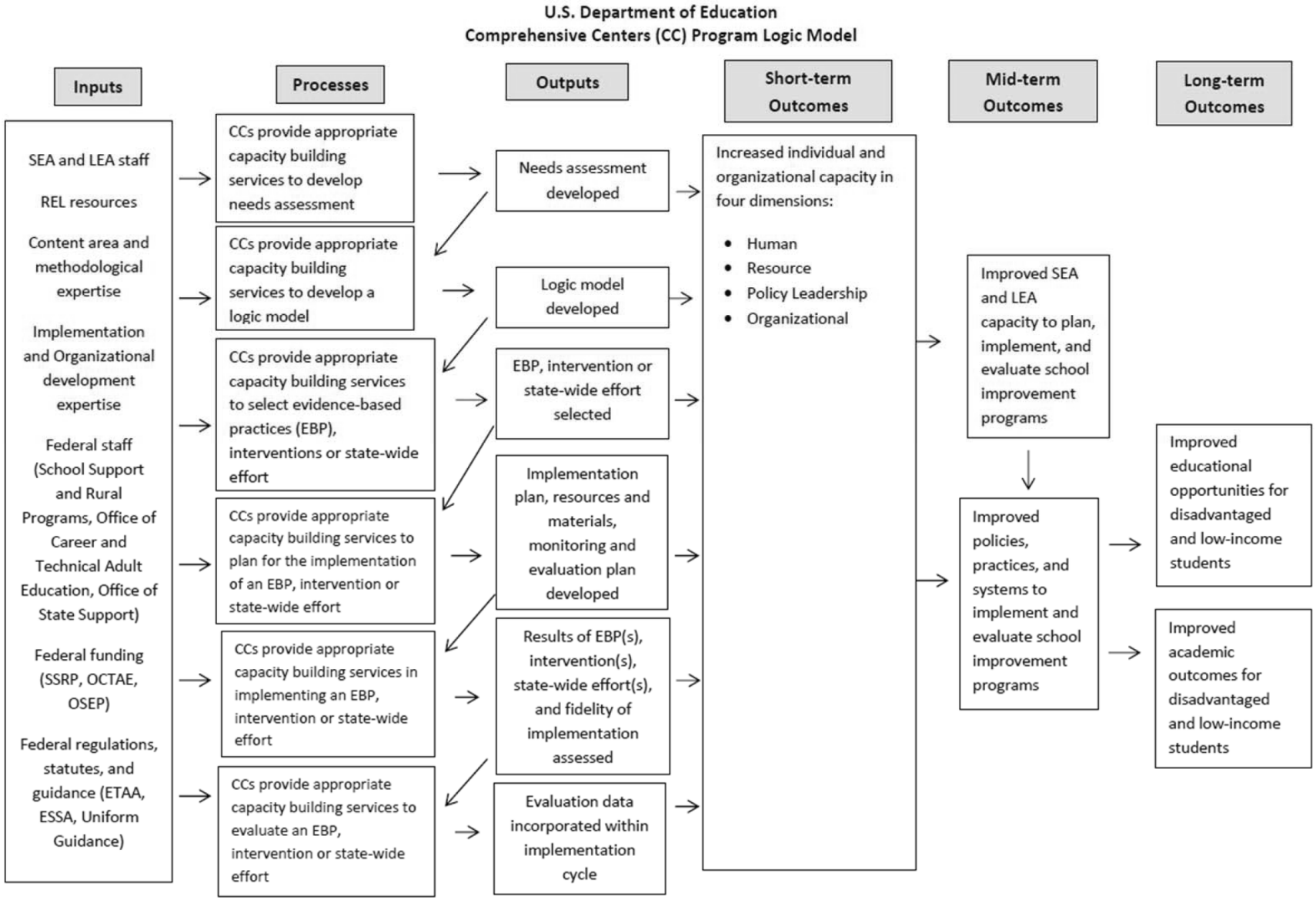
Comprehensive Centers Program Logic Model: Figure 1 is a diagram of the FY 2019 Comprehensive Centers program logic model. A logic model refers to a framework that identifies key project components, inputs, processes, outputs, and short-, mid-, and long-term outcomes and impacts and describes the theoretical and operational relationships among the key project components and relevant outcomes. The Comprehensive Centers program logic model inputs include but are not limited to SEA and LEA staff, implementation and organizational expertise, content area expertise, and Federal funding, staff, and regulations. Processes include capacity-building services that help recipients to develop needs assessments and logic models, select evidence-based practices, and planning for and assisting in the implementation of evidence-based practices. Outputs include products, data, and information to assist in the implementation and evaluation of evidence-based practices, such as needs assessments and logic models. Short-term outcomes include increased individual and organizational capacity in four dimensions: Human, organizational, policy, and resource. Mid-term outcomes include improving SEA and LEA capacity to plan, implement, and evaluate school improvement programs in order to improve policies, practices, and systems to implement and evaluate school improvement programs. Long-term outcomes include improved educational opportunities and academic outcomes for disadvantaged and low-income students.

BILLING CODE 4000–01–P

[8] Client means Chief State School Officers or designees.

[9] Recipients means those eligible for Comprehensive Center services.

Figure 1


U.S. Department of Education
Comprehensive Centers (CC) Program Logic Model
Inputs
Processes
Outputs
Short-term Outcomes
Mid-term Outcomes
Long-term Outcomes
SEA and LEA staff
REL resources
Content area and methodological expertise
Implementation and Organizational development expertise
Federal staff (School Support and Rural Programs, Office of Career and Technical Adult Education, Office of State Support)
Federal funding (SSRP, OCTAE, OSEP)
Federal regulations, statutes, and guidance (ETAA, ESSA, Uniform Guidance)
CCs provide appropriate capacity building services to develop needs assessment
CCs provide appropriate capacity building services to develop a logic model
CCs provide appropriate capacity building services to select evidence-based practices (EBP), interventions or state-wide effort
CCs provide appropriate capacity building services to plan for the implementation of an EBP, intervention or state-wide effort
CCs provide appropriate capacity building services in implementing an EBP, intervention or state-wide effort
CCs provide appropriate capacity building services to evaluate an EBP, intervention or state-wide effort
Needs assessment developed
Logic model developed
EBP, intervention or state-wide effort selected
Implementation plan, resources and materials, monitoring and evaluation plan developed
Results of EBP(s), intervention(s), state-wide effort(s), and fidelity of implementation assessed
Evaluation data incorporated within implementation cycle
Increased individual and organizational capacity in four dimensions:
• Human
• Resource
• Policy Leadership
• Organizational
Improved SEA and LEA capacity to plan, implement, and evaluate school improvement programs
Improved policies, practices, and systems to implement and evaluate school improvement programs
Improved educational opportunities for disadvantaged and low-income students
Improved academic outcomes for disadvantaged and low-income students

BILLING CODE 4000–01–C

Final Priorities, Requirements, Definitions, and Performance Measures

We will announce the final priorities, requirements, definitions, and performance measures in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and performance measures after considering responses to the proposed priorities, requirements, definitions, and performance measures and other information available to the Department. We are not precluded from proposing additional priorities, requirements, definitions, performance measures, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these proposed priorities, requirements, definitions, and performance measures we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771: Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2018, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definitions, and performance measures only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined are necessary for administering the Department's programs and activities.

Summary of Costs and Benefits: The Department believes that the proposed priorities, requirements, definitions, and performance measures would not impose significant costs on eligible research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals that would receive assistance through the Comprehensive Centers program. We also believe that the benefits of implementing the proposed priorities, requirements, definitions, and performance measures justify any associated costs.

The Department believes that the proposed priorities, requirements, definitions, and performance measures would result in the selection of high-quality applications to establish Centers that are most likely to build the capacity of SEAs in order to improve educational outcomes for all students. Through the proposed priorities, requirements, definitions, and performance measures, we seek to provide clarity as to the scope of activities we expect to support with program funds. A potential applicant would need to consider carefully its capacity to implement a project successfully.

The Department further believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and performance measures would be largely limited to paperwork burden related to preparing an application and that the benefits of preparing an application and receiving an award would justify any costs incurred by the applicant. This is because, during the project period, the costs of actually establishing a Center and carrying out activities under a Comprehensive Centers program grant would be paid for with program funds and any matching funds. Thus, the costs of establishing a Comprehensive Center using these proposed priorities,

requirements, definitions, and performance measures would not be a significant burden for any eligible applicant, including a small entity.

Elsewhere in this section under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Paperwork Reduction Act of 1995 (PRA): These proposed priorities, requirements, definitions, and performance measures do not contain any information collection requirements.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action could affect are eligible research organizations, agencies, institutions of higher education, or partnerships among such entities, or individuals. The Secretary believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and performance measures would be limited to paperwork burden related to preparing an application and that the benefits of implementing these proposals would outweigh any costs incurred by the applicant.

Participation in the Comprehensive Centers program is voluntary. For this reason, the proposed priorities, requirements, definitions, and performance measures would impose no burden on small entities unless they applied for funding under the Comprehensive Centers program using the proposed priorities, requirements, definitions, and performance measures. We expect that in determining whether to apply for Comprehensive Center funds, an eligible entity would evaluate the requirements of preparing an application and implementing a Comprehensive Center, and any associated costs, and weigh them against the benefits likely to be achieved by implementing a Center. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application and implementing a project. The likely benefits of applying for a Comprehensive Centers program grant include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application, such as the use of such application to create partnerships with other entities in order to assist SEAs.

The Secretary believes that the proposed priorities, requirements, definitions, and performance measures would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

Further, this proposed regulatory action could help a small entity determine whether it has the interest, need, or capacity to implement activities under the program and, thus, prevent a small entity that does not have such an interest, need, or capacity from absorbing the burden of applying.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. The Secretary invites comments from small eligible entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, requests evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

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 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 via the Federal Digital System 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.

Dated: September 24, 2018.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–21089 Filed 9–27–18; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 18–929]

Wireline Competition Bureau Seeks Comment on Procedures To Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, Wireline Competition Bureau seeks comment on several proposals to implement a process for resolving location discrepancies at issue for Phase II auction support recipients.

DATES: Comments are due on or before October 29, 2018 and reply comments are due on or before November 13, 2018.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90 by the following method:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Wireline Competition Bureau's document in WC Docket No. 10–90; DA 18–929, released September

10, 2018. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554 or at the following internet address: *https://www.fcc.gov/document/wcb-seeks-comment-caf-phase-ii-location-discrepancy-procedures.*

I. Introduction

1. In this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment on several proposals to implement a process for resolving location discrepancies at issue for Phase II auction support recipients. Specifically, the Bureau seeks comment on approaches to identify and resolve apparent discrepancies between the number of model-determined funded locations that Phase II auction support recipients are expected to serve (funded locations) and the actual number of locations that support recipients can serve (actual locations). The Bureau undertakes this action pursuant to the 2018 *Phase II Auction Reconsideration Order,* 83 FR 15982, April 13, 2018, which directed the Bureau to implement a review process to evaluate requests by Phase II auction support recipients who might seek adjustments in defined deployment obligations in exchange for corresponding reductions in support in circumstances where there are not enough actual locations for the provider to serve.

2. Pursuant to the process set forth by the Commission, the Bureau must: (1) Collect probative evidence of actual locations from those Phase II auction support recipients choosing to participate in this process (participants) (including evidence demonstrating that the participants could find no additional actual locations other than those identified with location data); (2) make all such evidence available for review by relevant stakeholders and specify the types of evidence that such stakeholders should submit to challenge such evidence; (3) adjudicate individual claims for relief based on a preponderance of the evidence standard; (4) issue an order when appropriate to reduce deployment obligations and authorized support (on a pro rata basis); and, (5) conduct future audits of evidence submitted by participants. While the Commission set some parameters for certain aspects of this process, it also directed the Bureau to adopt requirements and issue guidance necessary for implementation, consistent with prior Commission direction regarding funded location adjustments. The Commission directed the Bureau to ''release a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both [participants] and commenters.''

II. Discussion

3. *Definition of an Actual Location.* The Bureau seeks comment on how it should define an actual location for purposes of this review process. In the *CAM Inputs Order,* 79 FR 29111, May 21, 2014, the Bureau defined funded locations as residential and small business locations and excluded enterprise locations assumed to be served with higher bandwidth dedicated fiber, such as community anchor institutions, certain large businesses, and wireless towers assumed to be served with higher bandwidth dedicated fiber. In the *Phase II Auction Reconsideration Order,* the Commission stressed that a CAM location is a residential housing unit or small business served with mass market services and rejected commenters' arguments in favor of a more expansive definition. In addition, a location need not be occupied when being reported as a served location, but it cannot be abandoned, derelict, condemned, or otherwise uninhabitable.

4. In general, CAF support recipients cannot report unfinished residential or business locations or ongoing or future real estate developments as served locations in satisfaction of build-out requirements. Given that this review process, however, will provide the basis for a participant's deployment obligation over a 10-year support term, the Bureau seeks comment on whether actual locations should include prospective developments that have a reasonable certainty of coming into existence within the support term. The Bureau seeks comment on the potential evidentiary obstacles to implementing this modification. How might participants learn of such prospective developments and the number of future locations associated with them? Do development plans routinely indicate the number of residential and business units? Is such information available from local governments and authorities, and does the amount and type of information available from such entities vary to a degree that could provide an unfair advantage or disadvantage to participants based on their geographic areas? As an alternative, should the Bureau rely on relevant stakeholders to submit evidence of such locations in their submissions?

5. *Reliability and Validity of Data.* In the *Phase II Auction Reconsideration Order,* the Commission required participants not only to submit location data but also to provide evidence demonstrating that they could not find any additional actual locations in their eligible areas within the state. In doing so, the Commission expressed concern that participants would otherwise report only ''cherry pick[ed]'' locations, *i.e.,* the easiest and least expensive locations to serve, and omit all other locations. The Commission directed the Bureau to identify the information that must be submitted to fulfill this purpose. The Bureau expects that such information must demonstrate the completeness, reliability, and validity of the actual location data submitted by participants. Accordingly, the Bureau proposes that participants in this review process submit a description in narrative form of the methodologies used to identify structures within their eligible areas and distinguishing actual locations from other kinds of structures.

6. The Bureau seeks comment on whether to require that participants use a particular method to identify the geocoordinates and addresses of actual locations or permit carriers to choose their method(s) and correct for inaccuracies. For purposes of reporting deployed locations, USAC has published guidance on three generally accepted methods of geolocation, *i.e.,* (1) GPS in the field, (2) desktop geolocation using web-based maps and imagery, and (3) automated address geocoding (frequently reliant on third-party address data). Each of these methods will produce variable levels of accuracy in terms of identifying the specific situs of the location. For example, desktop geolocation and, to an even greater extent, automated address geocoding may produce interpolated geocoordinates and addresses that do not describe a situs with the required level of granularity to produce accurate results. Such inaccuracies, in turn, increase the likelihood that the list of actual locations produced by participants will exclude certain locations, such as those adjacent to ineligible areas or those that include multiple dwelling units (MDUs). However, the potential shortcomings of geolocation methods may be minimized through specific practices.

7. The Bureau seeks comment on methodological and evidentiary standards necessary to ensure that participants have used geolocation method(s) consistently and comprehensively to accurately identify all actual locations in eligible areas within the state. How would such

standards differ if the Bureau were to allow any of the three geolocation methods or combinations of such methods? For example, should the Bureau require participants submitting location data based on GPS field research to also submit grid data, mileage receipts, weekly logs, or some other kind of evidence to demonstrate that they used GPS to identify every actual location? Should the Bureau require participants relying on desktop geolocation or automated address geocoding to use more than one application or source? Should the Bureau require such participants to disclose details about the application/source data, such as how and when such data were collected? Should the Bureau require participants using such methods to test the reliability and validity of the source/application data when applied to their specific eligible areas? Should the Bureau require all participants (regardless of geolocation method) to submit photographic evidence demonstrating the reasons for excluding structures from their list? The Bureau seeks comment on these proposals.

8. In the *Phase II Auction Reconsideration Order,* the Commission explained that as part of this review process, ''[r]elevant stakeholders would have the opportunity to review and comment on the information [submitted by participants] and to identify other locations . . . .'' The Bureau seeks comment on how the Bureau should define ''relevant stakeholders.'' Specifically, the Bureau proposes that state and local authorities and Tribal governments as representatives of individuals residing in supported areas be allowed to file comments as part of the process. Should the Bureau accept comments from individuals as well? Should the Bureau accept comments from potential customers of participants? If the Bureau were to adopt a broad definition of ''relevant stakeholder'' that includes all potential customers, how does the Bureau verify that the commenter is a potential customer? Should the Bureau avoid collecting personally identifiable information (PII)? As further discussed below, would a protective order sufficiently protect participants from the premature disclosure and/or misuse of their data?

9. The Bureau seeks comment on the evidence that must be submitted by relevant stakeholders to effectively rebut or refute the participant's contentions. The Bureau expects that stakeholders will identify specific locations that they assert are wrongfully omitted from the participant's list of actual locations. The Bureau proposes that stakeholders seeking to report specific locations omitted from the participant's list must submit the same kind of location evidence that the Bureau requires of participants, *i.e.,* latitude and longitude coordinates and addresses (or geographic markers if addresses are unavailable), as well as some additional evidence supporting the existence and placement of the location. The Bureau seeks comment on other forms of evidence that could also prove the existence or situs of individual locations. For example, should the Commission accept billing statements, property records, images or pictures of houses at a specific address or intersection? Should the Bureau accept screenshots of houses from Google maps or other publicly available mapping services? How would the Bureau evaluate and weigh such evidence?

10. The Bureau proposes to dismiss any challenge that lacks some evidentiary showing. The Bureau also proposes not to allow stakeholders to submit alternative evidence of locations based on public or private data sources that the stakeholder cannot conclusively demonstrate to be significantly more accurate than the recipient's data sources. The Bureau seeks comment on these proposals.

11. The Bureau proposes that evidence of omitted locations from relevant stakeholders be submitted in a similar format to the data on actual locations submitted by Phase II auction support recipients. The Bureau intends to review the information submitted by relevant stakeholders and modify lists of actual locations as part of its final adjudicatory decision.

12. *HUBB Reporting of Location Evidence.* The Bureau proposes that participants report tabular data on actual locations, including addresses and geographic coordinates. The Bureau proposes that participants submit such data in the HUBB or a similar web-based data submission application managed by USAC. There are several advantages to this approach. First, the technology used in the HUBB is designed to accept addresses and geographic coordinates for specific locations. Second, the HUBB provides certain data validations, including checks to ensure entries are not duplicates and are located within specific census blocks. Thus, the HUBB facilitates timely correction of data submission errors prior to the close of a filing deadline. Third, the Bureau and USAC have released specific guidance for the reporting of served locations, which may be adapted to the reporting of actual location data for purposes of this review process. Fourth, the use of the HUBB will help alleviate the burden associated with reporting data on served locations (which all Phase II auction support recipients will need to submit in future years) because such data should be readily convertible to the served location evidence. In this regard, while there is no specific requirement that participants deploy to their reported actual locations in future years, the Bureau expects that, in most instances and absent significant future demographic changes, there will be an overlap between actual locations and served locations. As further discussed below, this overlap should be useful for auditing purposes. Finally, the HUBB permits controlled access to data, which obviates the need to create a separate service for this purpose and limits potential delays associated with such a service. As discussed below, controlled access will also help the Bureau protect location data that may implicate privacy concerns.

13. The Bureau seeks comment on these and other ways the web-based functionality may be used to facilitate the submission of actual location evidence and ways that the HUBB may be adapted to fulfill this purpose. The Bureau also seeks comment on whether participants may face specific obstacles or burdens in submitting location data electronically into the HUBB or a similar system.

14. In the *Phase II Auction Reconsideration Order,* the Commission requires participants to file actual location data ''within a year'' of the publication of the Phase II auction closing public notice. The Bureau proposes applying this deadline to all evidence that the Bureau ultimately requires of participants.

15. The Bureau proposes to open a window, 14 days before this deadline and ending on the deadline, for participants to certify, under penalty of perjury, the truth and accuracy of their location data and associated petition. The certification will be mandatory and must be signed by an individual with relevant knowledge (such as an officer of the company), certifying under penalty of perjury that the participant has engaged in due diligence to verify statements and evidence presented in this challenge process and that such information is accurate to the best of the certifying party's knowledge and belief. By opening a filing window rather than permitting participants to certify their data and information at any time during the first year, the Bureau would help ensure that a participant's data reflects the most recent facts on the ground and that the participant does not omit new or prospective building developments

coming into being toward the end of the one-year time frame for compiling and submitting such evidence.

16. Alternatively, the Bureau could permit certifications at any time prior to the final deadline but would also require participants to monitor their supported areas within the state, add any new locations (or potential developments) or remove any locations determined to be ineligible prior to the two-week time frame proposed above and recertify their data. The Bureau emphasizes that regardless of when participants submit their data and information, they will have a good faith obligation to amend or correct data that they later discover to be inaccurate or incomplete. Such obligation will extend until completion of the 10-year funding term. The Bureau seeks comment on these options.

17. The Bureau proposes that it reviews the actual location evidence submitted by Phase II Auction support recipients and, within 60 days of their filing deadline, announce *prima facie* cases for adjustment based on the submission of relevant and complete data. The Bureau proposes that relevant stakeholders will then have 90 days to submit evidence and rebuttals. Like the data and related filings of participants in this review process, any submission by a relevant stakeholder must be signed by an individual with relevant knowledge, certifying under penalty of perjury, that the information presented is accurate to the best of his or her knowledge and belief. Once this 90-day timeframe expires, the participant will have 15 days to submit a reply. The Bureau seeks comment on the proposed timeframes by which relevant stakeholders must submit their evidence to challenge participant's data and by which participants may reply to such challenge. Specifically, the Bureau seeks comment on whether these proposed timeframes adequately serve our goal of providing a meaningful opportunity for challenge, while concluding this challenge process in a reasonable timeframe. The Bureau proposes that strict adherence to these deadlines is necessary to provide an adequate opportunity for relevant stakeholders and participants to contest data and findings.

18. Consistent with standards of review adopted for similar review processes, the Commission adopted a preponderance of the evidence standard to evaluate the merits of participants' claims for adjustment of their defined deployment obligations. The Bureau also proposes that participants bear the burden of persuasion. Accordingly, if the Bureau finds that the participant has failed to demonstrate that it is more likely than not that the CAM-estimated number of funded locations do not reflect the facts on the ground, the Bureau will not modify the defined deployment obligation. The Bureau notes that placing the burden of persuasion on the participant encourages the participant to fully present its evidence and further tempers any incentive to ''cherry pick'' locations.

19. The Commission has directed that, in circumstances where the Bureau determines that modification of the participant's number of funded locations is warranted, it must reduce the authorized support on a pro rata basis. As part of its adjudicatory order, the Bureau will re-authorize support at the new reduced amount. The Bureau proposes that, given the timing of this review process, if the participant has already been authorized to receive support, the Bureau will also order a reduction in future payments for the remainder of the support term proportionally to reflect the total amount of reduction. The Bureau also proposes to allow participants to promptly adjust their letters of credit to reflect the new authorized funding amount once the Bureau's order modifying the authorized support is issued. The Bureau seeks comment on these proposals.

20. The Bureau notes that the Commission treats location data for served locations as non-confidential and has required the public disclosure of such information. The public interest in accessing these data to ensure transparency and oversight, however, is significantly greater than in accessing evidence of actual locations, particularly before the Bureau issues an order concluding its adjudication of the individual merits of a participant's claim. Further, unlike evidence of served locations, unverified lists of actual locations and related evidence may indirectly reveal future deployment plans or other information that could be used to the competitive disadvantage of participants. The responsive comments of relevant stakeholders could potentially link addresses or other information to specific individuals. Such data, if published, could raise important privacy concerns and trigger statutory protections against agency disclosures, such as outlined in the Privacy Act of 1974.

21. The Bureau seeks comment on what steps it should take to ensure that privacy and competitive interests are not compromised. Should the Commission adopt a protective order to control stakeholders' use of participants' information pending completion of the review process? Should the Bureau require participants and/or relevant stakeholders to seek confidential treatment of their information pursuant to section 0.459 of the Commission's rules or should the Bureau adopt a presumption that such information is confidential, at least until the adjudicatory process is complete? Should or must the Bureau review and aggregate this evidence and release it for public consumption after the Bureau adjudicates the request? Should or must the Bureau release such evidence and findings for all participants at the same time, or can it do so on a rolling basis as it resolves individual requests for relief? The Bureau seeks comment on these issues.

22. Phase II auction support recipients, like all recipients of high-cost support, are subject to compliance audits and other investigations to ensure compliance with program rules and orders. As USF administrator, USAC has the authority and responsibility to audit USF payments. The Commission has designated the Managing Director as the agency official responsible for ensuring ''that systems for audit follow-up and resolution are documented and in place, that timely responses are made to all audit reports, and that corrective actions are taken.'' The Commission resolves contested audit recommendations and findings, either on appeal from the Bureau or directly, if the challenge raises novel questions of fact, law, or policy.

23. In the *Phase II Auction Reconsideration Order,* the Commission also specified that any data submitted by participants pursuant to this review process is subject to potential future audit. The Commission directed the Bureau to adopt parameters of such an audit process. Accordingly, the Bureau seeks comment on this audit process. Specifically, should the Bureau define circumstances that will trigger an audit, such as defaulting on deployment obligations in subsequent years? Should an audit be triggered if a participant frequently misreports served locations evidence? Should an audit be triggered if, at the end of the support term, the reported served locations differ significantly from the reported actual locations—for instance, if 30 percent (or some higher percentage) of the reported served locations are not included on the actual locations list? Should the Bureau audit all participants within a set time frame, for instance, in the two years following any modification to a defined deployment obligation?

24. Under section 54.320(b) of the Commission's rules, all recipients of

high-cost support must maintain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules and must maintain such records for a minimum of 10 years from the receipt of funding. Are the current record retention requirements adequate to facilitate audits of participants? Are any additional measures necessary to ensure that participants retain and provide the relevant and complete documentation to auditors upon request?

25. If, during the audit, it is discovered that the participant failed to report actual locations when it certified its data, what are the appropriate consequences? Should the Bureau retroactively require that the participant deploy to the CAM estimated number of locations despite the reduction in support? If the participant then defaults by failing to build to the CAM estimated number of locations, should the participant be required to refund support in accordance with default procedures? Should the Bureau treat the participant as if it has defaulted on its deployment obligations in total and seek recovery of all authorized support? Should consequences differ if it is determined that the participant intentionally omitted actual locations or was grossly negligent in researching locations? The Bureau notes that if it determines that the participant intentionally or negligently misrepresented actual locations, the filing may trigger possible forfeiture penalties.

26. The Bureau seeks comment on these proposals and on any alternatives. If commenters believe different procedures would better serve the Commission's goals of granting Phase II auction support recipients relief from defined deployment obligations that may be impossible to fulfill (as opposed to merely difficult or more expensive to fulfill), and providing funding recipients with some certainty about their defined deployment obligations as they plan deployments for future years (without prematurely excluding ongoing developments), they should provide a detailed description of their preferred alternative. The Bureau welcomes suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

III. Procedural Matters

A. Initial Paperwork Reduction Act

27. This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

28. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

29. The Bureau is implementing a process, adopted by the Commission in its *Phase II Auction Reconsideration Order,* for the modification of defined deployment obligations where the number of locations within a funding recipient's bid areas within the state (actual locations) fall short of the CAM-estimated number of locations (funded locations). The Commission directed the Bureau to gather evidence of, actual locations from Phase II auction support recipients participating in this review process (participants), included addresses and geocoded data (actual location data) within one year of the release of the Phase II auction closing public notice as well as additional evidence, as specified by the Bureau, demonstrating no additional actual locations could be found; to enable relevant stakeholders to challenge such evidence and submit additional evidence of actual locations; to adjudicate participants' claims for relief based on a preponderance of the evidence standard; and, where such standard has been met, to reduce participants' obligations and support on a pro rata basis. The Commission also specified the data and information submitted by participants in support of their claims for relief are subject to future audit. The Commission directed the Bureau to adopt rules, requirements, deadlines, and other measures necessary to implement its review process after providing public notice and seeking public comment.[7]

30. This Public Notice proposes that participants file actual location data in the High Cost Broadband Portal (HUBB) maintained by the Universal Service Administrative Company (USAC), and separately file a narrative petition detailing the reliability and validity of such data to demonstrate that no additional locations may be found. This Public Notice seeks comment on the various forms of evidence that should be considered for purposes of determining reliability and validity as well as the kinds of evidence that relevant stakeholders should submit to effectively challenge participants' evidence. The Bureau emphasizes that it will not consider assertions about actual locations that are offered without supporting evidence. The Bureau clarifies the Commission's one-year deadline for the submission of location data and proposes that participants file their associated petitions by this deadline. The Bureau also proposes specific deadlines for the filing of petitions by relevant stakeholders and the filing of replies. The Bureau proposes that both participants and relevant stakeholders certify, under penalty of perjury, the truth and accuracy of all such submissions. In addition, the Bureau seeks comment on various proposals relating to the adjudication of requests for support modifications and future auditing processes relating to participants' submissions.

31. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

32. Our actions, over time, may affect small entities that are not easily categorized at present. The Bureau therefore describes here, at the outset, three comprehensive small entity size

standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

33. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

34. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Bureau estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

35. In this Public Notice, the Bureau seeks public comment on procedures for implementing a review process for the modification of funding awarded under the Connect America Phase II auction. Certain proposals could result in additional reporting requirements.

36. If the Bureau implements the Phase II challenge process articulated above, commenters, including small entities, wishing to participate would be required to comply with the listed reporting and evidentiary standards. This includes filing a challenge along with supporting evidence and serving a copy of the challenge on any challenged party within a specified timeframe.

37. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

38. The Public Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Public Notice, and the Commission will consider alternatives that reduce the burden on small entities.

39. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Public Notice, in reaching its final conclusions and taking action in this proceeding. The reporting requirements in the Public Notice could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

40. In the Public Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Small entities may be more likely to seek relief from their obligations to serve the CAM-estimated number of funded locations. Small entities may also be more likely to challenge participants' requests for relief. The Bureau will consider comments from small entities as to whether a different standard should apply.

41. *Permit but Disclose Ex Parte Contact.* For the purposes of the Commission's *ex parte* rules, information filed in this proceeding will be treated as initiating a permit-but-disclose proceeding under the Commission's rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. Filing Requirements

42. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://fjallfoss.fcc.gov/ecfs2/.*

43. *Paper Filings.* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings submitted to the FCC must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *Hand or Messenger Delivery.* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC

Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours are 8:00 a.m. to 7:00 p.m.

• *Commercial Overnight Mail.* Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• *U.S. Postal Service First-Class, Express, and Priority Mail.* U.S. Postal Service mail must be addressed to 445 12th Street SW, Washington DC 20554.

44. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

45. For additional information on this proceeding, contact Nissa Laughner at (202) 418–1358 or *Nissa.Laughner@fcc.gov,* of the Wireline Competition Bureau, Telecommunications Access Policy Division.

Federal Communications Commission.

Ryan Palmer,

Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2018–21091 Filed 9–27–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 180702603–8603–01]

RIN 0648–BH98

Advance Notice of Proposed Rulemaking; Request for Information

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS hereby publishes an advance notice of proposed rulemaking to solicit comments on modifying the Atlantic Large Whale Take Reduction Plan's Massachusetts Trap/Pot Restricted Area and the Great South Channel Trap/Pot Restricted Area to allow trap/pot fishing that does not use vertical buoy lines (referred to as buoy-lineless or ropeless gear) prior to gear retrieval. NMFS is requesting comments on this possible action including whether opening these areas that are currently closed to trap/pot fishing would provide an economic benefit or incentive for buoy-lineless fishing development and to assess interest from industry for buoy-lineless fishing in these areas.

DATES: Information related to this document must be received by close of business on October 29, 2018.

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

Electronic Submission: Submit all electronic public comments via the Federal e-rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0082.*

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

-OR-

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Allison Rosner NMFS Protected Resources Division, Greater Atlantic Region, 978–282–8462, *allison.rosner@noaa.gov* or Kristy Long, NMFS Office of Protected Resources, 301–427–8402, *kristy.long@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Large whale entanglements resulting in mortalities and serious injuries still occur at levels that, for North Atlantic right whales, exceed the allowable levels established by the Marine Mammal Protection Act (MMPA). Under the MMPA, NMFS is required to reduce the mortality and serious injury to three strategic large whale stocks—the Western Stock of North Atlantic right whales (*Eubalaena glacialis*), the Gulf of Maine stock of humpback whales (*Megaptera novaeangliea*), and the Western North Atlantic stock of fin whales (*Balaenoptera physalus*)—incidentally taken in commercial fisheries to below the potential biological removal level for each stock.

Currently the Atlantic Large Whale Take Reduction Plan (Plan) has two seasonal trap/pot closures: Massachusetts Restricted Area (50 CFR 229.32(c)(3)) and the Great South Channel Trap/Pot Closure (50 CFR 229.32(c)(4)). Massachusetts Restricted Area prohibits fishing with, setting, or possessing trap/pot gear in this area unless stowed in accordance with § 229.2 from February 1 to April 30. Great South Channel Trap/Pot Closure prohibits fishing with, setting, or possessing trap/pot gear in this area unless stowed in accordance with § 229.2 from April 1 through June 30.

In 2003, the Atlantic Large Whale Take Reduction Team (Team) agreed to manage entanglement risk by first reducing the risk associated with groundlines and then reducing the risk associated with vertical lines in commercial trap/pot and gillnet gear. Risk reduction of groundlines was addressed in October 2007 with the implementation of the sinking groundline requirement for all fisheries throughout the east coast (72 FR 57104, October 5, 2007). In 2009, at the request of the Team, NMFS also investigated the feasibility of opening a buoy-lineless (or ropeless) fishing gear testing site in the Great South Channel trap/pot and gillnet closure area. At the time, the Agency determined that technological and economic incentives were not sufficient for this to be successful, and that other management actions to reduce entanglement risks caused by vertical lines should be prioritized.

In 2014, the Plan was amended (79 FR 36586, June 27, 2014) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. This amendment included gear modifications, gear setting requirements, an expanded seasonal trap/pot closure (Massachusetts Restricted Area) and gear marking for both trap/pot and gillnet fisheries. The original Massachusetts Restricted Area was a seasonal closure from January 1 through April 30 for all trap/pot fisheries. In a subsequent Plan amendment, the boundary for the Massachusetts Restricted Area was expanded by 900 square miles (2.59 square kilometers), and the start date changed to February 1 (79 FR 73848, December 12, 2014).

In response to continued North Atlantic right whale population decline and associated entanglements as well as recent technological developments with ropeless fishing design, NMFS convened a subgroup to investigate the feasibility of buoy lineless options that may help reduce future entanglement risk. The ''ALWTRT Ropeless Feasibility Subgroup'' met March 15–16, 2018, in Providence, RI, to assess the current research available on ropeless fishing gear prototypes, the feasibility of this technology, and discuss data gaps. From this meeting, the subgroup suggested that the Team and NMFS revisit the previous discussion to open closed areas to buoy-lineless trap/pot fishing. This could incentivize cooperative research that may lead to further technological developments for buoy-lineless fishing.

This notice announces the Agency's preparation for possible rulemaking and associated analysis of changing the Massachusetts Restricted Area and Great South Channel closures to buoy-lineless trap/pot gear areas under the MMPA and to request comments and information regarding this possibility. In order to commercially fish in these areas, fishermen must still comply with the Federal American lobster regulations, state regulations, and other Plan requirements (*e.g.* use of sinking groundlines). Given the surface system requirements (*e.g.* mandated radar reflector use) under the Interstate Fishery Management Plan for American Lobster, in order to participate in trap/pot fishing that does not use vertical lines except during the active haul back of gear, interested parties with federal permits will be required to apply for an Exempted Fishing Permit (EFP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. EFPs may be issued for activities in support of fisheries-related research. When applying for an EFP, the applicant must include information on the research plan including principal investigator, project objectives, research description, gear and effort information, participating vessel information, any anticipated impacts on marine mammals or endangered species, and exemptions requested. If an EFP is authorized, trip reporting and project summary reports will also be required, and conditions on number of participants or traps or on areas of experimental fishing may be required. EFPs apply to Federal waters only; however, Plan requirements apply to both state and federal waters. Therefore, additional exemptions and restrictions from state regulations will be required from the applicable state authority. States may choose to adopt the Team conditions when granting these state authorizations. More information on EFPs can be found on GARFO's website: *www.greateratlantic.fisheries.noaa.gov/sustainable/research/.*

Findings from this ANPR and supporting analyses will be presented at an upcoming Team meeting (scheduled for October 2018) for consideration. If at that time the Team recommends that NMFS move forward with allowing the experimentation of buoy-lineless fishing within the closure areas, NMFS will work with the Team to develop best practices that may be considered as conditions under the EFP (*e.g.,* ideal locations within the management areas, ways to reduce gear conflict with other fixed or mobile gears, reporting to law enforcement, etc.). This guidance will be useful for EFP applicants developing the research plans required by the application process. Notices of our preliminary determination to approve an EFP are published in the **Federal Register** for a 15-day public comment period; therefore, the public will have an opportunity to review and comment upon any such requests. If the Team recommends this approach, this Advance Notice of Proposed Rulemaking will be followed by a proposed and final rulemaking.

Request for Comments

NMFS requests comments on potential impacts from this initiative including economic and habitat impacts, best discrete locations for vertical lineless trap/pot fishing, ways gear conflicts can be reduced, other guidelines for ropeless gear use to consider in the development of best practices, and to solicit industry interest for participating in these types of fisheries. NMFS also requests expressions of interest from potential applicants.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: September 24, 2018.

Samuel D. Rauch, III,

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

[FR Doc. 2018–21115 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 83, No. 189

Friday, September 28, 2018

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

Food Safety and Inspection Service

[Docket No. FSIS–2018–0014]

Petition To Permit Waivers of Maximum Line Speeds for Young Chicken Establishments Operating Under the New Poultry Inspection System; Criteria for Consideration of Waiver Requests for Young Chicken Establishments To Operate at Line Speeds of Up to 175 Birds per Minute

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Response to comments and information on waiver criteria.

SUMMARY: The Food Safety and Inspection Service (FSIS) is responding to public comments on a petition submitted by the National Chicken Council (NCC) on September 1, 2017, and is also providing information on the criteria applicable to line speed waivers for young chicken establishments. The NCC submitted a petition to FSIS requesting that the Agency establish a waiver program to permit young chicken slaughter establishments to operate without line speed limits if they participate in the New Poultry Inspection System (NPIS) and the FSIS *Salmonella* Initiative Program (SIP) and develop a system for monitoring and responding to loss of process control. FSIS issued a response denying the petition on January 29, 2018. The response explained that instead of establishing a separate line speed waiver program under the conditions requested in the petition, FSIS would make available criteria that it will use under its existing waiver procedures to consider individual waiver requests from young chicken establishments to operate at line speeds of up to 175 bpm.

FSIS published these criteria in the February 23, 2018, *Constituent Update.* This notice provides additional information on the criteria that FSIS will use to evaluate new line speed waiver request submissions. Additionally, FSIS is announcing that the 20 young chicken establishments already operating under line speed waivers must meet the new criteria to remain eligible for the waiver. FSIS will issue these establishments new waiver letters that reflect the eligibility criteria described in this document. Failure by establishments already operating under line speed waivers to meet the new criteria within 120 days of receipt of these letters may result in the revocation of the waivers.

FOR FURTHER INFORMATION CONTACT: Roberta Wagner, Assistant Administrator, Office of Policy and Program Development, FSIS, USDA; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2014, FSIS published a final rule that, among other things, established the NPIS as an additional inspection system for young chicken and all turkey slaughter establishments (79 FR 49566). The NPIS did not replace FSIS's other poultry slaughter inspection systems, and young chicken and turkey slaughter establishments that do not choose to operate under the NPIS may continue to operate under their current inspection system.[1] Under the inspection systems other than the NPIS, FSIS online inspectors positioned along the slaughter line are responsible for identifying unacceptable carcasses and parts, examining carcasses for visual defects, and directing establishment employees to take appropriate corrective actions if the defects can be corrected through trimming and reprocessing. The maximum line speeds authorized under these inspection systems reflect the time it takes for an inspector to effectively perform the online carcass inspection procedures required for the system. The fastest line speed authorized for a non-NPIS young chicken inspection system is 140 birds per minute (bpm) with four online inspectors, *i.e.,* 35 bpm per inspector, under the Streamlined Inspection System (SIS) for young chickens.

Under the NPIS, establishment employees sort carcasses and remove unacceptable carcasses and parts before the birds are presented to an online inspector located at the end of the line before the chiller. Because the online inspector under the NPIS is presented with carcasses that have been sorted, washed, and trimmed by establishment employees, and are thus much more likely to pass inspection, the inspector is able to conduct a more efficient and effective online inspection of each bird processed.

The NPIS was informed by the Agency's experience under the Hazard Analysis and Critical Control Point (HACCP)-Based Inspection Models Project (HIMP) pilot study. FSIS's experience under the HIMP pilot showed that online inspectors in HIMP young chicken establishments were able to conduct an effective online inspection of each carcass when operating at a line speed of up to 175 bpm and that HIMP establishments were able to maintain process control at the line speeds authorized under HIMP. Based on FSIS's experience under HIMP, the Agency initially proposed 175 bpm as the maximum line speed for NPIS young chicken establishments (77 FR 4408). However, after considering the public comments submitted on the proposed rule, FSIS concluded that it was important to assess young chicken establishments' ability to maintain process control as they implement changes to operate under the NPIS (79 FR 49591). Therefore, the final rule that established the NPIS provided for a maximum line speed of 140 bpm for young chicken establishments, instead of 175 bpm as was proposed, with an exception for the 20 young chicken establishments that participated in the HIMP pilot study.

In the preamble to the final rule, FSIS explained that it decided to grant waivers to the 20 young chicken HIMP establishments to permit them to continue to operate at lines speeds of up to 175 bpm after they convert to NPIS because data from the HIMP pilot demonstrated that these establishments were capable of consistently producing safe, wholesome and unadulterated product and meeting pathogen reduction and other performance standards when operating under line speeds authorized under HIMP (79 FR 49591). The preamble to the final rule

[1] Poultry slaughter inspections systems other than the NPIS include the Streamlined Inspection System (SIS), New Line Speed Inspection System (NELS), the New Turkey Inspection System (NTIS), and Traditional Inspection.

also explained that if an NPIS establishment operating under a line speed waiver goes out of business or decides to give up its waiver, FSIS will select another establishment to take its place (79 FR 49583). Thus, when it published the final rule, FSIS planned to continue to provide waivers for up to 20 young chicken establishments to operate at up to 175 bpm under the NPIS.

In the preamble to the final rule, FSIS also explained that ''[a]fter the NPIS has been fully implemented on a wide scale, and the Agency has gained at least a year of experience under the new system, FSIS intends to assess the impact of changes adopted by establishments operating under the NPIS by evaluating the results of the Agency's *Salmonella* and *Campylobacter* verification sampling, reviewing documentation on establishments' [other consumer protection] performance, and other relevant factors'' (79 FR 49591). The preamble also stated that ''once the NPIS is fully implemented at most establishments, data from these establishments can be used to compare against data from the [former HIMP] young chicken establishments operating under the [line speed] waivers'' (79 FR 49591). Thus, when FSIS published the final rule establishing NPIS, it made clear that the Agency would continue to consider line speeds at which establishments are capable of consistently producing safe, wholesome, and unadulterated product and are meeting pathogen reduction and other performance standards.

National Chicken Council Petition and FSIS Response

Petition. On September 1, 2017, NCC petitioned [2] FSIS to implement a waiver system to exempt young chicken slaughter establishments from the regulation that prescribes 140 bpm as the maximum line speed under the NPIS (9 CFR 381.69(a)). As conditions for the waiver, the petition requested that establishments be required to opt into the NPIS, participate in SIP,[3] and develop a system for monitoring and responding to loss of process control. According to the petition, the 140 bpm maximum line speed for the NPIS has deterred many young chicken establishments from opting into the NPIS. The petition stated that FSIS has the authority to implement such a wavier program under 9 CFR 381.3(b), which provides that ''[t]he Administrator may, in specific cases, waive for limited periods . . . any provision of the regulations . . . to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements: *Provided,* [t]hat such waivers . . . are not in conflict with the purposes or provisions of the [Poultry Products Inspection Act (PPIA)].''

The petition asserted that the requested waiver program will encourage more establishments to opt into the NPIS and will promote and enhance Agency and industry efficiency without compromising food safety, worker safety, or animal welfare. The petition referenced information from the 2011 HIMP pilot study,[4] a 2001 published study, a report from the Department of Labor (DOL) Bureau of Labor Statistics (BLS), and an unpublished industry survey conducted by NCC in 2017 to support the requested action. The petition also stated that the current line speed regulation imposes costs on the industry, creates competitive disparities among U.S. poultry establishments, and places U.S. poultry establishments at a competitive disadvantage with international competitors. The petition said that allowing establishments to operate without line speed limits is consistent with Executive Order (E.O.) 13771 on ''Reducing Regulation and Controlling Regulatory Costs.''

Consistent with its regulations on petitions, FSIS posted the NCC petition on the FSIS website and received comments from interested persons on the petition (9 CFR 392.6 and 392.7). FSIS also announced the availability of the petition in the October 13, 2017, *Constituent Update* [5] and explained that, based on communications with stakeholders, the Agency anticipated that it would receive a significant number of additional comments on the petition. Therefore, to facilitate submission and public posting of comments on the petition, FSIS announced that interested persons could submit comments online through the Federal eRulemaking Portal at: *https://www.regulations.gov.* Comments were accepted online until December 13, 2017, and FSIS considered all timely comments on the petition as part of its review of the petition (9 CFR 392.7).

FSIS Response to Petition. On January 29, 2018, FSIS sent a response to the NCC denying the petition.[6] In its response, FSIS explained that it had decided to deny the petition because the Agency already has detailed procedures for the submission of new technology notifications and protocols and requests for waivers from regulatory requirements. The response noted that these procedures include a process for submitting requests for the use of alternative procedures, such as faster line speeds, that would require regulatory waivers under the SIP. The response further stated that because FSIS has already implemented procedures for establishments to request regulatory waivers, the Agency determined that it was not necessary to establish a separate system to provide line speed waivers to young chicken establishments operating under the NPIS.

In addition to denying the request to establish a line speed waiver program, the January 2018 response also stated that FSIS was denying NCC's request to permit waivers that would allow NPIS young chicken establishments to operate without a maximum line speed. As noted in the response, the preamble to the final rule that established the NPIS stated that, based on its experience under the HIMP pilot, FSIS found that inspectors are able to conduct an effective online inspection of each carcass at line speeds of up to 175 bpm (79 FR 49592). The response noted that the petition did not include data to demonstrate that online inspectors can conduct an effective carcass-by-carcass inspection at line speeds faster than those authorized under HIMP.

In addition to denying the petition, the response noted that FSIS now has over a year of documented process control history for many young chicken establishments operating under the NPIS. The response explained that based on this history, FSIS has decided to consider requests for waivers from young chicken establishments in addition to the current 20 HIMP establishments, to operate at line speeds of up to 175 bpm. The response also explained that in the near future, FSIS

[2] NCC petition available at: *https://www.fsis.usda.gov/wps/wcm/connect/7734f5cf-05d9-4f89-a7eb-6d85037ad2a7/17-05-Petition-National-Chicken-Council-09012017.pdf?MOD=AJPERES.*

[3] Under SIP, FSIS grants establishments a waiver of the regulation under the condition that the establishment collects and analyzes samples for microbial organisms and shares the results with FSIS.

[4] The 2011 HIMP Report is available at: *https://www.fsis.usda.gov/wps/wcm/connect/fcd9ca3e-3f08-421f-84a7-936bc410627c/Evaluation_HACCP_HIMP.pdf?MOD=AJPERES.*

[5] The October 13, 2017 Constituent Update is available at: *https://www.fsis.usda.gov/wps/wcm/connect/a54d5331-372e-4df3-ac4d-8c2953969039/ConstiUpdate101317.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=a54d5331-372e-4df3-ac4d-8c2953969039.*

[6] FSIS's January 29, 2018, response to the petition is available at: *https://www.fsis.usda.gov/wps/wcm/connect/235092cf-e3c0-4285-9560-e60cf6956df8/17-05-FSIS-Response-Letter-01292018.pdf?MOD=AJPERES.*

intends to make available criteria that it will use to consider these waiver requests.

Criteria for FSIS To Consider Line Speed Waivers

On February 23, 2018, in the *Constituent Update,* FSIS announced the criteria that the Agency will use to consider requests from NPIS young chicken slaughter establishments to operate at line speeds of up to 175 bpm and outlined the submission requirements.[7] As provided in that document, to be eligible for a line speed waiver, a young chicken establishment:

- Must have been operating under the NPIS for at least one year, during which time it has been in compliance with all NPIS requirements;
- Must be in *Salmonella* performance standard category 1 or 2 for young chicken carcasses;
- Must have a demonstrated history of regulatory compliance. More specifically, the establishment has not received a public health alert[8] for the last 120 days; has not had an enforcement action as a result of a Food Safety Assessment (FSA) conducted in the last 120 days; and has not been the subject of a public health related enforcement action in the last 120 days; and
- Must be able to demonstrate that the new equipment, technologies, or procedures that allow the establishment to operate at faster line speeds will maintain or improve food safety.

In addition to outlining the criteria that FSIS will consider to determine whether to grant a line speed waiver, the February 23, 2018 *Constituent Update* also describes the documentation that establishments will need to include with their waiver request submissions. As stated in the *Constituent Update,* the waiver request submission will need to include documentation that:

- Provides details about the establishment's HACCP system, including how the establishment addresses the inhibition and reduction of *Salmonella;*
- Demonstrates that the establishment has effective process control by submitting one year of microbial data, methodology for evaluating that microbial data (*e.g.,* indicator organism data in a process control chart identifying upper and lower control limits), correlation of that microbial data to the establishment's sanitary dressing process control data, correlation of that microbial data to FSIS's *Salmonella* data, and interventions to address seasonality;
- Describes how existing or new equipment, technologies, or procedures will allow for the operation at a faster line speed (*e.g.,* descriptions or names of the equipment, line configuration, and verification activities that will be used);
- Provides support on how the increased line speed will not negatively impact FSIS employee safety nor interfere with inspection procedures (*e.g.,* information about safety protocols or line configuration);
- Supports how the modifications to its food safety system to operate at the faster line speed will maintain or improve food safety (*e.g.,* a statement that explains how the new equipment will provide the same as or cleaner evisceration processes, or how an improved line configuration will continue to prevent cross contamination); and
- Indicates the type of records that will be maintained in the new process, including the collection of information that will assist FSIS in performing appropriate rule-making analysis (*e.g.,* laboratory results, weekly or monthly summary production reports, or evaluations from inspection program personnel).

Because FSIS intends to use the data collected from young chicken establishments to evaluate their ability to maintain process control at higher line speeds, the *Constituent Update* explained that the Agency will limit the additional line speed waivers to establishments that have the ability and intend to operate at line speeds higher than 140 bpm.

In addition, after reviewing comments submitted in response to the NCC petition, FSIS is adding compliance with good commercial practices (GCPs) to the criteria that the Agency will use to consider line speed waiver requests submitted by NPIS young chicken slaughter establishments. The regulations require that poultry be slaughtered in accordance with GCPs, in a manner that will result in thorough bleeding of the poultry carcass and will ensure that breathing has stopped before scalding (9 CFR 381.65(b)). In a **Federal Register** notice published on September 28, 2005, FSIS explained that poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely because such birds are more likely to be bruised or to die other than by slaughter (70 FR 56624).

If an establishment is not following GCPs, and birds are dying other than by slaughter, FSIS inspection program personnel (IPP) will document a non-compliance record (NR) citing 9 CFR 381.65(b). If birds are being mistreated, but can still be fully bled and are not breathing when they enter the scalder, IPP are instructed to discuss the mistreatment with the establishment and document the discussion and any planned action by the establishment in a Memorandum of Interview (MOI). IPP will forward a copy of the MOI to the FSIS District Veterinary Medical Specialist (DVMS) for review (FSIS Directive 6100.3, *Ante-Mortem and Post-Mortem Poultry Inspection,* April 11, 2011).

As discussed below, some comments raised issues related to line speeds for NPIS young chicken establishments and compliance with GCPs. Under all poultry inspection systems, including the NPIS, establishments are required to slaughter poultry in accordance with GCPs. Therefore, in addition to the criteria described above, the Agency will consider compliance with GCPs as part of an establishment's demonstrated history of regulatory compliance. Thus, consistent with the above regulatory compliance criteria, to be eligible for a line speed waiver, establishments must also have not had an NR for violation of GCPs (9 CFR 381.65(b)) in the past 120 days.

Finally, FSIS also will be requiring establishments with line speed waivers to conduct daily Aerobic Plate Count (APC) testing, instead of weekly testing for indicator organisms, and to make the results available to FSIS. This testing will provide additional data for consideration by FSIS when it determines whether rulemaking for young chicken slaughter line speeds is supported.

Conditions for Operating Under a Waiver and FSIS Verification

Establishments that are eligible for a line speed waiver and that have assembled the documentation that needs to be included in their waiver request described above should submit their line speed waiver requests to the FSIS Office of Policy and Program Development (OPPD) Risk Innovations and Management Staff (RIMS). After FSIS receives a line speed waiver request, the Agency will follow the

[7] The February 23, 2018, *Constituent Update* is available at: *https://www.fsis.usda.gov/wps/wcm/connect/ee977696-7f87-4b87-8717-15a824ce0a81/ConstiUpdate022318.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=ee977696-7f87-4b87-8717-15a824ce0a81.*

[8] This refers to a public health alert issued through the Public Health Information System for non-compliance with public health regulations (see FSIS Notice 15–08, *Public Health Regulations and Alerts for Use in Determining Inspection Program Personnel Actions and Public Health Risk Evaluation Scheduling in Meat and Poultry Establishments* (March 20, 2018)).

procedures in FSIS Directive 5020.2, *The New Technology Review Process* (October 24, 2017), to verify that the establishment meets the criteria to be eligible for the waiver and to evaluate the establishment's waiver request submission.

As noted in the *Constituent Update,* if an establishment is granted a waiver, RIMS will provide the establishment with a waiver letter that specifies the required conditions for operating under the waiver. To ensure consistency in data collection and analysis, when FSIS issues the waiver letter, the Agency will also include a template for the establishment to use to record and report to FSIS the data that the establishment will be required to collect as a condition for its waiver. This template will provide for the reporting of data on the daily Aerobic Plate Count (APC) testing described above. FSIS will require that all young chicken establishments with line speed waivers use the template to submit their data to facilitate data aggregation and analysis.

As also noted in the *Constituent Update,* one of the conditions for operating under a line speed waiver will be that establishments notify the FSIS inspector-in-charge (IIC) when they are operating at line speeds higher than 140 bpm and when they reduce their line speeds to 140 bpm or below to allow FSIS to evaluate the establishment's ability to maintain process control at a given line speed. Young chicken establishments that are granted a line speed waiver will routinely need to operate at least one line at speeds above 140 bpm on average, but not higher than 175 bpm. Establishments with multiple lines may operate more than one line above 140 bpm and up to 175 bpm, but if they do, they will need to collect separate data for each individual line. While FSIS recognizes that establishments may need to occasionally reduce line speed during the course of operations, the average speed for each line used to collect data under the waiver will need to be higher than 140 bpm. Establishments consistently unable to maintain process control at line speeds higher than 140 bpm or consistently operating at line speeds lower than 140 bpm will be subject to waiver revocation.

Consistent with the waivers granted to the 20 HIMP young chicken establishments to operate at up to 175 bpm, any additional NPIS establishments that are granted a line speed waiver will need to participate in the SIP as a condition of their waivers. Under the SIP, FSIS grants establishments a waiver of a regulation with the condition that the establishment collects and analyzes samples for microbial organisms including both *Salmonella* and indicator organisms, and shares the results with FSIS. As discussed above, FSIS will require establishments with line speed waivers to conduct daily APC testing, instead of weekly testing for indicator organisms, as a condition of their waivers. Establishments operating under a line speed waiver will need to identify the line speed they were operating under when they collected the microbial data required under the SIP and include the line speed when they submit their SIP data to FSIS. FSIS intends to use a six-month moving window approach to determine the establishment's average line speed based on the line speeds recorded as part of the SIP data.

In addition to participating in the SIP, young chicken establishments that have been granted a line speed waiver will need to continue to meet the criteria outlined in the February 23, 2018, *Constituent Update* described above to remain eligible for a waiver. The Agency will follow the procedures in FSIS Directive 5020.1, *Verification Activities for the Use of New Technology in Meat and Poultry Establishments, and Egg Products Plants* (October 6, 2016), to verify that establishments that have been granted waivers remain eligible for their waivers and are following the process control procedures agreed to as a condition for the waivers.

Under Directive 5020.1, FSIS IPP verify, among other things, that the establishment is effectively implementing its process control procedures as documented in its waiver letter and collecting SIP microbial data to monitor its ability to maintain process control. IPP will review the results of the establishment's microbial sampling program and verify that the establishment takes appropriate corrective actions in response to its testing results, including slowing the line when needed to maintain process control.

Additionally, FSIS will review the results of the Agency's *Salmonella* sampling to verify that the establishment continues to meet the performance standards for Category 1 or 2 for young chicken carcasses when operating at faster line speeds. FSIS will also evaluate process control by reviewing the results of the Agency's 10-bird offline verification checks to verify that the establishment is meeting the zero tolerance standard for fecal contamination and septicemia/toxemia, and that it is not producing product with persistent, unattended non-food safety trim and processing defects when operating at higher line speeds.

Directive 5020.1 provides that FSIS may revoke a waiver of regulatory requirements when an establishment fails to meet or follow its alternative procedures associated with the waiver. Thus, if FSIS finds that an establishment that has been granted a line speed waiver is unable to meet the conditions of its waiver agreement, the Agency will consider whether to allow the establishment to implement corrective actions and resume operating under the waiver or whether the waiver needs to be revoked. If the waiver is revoked, the establishment will be required to comply with the 140 bpm maximum line speed for the NPIS (9 CFR 381.69(a)).

FSIS currently posts a table of all establishments that have been granted regulatory waivers under the SIP on the FSIS website at: *https://www.fsis.usda.gov/wps/wcm/connect/188bf583-45c9-4837-9205-37e0eb1ba243/Waiver_Table.pdf?MOD=AJPERES.* The 20 former HIMP young chicken establishments now operating under the NPIS that have been granted line speed waivers are included in the table. These establishments are the only NPIS young chicken establishments that have been granted line speed waivers under the SIP. FSIS intends to update this table if the Agency grants additional SIP waivers or revokes existing waivers.

Former HIMP Young Chicken Establishments' Line Speed Waivers

As noted above, when FSIS implemented the NPIS, the Agency granted waivers to allow the 20 young chicken establishments that participated in the HIMP pilot to operate at line speeds up to 175 bpm after they converted to the NPIS because data from the HIMP pilot showed that these establishments were able to maintain process control when operating at the line speeds authorized by HIMP (79 FR 49591). A preliminary review of the SIP data that these establishments have submitted to FSIS as a condition of their waivers shows that most of them have operated at line speeds higher than 140 bpm since they converted to the NPIS, and over half report that they have operated between 170 and 175 bpm. Thus, the data collected under these waivers has allowed FSIS to continue to evaluate the ability of the former HIMP young chicken establishments to maintain process control when operating at higher line speeds after they convert to the NPIS.

As discussed above, FSIS now has over a year of documented process control history for many young chicken

establishments operating under the NPIS.[9] Therefore, the Agency intends to consider additional waiver requests to allow NPIS young chicken establishments that meet the criteria described above to operate at line speeds of up to 175 bpm. FSIS intends to use the data collected from young chicken establishments that are granted these additional waivers, along with data collected from the 20 former young chicken HIMP establishments that have been granted waivers, to assess the ability of NPIS establishments to maintain process control at higher line speeds and to inform future rulemaking, if supported.

So that the data collected from all NPIS establishments with line speed waivers will be comparable, the 20 former HIMP young chicken establishments granted line speed waivers and establishments applying for new line speed waivers will have to meet the new, additional line speed waiver criteria. FSIS intends to issue new waiver letters containing the eligibility criteria described above to the 20 former HIMP establishments and grant them 120 days from receipt to meet the criteria. If an establishment is unable to meet any of the criteria within 120 days of receipt, FSIS may revoke its line speed waiver.

Comments

As noted above, FSIS made the NCC petition available to the public on the FSIS website and the Federal eRulemaking Portal at *https://www.regulations.gov.* FSIS received over 100,000 comments and signatures on the NCC petition, most of them identical comments or form letters submitted as part of organized write-in campaigns. FSIS received comments from poultry slaughter establishments and their employees, companies that own poultry slaughter establishments, trade associations representing the poultry industry, consumer advocacy organizations, animal welfare advocacy organizations, worker advocacy organizations, civil rights advocacy organizations, environmental advocacy organizations, labor unions, members of Congress, poultry establishment employees, and individuals. The comments also included a petition from an animal welfare advocacy organization with over 53,000 signatures and a petition from a consumer advocacy organization with over 17,000 signatures. FSIS also received approximately 7,900 identical postcards from individuals employed by poultry slaughter establishments urging the Agency to deny the petition. In addition, several employees from various poultry slaughter companies submitted comments on company letterhead in support of the petition.

Comments from poultry slaughter establishments and their employees, companies that own poultry slaughter establishments, trade associations representing the poultry industry, and a few individuals supported granting the petition. Comments from consumer advocacy organizations, animal welfare advocacy organizations, worker advocacy organizations, civil rights advocacy organizations, labor unions, members of Congress, poultry establishment employees, and several individuals urged FSIS to deny the petition. All of the comments submitted in response to organized write-in campaigns urged FSIS to deny the petition.

A summary of the general issues raised by the comments received in response to the NCC petition and FSIS's responses are presented below. Several of the issues have been addressed by FSIS's denial of the NCC petition.

Support for Petition

Comment: Poultry slaughter establishments, companies that own poultry slaughter establishments, and trade associations representing the poultry industry said that granting the NCC petition would enhance FSIS inspection procedures and increase industry efficiency while ensuring safeguards are in place to promote worker safety and bird welfare. The comments stated that line speeds should be based on an establishment's ability to maintain process control rather than regulatory line speed limits. The comments noted that the NPIS was intended to improve food safety outcomes and generate cost efficiencies for both establishments and FSIS. According to the comments, without the incentive of higher line speeds, the 140 bpm line speed cap established in the final NPIS rule has discouraged many establishments from opting into the NPIS and has caused the industry and FSIS to forego potential cost savings associated with making better use of resources. The comments asserted that allowing establishments to increase line speeds will enhance food safety by encouraging more establishments to participate in the NPIS and SIP.

Response: As stated in FSIS's response to the NCC petition, the Agency has determined that it is not necessary to establish a separate system to provide line speed waivers to young chicken establishments operating under the NPIS because FSIS has already issued regulations and implemented procedures for establishments to request regulatory waivers. Establishments that meet the criteria to be eligible for a line speed waiver may use the existing procedures to submit a waiver request.

FSIS established 140 bpm as the maximum line speed for the NPIS, with an exception for the 20 former HIMP young chicken establishments, because FSIS concluded that it is important to assess each young chicken establishment's ability to maintain process control as they implement changes to operate under the NPIS (79 FR 49591). In the final rule that established the NPIS, FSIS made clear that it would continue to evaluate the line speeds at which establishments are capable of consistently producing safe, wholesome, and unadulterated product, as well as meeting *Salmonella* and other performance standards.

Although FSIS has denied NCC's request to establish a waiver program that would provide for unlimited line speeds, the Agency will consider granting individual waivers to allow young chicken establishments that meet the criteria described above to operate at line speeds of up to 175 bpm. The data collected from establishments that are granted these waivers will allow FSIS to evaluate the ability of NPIS establishments that did not participate in the HIMP pilot to maintain process control at line speeds of up to 175 bpm. The waivers do not provide for unlimited line speeds, as requested in the NCC petition, because the Agency's experience under the HIMP pilot showed that online inspectors are able to conduct an effective online inspection of each bird processed at line speeds of up to 175 bpm.

Waiver Regulations

Comment: Comments from consumer advocacy organizations, animal welfare advocacy organizations, worker safety advocacy organizations, civil rights advocacy organizations, labor unions, and members of Congress stated that FSIS must deny the NCC petition because the requested action does not meet any of the criteria to qualify for a waiver under 9 CFR 381.3(b). The waiver regulations in 9 CFR 381.3(b) provide that ''[t]he Administrator may, in specific cases, waive any provision of the poultry inspection regulations in order to permit appropriate and necessary action in the event of a public health emergency or to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate

[9] As of August 21, 2018, 67 young chicken establishments were operating under the NPIS, including the 20 former HIMP establishments.

definite improvements: *Provided,* That such waivers . . . are not in conflict with the purposes or provisions of the Act.''

The comments stated that the petition does not identify a public health emergency, does not provide for experimentation, does not identify a new technology, would not be for a limited period of time, and does not describe any definite improvements as required under the regulation. Specific issues raised in the comments received follow:

• *Public health emergency.* The comments stated that the requested waiver system does not meet the first basis for granting a waiver under 9 CFR 381.3(b) because providing for faster line speeds is not ''an appropriate or necessary action in the event of a public health emergency.''

• ''*Specific classes of cases*'' *and* ''*limited periods*''. The comments noted that 9 CFR 381.3(b) only authorizes FSIS to grant waivers in ''specific classes of cases'' for ''limited periods.'' The comments said that the NCC petition does not identify any specific classes of cases because the line speed waiver requested in the petition would apply to any slaughter establishment that participates in the NPIS or the SIP. The comments also asserted that the petition does not provide for time limits for the requested waiver system. The comments stated that granting the petition would establish an indefinite waiver program in violation of the regulation.

• ''*Experimentation with new technology*''. The comments stated that the petition asks that FSIS allow establishments participating in the NPIS to operate without any line speed limitations without identifying any new procedures, equipment, or processing techniques. A worker rights advocacy organization and a labor union commented that in FSIS's 2003 notice regarding procedures for notification of new technology, the Agency acknowledged that line speeds are not a new technology when it explained that ''a new technology that changed the line speeds for poultry would require a waiver to the regulations for a limited time to test the new technology'' (68 FR 6874). According to the comments, a change in line speed may be the result of a new technology, but is not a new technology itself.

• ''*Definite improvements*''. The comments stated that the NCC petition does not include any information to show how a waiver of the maximum line speed authorized under the NPIS would ''facilitate definite improvements'' consistent with the purposes or provisions of the PPIA. Several comments stated that rather than describe how the requested waiver system would facilitate definite improvements in food safety, the petition asserts that allowing faster line speeds would not be worse for public health or worker safety than the current line speeds. Several comments stated that the economic considerations identified in the petition, such as cost savings, profitability, and competitiveness are not valid criteria for granting a waiver because they do not qualify as ''definite improvements'' under 9 CFR 381.3(b).

FSIS Response: For the reasons specified below, FSIS believes that line speed waivers are consistent with its regulations under 9 CFR 381.3(b) and has developed criteria that the Agency intends to use to consider these waiver requests and has specified the documentation that establishments will need to include in their waiver request submissions.

''*Specified classes of cases*'' *and* ''*limited periods.*''

Any individual waivers that FSIS may grant using the aforementioned criteria will comply with the regulatory requirements for waivers in 9 CFR 381.3(b) because the waivers will apply to specific classes of cases, *i.e.,* young chicken establishments that meet the criteria described above. Further, the waivers are time limited in that if the data generated under the waivers support regulatory changes, *i.e.,* the establishments are able to consistently maintain process control at the higher line speeds, the waivers will be in effect only until the rulemaking process is complete. If the data generated do not support regulatory changes, the waivers will be terminated.

''*Experimentation with new technology.*''

FSIS broadly defines ''new technology as new, *or new applications of,* equipment, substances, methods, processes, or procedures affecting the slaughter of livestock and poultry or processing of meat, poultry, or egg products. (68 FR 6873, February 11, 2003). At a minimum, increasing line speeds is a new application of existing technology in facilities that have never operated at these higher speeds in the past. Further, it is expected that some facilities that request waivers would have to install new equipment or reconfigure existing equipment in order to accommodate higher line speeds. In the same **Federal Register** notice cited above, FSIS noted that technology changes that could adversely affect product safety, interfere with FSIS inspection procedures, or jeopardize the safety of inspection program personnel, including changes in line speeds, would require regulatory waivers (68 FR 6874). Therefore, FSIS believes that the line speed waivers contemplated in this document are consistent with past Agency policy and the regulations at 9 CFR 381.3(b).

''*Definite improvements.*''

FSIS interprets ''definite improvement'' to mean *any* improvement of equipment, substances, methods, processes, or procedures affecting the slaughter of livestock and poultry or processing of meat, poultry or egg products, (83 FR 4782, February 1, 2018). FSIS believes that if an establishment were able to increase efficiency in poultry production by operating at higher line speeds, while consistently maintaining process control, with no diminution in the food safety profile of the finished product, it would constitute a ''definite improvement'' within the meaning of 9 CFR 381.3(b). As previously noted, an establishment's waiver submission request will need to explain how food safety system modifications undertaken to operate at faster line speeds will maintain or improve food safety.

Comment: In addition to the criteria for granting waivers described above, the comments also noted that under the regulation, FSIS may only grant waivers that are not in conflict with the purposes or provisions of the PPIA (9 CFR 381.3(b)).

Comments from consumer advocacy organizations, animal welfare organizations, members of Congress, and worker advocacy organizations stated that the requested waiver system, if implemented, would be inconsistent with the fundamental purpose of the PPIA because eliminating maximum line speeds has the potential to increase the risk that adulterated product will enter commerce. A consumer advocacy organization stated that the potential for human error increases with an increase in line speed, and workers forced to perform the same repetitive activities at a faster pace will become increasingly fatigued, making them more likely to make mistakes that result in product contamination or failure to notice and address safety risks. Consumer advocacy organizations, worker advocacy organizations, and an environmental advocacy organization commented that higher line speeds may also affect the accuracy of the equipment on the evisceration and cause carcasses to become contaminated with fecal material.

Several comments stated that faster line speeds give company sorters less time to identify carcasses affected with food safety defects, such as septicemia/

toxemia and visible fecal contamination. An animal welfare advocacy organization commented that NCC's requested action would increase the risk that poultry meat would become adulterated from inhumane handling of chickens because faster line speeds are correlated with loss of process control that results in birds being intentionally mistreated by workers, improperly hung in shackles, insufficiently cut and bled, and scalded alive.

FSIS Response: Because FSIS has denied the NCC petition, the Agency will not be establishing a waiver program that the comments state will conflict with the purposes or provisions of the PPIA. Instead, as noted throughout this document, the Agency will use its existing waiver procedures to consider granting line speed waivers to individual establishments that meet the criteria described above to operate at line speeds of up to 175 bpm. Under these criteria, establishments will only be eligible for a waiver if, among other things, they have been operating under the NPIS for at least one year with a demonstrated ability to maintain process control and demonstrated history of regulatory compliance. After an establishment has been granted a waiver, it will need to submit microbial data and other records, such as statistical process control charts, to FSIS to demonstrate that it is able to maintain process control when operating at faster line speeds. FSIS will monitor the establishment's ability to maintain process control by evaluating the results of the Agency's *Salmonella* verification sampling, performing carcass verification checks, performing sanitation verification activities, and reviewing the records that the establishment maintains to demonstrate process control, including the establishment's microbiological testing data. Finally, in regard to the handling of live chickens, as discussed above, compliance with GCP regulations will be a condition of operating under a line speed waiver for both waiver applicants and establishments already operating under waivers.

Comment: Several comments asserted that, in addition to the potential for increased contamination, the petition's requested waiver system would conflict with the purposes or provisions of the PPIA because high line speeds would make it difficult for FSIS inspectors to conduct an effective online carcass-by-carcass inspection. Comments from consumer and animal welfare advocacy organizations noted that the PPIA requires FSIS inspectors to inspect ''the carcass of each bird processed'' (21 U.S.C. 455(b)) and that ''inspection'' means that the inspector gives a ''critical determination whether [a carcass or part of a carcass] is adulterated or unadulterated'' (*AFGE* v. *Glickman,* 215 F 2nd 7 (D.C. Cir., 2000)). According to the comments, NCC's request to allow poultry slaughter establishments to operate at line speeds greater than 175 bpm would make it extremely difficult, if not impossible, for FSIS to inspect the carcass of each bird processed. A consumer advocacy organization stated that faster line speeds will also reduce the percentage of carcasses assessed through offline inspections because the number of assigned offline carcass verification checks does not vary with line speed, meaning a smaller percentage of birds will be inspected offline for fecal contamination as line speeds increase.

FSIS Response: Because FSIS has denied the NCC petition, young chicken NPIS establishments will not be granted waivers to operate without line speed limits. FSIS's experience under the HIMP pilot showed that online inspectors in HIMP young chicken establishments were able to conduct an effective online inspection of each carcass when operating at a line speed of up to 175 bpm. As discussed above, FSIS intends to grant individual waivers to allow certain young chicken NPIS establishments to operate at line speeds up to 175 bpm. To ensure that online inspectors are able to conduct an effective online inspection of each bird processed, FSIS inspectors-in-charge (IICs) in all NPIS establishments, including those operating under waivers, are authorized to direct establishments to operate at a reduced line speed when in the IIC's judgment a carcass-by-carcass inspection cannot be performed within the time available, due to the manner in which the birds are presented to the online carcass inspector, the health conditions of a particular flock, or factors that may indicate a loss of process control (9 CFR 381.69(d)).

With respect to the comment that faster line speeds will reduce the percentage of carcasses assessed through offline inspections, as stated in the preamble to the rule that established the NPIS, under the NPIS, the offline carcass verification checks will be more risk-based than under the HIMP pilot to reflect the performance of the establishment (79 FR 49587). As under the HIMP pilot, FSIS continues to conduct eight 10-bird verification checks per line per shift under the NPIS. However, as noted in the final NPIS rule, FSIS monitors and analyzes the ongoing results of its offline carcass verification activities to assess the effectiveness of the establishment's sorting and other process control procedures (79 FR 49587). FSIS conducts additional verification activities in all NPIS establishments, including those operating under waivers, as needed to respond to the Agency's verification findings (FSIS Directive 6500.1, *New Poultry Inspection System: Post-Mortem Inspection and Verification of Ready-to-Cook Requirement,* February 1, 2017).

Comment: A worker rights advocacy organization stated that even if the requirements of the waiver regulations are met, the NCC is not authorized to submit a waiver request under CFR 381.3(b). The organization stated that FSIS's Procedures for Notification of New Technology (68 FR 6873) allow official establishments and companies that manufacture and sell technology to official establishments to submit new technology notifications to the Agency. The comment noted that the NCC is not an official establishment or a company that manufactures or sells new technologies.

FSIS Response: Nothing in the regulations at 9 CFR 381.3(b) limits the submission of waiver requests to the regulated industry or companies that manufacture or sell new technologies. FSIS has denied the NCC petition, but will continue to consider waiver requests from official establishments, companies that manufacture or sell new technologies, and other interested parties.

NPIS Line Speed Regulation

Comment: Comments from consumer advocacy organizations, animal welfare advocacy organizations, worker rights advocacy organizations, civil rights advocacy organizations, and members of Congress asserted that the NCC petition is an attempt to bypass the maximum line speed for the NPIS prescribed in the regulations without going through the rulemaking process in violation of the Administrative Procedure Act (APA) (5 U.S.C. 553). These comments stated that the 140 bpm maximum line speed is a legislative rule established through notice-and-comment rulemaking and, therefore, can only be modified through notice-and-comment rulemaking. A consumer advocacy organization stated that the SIP waiver process is intended to facilitate experimentation, not implement industry-wide changes.

FSIS Response: Because FSIS has denied the NCC petition, the Agency will not be establishing a line speed waiver system for all young chicken establishments and will not allow all young chicken NPIS establishments to operate at line speeds faster than the

maximum 140 bpm prescribed by the regulation (9 CFR 381.69(a)). The Agency will consider individual line speed waiver request submissions through its existing procedures using the criteria described above. It should be noted that the existing waiver regulations were promulgated by notice-and-comment rulemaking pursuant to the APA. FSIS's decision to grant individual regulatory waivers under 9 CFR 381.3(b) will not apply to all young chicken slaughter establishments nor establish a new maximum line speed under NPIS and, therefore, would not be subject to the APA's notice-and-comment rulemaking provisions.

Comment: Comments from consumer advocacy organizations, animal welfare advocacy organizations, worker rights advocacy organizations, civil rights advocacy organizations, and members of Congress stated that granting waivers from the line speed limits established for the NPIS would be an arbitrary reversal of Agency position. The comments asserted that FSIS considered and rejected requests to allow for faster line speeds under the NPIS when the Agency finalized the rule that established the NPIS in 2014 (79 FR 49566). The comments noted that the 2014 final rule was the result of a comprehensive, two-and-a-half year rulemaking process during which FSIS received and considered more than 250,000 public comments. A worker safety advocacy organization noted that the question of the maximum allowable line speed was the single most commented-upon aspect of the NPIS rulemaking. Several comments also noted that in the fall of 2013, a network of worker safety groups petitioned the Occupational Safety and Health Administration (OSHA) and USDA to regulate and reduce assembly line speeds in meat and poultry processing establishments. The comments stated that OSHA ultimately denied the petition due to ''a lack of resources,'' but in the 2014 NPIS final rule, FSIS chose not to increase the current maximum line speed limits for poultry slaughter establishments.

Comments from consumer advocacy organizations, animal welfare advocacy organizations, worker rights advocacy organizations, civil rights advocacy organizations, and members of Congress stated that in FSIS's 2014 NPIS rulemaking, the Agency acknowledged that line speeds should not increase without further research ''to assess establishments' ability to maintain process control as they implement changes to operate under the NPIS'' (79 FR 49615). The comments noted that FSIS intended to conduct this assessment ''[a]fter the NPIS has been fully implemented on a wide scale and the Agency has gained at least a year of experience under the new system'' (79 FR 49615). The comments noted that at the time the NCC petition was submitted, approximately 60 establishments had converted to the NPIS while in the final rule that established the NPIS, FSIS had estimated that 219 establishment would convert. Therefore, the comments asserted, the NPIS has not yet been fully implemented on a wide scale. According to the comments, FSIS has not accrued the necessary experience to evaluate the NPIS establishments' ability to maintain process control at any given line speed.

A consumer advocacy organization noted that FSIS granted SIP waivers to allow the 20 former young chicken HIMP establishments to continue to operate at line speeds of up to 175 bpm after they converted to the NPIS because these establishments have demonstrated that they are able to maintain process control under the line speeds authorized by HIMP. The comment said that in granting these SIP waivers, FSIS stated that it would compare the data from the former HIMP young chicken establishments to data from other non-HIMP NPIS establishments as a means of evaluating the new program (79 FR 49591). The comment stated that FSIS has not made any efforts to conduct such an assessment that is available to the public.

FSIS Response: As noted above, FSIS has denied the NCC petition and thus, will not be implementing the line speed waiver program requested in the petition. FSIS's decision to consider individual waiver requests to allow certain young chicken NPIS establishments to operate at line speeds of up to 175 bpm does not affect the regulation that prescribes 140 bpm as the maximum line speed for NPIS young chickens establishments (9 CFR 381.69(a)) and is consistent with the Agency's position on line speeds as stated in the final rule that established the NPIS.

Also as discussed above, when FSIS published the final rule that established the NPIS, the Agency made it clear that it would continue to evaluate the line speeds at which establishments are capable of consistently producing safe, wholesome, and unadulterated product, as well as meeting pathogen reduction and other performance standards (79 FR 49591). The data collected from establishments that are granted new line speed waivers will allow FSIS to evaluate the ability of NPIS establishments that did not participate in the HIMP pilot to maintain process control at line speeds up to 175 bpm. FSIS intends to use these data, along with the data from establishments currently operating under line speed waivers, to inform future rulemaking, if warranted, with respect to line speeds under the NPIS.

Comment: An animal welfare advocacy organization commented that the PPIA requires a hearing be held for ''oral presentation of views'' for interested parties when the Agency engages in rulemaking related to its subject matter (21 U.S.C. 463(c)). The organization stated that FSIS has not held such a public hearing, and the public comment period that FSIS provided on *regulations.gov* is not a lawful substitute for the hearing requirement.

FSIS Response: FSIS's regulations on petitions provide for interested persons to submit comments on a petition (9 CFR 392.7). The public comment period that FSIS provided on *regulations.gov* is consistent with this regulatory provision. Under 21 U.S.C. 463(c), FSIS is required to provide interested persons an opportunity for the oral presentation of views after the Agency has initiated informal rulemaking. FSIS has not initiated informal rulemaking in response to the petition. In addition, 21 U.S.C. 463(c) does not require that FSIS hold public hearings to receive oral presentation of views as part of the rulemaking process.

NPIS Line Speed Data

Comment: As discussed earlier in this document, the NCC petition cited data in support of its position, including information from the 2011 HIMP pilot study, a 2001 published study on the HIMP pilot, and a 2017 unpublished survey of NCC member companies operating under the NPIS with and without line speed waivers. Comments from poultry slaughter establishments and trade associations representing the poultry industry stated that the available data demonstrate that young chicken NPIS establishments are able to operate at line speeds above 140 bpm without compromising food safety. The comments stated that FSIS's experience with the HIMP pilot upon which the NPIS is based demonstrates that establishments can safely operate at higher line speeds. The comments referenced data from the 2011 HIMP Report that shows that establishments operating under the line speeds authorized by HIMP perform as well as or better than comparable non-HIMP establishments. A trade association representing the poultry industry referenced the 2001 study cited in the

petition and claimed that this study reinforces the conclusions in the HIMP Report. The comments also referenced a preliminary analysis of data from NPIS and non-NPIS establishments that FSIS presented to stakeholders in October 2017. The comments asserted that this analysis further confirms that establishments permitted to operate at line speeds greater than 140 bpm had comparable *Salmonella* and *Campylobacter* percent positives for both whole chicken carcasses and chicken parts, and that both were below the FSIS performance standards for these pathogens. The comments also stated that an NCC analysis of FSIS performance standards sampling data, NR rates, and other key food safety performance indicators submitted in support of the petition shows that NPIS establishments, including former HIMP establishments operating with higher line speeds, are performing at least as well as non-NPIS establishments.

Consumer advocacy organizations, animal welfare advocacy organizations, and worker advocacy organizations asserted that the petition does not include any data to demonstrate that the NPIS establishments would be able to maintain process control at faster line speeds. The comments stated that although the petition discusses the results of an unpublished industry survey, the discussion does not provide sufficient detail for FSIS to consider the data. The comments noted that the petition does not include any information on how establishments were chosen for the survey, the methodology used to conduct the survey, or how the results are statistically sound or valid. Comments from a consumer advocacy organization and an animal welfare advocacy organization noted that the petition did not present the *Campylobacter* and *Salmonella* data, even in summary form. The comments stated that the petition only lists the survey participants' total *Salmonella* and *Campylobacter* percent positives and that the petition states that the NPIS participants' percent positives were ''as good as if not better than their non-NPIS counterparts.''

The comments also noted that the NCC survey results were not peer reviewed. A consumer advocacy organization stated that the survey also did not include a pre-specified analysis plan, which could allow for selective reporting, and that the survey relied upon data collected in the winter months, a time period when *Salmonella* positives are typically lower. Another consumer advocacy organization stated that the NCC seeks to draw conclusions on line speeds beyond the range of actual line speeds studied in its survey.

Two consumer advocacy organizations noted that the petition also referenced data from the 2011 HIMP Report to support the requested action. The comments asserted that data in the 2011 HIMP Report does not establish that food safety will be maintained should line speed caps be lifted. The comments noted that the 2011 HIMP Report stated that the average line speed under HIMP was 131 bpm, well below the maximum line speed of 175 bpm authorized under HIMP. The comments also asserted that line speed information from former HIMP establishments does not provide insight into operation at unlimited line speeds. The organizations also commented that the petition does not address the concern that other young chicken establishments might behave differently than the 20 former HIMP establishments. One comment stated that the 2011 HIMP Report findings of no statistical difference in fecal NRs and *Salmonella* positives based on line speed show that FSIS did not find that increased line speeds were statistically related to these indicia of contamination. The comment stated that this is not a ''definite improvement.''

FSIS Response: Although FSIS considered the supporting data in the petition and the comments on these data when evaluating the NCC petition, the supporting data were not the primary basis for denying the petition. FSIS denied the NCC petition because the Agency has already implemented procedures for establishments to request regulatory waivers and therefore, FSIS determined that it is not necessary to establish a separate waiver system to provide line speed waivers to young chicken establishments operating under the NPIS. FSIS reviews submissions for the use of procedures or processes that require regulatory waivers on a case-by-case basis to determine whether the waiver request submission includes a method to document the performance of the new technology, so the resulting data can be monitored and analyzed.

As noted above, FSIS has established criteria that the Agency intends to use under its existing waiver process to consider waiver requests by young chicken establishments to operate at line speeds of up to 175 bpm. FSIS will consider individual waiver requests on a case-by-case basis and will base its decision on whether to grant a waiver on the information included in an establishment's waiver request submission, not on the data submitted in support of the petition.

Worker Safety

Comment: Comments from poultry slaughter establishments, trade associations representing the poultry industry, and individuals stated that permitting NPIS young chicken establishments to run at line speeds faster than 140 bpm would not be expected to have a significant impact on worker safety because the waivers would only apply to a specific highly automated part of the processing line with little direct employee interaction with the equipment or the birds. The comments stated that the ''further processing lines'' where workers debone and cut up chicken parts are separate from the evisceration line and do not run at the same speed as the evisceration line. The comments stated that even under the current NPIS system, these further processing lines run at slower speeds appropriate for the type of work being done and this would not change if FSIS were to grant the petition.

Poultry establishments and trade associations representing the poultry industry commented that the available data show that increased line speeds do not present greater risks for worker safety. The comments asserted that worker safety in poultry establishments has improved in the past two decades, with worker illness and injury rates reported by the Bureau of Labor Statistics (BLS) decreasing by more than 80 percent since 1994. The comments stated that the incidence of non-fatal occupational injuries and illnesses in the poultry sector, which includes slaughter and processing, remains at an all-time low. The comments further stated that the total recordable poultry processing illness and injury rate for 2016 was 4.2 cases per 100 full-time workers per year, down from 4.3 in 2005. The comments also stated that the poultry industry's rate of 4.2 was below the rate of 6.9 for similar agricultural industries in terms of injuries per 100 full-time workers and lower than the rate of 4.7 for the entire food manufacturing sector. In addition to these statistics, the comments noted that the NCC's industry survey of establishments that have recently opted into the NPIS and those that had been former HIMP establishments revealed that all plants surveyed, on average, were operating well below the industry's total DART (days away, restricted, or transferred) rates. According to the comments, this provides evidence that the increased line speeds have not resulted in an increase in worker injuries.

Comments from worker and civil rights advocacy organizations, poultry establishment employees, consumer advocacy organizations, labor unions, members of Congress, an environmental advocacy organization, and private citizens asserted that establishing a line speed waiver system as requested in the NCC petition would increase risks to worker health and safety in establishments that operate under such waivers and would expose workers to hazards that have not been studied. The comments referenced studies, reports, and other data on work-related injuries in the meat and poultry processing industry. The most commonly referenced information sources included:

- Studies published by the National Institute for Occupational Safety and Health (NIOSH) that found high rates of carpal tunnel syndrome among workers in the poultry industry. One study found that 34 percent of workers in poultry processing establishments had carpal tunnel syndrome, and 76 percent had evidence of nerve damage in their hands and wrists. Another study found that 42 percent of workers at a poultry processing establishment had carpal tunnel syndrome.
- 2016 BLS data showing that employer reported injury rates for poultry workers were 60 percent above the national average for all private industry, and illness rates were more than five times as high.
- Reports published by the Government Accountability Office (GAO) in 2005, 2016, and 2017 that concluded, among other things, that injury rates in the meat and poultry slaughter industries continue to be higher than the rates for others in the manufacturing industry, that meat and poultry workers may under-report illnesses and injuries because they fear losing their jobs, and that employers may underreport worker injuries because of concerns about potential costs.
- Various reports from worker advocacy organizations on worker safety in meat and poultry processing establishments. These reports include surveys of poultry workers that have suffered illnesses and injury from the fast-paced repetitive tasks associated with the current line speeds.
- OSHA citations of poultry processing establishments for failure to record injuries and illnesses requiring more than first aid.

The comments stated that the available studies, reports, and data contradict NCC's assertion that worker illness and injury are at an all-time low, and, according to the comments, the statistics that NCC relied on are based on a potentially biased self-reporting system. Several comments noted that in the preamble to the final rule that established the NPIS, FSIS recognized that the systemic underreporting of the poultry industry work-related injuries and illness ''could make it difficult to accurately assess the extent to which poultry workers suffer from work related injuries and musculoskeletal diseases and disorders.'' Comments from a civil rights organization, members of Congress, and a labor union expressed concern that increased line speeds will disproportionately hurt women and people of color. The labor union commented that nearly 40 percent of those who work in animal slaughtering and processing are women and 67 percent are people of color.

FSIS Response: While FSIS agrees that working conditions in poultry slaughter establishments is an important issue, the Agency has neither the authority nor the expertise to regulate issues related to establishment worker safety. FSIS has been delegated the authority to exercise the functions of the Secretary of Agriculture under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the PPIA (21 U.S.C. 451 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C 1301 *et seq.*) (the Acts). Under the Acts, FSIS protects the public by verifying that meat, poultry, and egg products are safe, wholesome, not adulterated, and properly marked, labeled, and packaged. The Acts authorize FSIS to administer and enforce laws and regulations solely to protect the health and welfare of consumers.

The DOL's OSHA was created by the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) to assure safe and healthful working conditions for men and women by setting and enforcing standards and by providing training, outreach, education, and assistance. As was noted in the preamble to the final rule that established the NPIS, OSHA is the Federal agency with statutory and regulatory authority to promote workplace safety and health (79 FR 49600). FSIS's authority with respect to working conditions in poultry slaughter establishments extends only to FSIS inspection personnel. While FSIS is prepared to address worker safety within the bounds of its authority, as noted above, FSIS has neither the legal authority nor the expertise to regulate or enforce workplace standards for establishment employees.

During the development of the final rule that established the NPIS, FSIS collaborated with OSHA and NIOSH, to address issues related to worker safety raised by the public comments. OSHA and NIOSH are the government agencies with the expertise and authority to address worker safety issues in private industry workplaces. As a result of this collaboration, the final NPIS regulations include provisions to remind establishments of their existing legal obligations to comply with the worker safety laws administered by OSHA (9 CFR 381.69(d)). The final regulations also provide for establishments operating under the NPIS to submit on an annual basis an attestation to the management member of the local FSIS circuit safety committee stating that the establishment maintains a program to monitor and document any work-related conditions of establishment workers (9 CFR 381.45). Because OSHA is the Federal agency with statutory and regulatory authority to promote workplace safety and health, FSIS forwards the annual attestation to OSHA for use in its own enforcement program. All establishments operating under the NPIS are subject to the attestation regulation, including the NPIS establishments operating under regulatory waivers. However, FSIS employees are not responsible for determining the merit of the content of the attestation or for enforcement of non-compliance with the attestation provision.

Animal Welfare

Comment: Comments from animal welfare advocacy organizations and individuals concerned about animal welfare asserted that granting the petition and allowing NPIS establishments to operate at faster line speeds would have adverse effects on the humane handling of poultry. The comments expressed concern about worker frustration over faster line speeds and the potential for workers to take these frustrations out on the birds; the potential for increased injuries that may occur from shackling birds at faster line speeds; the potential for worker injuries from birds vigorously flapping their wings while in shackles; and the potential for ineffective stunning and throat cutting of birds at faster line speeds. The comments noted that for over 12 years, FSIS has recognized that ''poultry products are more likely to be adulterated if, among other circumstances, they are produced by birds who have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter'' (79 FR 49590). The comments referenced FSIS NRs for cadavers, birds entering the scalder alive or not fully bled out, and birds

exhibiting severe bruising primarily caused by dislocated legs and broken wings. According to the comments, faster line speeds will exacerbate these conditions. Two animal welfare advocacy organizations asserted that setting policy for poultry slaughter that promotes better animal handling practices would further compliance with the PPIA and ensure more effective and efficient inspections.

FSIS Response: Because the Humane Methods of Slaughter Act (HMSA) (7 U.S.C. 1901–1907) does not apply to poultry, FSIS does not have direct authority to regulate the humane handling of live poultry in connection with slaughter. As noted above, under all poultry inspection systems, including the NPIS, establishments are required to slaughter poultry in accordance with GCPs, in a manner that results in thorough bleeding of the poultry carcasses and ensures that breathing has stopped before scalding (9 CFR 381.65(b)). As noted in the comments, in September 2005, FSIS published a **Federal Register** notice to explain that poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely because such birds are more likely to be bruised or to die other than by slaughter (70 FR 56624). Under both the PPIA and its implementing regulations, poultry carcasses showing evidence of having died from causes other than by slaughter are considered adulterated and as such must be condemned (21 U.S.C. 453(g)(5) and 9 CFR 381.90). Establishments operating under the NPIS have always been, and will continue to be, subject to these requirements regardless of their line speed, including establishments that have been granted waivers to operate at line speeds of up to 175 bpm. As outlined in FSIS Directive 6300.1, *Ante-mortem and Post-mortem Poultry Inspection,* FSIS verifies GCPs as part of a daily, per-shift inspection task performed by the public health veterinarian (PHV). Any non-compliances are documented under 9 CFR 381.65(b) and reviewed weekly as one of many measures of process control. However, in response to these comments, as discussed above, FSIS has decided to add compliance with the GCP regulation to the criteria that the Agency will consider when evaluating an establishment's line speed waiver request submission. Also, as discussed above, FSIS will now consider compliance with the GCP regulations as a condition for existing line speed waivers.

Comment: Two animal welfare advocacy organizations commented that if FSIS grants NCC's petition, it should require multi-stage controlled atmosphere killing (CAK) as a condition of increasing line speeds. According to the comments, faster line speeds will likely result in more frequent loss of process control, and FSIS is unlikely to be able to provide a rational explanation on how removing line speed limits will result in similar or better process control than is currently achieved with the line speed limit for the NPIS. The comments asserted that multi-stage CAK systems would help maintain process control because birds stunned while in transport cages do not need to be removed from their cages, dumped onto conveyor belts, and shackled upside down while still conscious. The organizations stated that this would facilitate proper handling.

FSIS Response: FSIS does not prescribe specific methods that establishments must use to stun or kill poultry in connection with slaughter. Establishments are required to maintain process control and comply with requirements for GCPs regardless of the methods they use to stun or kill the birds. Establishments may use CAK stunning if they choose to do so.

National Environmental Policy Act

Comment: Comments from animal welfare advocacy organizations and an environmental advocacy organization stated that if FSIS grants the NCC petition, the Agency must prepare an Environmental Impact Statement (EIS) as required under the National Environmental Policy Act (NEPA)(42 U.S.C. 4321 *et seq.*) because the requested action to allow poultry slaughterhouses to increase line speeds would result in significant environmental impacts. The comments stated that faster line speeds would mean more birds slaughtered per shift. According to the comments, more birds slaughtered would mean more waste, more water use, and more fossil fuels required to transport the birds from farm to slaughterhouse. The comments asserted that these are all significant environmental impacts, with both individual and cumulative effects at the local, state, and national levels. The comments also stated that if FSIS grants NCC's petition, FSIS cannot claim the categorical exclusion from the preparation of an Environmental Assessment (EA) or an EIS under 7 CFR part 1b of the USDA regulations.

FSIS Response: Because FSIS has denied the NCC petition, it will not be implementing the waiver system that these commenters believe could result in significant environmental impacts and thus is not required to analyze potential environmental impacts resulting from the waiver system proposed by NCC as suggested by the comments.

With respect to the Agency's decision to consider granting waivers to additional NPIS establishments to operate at line speeds of up to 175 bpm, that decision is categorically excluded from NEPA requirements. Federal agencies may identify classes of actions that normally do not require the preparation of either an EA or EIS because such actions do not have a significant effect on the human environment, either individually or cumulatively (40 CFR 1507.3(b)(2)). Such classes of actions are ''categorically excluded'' from NEPA requirements (40 CFR 1508.4). Under 7 CFR 1b.4, all FSIS actions, including inspection functions, are categorically excluded from preparation of an EA or EIS unless the Agency head determines that a particular action may have a significant environmental effect. Accordingly, FSIS is not required to prepare an EA or EIS unless it anticipates that granting additional line speed waivers may have a significant environmental effect.

The Agency does not anticipate that its decision to consider granting waivers to additional NPIS establishments to operate at line speeds of up to 175 bpm will have individual or cumulative effects on the environment. Expected sales of poultry products to consumers will determine the total number of birds that a poultry establishment slaughters, not the maximum line speed under which it operates. The Agency has no authority to determine a poultry establishment's production levels. An establishment may decide to increase production hours to slaughter more birds in response to market demand, regardless of its maximum line speed. Granting an establishment a waiver to operate at up to 175 bpm will allow that establishment to slaughter birds more efficiently, but will not affect consumer demand for the establishment's poultry products. In some instances, an establishment that is granted a waiver may be able to reduce its hours of operation while maintaining production at a rate necessary to meet market demand for its poultry products. Thus, granting waivers to allow additional NPIS establishments to operate at up to 175 bpm is not expected to affect the number of birds slaughtered or result in more waste, more water use, or require more fossil fuels to transport the birds from farm to slaughterhouse, as suggested by the comments. In addition,

all poultry slaughter establishments, regardless of line speed, are required to meet all local, State, and Federal environmental requirements.

Economic Issues and Regulatory Reform

Comment: Comments from poultry slaughter establishments and an individual stated that granting the NCC petition would be consistent with Executive Order (E.O.) 13771, which requires that for each new regulation issued, at least two existing regulations must be eliminated to offset the cost of the new regulations. The comments noted that a line speed waiver program would be a deregulatory action under E.O. 13771 because it would expand production options and provide for cost savings to industry.

Comments from consumer advocacy organizations and animal welfare advocacy organizations noted that the petition states that the requested waiver system would be consistent with the Administration's emphasis on reducing regulatory burdens on the industry and assuring competitiveness with other countries. Comments from consumer advocacy and animal welfare advocacy organizations stated that enhanced competitiveness and reduced regulatory burden are not justifications for FSIS to take an action that is inconsistent with its regulatory authority and that, according to the comments, could potentially compromise food safety. Animal welfare advocacy organizations stated that the petition exaggerates the regulatory burden of the maximum authorized line speed under the NPIS. According to the organizations, the petition does not identify any clear cost savings or decreases in FSIS administrative burden and does not include any explanation of how the administration of the requested action would be cost-effective or even financially neutral to FSIS.

FSIS Response: The purpose of the waiver process is to allow establishments to experiment with new equipment, technologies, or procedures to facilitate definite improvements, not to initiate regulatory changes across the industry, as some of the comments seem to suggest. FSIS evaluates the data generated by establishments operating under regulatory waivers to inform future rulemaking, if warranted. FSIS would consider the costs, benefits, and other economic impacts associated with implementing a new technology, including new technologies that would permit faster line speeds, if, based on the data collected under regulatory waivers, the Agency decided to initiate rulemaking to provide for the use of the new technology in the regulations.

Comment: Comments from poultry establishments, trade associations representing the poultry industry, and an individual asserted that allowing the 20 former young chicken HIMP establishments to operate under line speed waivers after they convert to the NPIS gives these establishments a competitive advantage over the other NPIS establishments. The comments stated that all facilities operating under the same inspection system should be regulated under identical criteria, and that the granting of waivers should be done equitably as well. According to the comments, limiting line speed waivers to the 20 former young chicken HIMP establishments has no justification and puts the Agency in the position of apparently granting financial favors to select poultry processing operations.

Several worker advocacy organizations stated that, in the final rule establishing the NPIS, after FSIS considered the extensive comments from affected stakeholders on all sides, and in light of evidence that young chicken establishments authorized to operate up to 175 bpm under the HIMP pilot were in fact operating at an average speed of 131 bpm, FSIS determined that a maximum line speed of 140 bpm would meet the economic needs of poultry slaughter establishments.

A consumer advocacy organization stated that lifting line speed caps across NPIS establishments will lead to new competitive pressures that could undermine food safety in ways not predictable from currently available data. According to the organization, it is conceivable that lifting line speed caps across the industry would create competitive pressure to push line speeds even higher than observed previously, potentially compromising food safety.

FSIS Response: FSIS disagrees that the line speed waivers granted to the former HIMP establishments to operate at line speeds up to 175 bpm after they converted to the NPIS created a new competitive advantage over other NPIS establishments subject to the 140 bpm maximum line speeds prescribed in the final NPIS regulations. The 20 former HIIMP young chicken establishments had been authorized to operate at line speeds up to 175 bpm for over 20 years during the time they were participating in the HIMP pilot. Under the final NPIS rule, these establishments were permitted to run at the line speeds that were authorized before FSIS established the NPIS.

Although FSIS has denied NCC's request to establish a waiver program to allow young chicken NPIS establishments to operate without line speed limits, the Agency will consider granting individual waivers to allow young chicken establishments that meet the criteria described above to operate at line speeds of up to 175 bpm. Under these criteria, line speed waivers will no longer be limited to the 20 former HIMP establishments, and thus, will be equitably distributed to eligible establishments. Because FSIS is not removing the maximum line speed for all NPIS establishments, FSIS has no reason to believe that granting additional individual waivers will create competitive pressure for establishments to increase line speeds. Establishments will not submit line speed waiver requests if their current line speeds meet their business needs.

Comment: Comments from poultry establishments, trade associations representing the poultry industry, and individuals commented that the current system places the U.S. chicken industry at a disadvantage compared to global competitors in South America, Asia, Canada, and Europe that are allowed to operate at line speeds in excess of 200 bpm using the same equipment as processors in the United States. An individual commented that animal welfare is important, and countries in Europe have shown that poultry can be slaughtered humanely under faster line speeds.

Comments from worker advocacy organizations asserted that the evidence points to clear problems with the faster line speeds permitted in foreign countries. According to the comments, certain foreign countries are not permitted to export poultry products to the United States because their poultry inspection systems have not been found equivalent to the U.S. system. The comments also stated that the poultry processed in certain foreign establishments have high levels of pathogens that continue to be of concern to European food safety officials. However, the comments did not indicate what the maximum line speeds permitted in these countries were and did not explain how maximum line speeds affected the countries' pathogen levels.

Response: As noted above, the purpose of the waiver process is to allow establishments to experiment with new equipment, technologies, or procedures, not to initiate regulatory changes across the industry. Regulatory waivers are not the appropriate vehicle to address the poultry industry's global competition issues. Additionally, countries that currently export poultry to the United States require that

establishments that process poultry for export comply with maximum line speeds regulations similar to those in the United States.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

FSIS will announce this notice online through the FSIS web page located at *http://www.fsis.usda.gov/federal-register.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018–21143 Filed 9–27–18; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chugach National Forest; Alaska; Notice of a Proposed Amendment to the Chugach National Forest Land and Resource Management Plan, Applying Only to the Sterling Highway Milepost 45–60 Project

AGENCY: Forest Service, USDA.

ACTION: Notice; project-specific amendment to the Chugach National Forest 2002 Land and Resource Management Plan.

SUMMARY: On May 31, 2018, the U.S. Department of Transportation, Federal Highway Administration (FHWA) signed a Record of Decision for the Sterling Highway MP 45–60 Project, which involves highway construction and reconstruction near Cooper Landing, Kenai Peninsula Borough, Alaska. The U.S. Department of Agriculture, Forest Service participated as a cooperating agency with FHWA and Alaska Department of Transportation and Public Facilities in the preparation of the draft and final Environmental Impact Statements (EIS). To support the FHWA decision, the Forest Service proposes a project-specific Land and Resource Management Plan (Forest Plan) amendment to make the selected route consistent with the Chugach Forest Plan.

DATES: Publication of this notice marks the initiation of a public comment period for the proposed action. Comments concerning the scope of the analysis must be received by November 13, 2018. The agency expects to release a draft Record of Decision for the proposed amendment in late 2018.

ADDRESSES: Send written comments to Chugach National Forest Supervisor's Office, Attn: Sterling Highway Plan Amendment, 161 East 1st Avenue, Door 8, Anchorage, AK 99501. Comments may also be sent via email to *comments-alaska-chugach@fs.fed.us,* or via facsimile to 907–743–9476.

FOR FURTHER INFORMATION CONTACT: Detailed information about the Sterling Highway Project, including the FHWA's Record of Decision, FEIS, and related reports, is available at *http://sterlinghighway.net/.* For information related specifically to the Forest Plan amendment, please contact David Fitz-Enz, Forest Planner, Chugach National Forest at 907–743–9595 or *dfitzenz@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

This notice is specific to the Forest Service. The FHWA was the lead Federal agency for the Sterling Highway Mile 45–60 Project EIS and Record of Decision, which was signed on May 31, 2018. The decision, implementing the ''Juneau Creek Alternative,'' requires 3.3 miles of new road construction across lands managed by the Chugach National Forest in the Kenai Peninsula Borough, Alaska. The Forest Service must determine whether to consent to the transfer of a highway easement for these lands under 23 U.S.C. 317. This consent is conditioned on the Forest Service completing a project-specific plan amendment because the new route is inconsistent with a Forest Plan standard prohibiting new road construction within a certain type of brown bear habitat. This notice pertains only to this project-specific plan amendment.

The policy for project consistency with prior plans amended using the 2012 Planning Rule is set out at FSH 1909.12, Chapter 20, Section 21.33. For a plan developed or revised under a prior planning regulation (1982 Planning Rule) that is amended pursuant to the 2012 Planning Rule, the consistency requirement is that the 2012 Planning Rule consistency provisions at 36 CFR 219.15(d) apply only to plan component(s) added or modified in conformance with, and as defined by, the 2012 Planning Rule. With respect to other plan provisions, the Forest Service's prior interpretation of consistency applies, that projects need only be consistent with plan standards and guidelines. (See 2012 Final Rule 77 FR 21162, 21241 (April 9, 2012); 1991 Advanced Notice of Proposed Rulemaking 56 FR 6508, 6519–6520 (Feb 15, 1991) and the 1995 Proposed Rule, at 60 FR 18886, 18902, 18909 (April 13, 1995).)

As analyzed and disclosed in the Sterling final EIS, this project is also inconsistent with one guideline related to brown bear habitat. This inconsistency does not require a plan amendment (Forest Plan, p. 3–22), but is

briefly mentioned here because it will be documented in the Forest Service's Record of Decision.

Purpose and Need for Action

The FHWA decision for the Sterling Highway MP 45–60 Project approves construction of new highway that crosses 3.3 miles of National Forest System land. The Forest Service must determine whether to consent to the transfer of a highway easement for construction and maintenance of the highway on these lands under 23 U.S.C. 317. This consent is conditioned on the Forest Service completing a project-specific Forest Plan amendment because the new route is inconsistent with a Forest Plan standard prohibiting new road construction within important brown bear feeding areas.

These feeding areas were mapped for this project in collaboration with Alaska Department of Fish and Game, and the new highway employs many design features to minimize effects to brown bear habitat. The purpose of this plan amendment is to provide a project-specific variance exempting the requirement for full consistency with this one forestwide standard related to brown bear habitat. The variance would apply only to this project. Completion of this amendment is required for the Forest Service to consent to the appropriation of lands for highway construction.

Proposed Action

The proposed action is to exempt the Sterling Highway MP 45–60 Project from the following standard in the 2002 Chugach Forest Plan (Forest Plan, p. 3–29):

''Standard 1, Brown Bear Habitat Management. On the Kenai Peninsula geographic area, manage areas of forest cover approximately 750-feet from both sides of important bear feeding areas in specific areas of a stream where salmon are concentrated in pools, below falls, or where broad spawning flats result in localized feeding concentrations of bears to provide cover for brown bears while feeding, or between brown bears and humans. Important brown bear feeding areas will be located with the advice of the Alaska Department of Fish and Game. Within the 750-foot brown bear management zone the following activities will not be allowed: a. new road construction; b. any vegetation management not intended to maintain or improve ecological conditions for brown bear. This standard does not prohibit relocation, reconstruction, or maintenance of existing roads and trails in these areas. During the process of reconstruction or relocation, emphasize opportunities to locate roads or trails outside of these brown bear zones.''

The amendment would exempt this standard only for the Sterling Highway MP 45–60 Project. It is considered a project-specific amendment because it would not change the applicability of Forest Plan requirements for other projects.

The Forest Service's decision will be supported by the environmental analysis contained within the FHWA final EIS. The FHWA has selected the ''Juneau Creek Alternative'' in their Record of Decision. The draft and final EIS issued by FHWA include a discussion of Forest Plan consistency, including the need for this project-specific amendment. They also disclose the environmental effects of this project on brown bear habitat. The draft and final EIS is available at *http://sterlinghighway.net/SHWPI_New.html*. The following are selected sections of the final EIS describing the effects of the selected alternative related to the need for the plan amendment and to effects on brown bear habitat: the Executive Summary, Section 3.2—Land Use Plans and Policies (pp. 3–50—52; 3–56), Section 3.7—Cumulative Effects (pp. 3–589—390), Section 3.22—Wildlife (pp. 3–456—457; 3–472—477; 3–478–482; 3–488—3–491).

Responsible Official

The Forest Supervisor for the Chugach National Forest is the Responsible Official for amending the 2002 Revised Land and Resource Management Plan.

Nature and Scope of Decision To Be Made

The Responsible Official will decide whether the project warrants a project-specific plan amendment and if so, the content of the amendment.

The scope of this amendment is a one-time exemption from Standard 1, Brown Bear Habitat Management, for the Sterling Highway MP 45–60 Project.

The scale of this amendment is limited to the important brown bear feeding areas where the Juneau Creek Alternative route impacts land mapped as Areas 8, 9, and 11 on Map 3.22–1 of the EIS (Chapter 3.22 Wildlife, p. 3–513). The highway easement would encompass less than 100 acres within the mapped feeding area of approximately 1,000 acres. The decision includes extensive mitigation, including a wildlife overpass and several underpasses, to mitigate the effects to wildlife.

The Responsible Official must ensure that the amendment is consistent with 36 CFR 219 regulations, as described below.

Planning Rule Requirements for Forest Plan Amendments

On December 15, 2016, the Department of Agriculture Under Secretary for Natural Resources and Environment issued a final rule that amended the 36 CFR 219 regulations pertaining to National Forest System Land Management Planning (Planning Rule) (81 FR 90723, 90737). The amendment to 36 CFR 219 clarified the Department's direction for amending Forest Plans. The Department also added a requirement for the responsible official amending a plan to provide notice ''about which substantive requirements of § 219.8 through 219.11 are likely to be directly relate to the amendment'' (36 CFR 219.13(b)(2), 81 FR 90738). Whether a rule provision is directly related to an amendment is determined by any one of the following: The purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment.

The substantive requirements of § 219.8 through 219.11 that are likely to be directly related to amending the above standard are:

§ 219.9(a): (a) Ecosystem plan components. (1) Ecosystem integrity. As required by § 219.8(a), the plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore their structure, function, composition, and connectivity.

§ 219.10(a)(3): Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors

§ 219.10(a)(5): Habitat conditions, subject to the requirements of 219.9, for wildlife, fish, and plants commonly enjoyed and used by the public; for hunting, fishing, trapping, gathering, observing, subsistence and other activities

If the proposed amendment is determined to be ''directly related'' to a substantive rule requirement, the Responsible Official must apply that requirement within the scope and scale of the proposed amendment and, if necessary, make adjustments to the proposed amendment to meet the rule requirement (36 CFR 219.13(b)(5) and (6)).

Opportunities for Public Participation

The FHWA provided opportunities for public comment throughout the development of this project, including public comment periods and public meetings following issuance of the draft EIS and Final EIS. A history of public participation, including all public comments, is available at: *http://sterlinghighway.net/SHWPI_New.html.* Both the draft and final EIS disclosed the need for a Forest Plan amendment, depending on the alternative selected.

This notice initiates a 45-day comment period on the proposed amendment. This will be the final comment period for this proposed amendment prior to issuing the record of decision for administrative review. Instructions on how to provide comment, and where to find additional information, are described in the beginning of this notice. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Administrative Review of Forest Plan Amendment Decisions

The decision for a plan amendment will be documented in a record of decision issued by the Forest Service. The decision will be subject to the predecisional administrative review process per 36 CFR 219 subpart B. Objections will be accepted only from those who have previously submitted substantive formal comments specific to the proposed plan amendment. The Reviewing Official for any objection is the Regional Forester for the Alaska Region.

Dated: September 7, 2018.

Gregory C. Smith,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–21153 Filed 9–27–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for Black Butte National Wild and Scenic River, Including Portions of Cold Creek, Mendocino National Forest, Mendocino County, California

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the Black Butte National Wild and Scenic River, including portions of Cold Creek, to Congress.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Mendocino National Forest Supervisor's Office, 825 N Humboldt Ave., Willows, CA 95988; (530) 934–3316.

SUPPLEMENTARY INFORMATION: The Black Butte Wild and Scenic River, including portions of Cold Creek, boundary is available for review at the following offices: USDA Forest Service, Yates Building, 14th and Independence Avenues SW, Washington, DC 20024; Pacific Southwest Region 1323 Club Drive, Vallejo, CA 94592; and Mendocino National Forest Supervisor's Office, 825 N Humboldt Ave., Willows, CA 95988.

The Northern California Coastal Wild Heritage Wilderness Act (Pub. L. 109–362) of October 17, 2006, designated the Black Butte River and portions of Cold Creek, California, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until 90-days after Congress receives the transmittal.

Dated: September 21, 2018.

Gregory C. Smith,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–21163 Filed 9–27–18; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: U.S. Census Bureau.

Title: Report of Building or Zoning Permits Issued for New Privately-Owned Housing Units.

OMB Control Number: 0607–0094.

Form Number(s): C–404.

Type of Request: Extension of a currently approved collection.

Number of Respondents: 20,325.

Average Hours per Response: Ranges from 3 to 23 minutes.

Burden Hours: 17,263.

Needs and Uses: The Census Bureau is requesting a three-year extension of the Report of Building or Zoning Permits Issued for New Privately-Owned Housing Units, otherwise known as the Building Permits Survey (BPS). The Census Bureau conducts this survey to collect data on new residential buildings from state and local permit-issuing offices. The key estimates from the survey are the numbers of new housing units authorized by building permits; data are also collected on the valuation of the housing units. The BPS specifically collects information on changes to the geographic coverage of the permit-issuing place, the number and valuation of new residential housing units authorized by building permits, and additional information on residential permits valued at $1 million or more, including, but not limited to, site address and type of building.

The Census Bureau produces statistics used to monitor activity in the large and dynamic construction industry. Given the importance of this industry, several of the statistical series have been designated by the Office of Management and Budget as Principal Economic Indicators. Two such indicators are directly dependent on the key estimates from the BPS. For New Residential Construction (which includes Housing Units Authorized by Building Permits, Housing Starts, and Housing Completions), form C–404 is used to collect the estimate for Housing Units Authorized by Building Permits. For New Residential Construction and Sales, the number of housing units authorized by building permits is a key component utilized in the estimation of housing units started, completed, and sold.

These statistics help state, local, and federal governments, as well as private industry, analyze this important sector of the economy. The building permit series are available monthly based on a sample of building permit offices, and annually based on the entire universe of permit offices. Published data from the survey can be found on the Census Bureau's website at *www.census.gov/permits.*

The Census Bureau collects these data primarily by mail or online using an online version of the same questionnaire. Some data are also collected via receipt of proprietary electronic files or mailed printouts for jurisdictions who have established reporting arrangements which allow them to submit their responses using their own file format.

We use the data, a component of The Conference Board Leading Economic Index, to estimate the number of housing units authorized, started, completed, and sold (single-family only). In addition, the Census Bureau uses the detailed geographic data in the development of annual population

estimates; those population estimates are used by government agencies to allocate funding and other resources to local areas, inform policy, and aid in city planning. Policymakers, planners, businesses, and others use the detailed geographic data to monitor growth and plan for local services, and to develop production and marketing plans. The BPS is the only source of statistics on residential construction for states, counties, and smaller geographic areas. Because building permits are public records, we can release data for individual jurisdictions, and annual data are published for every permit-issuing jurisdiction.

Affected Public: State, local or Tribal governments.

Frequency: Monthly and annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 182.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21168 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Procedures for Submitting Requests for Objections From the Section 232 National Security Adjustments of Imports of Steel and Aluminum

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before November 27, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Presidential Proclamations 9705 Adjusting Imports of Steel Into the United States and 9704 Adjusting Imports of Aluminum Into the United States

On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the two investigation reports submitted by the Secretary of Commerce pursuant to section 232 of the Trade Expansion Act of 1962 (U.S.C. 1862) and determining that adjusting imports through the imposition of duties on steel and aluminum is necessary so that imports of steel and aluminum will no longer threaten to impair the national security. The Proclamations also authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior executive branch officials as appropriate, to grant exclusions from the duties for domestic parties affected by the duties. This could take place if the Secretary determines the steel or aluminum for which the exclusion is requested is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or should be excluded based upon specific national security considerations. The President directed the Secretary to promulgate regulations as may be necessary to implement an exclusion process. The purpose of this information collection is to allow for submission of objections requests from the remedies instituted in presidential proclamations adjusting imports of steel into the United States and adjusting imports of aluminum into the United States.

II. Method of Collection

Submitted electronically.

III. Data

OMB Control Number: 0694–0138.

Form Number(s): 0694–0138.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 24,222.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 96,888.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), Presidential Proclamations 9704 and 9705.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21167 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Procedures for Submitting Request for Exclusions From the Section 232 National Security Adjustments of Imports of Steel and Aluminum

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before November 27, 2018.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *docpra@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mark Crace, BIS ICB Liaison, (202) 482–8093 or at *mark.crace@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Presidential Proclamations 9705 Adjusting Imports of Steel Into the United States and 9704 Adjusting Imports of Aluminum Into the United States

On March 8, 2018, the President issued Proclamations 9704 and 9705 concurring with the findings of the two investigation reports submitted by the Secretary of Commerce pursuant to section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862) and determining that adjusting imports through the imposition of duties on steel and aluminum is necessary so that imports of steel and aluminum will no longer threaten to impair the national security. The Proclamations also authorized the Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Treasury, the Secretary of State, the United States Trade Representative, the Assistant to the President for Economic Policy, the Assistant to the President for National Security Affairs, and other senior executive branch officials as appropriate, to grant exclusions from the duties for domestic parties affected by the duties. This could take place if the Secretary determines the steel or aluminum for which the exclusion is requested is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or should be excluded based upon specific national security considerations. The President directed the Secretary to promulgate regulations as may be necessary to implement an exclusion process. The purpose of this information collection is to allow for submission of exclusions requests from the remedies instituted in presidential proclamations adjusting imports of steel into the United States and adjusting imports of aluminum into the United States.

II. Method of Collection

Submitted electronically.

III. Data

OMB Control Number: 0694–0139.

Form Number(s): 0694–0139.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 86,133.

Estimated Time per Response: 4 hours.

Estimated Total Annual Burden Hours: 344,532.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862), Presidential Proclamations 9704 and 9705.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–21166 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG495

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) in October 2018.

DATES: The Snapper Grouper AP meeting will take place October 17, 2018, from 1:30 p.m. to 5 p.m.; October 18, from 8:30 a.m. until 5 p.m.; and October 19, from 8:30 a.m. until 12 p.m.

ADDRESSES:

Meeting address: The meetings will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Snapper Grouper AP meeting is open to the public and will be available via webinar as it occurs. Registration is required. Webinar registration information and other meeting materials will be posted to the Council's website at: *http://safmc.net/safmc-meetings/current-advisory-panel-meetings/* as it becomes available.

Agenda items for the Snapper Grouper AP meeting include the following: Input on the 2016–20 Vision

Blueprint for the Snapper Grouper Fishery, input on Citizen Science projects, fishery performance reports for Yellowtail Snapper and Golden Tilefish, recommendations on developing amendments to the Snapper Grouper Fishery Management Plan, and other issues as appropriate. The AP will develop recommendations as necessary for consideration by the Council's Snapper Grouper Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the public hearings.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 25, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–21172 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG497

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its System Management Plan (SMP) Workgroup via webinar.

DATES: The SMP Workgroup will meet via webinar from 9 a.m. until 11 a.m. on October 19, 2018 and from 9 a.m. until 11 a.m. on November 2, 2018.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The meetings are accessible to the public via webinar. Registration is required. Information regarding registration and other meeting information will be posted to the Council's website at: *http://safmc.net/safmc-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The SMP Workgroup is an advisory group for the Council that reviews actions items, evaluates protected areas, and reviews management of protected areas recommended by the Council. The SMP Workgroup was formed in March 2018. These will be the first two meetings held to discuss the System Management Plan for the Spawning Special Management Zones (SMZs) created in Amendment 36 to Fishery Management Plan for the Snapper Grouper Fishery of the South Atlantic Region. Agenda items for the SMP Workgroup meetings include the following: Data collected in Spawning SMZs; outreach and enforcement, format for reports, and report card for the Spawning SMZs. The Workgroup will also elect a chair and vice-chair, assign writing tasks, and review materials developed for Spawning SMZs.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the public meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 25, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–21179 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG494

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Coonamessett Farm Foundation contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow participating commercial fishing vessels to temporarily possess undersized monkfish for biological sampling during normal fishing operations in the Southern Fishery Management Area. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before October 15, 2018.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on CFF 2018 Monkfish RSA EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF 2018 Monkfish RSA EFP.''

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, 978–281–9180, *Cynthia.Ferrio@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Coonamessett Farm Foundation (CFF) submitted a complete application for an Exempted Fishing Permit (EFP) on September 12, 2018, to conduct fishing activities that the regulations would otherwise restrict. The EFP would authorize 12 participating vessels to temporarily possess undersize monkfish while biologically sampling all monkfish caught during normal fishing operations in the Southern Fishery Management Area. This research is designed to create a reproductive profile for monkfish in the region. Sampling would consist of recording the length, total weight, gonad weight, liver weight, and spleen color of each individual sampled fish. Collection of gonad and blood samples will also occur. Retention and sale of legal catch would be allowed on these trips, but all undersized fish and otherwise prohibited catch will be returned to the sea as quickly as possible.

If approved, this research would be conducted opportunistically over the course of 16 single-day commercial trips within the Southern Fishery Management Area for monkfish. All of these 16 trips are expected to take place in 2019 between January and June. All

gear and effort specifications (*i.e.,* haul duration, number of nets, etc.) would be dependent upon the discretion of the vessel captains' typical fishing practices, but would remain within commercial regulations.

CFF is requesting an exemption from the minimum size possession restriction in the Monkfish Fishery Management Plan (FMP) found at 50 CFR 648.93(a) to accurately sample all monkfish during these selected fishing trips. Funding for this research has been awarded under the Monkfish Research Set-Aside Program.

If approved, CFF may request minor modifications and extensions to the EFP throughout the study period. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: September 25, 2018.

Alan D. Risenhoover,

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

[FR Doc. 2018–21164 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG498

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting and hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of its American Samoa Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP) to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The American Samoa Archipelago FEP AP will meet on Thursday, October 11, 2018, between 4:30 p.m. and 6:30 p.m. All times listed are local island times. For specific times and agendas, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The American Samoa Archipelago FEP AP will meet at the Native American Samoa Advisory Council Building, Pava'ia'i Village, Tutuila, American Samoa, 96799.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the American Samoa Archipelago FEP AP Meeting

Thursday, October 11, 2018, 4:30 p.m.–6:30 p.m.

1. Welcome and Introductions
2. Report on Previous Advisory Panel Recommendations
3. Council Issues
   - A. Precious Corals Essential Fish Habitat Refinement Options
   - B. Update on Aquaculture Management
   - C. Specification of American Samoa Bottomfish MUS Annual Catch Limits for Fishing Year 2019
4. American Samoa FEP Community Activities
5. American Samoa FEP AP Issues
   - A. Report of the Subpanels
   - i. Island Fisheries Subpanel
   - ii. Pelagic Fisheries Subpanel
   - iii. Ecosystems and Habitat Subpanel
   - iv. Indigenous Fishing Rights Subpanel
   - B. Other Issues
6. Public Comment
7. Discussion and Recommendations
8. Other Business

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 25, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–21180 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG496

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Scientific and Statistical Committee (SSC) in Charleston, SC. See **SUPPLEMENTARY INFORMATION.**

DATES: The SSC will meet 1 p.m.–5:30 p.m., Monday, October 15, 2018; 8:30 a.m.–5:30 p.m., Tuesday, October 16, 2018; and 8:30 a.m.–12 p.m., Wednesday, October 17, 2018.

ADDRESSES:

Meeting address: The meeting will be held at the Town & Country Inn and Suites, 2008 Savannah Hwy., Charleston, SC 29407; phone: (800) 334–6660 or (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The following agenda items will be addressed by the SSC during the meeting:

1. Updates on Southeast Data, Assessment and Review (SEDAR) projects; approve the terms of reference, schedule, and identify participants for the Gulf and South Atlantic Scamp Research Track; and approve the terms of reference for the South Atlantic golden Tilefish and Snowy Grouper assessments.

2. Review the findings of a Florida Fish and Wildlife Conservation Commission selectivity study for Red Snapper, determine if they are the best scientific information available, and provide recommendations for including these findings into the Interim Analysis for Red Snapper.

3. Update on ongoing research from NOAA Fisheries' Southeast Fisheries Science Center.

4. Update on the Southeast Reef Fish Survey results from the 2018 sampling year.

5. Review revised Marine Recreational Information Program (MRIP) recreational catch estimates for Council managed stocks and consider approaches for revising Acceptable Biological Catch (ABC) recommendations for unassessed stocks.

6. Review the revised SEDAR assessments for Vermilion Snapper, Black Sea Bass, Blueline Tilefish and Red Grouper using the revised MRIP catch data; apply the ABC Control Rule and provide fishing level recommendations; and discuss uncertainties and changes due to revised MRIP numbers.

7. Review the ABC Control Rule Amendment and analyses, including example application of risk tolerance levels.

8. Review the methodology for a new bag and size limit analysis and the findings of the workgroup; discuss uncertainties and determine if this analysis is best scientific information available and useful for management.

9. Consider forming a workgroup for the SSC to provide input on the South Atlantic Ecosystem Model.

10. Receive updates and progress reports on ongoing Council amendments and activities.

The meeting is open to the public and will also be available via webinar as it occurs. Webinar registration is required. Information regarding webinar registration will be posted to the Council's website at: *http://safmc.net/safmc-meetings/scientific-and-statistical-committee-meetings/* as it becomes available. The meeting agenda, briefing book materials, and online comment form will be posted to the Council's website two weeks prior to the meeting. Written comment on SSC agenda topics is to be distributed to the Committee through the Council office, similar to all other briefing materials. Written comment to be considered by the SSC shall be provided to the Council office no later than one week prior to an SSC meeting. For this meeting, the deadline for submission of written comment is 12 p.m., Monday, October 8, 2018.

Multiple opportunities for comment on agenda items will be provided during SSC meetings. Open comment periods will be provided at the start of the meeting and near the conclusion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. Additional opportunities for comment on specific agenda items will be provided, as each item is discussed, between initial presentations, and SSC discussion. Those interested in providing comment should indicate such in the manner requested by the Chair, who will then recognize individuals to provide comment. All comments are part of the record of the meeting.

Although non-emergency issues not contained in the meeting agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 25, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–21178 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

BroadbandUSA Webinar Series

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting; date changes.

SUMMARY: The National Telecommunications and Information Administration (NTIA), as part of its BroadbandUSA program, announced a series of webinars to engage the public and stakeholders with information to accelerate broadband connectivity, improve digital inclusion, strengthen policies and support local priorities in a notice published on July 17, 2018. This notice provides new dates for the November 2018 and December 2018 webinars.

DATES: BroadbandUSA will hold a webinar on November 14, 2018, and December 12, 2018, from 2:00 p.m. to 3:00 p.m. Eastern Time.

ADDRESSES: This is a virtual meeting. NTIA will post the registration information on its BroadbandUSA website, *https://broadbandusa.ntia.doc.gov/event.*

FOR FURTHER INFORMATION CONTACT: Elaine Sloan, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4872, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8231; email: *broadbandusawebinars@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002; email *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: On July 17, 2018, NTIA published a Notice announcing that it would host a series of webinars through its BroadbandUSA program on a monthly basis to engage the public and stakeholders with information to accelerate broadband connectivity, improve digital inclusion, strengthen policies and support local priorities. *See* NTIA, BroadbandUSA Webinar Series, Notice of open meetings—webinar series, 83 FR 33211 (July 17, 2018). In the original notice, NTIA announced that the webinars would be held from 2:00 p.m. to 3:00 p.m. Eastern Time on the third Wednesday of every month, beginning October 17, 2018 and continuing through September 18, 2019. Through this notice, NTIA corrects the dates for the November 2018 and December 2018 webinars as November 14, 2018, and December 12, 2018, from 2:00 p.m. to 3:00 p.m. Eastern Time, respectively. All other information remains the same.

Dated: September 25, 2018.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2018–21151 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

International Work Sharing

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required

by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of an existing information collection: 0651–0079 (International Work Sharing).

DATES: Written comments must be submitted on or before November 27, 2018.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–0079 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Daniel Hunter, Program Manager, United States Patent and Trademark office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–8050; or by email at *Daniel.Hunter@uspto.gov* with ''0651–0079 comment'' in the subject line. Additional information about this information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO) established a Work Sharing Pilot Program in conjunction with the Japan Patent Office (JPO) and the Korean Intellectual Property Office (KIPO) to study how the exchange of search results between offices for corresponding counterpart applications improves patent quality and facilitates the examination of patent applications in both offices. Under this Work Sharing Pilot Program, two Collaborative Search Pilot (CSP) programs—USPTO–JPO and USPTO–KIPO—have been implemented. Through their respective CSP(s), each office concurrently conducts searches on corresponding counterpart applications. Each office's search results are exchanged following these concurrent searches, which provides examiners with a comprehensive set of art before them at the commencement of examination.

Work sharing between Intellectual Property (IP) offices is critical for increasing the efficiency and quality of patent examination worldwide. The exchange of information and documents between IP offices also benefits applicants by promoting compact prosecution, reducing pendency, and supporting patent quality by reducing the likelihood of inconsistencies in patentability determinations among IP offices when considering corresponding counterpart applications. The gains in efficiency and quality are achieved through a collaborative work sharing approach to the evaluation of patent claims. As a result of this exchange of search reports, the examiners in both offices may have a more comprehensive set of references before them when making an initial patentability determination.

II. Method of Collection

The forms associated with this collection may be downloaded from the USPTO website in Portable Document Format (PDF) and filled out electronically. Requests to participate in the International Work Sharing Program must be submitted online using EFS-Web, the USPTO's web-based electronic filing system.

III. Data

OMB Number: 0651–0079.

IC Instruments and Forms: PTO/SB/437, PTO/SB/CSP Survey 1.

Type of Review: Revision of an Existing Information Collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institution.

Estimated Number of Respondents: 300 responses per year. The USPTO estimates that 100 percent of the annual responses for this collection will be submitted electronically via EFS-Web, which customers may access through the USPTO website.

Estimated Time per Response: The USPTO estimates that it will take the public approximately between 5 minutes (0.08 hours) and 3 hours to complete the information in this collection, including the time to gather the necessary information, prepare the forms or documents, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 462 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $202,356. The USPTO expects that that an attorney will complete the information in this collection. The professional hourly rate for intellectual property attorneys in private firms is $438. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $202,356.00 per year.

No.	Item	Estimated time for response (a)	Estimated annual response (b)	Estimated annual burden hours (a) × (b) = (c)	Rate (d)	Estimated annual total cost (c) × (d) = (e)
1	Petition for Participation in the Collaborative Search Pilot (CSP) Program Between the Japan Patent Office (JPO) and the USPTO.	3	50	150	$438.00	$65,700.00
2	Petition for Participation in the Collaborative Search Pilot (CSP) Program Between the Korean Intellectual Property Office (KPO) and the USPTO.	3	100	300	438.00	131,400.00
3	CSP Survey	*0.08	150	12	438.00	5,256.00
Total			300	462		202,356.00

*5 minutes.

Estimated Total Annual (Non-hour) Respondent Cost Burden: $0. There are no estimated filing fees or postage costs for this collection.

IV. Request for Comments

Comments submitted in response to this notice will be summarized or

included in the request for OMB approval of this information collection. They also will become a matter of public record.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) 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 respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2018–21215 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; "Patent Reexamination and Supplemental Examinations"

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: United States Patent and Trademark Office, Commerce.

Title: Patent Reexamination and Supplemental Examinations.

OMB Control Number: 0651–0064.

Form Number(s):

- PTO/SB/57
- PTO/SB/59

Type of Request: Regular.

Number of Respondents: 1,540 responses per year.

Average Hour per Response: The USPTO estimates that it will take the public approximately between 18 minutes (0.30 hours) to 55 hours to gather the necessary information, prepare the appropriate form or other document, and submit the information to the USPTO.

Burden Hours: 32,962.50 hours per year.

Cost Burden: $2,747,178 per year.

Needs and Uses: The public uses this information collection to request supplemental examination and reexamination proceedings and to ensure that the associated documentation is submitted to the USPTO.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *http://www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include "0651–0064 copy request" in the subject line of the message.
- *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 29, 2018 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2018–21212 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; "Fee Deficiency Submissions"

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: United States Patent and Trademark Office, Commerce.

Title: Fee Deficiency Submissions.

OMB Control Number: 0651–0070.

Form Number(s): None.

Type of Request: Regular.

Number of Respondents: 2,500 responses per year.

Average Hours per Response: 2 hours per response.

Burden Hours: 5,000 hours annually.

Cost Burden: $335.00.

Needs and Uses: The Leahy-Smith America Invents Act ("Act") was enacted into law on September 16, 2011. See Public Law 112–29, 125 Stat. 283 (2011). Under section 10(b) of the Act, eligible small entities shall receive a 50 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The Act further provides that micro entities shall receive a 75 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

This information collection covers the submissions made by patent applicants and patentees to excuse small and micro entity fee payment errors, in accordance with the procedures set forth in 37 CFR 1.28(c) and 1.29(k). Specifically, 37 CFR 1.28(c) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the small entity amount. 37 CFR 1.29(k) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the micro entity amount.

This information collection is necessary so that patent applicants and patentees may pay the balance of fees due (*i.e.,* make a fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The USPTO needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent. This renewal seeks to extend the authority of USPTO to collect the balance of fees due from those who may have such an outstanding balance (*i.e.,* a fee deficiency).

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0070'' in the subject line of the message.

• *Mail:* Marcie Lovett, Director, Records and Information Governance Division, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 29, 2018 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Director, Records and Information Governance Division, OCTO, United States Patent and Trademark Office.

[FR Doc. 2018–21213 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request; ''Post Patent Public Submissions''

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

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

Title: Post Patent Public Submissions.

OMB Control Number: 0651–0067.

Form Number(s):

• PTO/SB/42

Type of Request: Regular.

Number of Respondents: 100 responses per year.

Average Hours per Response: The USPTO expects that it will take the public 10 hours to respond to the items in this collection. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Burden Hours: 1,000 hours per year.

Cost Burden: $11.50 per year.

Needs and Uses: This information collection is necessary so that the public may submit, in a patent file, prior art consisting of patents or printed publications which the person making the submission believes to have a bearing on the patentability of any claim of the patent, and statements of the patent owner that were filed by the patent owner in a proceeding before a Federal court or the USPTO in which the patent owner took a position on the scope of any claim of the patent. The public may use this information to aid in ascertaining the patentability and/or scope of the claims of the patent. The USPTO may use the information during subsequent reissue or reexamination proceedings, except that the USPTO's use of statements of the patent owner that were filed by the patent owner in a proceeding before a Federal court or the USPTO in which the patent owner took a position on the scope of any claim of the patent will be limited to determining the meaning of a patent claim in *ex parte* reexamination proceedings that have already been ordered and in *inter partes* review and post review proceedings that have already been instituted.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Further information can be obtained by:

• *Email: InformationCollection@uspto.gov.* Include ''0651–0067 information request'' in the subject line of the message.

• *Mail:* Marcie Lovett, Records and Information Governance Division Director, Office of the Chief Technology Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 29, 2018 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Marcie Lovett,

Records and Information Governance Division Director, OCTO, United States Patent and Trademark Office.

[FR Doc. 2018–21214 Filed 9–27–18; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* October 28, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 8/24/2018 (83 FR 165), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8115–00–935–6531—Box, Shipping Cleated Plywood, 43″ x 31¾″ x 21½″
8115–00–935–6526—Box, Shipping Cleated Plywood, 43″ x 31¾″ x 41″
8115–00–935–6530—Box, Shipping Cleated Plywood, 86″ x 31¾″ x 21½″
8115–00–935–6532—Box, Shipping Cleated Plywood, 31¾″ x 29″ x 21½″
8115–00–935–5887—Box, Shipping Cleated Plywood, 86″ x 31¾'' x 41″
8115–00–935–6525—Box, Shipping Cleated Plywood, 57″ x 31¾'' x 41″
8115–00–935–6527—Box, Shipping Cleated Plywood, 29″ x 31¾'' x 41″
8115–00–935–6528—Box, Shipping Cleated Plywood, 58″ x 43″ x 41″
Mandatory Source of Supply: Helena Industries, Inc., Helena, MT
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Services

Service Type: Janitorial/Custodial Service
Mandatory for: VA Outpatient Clinic, Mobile, AL
Mandatory Source of Supply: Lakeview Center, Inc., Pensacola, FL
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Janitorial/Custodial Service
Mandatory for: Naval Operations Support Center (NOSC) Bldgs. 245 and 247, Cheyenne, WY
Mandatory Source of Supply: Skils'kin, Spokane, WA
Contracting Activity: DEPT OF THE NAVY, NAVFAC NORTHWEST

Service Type: Janitorial/Custodial Service
Mandatory for: Orlando VA Medical Center: 2500 Leahy Avenue, Orlando, FL
Mandatory Source of Supply: Lakeview Center, Inc., Pensacola, FL
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 675–ORLANDO

Service Type: Food Service Attendant Service
Mandatory for: USDA, Animal and Plant Health Inspection Service: Otis Methods Dev. Center, Building 1398, Otis ANG Base, MA
Mandatory Source of Supply: UNKNOWN
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Service Type: Laundry Service
Mandatory for:
Aiken CBOC, Aiken, SC, 951 Milbrook Avenue, Aiken, SC
Athens VA CBOC, Athens, GA, 9249 Highway 29 South, Athens, GA
Carl Vinson VA Medical Center, Dublin, GA, 1826 Veterans Boulevard, Dublin, GA
Charlie Norwood VA Medical Center Uptown Division, 1 Freedom Way, Augusta, GA
Charlie Norwood VA Medical Center Downtown Division, 800 Balie Street, Augusta, GA
Ralph H. Johnson VA Medical Center, Charleston, SC, 109 Bee Street, Charleston, SC
W.J.B. Dorn VA Medical Center, Columbia, SC, 6439 Garners Ferry Road, Columbia, SC
Mandatory Source of Supply: GINFL Services, Inc., Jacksonville, FL
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 247–NETWORK

Service Type: Laundry Service
Mandatory for: Fleet and Industrial Supply Command, Norfolk, VA
Mandatory Source of Supply: Rappahannock Goodwill Industries, Inc., Fredericksburg, VA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Food Service Attendant Service
Mandatory for: Norfolk Naval Shipyard: Bldgs:1SJ–4SJ, 6SJ–8SJ, 11SJ, 12SJ, 14SJ, 19, 26SJ, 38SJ, 41, 43SJ, 51, 59, 67, 69SJ, 79SJ, 82SJ, 89SJ, 91SJ, 94SJ, 124SJ, 164SJ–168SJ, 170SJ–172SJ, + 38 add'l bldgs. Portsmouth, VA
Mandatory Source of Supply: Portco, Inc., Portsmouth, VA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Laundry Service
Mandatory for:
Transient Personnel Unit, BEQ & BOQ,: Fleet Anti-Submarine Warfare Center, San Diego, CA
San Diego Naval Air Station: Galley Building 794, San Diego, CA
Mandatory Source of Supply: Job Options, Inc., San Diego, CA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Janitorial/Custodial Service
Mandatory for: Naval & Marine Corps Reserve Center, Lehigh Valley, PA
Mandatory Source of Supply: Via of the Lehigh Valley, Inc., Bethlehem, PA
Contracting Activity: DEPT OF THE NAVY, U S FLEET FORCES COMMAND

Service Type: Document Processing Service
Mandatory for: Office of Transportation Audits: 18th & F Streets NW, Washington, DC
Mandatory Source of Supply: Linden Resources, Inc., Arlington, VA
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS INFORMATION TECHNOLOGY CENTER

Michael R. Jurkowski,
Business Management Specialist.

[FR Doc. 2018–21183 Filed 9–27–18; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete products from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* October 28, 2018.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): MR 830—Spinner, Salad
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s): MR 467—Grocery Shopping Tote Bag, Laminated, Easter, Orange Eggs, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s): 8540–00–NIB–0040—Towel, Paper, C-Fold, 100% PCRM, 4″ x 10″1/4″, White, 7 Bundles
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
7530–00–NIB–0556—Folder, Classification
7530–00–NIB–0552—Folder, Classification
Mandatory Source of Supply: Clovernook Center for the Blind and Visually Impaired, Cincinnati, OH
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR (2, NEW YORK, NY

NSN(s)—Product Name(s): 7520–01–643–8193—Retractable, Ballpoint Pen and Stylus, Medium, Black Ink
Mandatory Source of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s): 7930–00–NIB–0127—Cleaner, Commercial Vehicle, Skilcraft Savvy TR–43, Gallon
7930–00–NIB–0142—Cleaner, Commercial Vehicle, Skilcraft Savvy TR–43, 5 Gallons

7930–00–NIB–0143—Cleaner, Commercial Vehicle, Skilcraft Savvy TR–43, 55 Gallons

Mandatory Source of Supply: VisionCorps, Lancaster, PA

Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s): 7110–01–622–1763—White Board, Dry Erase, Magnetic, Work/Plan Kit, Aluminum Frame, 6′ x 4′

7110–01–622–1763—White Board, Dry Erase, Magnetic, Work/Plan Kit, Aluminum Frame, 6′ x 4′

7110–01–622–1764—White Board, Dry Erase, Magnetic, Work/Plan Kit, Aluminum Frame, 4′ x 3′

Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Contracting Activity: GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

Michael R. Jurkowski,

Business Management Specialist.

[FR Doc. 2018–21182 Filed 9–27–18; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0031]

Request for Information Regarding Bureau Data Collections

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is seeking comments and information from interested parties to assist the Bureau in assessing the overall efficiency and effectiveness of the Bureau's Data Governance Program and its Data Collections in support of the Bureau's work and, consistent with law, the Bureau is considering whether any changes to its Data Governance Program or Data Collections would be appropriate.

DATES: Comments must be received by December 27, 2018.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2018–0031, by any of the following methods:

- *Electronic:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2018–0031 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of the topic on which you are commenting at the top of each response (you do not need to address all topics). Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. eastern time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions in response to this request for information, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Ren Essene, Data Policy Manager; and Suzan Muslu, Data Governance Specialist, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau of Consumer Financial Protection was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] to implement and, where applicable, enforce Federal consumer financial law consistently to achieve certain specified ends. The Bureau collects, manages, and publishes information in the course of its activities pursuant to the Dodd-Frank Act and other statutes. Congress delineated six ''primary functions'' of the Bureau in the Dodd-Frank Act.[2] Some of those functions expressly require the Bureau to collect data; in other instances, collecting data is integral to enabling the Bureau to discharge a function. Consistent with the practice of many Federal agencies, including other financial regulators, the Bureau collects information to inform and guide its work. Like other agencies, the Bureau also works to protect its data by using a secure environment and employing best practices for data controls. For example, the Bureau limits who has access to its Data Collections, de-identifies data, and prohibits Bureau staff from trying to re-identify individuals from de-identified datasets.

The executive branch has also emphasized data use, and the President's Management Agenda directly addresses data and information technology as primary drivers of transformation. One of the Cross-Agency Priority Goals is to leverage data as strategic assets to grow the economy, increase the effectiveness of the Federal government, facilitate oversight, and promote transparency. The Bureau aims to leverage data in the same way.

The Bureau is issuing concurrently with this Request for Information (RFI) a report on the *Sources and Uses of Data at the Bureau of Consumer Financial Protection* (''Data Report''), available on its website,[3] which describes the sources and uses of the data that the Bureau intakes, including data that is obtained for one purpose and put to an additional use (''reuse''). The Data Report also describes the Bureau's data governance structure and processes, including the structure and processes governing the intake, use, access and disclosure of data. We refer to these activities as the Bureau's ''Data Governance Program.''

This RFI seeks input on several aspects of the Bureau's Data Governance Program and its Data Collection activities to date, and suggestions for future improvements. For purposes of this RFI, we use the phrase ''Data Collections'' to refer to Bureau data intakes outside of the Division of Supervision, Enforcement, and Fair Lending or of the Office of Consumer Response. Data Collections include data that are collected by another agency and shared with the Bureau, data that are collected by a commercial entity and sold to the Bureau, public data that are downloaded by the Bureau, as well as instances in which the Bureau itself collects data either directly or through a contractor. The Data Report provides detailed information on the Bureau's Data Collections activities to date.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5511(c).

[3] *See* Bureau of Consumer Fin. Prot., ''Sources and Uses of Data at the Bureau of Consumer Financial Protection,'' (Sept. 2018), available at *https://www.consumerfinance.gov/data-research/research-reports/sources-and-uses-data-bureau-consumer-financial-protection/.*

Request for Information Overview

The Bureau is using this RFI to seek public input regarding the overall effectiveness and efficiency of the Bureau's Data Collections, as well as changes that it may make, consistent with applicable law, to the Data Governance Program at the Bureau; the Bureau's Data Collection practices related to privacy; the sources, uses, and scope of information the Bureau collects; ways the Bureau should or should not reuse data collected for one purpose to inform other functions of the Bureau; ways to reduce reporting burden; changes that may assist the Bureau to more effectively meet our statutory purpose and objectives; and other activities that the Bureau could engage in to make Data Collections from financial institutions more effective and efficient.

The Bureau recently concluded a Call for Evidence in which it sought public comment, through a series of RFIs, on multiple aspects of the Bureau's work. This RFI is not intended to duplicate that work. Accordingly, the Bureau is not seeking comments on the following data or Data Collections that are addressed in other recent Bureau RFIs: (1) Information collected as part of the Bureau's consumer complaint process, public complaint reporting, and the Consumer Complaint Database; [4] (2) the substance of any particular rule (for both rules the Bureau adopted and those it inherited) with separate information collection requirements; [5] or (3) information collected through the Bureau's enforcement civil investigative demands (CIDs) or through supervisory activities.[6] The suggested topics for this RFI (below) are not intended to cover data issues or Data Collections in those areas. The Bureau does, however, invite comments on the Bureau's reuse of data collected through consumer response and supervisory and enforcement activities.

The Bureau encourages comments from all interested members of the public. The Bureau anticipates that the responding public may include entities subject to Bureau rules, trade associations and professional services organizations that represent these entities, individual consumers, consumer advocates, regulators, and researchers or members of academia.

Suggested Topics for Commenters

To allow the Bureau to evaluate suggestions more effectively, the Bureau requests that, where possible, comments include:

- Specific discussions of any potential changes to our Data Collection processes, consistent with the laws providing the Bureau with data collection authority and the Bureau's statutory purposes and objectives, and including, in as much detail as possible, the nature of the requested change, and supporting data or other information on impacts, costs, benefits, or information concerning alignment with the processes of other agencies.
- Specific identification of any aspects of the Bureau's approach to its Data Collections that are working well, and including, in as much detail as possible, supporting data or other information on impacts, costs, benefits, or information concerning alignment with the processes of other agencies.

The following sections list areas of interest on which commenters may want to focus. This non-exhaustive list is meant to assist in the formulation of comments and is not intended to restrict what may be addressed by the public. Commenters may comment on matters that are related to the Bureau's Data Collections, but do not appear in the list below. The Bureau requests that, in addressing these questions, commenters identify with specificity the Bureau's Data Collection, format, process, or delivery platform at issue, providing specific examples where appropriate. In discussing the Bureau's Data Collections to date, the Bureau also requests that commenters provide examples and supporting information where possible, as well as relevant information about how this information has been collected by an institution, by which parties, and in what ways. Commenters should feel free to comment on some or all of the questions below, but are encouraged to indicate in which area your comments are focused.

The Bureau requests that commenters note their highest priorities, where possible, along with an explanation of how or why certain suggestions have been prioritized. Suggestions will be most helpful if they focus on revisions that the Bureau could implement without changes in the law, consistent with its existing statutory authorities.

The Bureau is seeking feedback on all aspects of its Data Collections, including the following areas of interest:

1. Aspects of the Bureau's Data Governance Program, including:

a. Best practices for data governance that the Bureau should consider adopting; and

b. Additional ways that the Bureau can improve its Data Governance Program, including improvements to its processes for collecting data, managing data, and releasing data.

2. The Bureau's Data Collection practices related to privacy, including practices the Bureau should maintain or changes that the Bureau can feasibly make to further protect privacy without hindering the Bureau's ability to accomplish its objectives and statutory mandates. Topics may include:

a. Use of aggregated data, including sources of aggregated data sufficient to effectively do the Bureau's work;

b. Use of sampling methodologies;

c. Use of de-identified data and de-identification processes;

d. Use of direct identifiers;

e. Notice to consumers regarding use of data known to be related to them; and

f. How the Bureau's Data Collection practices related to privacy compare to other Federal agencies' practices.

3. Changes the Bureau should, or should not, make to the sources, uses, and scope of its Data Collections.

4. How and when data collected primarily for one Bureau function should, or should not, be used for other Bureau functions consistent with applicable law. Topics may include:

a. The use of confidential supervisory information or confidential investigation information to inform multiple functions of the Bureau;

b. The use of data obtained for purposes of research, market monitoring, or for assessing the effectiveness of significant rules to inform other functions of the Bureau;

c. Reduction of burden on potential furnishers of data by use of the same data by other Bureau functions; and

d. Other issues that the Bureau should consider when using a Data Collection for a function other than the primary function for which it was collected.

5. Ways to improve Data Collection processes that reduce reporting burden without hindering the Bureau's ability to accomplish statutory objectives. Topics may include:

a. Whether Bureau Data Collections overlap with information maintained by other governmental agencies in a way that makes it difficult or particularly burdensome for institutions to comply with Bureau Data Collections;

b. Whether and how the Bureau should leverage existing industry data standards for particular markets that the Bureau regulates as part of its Data Collections;

[4] *See* Request for Information Regarding Bureau Public Reporting Practices of Consumer Complaint Information, 83 FR 9499 (Mar. 6, 2018); Request for Information Regarding the Bureau's Consumer Complaint and Consumer Inquiry Handling Processes, 83 FR 16839 (Apr. 17, 2018).

[5] *See* Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, 83 FR 12286 (Mar. 21, 2018); Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, 83 FR 12881 (Mar. 26, 2018).

[6] *See* Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes, 83 FR 3686 (Jan. 26, 2018); Request for Information Regarding the Bureau's Supervision Program, 83 FR 7166 (Feb. 20, 2018).

c. Whether Data Collection requests are aligned with how institutions maintain information or utilize current technologies;

d. Whether Data Collections have provided helpful insight into particular markets, and whether there are other collections that would prove more insightful; and

e. Ways the Bureau may interact with industry or consumer groups to gather suggestions on how to reduce reporting burden and increase the effectiveness of its Data Collections.

6. Changes the Bureau could make to existing Data Collections, or potential new Data Collections the Bureau could collect, consistent with its statutory authority, to more effectively meet the statutory purposes and objectives as set forth in section 1021 of the Dodd-Frank Act:

a. The statutory purposes set forth in section 1021(a) are:

i. All consumers have access to markets for consumer financial products and services; and

ii. Markets for consumer financial products and services are fair, transparent, and competitive.

b. The statutory objectives set forth in section 1021(b) are:

i. Consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

ii. Consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

iii. Outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

iv. Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

v. Markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

7. Other activities that the Bureau could engage in to make the Data Collection requests from financial institutions more effective and efficient.

8. Areas where the Bureau has not exercised the full extent of its Data Collection authority; where Data Collections would be beneficial and align with the purposes and objectives of the applicable Federal consumer financial laws; and/or where the Bureau can better leverage data as a strategic asset to increase effectiveness.

Authority: 12 U.S.C. 5511(c); 12 U.S.C. 5492(a).

Dated: September 24, 2018.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2018–21162 Filed 9–27–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with applicable laws and regulations, announcement is made of the intent to grant an exclusive within a field of use, royalty-bearing, revocable biological materials license.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Datlof, Office of Research & Technology Applications, (301) 619–0033, telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant an exclusive within a field of use, royalty-bearing, revocable biological materials license to 45AZ Dengue-1 strain to PrimeVax Immuno-Oncology, Inc., having its principal place of business at 2229 W Mills Drive, Orange, California 92868.

Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–21152 Filed 9–27–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0045]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 29, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Patient Safety Culture Survey; OMB Control Number 0720–0034.

Type of Request: Revision.

Number of Respondents: 9,200.

Responses per Respondent: 1.

Annual Responses: 9,200.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 1,533.

Needs and Uses: The 2001 National Defense Authorization Act contains specific sections addressing patient safety in military and veterans' health care systems. This legislation states that the Secretary of Defense shall establish a patient care error reporting and management system to study occurrences of errors in patient care and that one purpose of the system should be to ''identify systemic factors that are associated with such occurrences'' and ''to provide for action to be taken to correct the identified systemic factors'' (Sec. 754, items b2 and b3). In addition, the legislation states that the Secretary shall ''continue research and development investments to improve communication, coordination, and team work in the provision of health care''. (Sec. 754, item d4).

In its ongoing response to this legislation and in support of its mission to ''promote a culture of safety to eliminate preventable patient harm by engaging, educating and equipping patient-care teams to institutionalize evidence-based safe practices,'' the DoD Patient Safety Program plans to field the Department of Defense Patient Safety Culture Survey. The Culture Survey is based on the Department of Health and Human Services' Agency for Healthcare Research and Quality's validated survey instrument. The survey obtains MHS staff opinions on patient safety issues

such as teamwork, communications, medical error occurrence and response, error reporting, and overall perceptions of patient safety.

Affected Public: Federal Government; Individuals or Households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 19, 2018.

Shelly E. Finke,

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

[FR Doc. 2018–20777 Filed 9–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–HA–0047]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 29, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Cortney Higgins, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: TRICARE Young Adult Application; DD–2947; OMB Control Number 0720–0049.

Type of Request: Extension.

Number of Respondents: 2,709.

Responses per Respondent: 1.

Annual Responses: 2,709.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 677.25.

Needs and Uses: The Ike Skelton National Defense Authorization Act for Fiscal Year 2011 (FY11), Section 702, aligns TRICARE Program eligibility by providing a means to extend the age of eligibility of TRICARE dependents from age 21 or 23 up to age 26 to allow the purchase of extended dependent medical coverage across existing TRICARE program options (Select and Prime). This is consistent with the intent of the Patient Protection and Affordable Care Act, the implementing Health and Human Services regulations, and the limitations of Chapter 55 of Title 10. Section 702 allows qualified adult children not eligible for medical coverage at age 21 (23 if enrolled in a full-time course of study at an institution of higher learning approved by the Secretary of Defense) and are under age 26 to qualify to purchase medical coverage unless the dependent is enrolled in or eligible to purchase employer sponsored insurance per section 5000A(f)(2) of the Internal Revenue Code of 1986 or is married. The dependents shall be able to purchase either the TRICARE Prime or Select benefits depending on if they meet specific program requirements and the availability of a desired plan in their geographic location.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Cortney Higgins.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: September 18, 2018.

Shelly E. Finke,

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

[FR Doc. 2018–20671 Filed 9–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Chehalis River Basin Flood Damage Reduction Project Proposed by the Chehalis River Basin Flood Control Zone District, Lewis County, WA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Seattle District received a permit application from the Chehalis River Basin Flood Control Zone District (applicant) for the construction of a flood retention structure on the upper Chehalis River and the raising of levees at the Centralia-Chehalis Airport. A Department of the Army (DA) permit is required for the project pursuant to Section 404 of the Clean Water Act. The Corps has determined the proposed project may have significant individual and/or cumulative impacts on the human environment. An environmental impact statement (EIS) will be prepared in accordance with the National Environmental Policy Act (NEPA). Preparation of the EIS will support the Corps' eventual decision to either issue, issue with modification or deny the DA permit for the proposed action. The EIS will assess the potential social, economic, and environmental impacts of the projects and is intended to be sufficient in scope to address Federal, State, and local requirements, environmental and socio-economic

issues concerning the proposed action, and permit reviews. The EIS process begins with the publication of this Notice of Intent. The EIS will be prepared according to the Corps' procedures for implementing NEPA, and consistent with the Corps' policy to facilitate public understanding and review of agency proposals. The Corps will serve as the lead federal agency for this EIS pursuant to the requirements of NEPA. The Washington State Department of Ecology (Ecology) will serve as the lead agency for the separate EIS pursuant to the requirements of the State Environmental Policy Act (SEPA). The Corps and Ecology have agreed to participate in joint scoping to simplify the public comment process for the two separate EISs.

DATES: The scoping period will start on September 28, 2018.

ADDRESSES: Written comments concerning the project and requests to be included on the EIS notification mailing list should be submitted to:

Anchor QEA, Care of: Chehalis River Basin Flood Control Zone District EIS, 720 Olive Way, Suite 1900, Seattle, Washington 98101.

Written comments regarding the scope of the EIS—including the environmental analysis, range of alternatives, and potential mitigation actions—should be received at this address or submitted by electronically at *www.chehalisbasinstrategy.com/eis.*

FOR FURTHER INFORMATION CONTACT: Ms. Janelle Leeson via email at: *Janelle.D.Leeson@usace.army.mil,* or at (206) 550–1425.

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The construction of a new flood retention facility within the upper Chehalis River and the raising of levees at the Centralia-Chehalis Airport. The Corps is preparing an EIS to analyze the potential social, economic, and environmental impacts associated with authorizing the actions.

2. *Project Description.* The proposal involves the construction of a water retention facility at a site in the Chehalis River (River Mile [RM] 108.5) near the Town of Pe Ell, in Lewis County, Washington and the raising of levees at the Centralia-Chehalis Airport in the City of Chehalis, Lewis County, Washington to reduce damage from major flood events in the Chehalis Basin, Washington.

The applicant, funded by the Washington State capitol budget, is proposing construction of a flood retention expandable (FRE) facility and associated infrastructure on the main-stem Chehalis River south of the Town of Pe Ell. The facility would have capacity to provide 65,000 acre-feet of temporary flood storage during major floods; the Chehalis River would flow normally during regular conditions or small flood events. The top of the dam structure would be 1,220 feet long with a maximum structural height of up to 254 feet including 3 to 5 feet of freeboard for safety. The FRE facility is proposed to include a 210-foot-wide emergency spillway, discharging into a 70-foot-wide and 230-foot-long stilling basin.

The FRE facility would be constructed with a foundation and hydraulic structure extents capable of supporting future construction of a larger dam with up to 130,000 acre feet of storage. An expansion of the facility would be subject to a separate NEPA and SEPA process and permitting if proposed.

Construction of the flood retention structure would include the installation of a temporary diversion tunnel to accommodate fish passage during construction. Permanent fish passage would be accomplished primarily through five openings installed along the river bottom at the base of the flood retention structure. The openings would be 230 feet in length. They are anticipated to replicate the stream discharge and velocity rating curves exhibited by the natural channel at the dam site (through which fish currently pass without the dam), up through river discharges of 4,000 cubic feet per second (cfs). When water is impounded behind the dam during high-flow events, the low-level outlet would be closed. Fish passage would be provided via a collection, handling, transport, and release (CHTR) facility during the high-flow, short-term periods of time when the dam outlets are closed.

The applicant also proposes to raise the elevation of the Centralia-Chehalis Airport levee in Chehalis, Washington. The existing 9,511-foot-long-levee would be raised 4 to 7 feet, along with raising Airport Road 1,700 feet along the southern extent of the airport.

Potential impacts of the proposal have not been determined at this time. Mitigation for proposed unavoidable impacts to waters of the U.S. will be required to comply with the Corps' 2008 mitigation rule.

A full project description as provided by the applicant can be accessed electrically at *www.chehalisbasinstrategy.com/eis.*

3. Alternatives. The EIS will address an array of alternatives for providing alternatives suitable for reducing flood damage within the Chehalis River Basin, including a no action alternative. Mitigation measures may include, but are not limited to, avoidance of sensitive areas and creation, restoration, or enhancement of wetlands.

4. *Scoping Process.* The scoping period will continue for 31 days after publication of this Notice of Intent and will close on October 29, 2018. During the scoping period, the Corps invites Federal agencies, State and local governments, Native American Tribes, and the public to participate in the scoping process either by providing written comments or by attending the public scoping meetings scheduled at the time and location indicated below. Written comments will be considered in the preparation of the Draft EIS. Comments postmarked or received electronically after the specified date will be considered to the extent feasible.

The purpose of scoping is to assist the Corps in defining issues, public concerns, and alternatives and the depth to which they will be evaluated in the EIS. The Corps has prepared project information documents to familiarize agencies, Tribes, the public, and interested organizations with the proposed projects and potential environmental issues. Copies of the documents will be available at the public meeting and at the website *www.chehalisbasinstrategy.com/eis* or can be requested by contacting the Corps, Seattle District, as described above. Corps' representatives will answer scope-related questions and accept comments at public scoping meetings.

a. Public scoping meetings will be held to present an overview of the project and to afford all parties an opportunity to provide comments regarding the range of actions, alternatives, and potential impacts. The public scoping meetings will be held as follows:

At Montesano City Hall, Banquet Room, 112 North Main Street, Montesano, Washington 98563 on Tuesday, October 16, 2018 from 5:00 p.m. to 8:00 p.m.

At Centralia College, Bowman Rotary Banquet Rooms A and B, 600 Centralia College Boulevard, Centralia, Washington 98531 on Wednesday, October 17, 2018 from 5:00 p.m. to 8:00 p.m.

During the scoping period, continuous access to the scoping meeting presentation will be hosted on the EIS website at *www.chehalisbasinstrategy.com/eis.*

b. Potentially significant issues to be analyzed in the EIS include but are not limited to project-specific and cumulative effects on water resources; cultural, historic, and archaeological resources; geomorphology; geology including landslides and earthquakes;

wetland and riparian habitat and wildlife; climate change; transportation; recreation; land use; Tribal resources, including Tribal treaty rights; environmental health and safety, and public services and utilities.

c. The Corps will serve as the lead agency for compliance with NEPA. The Corps has invited the U.S. Environmental Protection Agency, the Chehalis Tribe, and the Quinault Indian Nation to serve as cooperating agencies under NEPA. The Corps will consult with the Washington State Historic Preservation Officer and applicable Tribes to comply with the National Historic Preservation Act; and applicable Tribes to comply with treaty provisions.

d. Development of the draft EIS will begin after the close of the scoping period. The draft EIS is currently scheduled to be available for public review and comment in early 2020.

e. A 31-day public review period will be provided for all interested parties, individuals, and agencies to review and comment on the draft EIS. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified when the draft EIS is issued.

f. All comments received will become part of the administrative record and are subject to public release, as appropriate, in their entirety, including any personally identifiable information such as names, phone numbers, and addresses if included in the comment.

Dated: September 19, 2018.

Ryan A. Baum,

Major, Corps of Engineers, Acting Commander.

[FR Doc. 2018–21154 Filed 9–27–18; 8:45 a.m.]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Final Missouri River Recovery Management Plan and Environmental Impact Statement

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of final EIS waiting period.

SUMMARY: The Notice of Availability for the Final Missouri River Recovery Management Plan and Environmental Impact Statement (MRRMP–FEIS) published in the **Federal Register** on Friday, August 31, 2018, stated the waiting period for signature of the MRRMP–FEIS Record of Decision would end on October 9, 2018. The U.S. Army Corps of Engineers is extending the waiting period through October 22, 2018.

FOR FURTHER INFORMATION CONTACT: Tiffany Vanosdall, U.S. Army Corps of Engineers at (402) 995–2695 or by email at *tiffany.k.vanosdall@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The MRRMP–FEIS can be downloaded online at: *http://www.nwo.usace.army.mil/mrrp/mgmt-plan/* or at: *http://parkplanning.nps.gov/MRRMP.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–21155 Filed 9–27–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–203–000]

Notice of Complaint; Owensboro Municipal Utilities v. Louisville Gas and Electric Company, Kentucky Utilities Company

Take notice that on September 21, 2018, pursuant to sections 206, 306, 309, and 316 [1] of the Federal Power Act and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] Owensboro Municipal Utilities (Complainant) filed a formal complaint against Louisville Gas and Electric Company and Kentucky Utilities Company, (Respondents) alleging that, from February 1, 2018 forward, Respondents violated and continue to violate its joint obligation, under First Revised Rate Schedule No. 402 to reimburse Complainant for pancaked transmission service charges incurred to Drive-Out from the Midcontinent Independent System Operator, all as more fully explained in the complaint.

The Complainants certify that copies of the Complaint were served on contacts for Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 11, 2018.

Dated: September 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21129 Filed 9–27–18; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 825e, 824e, 825h, and 825o.

[2] 18 CFR 385.206.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR18–82–000.
Applicants: Banquete Hub LLC.
Description: Tariff filing per 284.123(b),(e)/: Baseline Filing—Banquete Hub SOC and the Errata to be effective 10/1/2018.
Filed Date: 9/19/18.
Accession Number: 201809195092.
Comments/Protests Due: 5 p.m. ET 10/10/18.

Docket Numbers: RP18–1192–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing TETLP OFO September 2018 Penalty Disbursement Report.
Filed Date: 9/20/18.

Accession Number: 20180920–5031.
Comments Due: 5 p.m. ET 10/2/18.

Docket Numbers: RP18–1193–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing Effective November 1, 2018 to be effective 11/1/2018.
Filed Date: 9/20/18.
Accession Number: 20180920–5047.
Comments Due: 5 p.m. ET 10/2/18.

Docket Numbers: RP18–1194–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: 2018 Annual Penalty Revenue Credit Filing.
Filed Date: 9/20/18.
Accession Number: 20180920–5151.
Comments Due: 5 p.m. ET 10/2/18.

Docket Numbers: RP18–1195–000.
Applicants: Enable Gas Transmission, LLC.
Description: Annual Report of Total Penalty Revenue Credits of Enable Gas Transmission, LLC.
Filed Date: 9/20/18.
Accession Number: 20180920–5152.
Comments Due: 5 p.m. ET 10/2/18.

Docket Numbers: RP18–1196–000.
Applicants: Enable Gas Transmission, LLC.
Description: Annual Report of Linked Firm Service Penalty Revenue Credits of Enable Gas Transmission, LLC.
Filed Date: 9/20/18.
Accession Number: 20180920–5153.
Comments Due: 5 p.m. ET 10/2/18.

Docket Numbers: RP18–1197–000.
Applicants: Enable Mississippi River Transmission, LLC.
Description: § 4(d) Rate Filing: 2018 MRT Annual Fuel Filing to be effective 11/1/2018.
Filed Date: 9/20/18.
Accession Number: 20180920–5157.
Comments Due: 5 p.m. ET 10/2/18.

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: September 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21128 Filed 9–27–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–78–005.
Applicants: NRG Energy, Inc., Clearway Energy, Inc.
Description: Request for Termination of Blanket Authorization and Conditions of NRG Energy, Inc., et al.
Filed Date: 9/21/18.
Accession Number: 20180921–5160.
Comments Due: 5 p.m. ET 10/12/18.

Docket Numbers: EC18–159–000.
Applicants: AltaGas San Joaquin Energy Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of AltaGas San Joaquin Energy Inc.
Filed Date: 9/21/18.
Accession Number: 20180921–5233.
Comments Due: 5 p.m. ET 10/12/18.

Docket Numbers: EC18–160–000.
Applicants: Alpaugh 50, LLC, Alpaugh North, LLC, Broken Bow Wind II, LLC, CED White River Solar, LLC, Copper Mountain Solar 1, LLC, Copper Mountain Solar 2, LLC, Copper Mountain Solar 3, LLC, Copper Mountain Solar 4, LLC, Great Valley Solar 1, LLC, Great Valley Solar 2, LLC, Great Valley Solar 3, LLC, Mesquite Solar 1, LLC, Mesquite Solar 2, LLC, Mesquite Solar 3, LLC, SEP II, LLC.
Description: Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act and Request for Expedited Action of Alpaugh 50, LLC, et. al.
Filed Date: 9/21/18.
Accession Number: 20180921–5235.
Comments Due: 5 p.m. ET 10/12/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2214–001.
Applicants: Stryker 22, LLC.
Description: Tariff Amendment: Supplemental—MBRA Tariff to be effective 9/25/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5029.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: ER18–2216–001.
Applicants: Plumsted 537 LLC.
Description: Tariff Amendment: Supplemental—MBRA Tariff to be effective 9/22/2018.
Filed Date: 9/21/18.
Accession Number: 20180921–5210.
Comments Due: 5 p.m. ET 10/12/18.

Docket Numbers: ER18–2464–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2482R1 KCPL & Westar Energy Interconnection & Interchange Ag to be effective 12/1/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5001.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: ER18–2465–000.
Applicants: Potter Road Powerhouse LLC.
Description: Baseline eTariff Filing: Application and MBR Tariff to be effective 9/25/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5054.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: ER18–2466–000.
Applicants: Federal Way Powerhouse LLC.
Description: Baseline eTariff Filing: Application and MBR Tariff to be effective 9/25/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5055.
Comments Due: 5 p.m. ET 10/15/18.

Docket Numbers: ER18–2467–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of Original Service Agreement No. 3408; Queue No. X3–002 to be effective 10/1/2018.
Filed Date: 9/24/18.
Accession Number: 20180924–5113.
Comments Due: 5 p.m. ET 10/15/18.

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: September 24, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–21127 Filed 9–27–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9984–33–OLEM]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs for FY2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will accept requests, from October 15, 2018 through December 14, 2018, for grants to establish and enhance State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of a response program and establishing a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2019, EPA will consider funding requests up to a maximum of $1.0 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

DATES: This action is applicable as of October 15, 2018. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2019.

ADDRESSES: Mailing addresses for EPA Regional Offices and EPA Headquarters can be found at *www.epa.gov/brownfields* and at the end of this Notice. Funding requests may be submitted electronically to the EPA Regional Offices.

FOR FURTHER INFORMATION CONTACT: Rachel Lentz, EPA's Office of Land and Emergency Management, Office of Brownfields and Land Revitalization, (202) 566 2745, *lentz.rachel@epa.gov* or the applicable EPA Regional Office listed at the end this Notice.

SUPPLEMENTARY INFORMATION:

I. General Information

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $50 million grant program to establish and enhance state [1] and tribal [2] response programs. CERCLA section 128(a) response program grants are funded with categorical [3] State and Tribal Assistance Grant (STAG) appropriations. Section 128(a) cooperative agreements are awarded and administered by the EPA regional offices. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. This document provides guidance that will enable states and tribes to apply for and use Fiscal Year 2019 section 128(a) funds [4].

Section 128(a)(1)(B)(ii)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $1.5 million grant program to assist small communities, Indian tribes, rural areas, or disadvantaged areas to carryout section CERCLA 104(k)(7) (by providing training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfields sites, site assessments, remediation of brownfield sites, community involvement, or site preparation). The guidance regarding CERCLA 128(a)(1)(B)(ii)(III) Small Technical Assistance Grants is located in Appendix A.

The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants under 40 CFR part 35 Subparts A and B, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or purchase environmental insurance or developing a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

Requests for funding will be accepted from October 15, 2018 through December 14, 2018. Requests EPA receives after December 14, 2018 will not be considered for FY2019 funding. Information that must be submitted with the funding request is listed in Section IX of this guidance. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds. First time requestors are strongly encouraged to contact their Regional EPA Brownfields contacts, listed at the end of this guidance, prior to submitting their funding request. EPA will consider funding requests up to a maximum of $1.0 million per state or tribe for FY2019.

Requests submitted by the December 14, 2018 request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final funding allocation determinations are made. As in previous years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions and unexpended balances are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance. Also, EPA will prioritize funding for recipients establishing their response programs.

States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their cooperative agreement's final package. For more information, please go to *www.grants.gov.*

II. Background

State and tribal response programs oversee assessment and cleanup activities at brownfield sites across the country. The depth and breadth of these programs vary. Some focus on CERCLA related activities, while others are multi-faceted, addressing sites regulated by both CERCLA and the Resource

[1] The term ''state'' is defined in this document as defined in CERCLA section 101(27).

[2] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA section 128(a).

[3] Categorical grants are issued by the U.S. Congress to fund state and local governments for narrowly defined purposes.

[4] The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

Conservation and Recovery Act (RCRA). Many states also offer accompanying financial incentive programs to spur cleanup and redevelopment. In enacting CERCLA section 128(a),[5] Congress recognized the value of state and tribal response programs in cleaning up and redeveloping brownfield sites. Section 128(a) strengthens EPA's partnerships with states and tribes, and recognizes the response programs' critical role in overseeing cleanups.

This funding is intended for those states and tribes that have the required management and administrative capacity within their government to administer a federal grant. The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements of an environmental response program and that the program establishes and maintains a public record of sites addressed. Subject to the availability of funds, EPA regional personnel will provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

III. Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

1. Demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program described in Section V of this guidance; *or* be a party to a voluntary response program Memorandum of Agreement (VRP MOA)[6] with EPA; and

2. maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year (see CERCLA section 128(b)(1)(C)).

IV. Matching Funds/Cost-Share

States and tribes are *not* required to provide matching funds for cooperative agreements awarded under section 128(a), with the exception of section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund (RLF), for which there is a 20% cost share requirement. Section 128(a) funds uses to capitalize a RLF must be operated in accordance with CERCLA section 104(k)(3).

[5] Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

[6] States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for section 128(a) funding.

V. The Four Elements—Section 128(a)(2)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements described below. Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements, and to establish and maintain the public record requirement.

The four elements of a response program are described below:

1. *Timely survey and inventory of brownfield sites in state or tribal land.* The goal for this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands.

EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a ''list'' of brownfield sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfield sites within their state or tribal lands. Inventories should evolve to a prioritization of sites based on community needs, planning priorities, and protection of human health and the environment. Inventories should be developed in direct coordination with communities, and particular attention should focus on communities with limited capacity to compete for and manage a competitive brownfield assessment, revolving loan, or cleanup cooperative agreement.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

2. *Oversight and enforcement authorities or other mechanisms and resources.* The goal for this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources to ensure that:

a. A response action will protect human health and the environment, and be conducted in accordance with applicable laws; and

b. the state or tribe will complete the necessary response activities if the person conducting the response fails to complete them (this includes operation and maintenance and/or long-term monitoring activities).

3. *Mechanisms and resources to provide meaningful opportunities for public participation.*[7] The goal for this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, *at a minimum:*

a. Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing to make cleanup decisions or conduct site activities;

b. prior notice and opportunity for meaningful public comment on cleanup plans and site activities, including the input into the prioritization of sites; and

c. a mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site — located in the community in which the person works or resides — may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

4. *Mechanisms for approval of cleanup plans, and verification and certification that cleanup is complete.* The goal for this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

VI. Public Record Requirement

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, as described below, to enable meaningful public participation (refer to

[7] States and tribes establishing this element may find useful information on public participation on EPA's community involvement website at *https://www.epa.gov/superfund/superfund-community-involvement.*

Section V.3 above). Specifically, under section 128(b)(1)(C), states and tribes must:

1. Maintain and update, at least annually or more often as appropriate, a public record that includes the name and location of sites at which response actions have been completed during the previous year;

2. maintain and update, at least annually or more often as appropriate, a public record that includes the name and location of sites at which response actions are planned in the next year; and

3. identify in the public record whether or not the site, upon completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy and include relevant information concerning the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls; and how the responsible entity is implementing those activities (see Section VI.C).

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

A. Distinguishing the ''Survey and Inventory'' Element From the ''Public Record''

It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year or are planned in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to identifying brownfield sites regardless of planned or completed actions.

B. Making the Public Record Easily Accessible

EPA's goal is to enable states and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make such information available to the public via the internet or other avenues. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address, and latitude and longitude information for each site.[8] States and tribes should ensure that all affected communities have appropriate access to the public record by making it available on-line, in print at libraries, or at other community gathering places.

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

C. Long-Term Maintenance of the Public Record

EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long-term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long-term maintenance of the public record, including information on institutional controls (such as ensuring the entity responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls is implementing those activities) in their work plans.[9]

VII. Use of Funding

A. Overview

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use funding to ''establish or enhance'' its response program. Specifically, a state or tribe may use cooperative agreement funds to build response programs that include the four elements outline in section 128(a)(2). Eligible activities include, but are not limited to, the following:

- Developing legislation, regulations, procedures, ordinances, guidance, etc. that establish or enhance the administrative and legal structure of a response program;
- establishing and maintaining the required public record described in Section VI of this guidance;
- operation, maintenance and long-term monitoring of institutional controls and engineering controls;
- conducting site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement under CERCLA section 128(a)(2)(C)(ii) to provide for public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed-especially from local communities with health risks related to exposure to hazardous waste or other public health concerns, those in economically disadvantaged or remote areas, and those with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfield sites; site-specific activities must be part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;
- capitalizing a revolving loan fund (RLF) for brownfields cleanup as authorized under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match (in the form of money, labor, material, or services from a non-federal source) on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions relevant to CERCLA section 104(k)(4) also apply; and
- purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

B. Uses Related To Establishing a State or Tribal Response Program

Under CERCLA section 128(a), establish includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations,

[8] For further information on data quality requirements for latitude and longitude information, please see EPA's data standards website available at *https://www.epa.gov/sites/production/files/2015-06/documents/latlongstandard-v2a_10022014.pdf.*

[9] States and tribes may find useful information on institutional controls on the EPA's institutional controls website at *http://www.epa.gov/superfund/policy/ic/index.htm.*

ordinances, procedures, guidance, and a public record.

States and tribes also need to comply with Grants Policy Issuance (GPI) 17–01 Sustainability in EPA Cooperative Agreements.

C. Uses Related To Enhancing a State or Tribal Response Program

Under CERCLA section 128(a), enhancing a state or tribal response program includes related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under such programs.

The exact enhancement activities that may be allowable depend upon the work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff (training examples include ASTM standards for conducting Limited Transaction Screens, Environmental Phase I and Phase IIs). It may also include developing better coordination and understanding of other state response programs, (*e.g.,* RCRA or Underground Storage Tanks (USTs)). As another example, states and tribal response program enhancement activities can also include outreach to local communities to increase awareness about brownfields, building a sustainable brownfields program, federal brownfields technical assistance opportunities [10] (*e.g.,* holding workshops to assist communities to apply for federal Brownfields grant funding, attending health fairs and cleanup days to inform individuals how to identify hazards in their own living areas, abandoned buildings, and among dumping areas), and knowledge regarding the importance of monitoring engineering and institutional controls. Additionally, enhancement activities can include facilitating the participation of the state and local agencies (*e.g.,* transportation, water, other infrastructure) in implementation of brownfields projects. States and tribes can also help local communities collaborate with local workforce development entities or Brownfields Environmental Workforce Development Job training recipients on the assessment and cleanup of brownfield sites.[11] States and tribes also need to comply with Grants Policy Issuance (GPI) 17–01 Sustainability in EPA Cooperative Agreements. Other enhancement uses may be allowable as well.

D. Uses Related to Site-Specific Activities

1. Eligible Uses of Funds for Site-Specific Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups can be both eligible and allowable if the activities is included in the work plan negotiated between the EPA regional office and the state or tribe, but activities must comply with all applicable laws and are subject to the following restrictions:

a. Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39). EPA encourages states and tribes to use site-specific funding to perform assessment (*e.g.,* phase I, phase II, supplemental assessments and cleanup planning) and cleanup activities that will expedite the reuse and redevelopment of sites, and prioritize sites based on need.[12] Furthermore, states and tribes that perform site-specific activities should plan to directly engage with and involve affected communities. For example, a Community Relations Plan (CRP) could be developed to provide reasonable notice about a planned cleanup, as well as opportunities for the public to comment on the cleanup. States and tribes should work towards securing additional funding for site-specific activities by leveraging resources from other sources such as businesses, non-profit organizations, education and training providers, and/or federal, state, tribal, and local governments;

b. absent EPA approval, no more than $200,000 per site assessment can be funded with section 128(a) funds, and no more than $200,000 per site cleanup can be funded with section 128(a) funds;

c. absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and/or clean up sites owned or operated by the recipient or held in trust by the United States Government for the recipient; and

d. assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA section 107, except:

- At brownfield sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
- when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser, or would satisfy all elements 101(40), except where the date of acquisition of the property was on or before January 11, 2002.

Subawards are defined at 2 CFR 200.92 and may not be awarded to for-profit organizations. If the recipient plans on making any subawards under the cooperative agreement, then they become a pass-through entity. As the pass-through entity, the recipient must report on its subaward monitoring activities under 2 CFR 200.331(d). Additional reporting requirements for these activities will be included in the cooperative agreement. In addition, subawards cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

1. At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or

2. when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser, or would satisfy all elements of CERCLA 101(40)(D) except where the date of acquisition of the property was on or before January 11, 2002.

2. Limitations on the Amount of Funds Used for Site-Specific Activities and Waiver Process

States and tribes may use section 128(a) funds for site-specific activities that improve state or tribal capacity. However, the amount recipients may request for site-specific assessments and cleanups may not exceed 50% of the

[10] EPA expects states and tribes will familiarize themselves with US EPA's brownfields technical assistance opportunities for brownfields communities. For more information on technical assistance opportunities, please visit: *https://www.epa.gov/brownfields.*

[11] For more information about EPA's Brownfields Environmental Workforce Development and Job Training Program, please visit: *https://www.epa.gov/brownfields/types-brownfields-grant-funding.*

[12] An example of prioritizing sites based on need can be focusing on environmental justice. EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across the nation. Environmental justice will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work. For more information, please visit *www.epa.gov/environmentaljustice.*

total amount of funding.[13] In order to exceed the 50% site-specific funding limit, a state or tribe must submit a waiver request. The funding request must include a brief justification describing the reason(s) for spending more than 50% of an annual allocation on site-specific activities. An applicant, when requesting a waiver, must include the following information in the written justification:

- Total amount requested for site-specific activities;
- percentage of the site-specific activities (assuming waiver is approved) in the total budget;
- site-specific activities that will be covered by this funding. If known, provide site specific information and describe how work on each site contributes to the development or enhancement of your state/tribal site response program. Explain how the community will be (or has been) involved in prioritization of site work and especially those sites where there is a potential or known significant environmental impact to the community;
- an explanation of how this shift in funding will not negatively impact the core programmatic capacity (*i.e.,* the ability to establish/enhance the four required elements of a response program) and how the core program activities will be maintained in spite of an increase in site-specific work. Recipients must demonstrate that they have adequate funding from other sources to effectively carry out work on the four elements for EPA to grant a waiver of the 50% limit on using 128(a) funds for site-specific activities; and
- an explanation as to whether the sites to be addressed are those for which the affected community(ies) has requested work be conducted (refer to Section VII.A Overview of Funding for more information).

EPA Headquarters will review waiver requests based on the information in the justification and other information available to the Agency. EPA will inform recipients whether the waiver is approved.

3. Uses Related to Site-Specific Activities at Petroleum Brownfield Sites

States and tribes may use section 128(a) funds for activities that establish and enhance response programs addressing petroleum brownfield sites. Subject to the restrictions listed above (see Section VII.D.1) for all site-specific activities, the costs of site-specific assessments and cleanup activities at petroleum contaminated brownfield sites, as defined in CERCLA section 101(39)(D)(ii)(II), are both eligible and allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfield sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

4. Additional Examples of Eligible Site-Specific Activities

Other eligible uses of funds for site-specific related include, but are not limited to, the following activities:

- Technical assistance to federal brownfields cooperative agreement recipients;
- development and/or review of quality assurance project plans (QAPPs); and
- entering data into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database

E. Uses Related to Activities at ''Non-Brownfield'' Sites

Other uses not specifically referenced in this guidance may also be eligible and allowable. Recipients should consult with their regional state or tribal contact for additional guidance. Costs incurred for activities at non-brownfield sites may be eligible and allowable if such activities are included in the state's or tribe's work plan. *Direct assessment and cleanup activities may only be conducted on eligible brownfield sites, as defined in CERCLA section 101(39).*

VIII. General Programmatic Guidelines for 128(a) Grant Funding Requests

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement[14] between EPA and a state or a tribe. The program administers cooperative agreements under the Uniform Administrative Requirements, Cost Principles and Audit requirements for Federal Awards regulations for all entity types including states, tribes, and local governments found in the Code of Federal Regulations at 2 CFR part 200 and any applicable EPA regulations in Title 2 CFR Subtitle B—Federal Agency Regulations for Grants and Agreements Chapter 15 as well as applicable provisions of 40 CFR part 35 Subparts A and B. Under these regulations, the cooperative agreement recipient for a section 128(a) grant is the government to which a cooperative agreement is awarded and which is accountable for use of the funds provided. The cooperative agreement recipient is the legal entity even if only a particular component of the entity is designated in the cooperative agreement award document. Further, unexpended balances of cooperative agreement funds are subject to restrictions under 40 CFR 35.118 and 40 CFR 35.518. EPA allocates funds to state and tribal response programs consistent with 40 CFR 35.420 and 40 CFR 35.737.

A. One Application per State or Tribe

Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested states or tribes. *EPA will accept only one application from each eligible state or tribe.*

B. Maximum Funding Request

For Fiscal Year 2019, EPA will consider funding requests up to a maximum of $1.0 million per state or tribe. Please note that demand for this program continues to increase. Due to the increasing number of entities requesting funding, it is likely that the FY19 states and tribal individual funding amounts will be less than the FY18 individual funding amounts.

C. Define the State or Tribal Response Program

States and tribes must define in their work plan the ''section 128(a) response program(s)'' to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

D. Separate Cooperative Agreements for the Capitalization of RLFs Using Section 128(a) Funds

If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded (*i.e.,* one for the RLF and one for non-RLF uses). States and tribes must, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not

[13] Oversight of assessment and cleanup activities performed by responsible parties (other than the state or tribe) does not count toward the 50% limit.

[14] A cooperative agreement is an agreement to a state/tribe that includes substantial involvement by EPA on activities described in the work plan which may include technical assistance, collaboration on program priorities, etc.

eligible for inclusion into a Performance Partnership Grant (PPG).

E. Authority To Manage a Revolving Loan Fund Program

If a state or tribe chooses to use its section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the lead authority to manage the program (*e.g.,* hold loans, make loans, enter into loan agreements, collect repayment, access and secure the site in event of an emergency or loan default). If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another agency within that state or tribe has the authority to manage the RLF and is willing to do so.

F. Section 128(a) Cooperative Agreements Can Be Part of a Performance Partnership Grant (PPG)

States and tribes may include section 128(a) cooperative agreements in their PPG as described in 69 FR 51756 (2004). Section 128(a) funds used to capitalize an RLF or purchase environmental insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

G. Project Period

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan. While not prohibited, pre-award costs are subject to 40 CFR 35.113 and 40 CFR 35.513.

H. Demonstrating the Four Elements

As part of the annual work plan negotiation process, states or tribes that do *not* have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described in Section V. EPA will not fund state or tribal response program annual work plans if EPA determines that these elements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, on progress reports, or on EPA's review of the state or tribal response program.

I. Establishing and Maintaining the Public Record

Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described in Section VI and below, exists and is being maintained.[15] Specifically for:

- States or tribes that received initial funding prior to FY18: Requests for FY19 funds will not be accepted from states or tribes that fail to demonstrate, by the December 14, 2018 request deadline, that they established and are maintaining a public record. (*Note,* this would potentially impact any state or tribe that had a term and condition placed on their FY18 cooperative agreement that prohibited drawdown of FY18 funds prior to meeting the public record requirement). States or tribes in this situation will not be prevented from drawing down their prior year funds once the public record requirement is met; and
- states or tribes that received initial funding in FY18: By the time of the actual FY19 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY19 cooperative agreement that prohibits the drawdown of FY19 funds until the public record requirement is met).

J. Demonstration of Significant Utilization of Prior Years' Funding

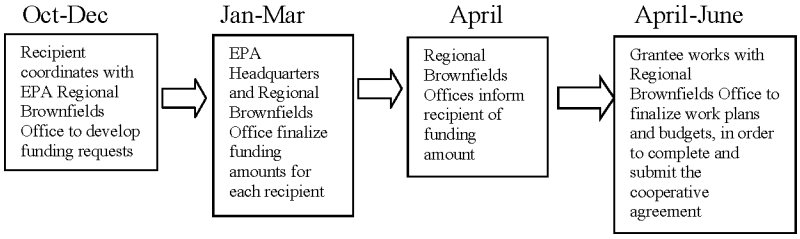
States and tribes should be aware that EPA and its Congressional appropriations committees place significant emphasis on the utilization of prior years' funding. Unused funds prior to FY18 will be considered in the allocation process. Existing balances of cooperative agreement funds as reflected in EPA's Financial Data Warehouse as of January 1, 2019 may result in a decreased allocation amount or, if appropriate the deobligation and reallocation of prior funding by EPA Regions as provided for in 40 CFR 35.118 and 40 CFR 35.518.

K. Allocation System and Process for Distribution of Funds

After the December 14, 2018, request deadline, EPA's Regional Offices will submit summaries of state and tribal requests to EPA Headquarters. Before doing so, regional offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program, and scope of the perceived need for funding (*e.g.,* size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of current year funding, funds remaining from prior years, etc).

After receipt of the regional recommendations, EPA Headquarters will consolidate requests and make decisions on the final funding allocations.

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made. Please refer to process flow chart below (dates are estimates and subject to change):



[15] For purposes of 128(a) funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the section 128(a) funding.

IX. Information To Be Submitted With the Funding Request

A. Summary of Planned Use of FY19 Funding

All states and tribes requesting FY19 funds must submit (to their regional brownfields contact, shown on the last page of this guidance) a draft work plan of the funds with associated dollar amounts to their regional brownfields contact listed on the last page. Please contact your regional brownfields contact or visit *www.epa.gov/brownfields/brownfields-comprehensive-environmental-response-compensation-and-liability-act-cercla* for a sample draft work plan.

For *entities which received CERCLA 128(a) funding in previous years,* respond to the following:

1. Funding Request

a. Prepare a draft work plan and budget for your FY19 funding request. The funding requested should be reasonably spent in one year. The requestor should work, as early as possible, with their EPA regional program contact to ensure that the funding amount requested and related activities are reasonable.

b. In your funding request, include the prior years' funding amount. Include any funds that you, the recipient, have not received or drawn down in payments (*i.e.,* funds EPA has obligated for grants that remain in EPA's Financial Data Warehouse). EPA will consider these funds in the allocation process when determining the recipient's programmatic needs. The recipient should include a detailed explanation and justification of prior year funds that remain in EPA's Financial Data Warehouse. The recipient should consult with the region regarding the amount of unspent funds which require explanation to ensure they have addressed the full amount of any remaining balance.

If you do not have an MOA with EPA, demonstrate how your program includes, or is taking reasonable steps to include, the four elements described in Section VI.

Note: Programmatic Capability—[Only Respond if Specifically Requested by Region]

EPA Regions may request demonstration of Programmatic Capability if the returning grantee has experienced key staff turnover or if the grantee has open programmatic review findings. An entity's corresponding EPA Region will notify returning recipients if the information below is required, and it must be included with your funding request. Describe the organizational structure you will utilize to ensure sound program management to guarantee or confirm timely and successful expenditure of funds, and completion of all technical, administrative and financial requirements of the program and cooperative agreement.

a. Include a brief description of the key qualifications of staff to manage the response program and/or the process you will follow to hire staff to manage the response program. If key staff is already in place, include their roles, expertise, qualifications, and experience.

b. Discuss how this response program fits into your current environmental program(s). If you do not have an environmental program, describe your process to develop, or interest to start one.

c. Describe if you have had adverse audit findings. If you had problems with the administration of any grants or cooperative agreements, describe how you have corrected, or are correcting, the problems.

For *tribal entities which have never received CERCLA 128(a) funding,* respond to the following:

2. Funding Request

a. Describe your plan to establish a response program, why it is a priority for your tribe, and why CERCLA 128(a) funding will be beneficial to your program. If your tribe is already supported by a tribal consortium receiving CERCLA 128(a) funding, explain why additional resources are necessary.

b. Prepare a draft work plan and budget for your first funding year. The funding requested should be reasonably spent in one year. For budget planning purposes, it is recommended that you assume funding sufficient to support 0.5 staff to establish a response program and some travel to attend regional and national trainings or events.

3. Programmatic Capability

a. Describe the organizational structure you will utilize to ensure sound program management to guarantee or confirm timely and successful expenditure of funds, and completion of all technical, administrative and financial requirements of the program and cooperative agreement.

b. Include a brief description of the key qualifications of staff to manage the response program and/or the process you will follow to hire staff to manage the response program. If key staff is already in place, include their roles, expertise, qualifications, and experience.

c. Discuss how this response program fits into your current environmental program(s). If you do not have an environmental program, describe your process to develop, or interest to start one.

d. Describe if you have had adverse audit findings. If you had problems with the administration of any grants or cooperative agreements, describe how you have corrected, or are correcting, the problems.

X. Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities. Each of the subsections below summarizes the basic terms and conditions, and related reporting that will be incorporated into your cooperative agreement.

A. Progress Reports

In accordance with 2 CFR 200.328 and any EPA specific regulations, state and tribes must provide progress reports meeting the terms and conditions of the cooperative agreement negotiated. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state or tribe accomplishments and environmental outputs associated with the approved budget and work plan. Reports should also provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information related to establishing or, if already established, maintaining the public record. Depending upon the activities included in the state's or tribe's work plan, the recipient may also need to report on the following:

1. *Interim and final progress reports.* Reports must prominently display the following information as reflected in the current EPA strategic plan: *Strategic Plan Goal 1:* Core Mission: Deliver real results to provide Americans with clean air, land, and water, and ensure chemical safety; *Strategic Plan Objective 1.3:* Revitalize Land and Prevent

Contamination; and *Work Plan Commitments and Timeframes.* EPA's strategic plan can be found on the internet at *http://www.epa.gov/planandbudget/strategicplan.html.*

2. *Reporting for Non-MOA states and tribes.* All recipients *without* a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element *may* include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:
  - Legal authorities and mechanisms (*e.g.,* statutes, regulations, orders, agreements); and
  - policies and procedures to implement legal authorities; and other mechanisms;
- a description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;
- a narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
  - a response action will protect human health and the environment; and be conducted in accordance with applicable federal and state law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and
- a narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

3. *Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfields site assessment or cleanup* must input information required by the OMB-approved Property Profile Form into the ACRES database for each site assessment and cleanup. In addition, recipients must report how they provide the affected community with prior notice and opportunity for meaningful participation as per CERCLA section 128(a)(2)(C)(ii), on proposed cleanup plans and site activities. For example, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and to solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote communities, and communities with limited experience working with government agencies.

4. *Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

- Number and frequency of oversight audits of licensed site professional certified cleanups;
- number and frequency of state/tribal oversight audits conducted;
- number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities; and
- number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

5. *Reporting required when using funding for an RLF.* Recipients with work plans that include funding for a revolving loan fund must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.

6. *Reporting environmental insurance.* Recipients with work plans that include funding for *environmental insurance* must report:

- Number and description of insurance policies purchased (*e.g.,* name of insurer, type of coverage provided, dollar limits of coverage, any buffers or deductibles, category and identity of insured persons, premium, first dollar or umbrella, whether site specific or blanket, occurrence or claims made, etc.);
- the number of sites covered by the insurance;
- the amount of funds spent on environmental insurance (*e.g.,* amount dedicated to insurance program, or to insurance premiums); and
- the amount of claims paid by insurers to policy holders.

The regional offices may also request that information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

B. Reporting of Program Activity Levels

States and tribes must report, by December 14, 2018, a summary of the *previous federal fiscal year's* work (October 1, 2017 through September 30, 2018). The following information must be submitted to your regional project officer:

- Environmental programs where CERCLA section 128(a) funds are used to support capacity building (general program support, non-site-specific work). Indicate as appropriate from the following:

____Brownfields
____Underground Storage Tanks/Leaking Underground Storage Tanks
____Federal Facilities
____Solid Waste
____Superfund
____Hazardous Waste Facilities
____VCP (Voluntary Cleanup Program, Independent Cleanup Program, etc.)
____Other_____;

- number of properties (or sites) enrolled in a response program during FY18;
- number of properties (or sites) where documentation indicates that cleanup work is complete and all required institutional controls (IC's) are in place, or not required;
- total number of acres associated with properties (or sites) in the previous bullet;
- number of properties where assistance was provided, but the property was not enrolled in the response program (OPTIONAL);
- date that the public record was last updated;
- Estimated total number of properties (or sites) in your brownfields inventory;
- Number of audits/inspections/reviews/other conducted to ensure engineering controls and institutional controls are still protective; and
- Did you develop or revise legislation, regulations, codes, guidance documents or policies related to establishing or enhancing your Voluntary Cleanup Program/Response Program during FY18? If yes, please indicate the type and whether it was new or revised. EPA may require states/tribes to report specific performance measures related to the four elements

that can be aggregated for national reporting to Congress.

C. Reporting of Public Record

All recipients must report, as specified in the terms and conditions of their cooperative agreement, and in Section VIII.I of this guidance, information related to establishing, or if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record (*e.g.,* website or other public database to meet the public record requirement). To meet the reporting requirement, recipients reporting may only be required to demonstrate that the public record (a) exists and is up-to-date, and (b) is adequate. A public record must, as appropriate, include the following information:

A list of sites at which response actions have been completed in the past year including:

- Date the response action was completed;
- site name;
- name of owner at time of cleanup, if known;
- location of the site (street address, and latitude and longitude);
- whether an institutional control is in place;
- type of institutional control(s) in place (*e.g.,* deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- nature of the contamination at the site (*e.g.,* hazardous substances, contaminants or pollutants, petroleum contamination, etc.); and
- size of the site in acres.

A list of sites planned to be addressed by the state or tribal response program in the coming year including:

- Site name and the name of owner at time of cleanup, if known;
- location of the site (street address, and latitude and longitude);
- to the extent known, whether an institutional control is in place;
- type of the institutional control(s) in place (*e.g.,* deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- to the extent known, the nature of the contamination at the site (*e.g.,* hazardous substances, contaminants, or pollutants, petroleum contamination, etc.); and
- size of the site in acres.

D. Award Administration Information

1. Subaward and Executive Compensation Reporting

Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR part 170, unless they qualify for an exception from the requirements, should they be selected for funding.

2. System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements

Unless exempt from these requirements under OMB guidance at 2 CFR part 25 (*e.g.,* individuals), applicants must:

1. Be registered in SAM prior to submitting an application or proposal under this announcement. SAM information can be found at *https://www.sam.gov/portal/public/SAM/;*

2. Maintain an active SAM registration with current information at all times during which they have an active federal award or an application or proposal under consideration by an agency; and

3. Provide their DUNS number in each application or proposal submitted to the agency. Applicants can receive a DUNS number, at no cost, by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711, or visiting the D&B website at: *http://www.dnb.com.*

If an applicant fails to comply with these requirements, it will affect their ability to receive the award.

Please note that the Central Contractor Registration (CCR) system has been replaced by the System for Award Management (SAM). To learn more about SAM, go to *SAM.gov* or *https://www.sam.gov/portal/public/SAM/.*

3. Submitting an Application via *Grants.gov*

If funding is provided it will be provided through a cooperative agreement award. All cooperative agreement applications for non-competitive assistance agreements must be submitted using *Grants.gov*. Below is the information that the applicant will use to submit their State and Tribal Response Program Grant applications via *Grants.gov:*

CDFA number: 66.817

Funding Opportunity Number (FON): EPA–CEP–02

To learn more about the *Grants.gov* submission requirements, go to *http://www.epa.gov/grants/how-apply-grants.*

4. Use of Funds

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively, and make sufficient progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms and conditions related to implementing this requirement.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

Region	State	Tribal
1—CT, ME, MA, NH, RI, VT	James Byrne, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1389, Fax (617) 918–1294.	AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1248, Fax (617) 918–1294.
2—NJ, NY, PR, VI	John Struble, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4291, Fax (212) 637–3083.	Phillip Clappin, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone (212) 637–4431, Fax (212) 637–3083.
3—DE, DC, MD, PA, VA, WV.	Michael Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–3371, Fax (215) 814–3274.	Michael Taurino, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–3371, Fax (215) 814–3274.
4—AL, FL, GA, KY, MS, NC, SC, TN.	Cindy Nolan, 61 Forsyth Street SW, 10TH FL (9T25), Atlanta, GA 30303–8960, Phone (404) 562–8425, Fax (404) 562–8788.	Olga Perry, 61 Forsyth Street SW, 10TH FL (9T25), Atlanta, GA 30303–8960, Phone (404) 562–8534, Fax (404) 562–8788.
5—IL, IN, MI, MN, OH, WI	Keary Cragan, 77 West Jackson Boulevard (SB–5J), Chicago, IL 60604–3507, Phone (312) 353–5669, Fax (312) 692–2161.	Rosita Clark, 77 West Jackson Boulevard (SB–5J), Chicago, IL 60604–3507, Phone (312) 886–7251, Fax (312) 697–2075.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS—Continued

Region	State	Tribal
6—AR, LA, NM, OK, TX	Roger Hancock, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–6688, Fax (214) 665–6660.	Roger Hancock, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–6688, Fax (214) 665–6660.
7—IA, KS, MO, NE	Susan Klein, 11201 Renner Boulevard (SUPRSTAR), Lenexa KS 66219, Phone (913) 551–7786, Fax (913) 551–9786.	Jennifer Morris, 11201 Renner Boulevard (SUPRSTAR), Lenexa KS 66219, Phone (913) 551–7341, Fax (913) 551–9341.
8—CO, MT, ND, SD, UT, WY.	Christina Wilson, 1595 Wynkoop Street (EPR–AR), Denver, CO 80202–1129, Phone (303) 312–6706, Fax (303) 312–6065.	Melisa Devincenzi, 1595 Wynkoop Street (EPR–AR), Denver, CO 80202–1129, Phone (303) 312–6377, Fax (303) 312–6962.
9—AZ, CA, HI, NV, AS, GU, MP.	Eugenia Chow, 75 Hawthorne St. (SFD–6–1), San Francisco, CA 94105, Phone (415) 972–3160, Fax (415) 947–3520.	Jose Garcia, Jr., 600 Wilshire Blvd, Suite 1460, Los Angeles, CA 90017, Phone (213) 244–1811, Fax (213) 244–1850.
10—AK, ID, OR, WA	Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513 Phone (907) 271–3414, Fax (907) 271–3424.	Mary K. Goolie, 222 West 7th Avenue #19 (AOO), Anchorage, AK 99513 Phone (907) 271–3414, Fax (907) 271–3424.

Appendix A

Funding Guidance for CERCLA 128(a) Small Technical Assistance Grants

Section 128(a)(1)(B)(ii)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $1.5 million grant program to assist small communities, Indian tribes, rural areas, or disadvantaged areas to carryout section CERCLA 104(k)(7) (by providing training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfields sites, site assessments, remediation of brownfield sites, community involvement, or site preparation). Statutory definitions of communities eligible to receive funding on behalf of a state or tribe. A recipient can define community as a census track:

Disadvantaged Area—The term 'disadvantaged area' means a community with an annual median household income that is less than 80 percent of the statewide annual median household income, as determined by the President based on the latest available decennial census and/or

Small Community—the term 'small community' means a community with a population of not more than 15,000 individuals, as determined by the President based on the latest available decennial census.

State and tribes with active CERCLA 128(a) grants and are requesting funds in fiscal year 2019 are eligible to submit one request on behalf of a small community or disadvantaged area. The maximum amount of funding allowed is $20,000. The funding will be awarded as part of the FY19 CERCLA 128(a) funding grant. Requests will be considered based on the following:

- Readiness of the recipient and community to complete the project within a year of award,
- the recipient is in good standing with their current CERCLA 128(a) grant,
- has documented support from the community benefiting from this grant, and
- adequately responds to the criteria listed below.

Information to include in the request:

- The amount of funding requested,
- a description of the target community and how they meet the statutory definition of disadvantaged area or small community,
- a description of the proposed project, including a description of key activities, and how it will further brownfields reuse,
- the expected outcomes and timeline to complete the project,
- how/who will be conducting the activities (*e.g.,* state, tribe, contractor)
- if additional resources are necessary to complete the project, please explain how you will secure them,
- an explanation of why existing state and tribal funding is inadequate to complete the proposed project,
- and demonstrate that the community supports the state or tribe receiving the grant

Requests should be no more than 2 pages.

These funds may not be places in Performance Partnership Grants.

XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

Dated: September 12, 2018.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Land and Emergency Management.

[FR Doc. 2018–20736 Filed 9–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9041–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/17/2018 Through 09/21/2018

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20180220, Draft Supplement, USFS, ID, Clear Creek Integrated Restoration Project, Comment Period Ends: 11/13/2018, Contact: Zoanne Anderson 208–963–4209.

EIS No. 20180221, Draft, HUD, VA, Ohio Creek Watershed Project, Comment Period Ends: 11/13/2018, Contact: Kerry Johnson 804–822–4803.

EIS No. 20180222, Draft, USFS, BLM, ID, Proposed East Smoky Panel Mine Project at Smoky Canyon Mine, Comment Period Ends: 12/26/2018, Contact: Kyle Free 208–478–6352.

EIS No. 20180223, Draft Supplement, GSA, CA, San Ysidro Land Port of Entry Improvements Project, Comment Period Ends: 11/13/2018, Contact: Osmahn A. Kadri 415–522–3617.

EIS No. 20180224, Draft, USACE, CT, New Haven Harbor Navigation Improvement Project, Draft Integrated Feasibility Report and Environmental Impact Statement, Comment Period Ends: 11/15/2018, Contact: Todd Randall 978–318–8518.

EIS No. 20180225, Final, USFS, CA, Strategic Community Fuelbreak Improvement Project, Review Period Ends: 10/29/2018, Contact: Nic Elmquist 805–967–3481.

EIS No. 20180226, Final, USN, WA, EA–18G ''Growler'' Airfield Operations at Naval Air Station Whidbey Island Complex, WA, Review Period Ends: 10/29/2018, Contact: Lisa Padgett 757–836–8446.

Amended Notices

EIS No. 20180178, Draft, NHTSA, REG, Draft EIS for The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021–2026 Passenger Cars and Light Trucks, Comment Period Ends: 10/26/2018, Contact: Ken Katz 202–366–4936.

Revision to FR Notice Published 08/10/2018; Extending the Comment Period from 09/24/2018 to 10/26/2018.

EIS No. 20180207, Final, USACE, NE, Missouri River Recovery Management Plan, Review Period Ends: 10/22/2018, Contact: Tiffany Vanosdall 402–995–2695.

Revision to FR Notice Published 9/7/2018; Extending the Review Period from 10/09/2018 to 10/22/2018.

Dated: September 24, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–21111 Filed 9–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0418; FRL–9983–13]

Agency Information Collection Activities; Proposed Renewal of an Existing Collection (EPA ICR No. 2511.02); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled: ''Reporting in the FIFRA Cooperative Agreement Work Plan and Report Template'' and identified by EPA ICR No. 2511.02 and OMB Control No. 2070–0198, represents the renewal of an existing ICR that is scheduled to expire on April 30, 2019. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before November 27, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0418, 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: Carolyn Siu, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 543–9488; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Reporting in the FIFRA Cooperative Agreement Work Plan and Report Template.

ICR number: EPA ICR No. 2511.02.

OMB control number: OMB Control No. 2070–0198.

ICR status: This ICR is currently scheduled to expire on April 30, 2019. 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 EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR documents the Paperwork burden of the electronic collection of information for the pre-award burden activity for creating a work plan and the post-award and after-the-grant award activities related to reporting accomplishments to implement EPA's Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) State and Tribal Assistance Grant (STAG) program (7 U.S.C. 136.u). This ICR augments the ICR entitled ''EPA's General Regulation for Assistance Programs ICR'' (EPA No. 0938.18; OMB No. 2030–0020) which accounts for the current PRA burden for the minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). This ICR renewal provides the burden assessment for the FIFRA program specific activities associated with using a standardized electronic format for only the STAG program reporting.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46.15 hours per response. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/affected entities: Entities potentially affected by this ICR are state, local governments, Indian tribes, and U.S. territories. Entities potentially affected by this ICR are grantees of Federal funds participating in the FIFRA and STAG program. The corresponding North American Industry Classification System (NAICS) Codes for respondents include: 9241—Administration of Environmental Quality programs; 92115—American Indians and Alaska Native Tribal Governments.

Estimated total number of potential respondents: 81.

Frequency of response: Biannually.

Estimated total average number of responses for each respondent: 2.

Estimated total annual burden hours: 26,195 hours.

Estimated total annual costs: $2,102,179. There are no capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is no increase or decrease of the PRA burden hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. However, there is an increase in EPA's burden cost in this ICR relative to the previous ICR due to updating the wages (from 2012 to 2017) and using the fully loaded wage rate replacing the unloaded wage rate used in the current ICR. This change is a program adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: September 13, 2018.

Charlotte Bertrand,

Acting Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2018–21190 Filed 9–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9984–42–OARM]

National and Governmental Advisory Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a public meeting of the he National Advisory Committee (NAC) and the Governmental Advisory Committee (GAC). The NAC and GAC provide advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. NAC/GAC members represent academia, business/industry, non-governmental organizations, and state, local and tribal governments. The purpose of the meeting is for the NAC/GAC to provide advice on trade and environment issues related to the North American Agreement on Environmental Cooperation. A copy of the meeting agenda will be posted at *https://www.epa.gov/faca/nac-gac.*

DATES: The NAC/GAC will hold a public meeting on Wednesday, October 10, 2018 from 9:00 a.m. to 5:30 p.m., (EST) and Thursday, October 11, 2018 from 9:00 a.m. until 3:00 p.m. (EST)

ADDRESSES: The meeting will be held at the *Sol of Tucson Hotel & Conference Center,* 5655 W Valencia Rd., Tucson, Arizona 85757.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Program Analyst, *carrillo.oscar@epa.gov,* (202) 564–0347, U.S. EPA, Office of Resources, Operations and Management; Federal Advisory Committee Management Division (MC1601M), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to NAC/GAC should be sent to Oscar Carrillo at *carrillo.oscar@epa.gov* by October 3rd. The meeting is open to the public, on a first-come, first-served basis. Members of the public wishing to participate in the meeting should contact Oscar Carrillo via email or by calling (202) 564–0347 no later than October 3rd. Oscar Carrillo has been designated signature authority by Monisha Harris, Director, Federal Advisory Committee Management Division.

Meeting Access: Information regarding accessibility and/or accommodations for individuals with disabilities should be directed to Oscar Carrillo at the email address or phone number listed above. To ensure adequate time for processing, please make requests for accommodations at least 10 days prior to the meeting.

Dated: September 6, 2018.

Oscar Carrillo,

Program Analyst.

[FR Doc. 2018–21188 Filed 9–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9984–31–Region 9]

Public Water System Supervision Program Revision for the State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Hawaii revised its approved Public Water System Supervision Program (PWSSP) under the federal Safe Drinking Water Act (SDWA) by adopting the Stage 1 Disinfectants and Disinfection Byproducts Rule, Stage 2 Disinfectants and Disinfection Byproducts Rule, Long Term 2 Enhanced Surface Water Treatment Rule, Lead and Copper Rule Short-Term Regulatory Revisions and Clarifications, Revised Total Coliform Rule, and the expanded Public Water System definition. The Environmental Protection Agency (EPA) has determined that these revisions by the State of Hawaii are no less stringent than the corresponding Federal regulations and otherwise meet applicable SDWA primacy requirements. Therefore, EPA intends to approve these revisions to the State of Hawaii's PWSSP.

DATES: Request for a public hearing must be received on or before October 29, 2018.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, except official State holidays (for the Hawaii location) and official Federal holidays (for the two EPA locations), at the following offices: Hawaii Department of Health, Safe Drinking Water Branch, 2385 Waimano Home Road, Uluakupu Building 4, Pearl City, Hawaii 96782; United States Environmental Protection Agency, Region 9, Pacific Islands Office, 300 Ala Moana Blvd., Room 5124, Honolulu, Hawaii 96850; and United States Environmental Protection Agency, Region 9, Drinking Water Management Section, 75 Hawthorne Street (WTR–3–1), San Francisco, California 94105. Documents relating to this determination are also available online at *http://health.hawaii.gov/sdwb/public-notices/* for inspection.

FOR FURTHER INFORMATION CONTACT: Anna Yen, EPA Region 9, Drinking Water Management Section, at the address given above; telephone number: (415) 972–3976; email address: *yen.anna@epa.gov.*

SUPPLEMENTARY INFORMATION: Background. EPA approved the State of Hawaii's original application for PWSSP primary enforcement authority which, following the public notice period, became effective on October 20, 1977 (42 FR 47244, no request for public hearing received). EPA subsequently approved and finalized revisions to the State of Hawaii's PWSSP on the following dates: May 6, 1993 (58 FR 17892); July 19, 1993 (58 FR 33442); September 29, 1993 (58 FR 45491); March 13, 1995 (60 FR 7962); May 23, 1996 (61 FR 17892); July 31, 2015 (80 FR 45656), and December 8, 2017 (82 FR 57981).

Public process. Any interested party may request a public hearing on this determination. A request for a public hearing must be submitted by October 29, 2018, to the Regional Administrator at the EPA Region 9 address shown above. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. If a substantial request for a public hearing is made by October 29, 2018, EPA Region 9 will hold a public hearing. Any request for a public hearing shall include the following information: 1. The 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 of the information that the requesting person intends to submit at such hearing; and 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.

If EPA Region 9 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on October 29, 2018, and no further public notice will be issued.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g–2 (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 24, 2018.

Deborah Jordan,

Acting Regional Administrator, EPA, Region 9.

[FR Doc. 2018–20853 Filed 9–27–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0632; FRL–9983–92]

Request for Nominations of Experts To Consider for ad hoc Participation on Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Scientific Advisory Panel (SAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA requests public nominations of scientific experts to be considered for *ad hoc* participation on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) through membership on the Food Quality Protection Act (FQPA) Science Review Board (SRB). All nominees will be considered for *ad hoc* participation providing independent scientific advice to the EPA on health and safety issues related to pesticides. The FIFRA SAP is comprised of biologists, statisticians, toxicologists and other experts and is assisted in their reviews by members of the FQPA SRB.

DATES: *Nominations.* Nominations should be provided to the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT** on or before November 13, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Marquea D. King, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3626; email address: *king.marquea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those who are or may be required to conduct testing of chemical substances and provide submissions to the EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA. 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.

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

1. *Submitting CBI.* Do not submit CBI information to EPA through *regulations.gov* or email. If your nomination contains any information that you consider to be CBI or otherwise

protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your nomination.

2. *Request for nominations to be considered for ad hoc participation on the FIFRA SAP.* As part of a broader process for developing a pool of experts known as the Food Quality Protection Act (FQPA) Science Review Board (SRB), Office of Science Coordination and Policy (OSCP) staff solicits the public and stakeholder communities nominations of prospective candidates for service as *ad hoc* participants on FIFRA SAP reviews. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates. Individuals may self-nominate. Individuals nominated should have expertise in one or more of the following areas: Biochemistry; chemistry; epidemiology; human health risk assessment; pathology; PBPK modeling; aquatic modeling; pharmacology; ecological risk assessment; environmental exposure and fate; environmental toxicology; occupational, consumer, and general exposure assessment; toxicology; dose response modeling; environmental engineering; statistics; water quality monitoring; hydrologist; GIS specialist; computational toxicology; entomology; veterinary entomology; medical entomology, insect ecology, allergenicity, research veterinarian; inhalation toxicology; volatile organics; endocrinology, alternative testing methods, high throughput testing approaches, adverse outcome pathways, cross species extrapolation, and systematic review. Nominees should be scientists who have sufficient professional qualifications, including training and experience, and can provide expert comments on the pesticide health and safety related issues for a FIFRA SAP meeting. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before November 13, 2018. The Agency will consider all nominations of prospective candidates for service as *ad hoc* participants on the FIFRA SAP that are received on or before that date. However, final selection of *ad hoc* participants is at the discretion of the Agency.

The selection of scientists to serve as *ad hoc* participants of the FIFRA SAP is based on the function of the Panel and the expertise needed to address the Agency's charge to the Panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the prospective candidate to fully participate in the Panel's reviews, absence of any conflicts of interest or appearance of loss of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of loss of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Often, numerous available and qualified candidates are identified for *ad hoc* participation. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the Panel.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634—Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidates' financial disclosure forms to assess whether there are financial conflicts of interest, appearance of a loss of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of *ad hoc* participants and FIFRA SAP members participating at each meeting will be posted on the FIFRA SAP website at *http://www.epa.gov/sap* or may be obtained from the OPP Docket at *http://www.regulations.gov.*

II. Background

A. Purpose of FIFRA SAP

The Federal Insecticide, Fungicide, and Rodenticide Act, Scientific Advisory Panel (FIFRA SAP) serves as a primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act (5 U.S.C. Appendix). FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. The FIFRA SAP is assisted in their reviews by ad hoc participation from members of the Food Quality Protection Act (FQPA) Science Review Board (SRB). As a scientific peer review mechanism, FIFRA SAP provides comments, evaluations, and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. The FIFRA SAP is not required to reach consensus in its recommendations to the Agency but consensus is a preferred outcome and possible under FACA.

At this time, EPA is seeking nominations to augment the FQPA SRB, a pool of experts who can be available to the SAP on an ad hoc basis to assist in peer reviews conducted by the Panel. EPA anticipates selecting experts from this pool, as needed, to assist the SAP in their peer review of EPA's issues related to the health and safety of pesticides.

Authority: 15 U.S.C. 2625 *et seq.*; 5 U.S.C. Appendix 2 *et seq.*

Dated: September 19, 2018.

Stanley Barone Jr.,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2018–21196 Filed 9–27–18; 8:45 am]

BILLING CODE 6560–50–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 Procurement Solicitation Package (FR 1400; OMB No. 7100–0180).

DATES: Comments must be submitted on or before November 27, 2018.

ADDRESSES: You may submit comments, identified by *FR 1400,* by any of the following methods:

- *Agency website: http://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 sensitive PII (personally identifiable information) at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets 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 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 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, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (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 prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports

Report title: Vendor Database.
Agency form number: FR 1400A.
OMB control number: 7100–0180.
Frequency: On occasion.
Respondents: Businesses.
Estimated number of respondents: 250.
Estimated average hours per response: 1.
Estimated annual burden hours: 250.
Report title: Solicitation Package.
Agency form number: FR 1400B.
OMB control number: 7100–0180.
Frequency: On occasion.
Respondents: Businesses.
Estimated number of respondents: 300.
Estimated average hours per response: 81.
Estimated annual burden hours: 24,300.

Report title: Vendor Risk Management Offeror Questionnaire.
Agency form number: FR 1400C.
OMB control number: 7100–0180.
Frequency: On occasion.
Respondents: Businesses.
Estimated number of respondents: 20.
Estimated average hours per response: 12.
Estimated annual burden hours: 240.

Report title: Subcontracting Report.
Agency form number: FR 1400D.
OMB control number: 7100–0180.
Frequency: Quarterly.
Respondents: Businesses.
Estimated number of respondents: 75.
Estimated average hours per response: 0.5.
Estimated annual burden hours: 150.

General description of report: The Board is continuously seeking vendors who are interested in doing business with the Board through various outreach events, minority/diversity conferences, meetings, and events targeted to either a specific industry classification of vendors or an upcoming acquisition. Vendors are encouraged during these efforts to register in the Board's database of interested vendors (FR 1400A). In announcing an acquisition, Board staff contacts vendors registered in the Board database via electronic mail or by telephone, and provides the Solicitation Package (FR 1400B) and applicable attachments. The Solicitation, Offer, and Award form (SOA) (Attachment A of FR 1400B) is required with proposals offered in response to a solicitation issued by the Board. The Supplier Information Form (Attachment N of FR 1400B) is required for the entry of a

vendor into the Board's contract writing and invoice payment system. As a result of the criteria used by the Board to evaluate proposals, the Solicitation Package may also include the Past Performance Data Sheet and Past Performance Questionnaire (Attachment I of FR 1400B) if past performance is an evaluation factor. Typically, if past performance is considered an evaluation factor, the vendor is asked to submit information on up to three previous contracts whose effort is recent and relevant to the effort required by the solicitation.

Solicitations that require the vendor to process, store, or transmit data from the Board will contain the Vendor Risk Management Offeror Questionnaire (FR 1400C). The questionnaire will be specific to the security controls surrounding the vendor's proposed application that will be used to process, store, or transmit the data. Security controls will be defined and prioritized based on the Federal Information Security Modernization Act of 2014 (FISMA) and the National Institute of Standards and Technology (NIST) Special Publication 800–53 (Security Controls and Assessment Procedures for Federal Information Systems and Organizations). In addition, for solicitations that have subcontracting opportunities and are expected to exceed $100,000 ($300,000 for construction), a non-covered company vendor is required to submit a subcontracting plan in its own format, with its proposal. Then, if the vendor is the chosen vendor and awarded a contract, the vendor is required to provide the quarterly Subcontracting Reports (FR 1400D) to the Board, which shall document the vendor's participation achievement on a cumulative basis. Information from the Subcontracting Report is used to assist the Board in fulfilling the requirement in Section 342(e) of the Dodd-Frank Act that requires the Board to submit to Congress an annual report regarding the fair inclusion of minorities and women in contracting.

Proposed revisions: To assist the Board's competitive vendor solicitation process, the Board is proposing to revise the FR 1400 by (1) reformatting and updating the Solicitation Package, including the Solicitation, Offer, and Award Form (SOA), Supplier Information Form, Past Performance Data Sheet, and Past Performance Questionnaire (FR 1400B); (2) adding the Vendor Risk Management Offeror Questionnaire (FR 1400C); and (3) revising the Subcontracting Report (FR 1400D) to improve clarity and gather specific information in accordance with the Board's subcontracting goals. Lastly, the Board proposes to discontinue the use of the Request for Price Quotation Form (RFP/RFPQ). The purpose of the RFPQ form will be absorbed into the FR 1400B.

Legal authorization and confidentiality: The FR 1400A is voluntary. For prospective vendors that decide to submit proposals to the Board, the FR 1400B, 1400C, and 1400D are required to obtain a benefit, in order to be eligible for the award of a contract.

The FR 1400 is authorized pursuant to sections 10 and 11 of the Federal Reserve Act (''FRA''), and section 342(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank''). Sections 10(3) and 11 of the FRA (12 U.S.C. 243 and 248(l)) grant the Board full authority to manage its buildings and its staff. Section 10(4) of the FRA (12 U.S.C. 244) authorizes the Board to determine and prescribe the manner in which its obligations shall be incurred and its disbursements and expenses allowed and paid. Therefore, the Board can solicit proposals and seek the information in FR 1400 from prospective vendors.

Additionally, the FR 1400 is authorized by section 342(c) of Dodd-Frank (12 U.S.C. 5452(c)), which requires the Board to develop and implement standards and procedures for the review and evaluation of contract proposals and for hiring service providers that include a component that gives consideration to the diversity of a prospective vendor and the fair inclusion of women and minorities in the workforce of such vendor and any subcontractor.

A vendor generally may request confidential treatment for information submitted during the solicitation process, and the Board will review the request to determine if the data may be kept confidential under exemption 4 of the Freedom of Information Act, which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, September 24, 2018.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2018–21126 Filed 9–27–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10464]

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 November 27, 2018.

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 Parham at (410) 786–1326.

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–10464 Agent/Broker Data Collection in Federally Facilitated Health Insurance Exchanges

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Title of Information Collection:* Agent/Broker Data Collection in Federally Facilitated Health Insurance Exchanges; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, enacted on March 30, 2010 (collectively, ''Affordable Care Act''), expands access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), also called Marketplaces, including the Small Business Health Options Program (SHOP). Revised requirements pertaining to agents/brokers completing Federally-facilitated Exchange (FFE) registration are discussed in the final rule published on February 27, 2015 for the Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016 (CMS–9944–F). These updated requirements direct agents/brokers to submit additional fields related to basic contact information and National Producer Number (NPN). Current state licensure and relevant health lines of authority (LOA) are then validated using the National Insurance Producer Registry (NIPR) database. This ICR serves as the formal request for renewal and also includes some of the information collection requirements from the previously approved final rule. *Form Number:* CMS–10464 (OMB control number: 0938–1204); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 52,000; *Number of Responses:* 52,000; *Total Annual Hours:* 12,480. (For questions regarding this collection contact Madeline Pellish at 301–492–4390.)

Dated: September 25, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–21171 Filed 9–27–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0333]

Richard M. Fleming; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is denying a request for a hearing submitted by Richard M. Fleming (Fleming) and is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Fleming for 10 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Fleming was convicted of two felonies under Federal law that involved fraud. Additionally, Fleming has demonstrated a pattern of conduct sufficient to find that there is reason to believe that he may violate requirements under the FD&C Act relating to drug products. In determining the appropriateness and period of Fleming's debarment, FDA considered the relevant factors listed in the FD&C Act. Fleming failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is applicable September 28, 2018.

ADDRESSES: Any application for termination of debarment by Fleming under section 306(d) of the FD&C Act (application) may be submitted as follows:

Electronic Submissions

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: Your application must include the Docket No. FDA–2013–N–

0333. An application will be placed in the docket and, unless submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

Docket: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, 240–402–5931.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(ii)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(ii)(I)) permits FDA to debar an individual if it finds that the individual: (1) Has been convicted of a felony that involves bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with, obstruction of an investigation into, or prosecution of, any criminal offense and (2) based on the conviction and other information, the individual has demonstrated a pattern of conduct sufficient to find that there is reason to believe that the person may violate requirements under the FD&C Act relating to drug products.

On April 24, 2009, Fleming, the president of, and sole physician at, Fleming Heart and Health Institute, P.C. (FHHI), pled guilty to one felony count of healthcare fraud, in violation of 18 U.S.C. 1347 and 2, and one felony count of mail fraud, in violation of 18 U.S.C. 1341 and 2. On August 20, 2009, the U.S. District Court for the District of Nebraska entered a judgment of conviction against Fleming on these counts and sentenced Fleming to 5 years of probation.

Fleming's convictions stemmed from two separate actions. Fleming, through his practice at FHHI, performed various imaging studies and submitted reimbursement claims to Medicare and Medicaid. Fleming pled guilty to one count of felony healthcare fraud in violation of 18 U.S.C. 1347 and 2 for conduct related to the submission of a reimbursement claim. Fleming admitted to knowingly executing and attempting to execute a scheme to defraud Medicare and Medicaid healthcare benefit programs in connection with the delivery of and payment for healthcare benefits, items, and services, namely by submitting payment claims for tomographic myocardial perfusion imaging studies that he did not actually perform. Fleming also pled guilty to one count of felony mail fraud in violation of 18 U.S.C. 1341 and 2 for conduct relating to money paid him to conduct a clinical study of a soy chip food product for the purpose of evaluating health benefits. As Fleming admitted during his guilty plea, he received approximately $35,000 for conducting a clinical trial, but he fabricated data for certain subjects.

By letter dated November 18, 2013, FDA's Office of Regulatory Affairs (ORA) notified Fleming of its proposal to debar him for 10 years from providing services in any capacity to a person having an approved or pending drug product application. The proposal explained that the proposed debarment period was based on both felony fraud convictions. ORA stated that these convictions establish Fleming's disregard for his professional obligations and the law and provide reason to believe that, if he were to provide services to a person that has an approved or pending drug application, he may violate requirements under the FD&C Act relating to drug products. Therefore, ORA found that Fleming was subject to debarment under section 306(b)(2)(B)(ii)(I) of the FD&C Act.

The proposal noted that the maximum debarment period for each offense is 5 years and that FDA may determine whether debarment periods for multiple offenses should run concurrently or consecutively. The proposal outlined findings concerning the four relevant factors that ORA considered in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act: (1) The nature and seriousness of any offense, (2) the nature and extent of management participation in any offense, (3) the nature and extent of voluntary steps to mitigate the impact on the public, and (4) prior convictions under the FD&C Act or other acts involving matters within FDA's jurisdiction. ORA found that the first three were unfavorable factors and that the last was a favorable factor for Fleming. The notice concluded that ''the unfavorable factors cumulatively far outweigh the sole favorable factor.'' Accordingly, FDA determines that debarment is appropriate, and that the 5-year period of debarment for each of the two offenses should be served consecutively, resulting in a total debarment period of 10 years.

Fleming timely responded to the proposal to debar and requested a hearing. Fleming's response included multiple documents in which he raises variations of two central arguments, namely that: (1) His guilty plea ''does not state a crime'' and (2) he is ''actually innocent.'' Fleming contends that his guilty plea was a ''holographic plea'' to protect his children.

Under the authority delegated to him by the Commissioner of Food and Drugs, the Director of the Office of Scientific Integrity (OSI) has considered Fleming's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

OSI has considered Fleming's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

Fleming submitted multiple documents in support of his arguments that his guilty plea ''does not state a crime'' and that he is ''actually innocent.'' However, section 306(l) of the FD&C Act defines conviction as when a Federal or State court's judgment of conviction or when a Federal or State court's acceptance of a guilty plea. In Fleming's ''Petition to Enter a Plea of Guilty,'' he stated that he understood the charges against him and that he was voluntarily entering his guilty plea. The court entered a judgment of conviction after accepting Fleming's guilty plea. Federal court is the proper venue for any challenge to Fleming's guilty plea based on a claim of actual innocence, not this remedial proceeding. OSI carefully reviewed Fleming's submission in its entirety, and Fleming does not dispute that the court entered a judgment of conviction or that the court accepted his guilty plea; therefore, Fleming's arguments regarding his actual innocence fail to raise a genuine and substantial issue of fact warranting a hearing.

Under section 306(b)(2)(B)(ii)(I) of the FD&C Act, FDA has the authority to debar an individual convicted of certain Federal felonies, involving, among other things, fraud, if FDA finds that the individual has demonstrated a pattern of conduct giving reason to believe that he may violate requirements under the FD&C Act relating to drug products. The relevant factual issues are whether Fleming was, in fact, convicted of a felony involving fraud and whether there is reason to believe that he may violate requirements under the FD&C Act relating to drug products. Fleming does not dispute that he pled guilty to felony healthcare fraud and felony mail fraud or that, based on these convictions, there is reason to believe that he may violate requirements under the FD&C Act relating to drug products. Therefore, Fleming has failed to raise a genuine and substantial issue of fact warranting a hearing regarding whether he is subject to debarment.

Fleming's response included one argument that may be construed to be a challenge to ORA's proposed findings on the nature and seriousness of his offense. Fleming appears to claim that the imaging studies he performed on his patients were safer than the imaging studies he billed to Medicare and Medicaid. In the proposal to debar, in evaluating the nature and seriousness of the offenses, ORA noted that Fleming was convicted of two felonies, healthcare fraud and mail fraud. ORA considered that he billed Medicare and Medicaid for procedures other than those that he had performed, that he falsified clinical trial data, and that his actions ''have the potential for causing significant loss of public confidence in the healthcare system.'' Fleming's actions took place over a period of several months and demonstrated multiple instances of fraud. While Fleming contends that he performed safer imaging studies than those billed, FDA must weigh this claim against the serious nature of the fraud he committed. Construing Fleming's argument in a light most favorable to him, whether he performed safer imaging studies does not sufficiently counter the very serious nature of fraudulent conduct and is not enough to establish that a shorter debarment period would be appropriate.

Based on the factual findings in the proposal to debar and on the record, OSI finds that a 5-year debarment period for each felony offense is appropriate. The nature and seriousness of Fleming's offense, Fleming's managerial participation, and his lack of voluntary steps to mitigate the impact on the public weigh in favor of debarment. Although Fleming does not appear to have prior criminal convictions involving matters within FDA's jurisdiction, a debarment period of 5 years for each felony conviction is appropriate. As noted in the proposal to debar, the conduct underlying the offenses involved submitting claims for payment for procedures other than the procedures Fleming performed and falsifying clinical trial data, and ''[t]he conduct that form[ed] the basis of [his] conviction occurred in the course of [his] profession and showed disregard for the obligations of [his] profession and the law.'' Based on the pattern of fraudulent conduct, FDA has reason to believe that Fleming may violate the requirements under the FD&C Act relating to drug products. Furthermore, given that Fleming has offered no arguments challenging the proposed determination regarding the extent to which his debarment periods should run concurrently or consecutively, OSI further determines that the 5-year debarment period for each felony conviction should run consecutively, resulting in a total debarment of 10 years.

III. Findings and Order

Therefore, the Director of OSI, under section 306(b)(2)(B)(i)(I) of the FD&C Act and authority delegated to him by the Commissioner of Food and Drugs, finds that: (1) Fleming has been convicted of a felony which involves bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records, or interference with, obstruction of an investigation into, or prosecution of, any criminal offense and (2) based on the conviction and other information, Fleming has demonstrated a pattern of conduct giving reason to believe that he may violate requirements under the FD&C Act relating to drug products. FDA considered the applicable factors listed in section 306(c)(3) of the FD&C Act and determined that a debarment of 10 years is appropriate.

As a result of the foregoing findings, Fleming is debarred for 10 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see 21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application, who knowingly uses the services of Fleming, in any capacity during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Fleming, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Fleming during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Dated: September 25, 2018.

George M. Warren,

Director, Office of Scientific Integrity.

[FR Doc. 2018–21210 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3304]

The Special 510(k) Program; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft

guidance entitled ''The Special 510(k) Program.'' FDA established the Special 510(k) Program to facilitate the submission, review, and clearance of changes to a manufacturer's own legally marketed predicate device. This draft guidance, when finalized, will provide the framework that FDA will use when considering whether a premarket notification (510(k)) is appropriate for review as a Special 510(k). This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 27, 2018 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–3304 for ''The Special 510(k) Program.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

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

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''The Special 510(k) Program'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Joshua Silverstein, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–5155; Angela DeMarco, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1611, Silver Spring, MD 20993–0002, 301–796–4471; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

On March 20, 1998, FDA issued the guidance document entitled ''The New 510(k) Paradigm: Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications,'' which established the Special 510(k) Program. By establishing the Special 510(k) Program, FDA sought to streamline review of 510(k) submissions by leveraging design control requirements. The Special 510(k) Program allows manufacturers who are intending to change their own legally marketed device to utilize risk analysis and verification and validation activities to facilitate submission, review, and clearance of the change. While FDA intends to review Special 510(k)s within 30 days, the Special 510(k) Program does not alter any statutory or regulatory requirements related to the premarket notification process under sections 510 and 513 of the FD&C Act (21 U.S.C. 360 and 360c) and 21 CFR part 807, subpart E.

To improve the efficiency of 510(k) review, FDA believes that an update to the Special 510(k) Program both clarifies existing policy and expands on device changes appropriate for the Program. This draft guidance, when finalized, will explain the updated factors FDA intends to use when considering

whether a 510(k) is appropriate for review as a Special 510(k). In general, a change to an existing device may be appropriate for a Special 510(k) when: (1) The proposed change is made and submitted by the manufacturer authorized to market the existing device; (2) performance data are unnecessary, or if performance data are necessary, well-established methods are available to evaluate the change; and (3) all performance data necessary to support substantial equivalence can be reviewed in a summary or risk analysis format.

When finalized, this guidance will supersede the Special 510(k) policy in the 1998 guidance entitled ''The New 510(k) Paradigm: Alternate Approaches to Demonstrating Substantial Equivalence in Premarket Notifications.''

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''The Special 510(k) Program.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov* or *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.* Persons unable to download an electronic copy of ''The Special 510(k) Program'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 18008 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket Notification	0910–0120
801	Medical Device Labeling Regulations	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation	0910–0073

Dated: September 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21141 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0613]

John D. McCoy; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying a request for a hearing submitted by John D. McCoy (McCoy) and is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring McCoy for 4 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that McCoy was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the conduct underlying the conviction undermines the process for the regulation of drugs. In determining the appropriateness and period of McCoy's debarment, FDA has considered the relevant factors listed in the FD&C Act. McCoy has failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is applicable September 28, 2018.

ADDRESSES: Any application for termination of debarment by McCoy under section 306(d) of the FD&C Act (application) may be submitted as follows:

Electronic Submissions

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: Your application must include the Docket No. FDA–2011–N–0613. An application will be placed in the docket and, unless submitted as

''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

Docket: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, 240–402–5931.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if it finds that: (1) The individual has been convicted of a misdemeanor under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act and (2) the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On April 20, 2009, in the U.S. District Court for the District of Arizona, McCoy pled guilty to a misdemeanor, namely adulterating a drug while held for sale after shipment in interstate commerce in violation of sections 301(k), 303(a)(1), and 501(d) of the FD&C Act (21 U.S.C. 331(k), 333(a)(1) and 351(d)). The conduct underlying the conviction involved the adulteration of BOTOX®/BOTOX® Cosmetic (BOTOX®). BOTOX® is a biological product derived from Botulinum Toxin Type A that is manufactured by Allergan, Inc., and was approved by FDA for use on humans. Toxin Research International was an Arizona corporation that marketed and sold TRI-Toxin, a Botulinum Toxin Type A product that was neither approved nor licensed by FDA. According to the records of the criminal proceedings, McCoy, while a physician at Skinovative Laser Center, mixed FDA-approved BOTOX® with TRI-toxin, while the BOTOX® was held for sale after shipment in interstate commerce, such that the BOTOX® was adulterated under section 501(d) of the FD&C Act.

By letter dated October 24, 2011, FDA's Office of Regulatory Affairs (ORA) notified McCoy of its proposal to debar him for 4 years from providing services in any capacity to a person having an approved or pending drug product application. The proposal outlined findings concerning three relevant factors ORA considered in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act. ORA found that the nature and seriousness of the offense and the nature and extent of voluntary steps to mitigate the effect on the public were unfavorable factors for McCoy. The absence of prior convictions involving matters within FDA's jurisdiction was a favorable factor. ORA concluded, ''Weighing all the factors, particularly the nature and seriousness of the conduct underlying your conviction, the Agency has determined that the unfavorable factors outweigh the favorable factors, and therefore warrant the imposition of a four year permissible debarment in this case.''

In a letter dated November 23, 2011, through counsel, McCoy requested a hearing on the proposal. In his hearing request, McCoy argues that there are disputed issues of material fact that FDA must consider, under section 306(c)(3) of the FD&C Act, in determining the appropriateness and period of debarment. McCoy also indicated that additional information justifying the hearing would be forthcoming. More than 60 days have passed from the date McCoy received ORA's letter, and McCoy has not filed any additional information.

Under the authority delegated to him by the Commissioner of Food and Drugs, the Director of the Office of Scientific Integrity (OSI) has considered McCoy's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. Hearings will not be granted on issues of policy or law, on mere allegations, denials or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see § 12.24(b) (21 CFR 12.24(b))).

OSI has considered McCoy's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

In his hearing request, McCoy first contends that there are disputed issues of material fact with respect to whether he voluntarily acted to mitigate the impact of his offense on the public (see section 306(c)(3)(C) of the FD&C Act). ORA found no evidence that McCoy took any voluntary steps to mitigate the impact on the public. McCoy has not provided any specific allegations or evidence supporting his general assertion that the facts underlying ORA's findings are in dispute. Although McCoy indicated that he would submit additional information supporting his hearing request, he has not done so. Under § 12.24(b)(2), a hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions. McCoy's bare assertion that there are disputed issues of fact with respect to that consideration fails to create a genuine and substantial issue of fact that warrants a hearing. Upon similar reasoning, McCoy's claim that the disputed issues of fact are not limited to those raised in his hearing request also falls far short of justifying a hearing.

Finally, McCoy contends that there are disputed issues of material fact with respect to whether, under section 306(c)(3)(D) of the FD&C Act, the extent to which changes in ownership, management, or operations has corrected the causes of any offense involved and provide reasonable assurances that the offense will not

occur again. Yet, again, McCoy has not provided any specific allegations or evidence to challenge ORA's determination that this consideration does not apply to him. FDA need only address the considerations in section 306(c)(3) of the FD&C Act ''where applicable.'' The considerations in section 306(c)(3) of the FD&C Act are not only for individuals but also for corporations, partnerships, and associations subject to permissive debarment. The consideration at issue does not typically apply to individuals because individuals are incapable of changes in ownership or management and could only alter the current operations of a business enterprise in which they are currently engaged. Even assuming *arguendo* that an individual could point to changes in his or her current business practices as an applicable consideration under section 306(c)(3) of the FD&C Act, McCoy's unsubstantiated contention that there are disputed issues of fact with respect to that consideration fails to create a genuine and substantial issue of fact that warrants a hearing.

Based on the factual findings in the proposal to debar and on the record, OSI finds that a 4-year debarment is appropriate. Although McCoy has no previous criminal convictions related to matters within the jurisdiction of FDA, this sole positive factor does not counterbalance the nature and seriousness of his offense and lack of voluntary steps taken to mitigate the effect on the public. As noted in the proposal to debar, McCoy's actions occurred on a repeated basis, and ''[his] conduct created a risk of injury to [his] patients . . ., undermined the Agency's oversight of an approved drug product, and seriously undermined the integrity of the Agency's regulation of drug products.''

III. Findings and Order

Therefore, the Director of OSI, under section 306(b)(2)(B)(i)(I) of the FD&C Act and under authority delegated to him by the Commissioner of Food and Drugs, finds that: (1) McCoy has been convicted of a misdemeanor under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act and (2) the conduct which served as the basis for the conviction undermines the process for the regulation of drugs. FDA has considered the applicable factors listed in section 306(c)(3) of the FD&C Act and determined that a debarment of 4 years is appropriate.

As a result of the foregoing findings, McCoy is debarred for 4 years from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application, who knowingly uses the services of McCoy, in any capacity during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If McCoy, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of McCoy during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Dated: September 25, 2018.

George M. Warren,

Director, Office of Scientific Integrity.

[FR Doc. 2018–21211 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3424]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on November 8, 2018, from 11 a.m. to 2:45 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

For those unable to attend in person, the meeting will also be webcast and will be available at the following link: *https://collaboration.fda.gov/vrbpac1118/.*

FOR FURTHER INFORMATION CONTACT: Serina Hunter-Thomas, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6338, Silver Spring, MD 20993–0002, 240–402–5771, *serina.hunter-thomas@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On November 8, 2018, the Center for Biologics Evaluation and Research's (CBER) VRBPAC committee will meet in open session to hear an overview of the research program in the Laboratory of DNA Viruses (LDV), Division of Viral Products (DVP), Office of Vaccines Research and Review (OVRR), CBER, FDA. FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On November 8, 2018, from 11 a.m. to 1:50 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact

person on or before November 1, 2018. Oral presentations from the public will be scheduled between approximately 12:45 p.m. to 1:45 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 24, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 25, 2018.

Closed Committee Deliberations: On November 8, 2018, from 1:50 p.m. to 2:45 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The recommendations of the advisory committee regarding the progress of the investigator's research will, along with other information, be used in making personnel and staffing decisions regarding individual scientists.

We believe that public discussion of these recommendations on individual scientists would constitute an unwarranted invasion of personal privacy.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Serina Hunter-Thomas at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21137 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3569]

GlaxoSmithKline, LLC, et al.; Withdrawal of Approval of 24 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 24 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of October 29, 2018.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993–0002, 240–402–7945, *Trang.Tran@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 061336	Bactocill (oxacillin sodium) Capsules, Equivalent to (EQ) 250 milligrams (mg) base and EQ 500 mg base.	GlaxoSmithKline, LLC, Five Moore Dr., P.O. Box 13398, Research Triangle Park, NC 27709.
ANDA 061773	Kefzol (cefazolin) for Injection USP, EQ 250 mg base/vial, EQ 500 mg base/vial, EQ 1 gram (g) base/vial, EQ 10 g base/vial, and EQ 20 g base/vial.	ACS Dobfar S.p.A., c/o Interchem Corp., 120 Rte. 17 North, Paramus, NJ 07652.
ANDA 062615	Nystatin Vaginal Inserts USP, 100,000 units	Odyssey Pharmaceuticals, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 063304	Clindamycin Phosphate Topical Solution USP, EQ 1% base	Wockhardt Bio AG, c/o Morton Grove Pharmaceuticals, Inc., 6451 Main St., Morton Grove, IL 60053.
ANDA 065001	Cefuroxime for Injection USP, EQ 750mg base/vial and EQ 1.5 g base/vial.	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 065002	Cefuroxime for Injection USP, EQ 7.5 g base/vial (Pharmacy Bulk Package).	Do.
ANDA 070736	Ibuprofen Tablets USP, 300 mg, 400 mg, and 600 mg	Aurolife Pharma, LLC, 279 Princeton Hightstown Rd., East Windsor, NJ 08520.
ANDA 071202	Sensorcaine—MPF Spinal (bupivacaine hydrochloride (HCl)) in Dextrose Injection 8.25% USP, 0.75%.	Fresenius Kabi USA, LLC.
ANDA 071846	Nitroglycerin in Dextrose 5% Injection, 10 mg/100 milliliter (mL).	Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
ANDA 071847	Nitroglycerin in Dextrose 5% Injection, 20 mg/100 mL	Do.
ANDA 071848	Nitroglycerin in Dextrose 5% Injection, 40 mg/100 mL	Do.
ANDA 072629	Albuterol Tablets USP, EQ 2 mg base	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 074991	Loperamide HCl Oral Solution, 1 mg/5 mL	Duramed Pharmaceuticals, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.

Application No.	Drug	Applicant
ANDA 077312	Fentanyl Citrate Troche/Lozenge, EQ 0.2 mg base, EQ 0.4 mg base, EQ 0.6 mg base, EQ 0.8 mg base, EQ 1.2 mg, and EQ 1.6 mg base.	Par Pharmaceutical, Inc., One Ram Ridge Rd., Chestnut Ridge, NY 10977.
ANDA 077853	Metformin HCl Tablets USP, 500 mg, 850 mg, and 1 g	Provident Pharmaceutical, Inc., c/o Vintage Pharmaceuticals, LLC, 1400 Atwater Dr., Malvern, PA 19355.
ANDA 080355	Hydrocortisone Tablets USP, 20 mg	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., Morris Corporate Center III, 400 Interpace Pkwy., Parsippany, NJ 07054.
ANDA 080377	Lidocaine HCl with Epinephrine Injection, 1%; 0.01 mg/mL and 2%; 0.01 mg/mL.	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 087100	Chlorthalidone Tablets USP, 25 mg	Do.
ANDA 087211	Methocarbamol and Aspirin Tablets, 400 mg/325 mg	Ivax Pharmaceuticals, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 090184	Podofilox Topical Solution, 0.5%	Bausch & Lomb, Inc., Subsidiary of Valeant Pharmaceuticals North America, LLC, 400 Somerset Corporate Blvd., Bridgewater, NJ 08807.
ANDA 202002	Imiquimod Cream, 5%	Strides Pharma Global Pte Ltd., c/o Strides Pharma, Inc., 2 Tower Center Blvd., Suite 1102, East Brunswick, NJ 08816.
ANDA 203247	Sodium Fluoride F–18 Injection, 10–200 millicurie (mCi)/mL	University of Texas MD Anderson Cancer Center, Cyclotron Radiochemistry Facility, 1881 East Rd., Unit 1903, Houston, TX 77054.
ANDA 203933	Ammonia N–13 Injection, 3.75–37.5 mCi/mL	Do.
ANDA 205072	Cefadroxil Capsules USP, EQ 500 mg base	CSPC Ouyi Pharmaceutical Co., Ltd., c/o Megalith Pharmaceuticals, Inc., 9625 Hillside Rd., Rancho Cucamonga, CA 91737.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of October 29, 2018. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on October 29, 2018 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: September 25, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21199 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3522]

Use of the Names of Dairy Foods in the Labeling of Plant-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA or we) invites comments on the labeling of plant-based products with names that include the names of dairy foods such as ''milk,'' ''cultured milk,'' ''yogurt,'' and ''cheese.'' We are interested in learning how consumers use these plant-based products and how they understand terms such as, for example, ''milk'' or ''yogurt'' when included in the names of plant-based products. We also are interested in learning whether consumers are aware of and understand differences between the basic nature, characteristics, ingredients, and nutritional content of plant-based products and their dairy counterparts. We are taking this action to inform our development of an approach to the labeling of plant-based products that consumers may substitute for dairy foods.

DATES: Submit either electronic or written comments on this document by November 27, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 27, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of November 27, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–N–3522 for ''Use of the Names of Dairy Foods in the Labeling of Plant-Based Products.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

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

FOR FURTHER INFORMATION CONTACT: Mabel Lee, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Over the past several years, there has been an emergence and expansion of plant-based products labeled with names that include the names of dairy foods such as ''milk'' (*e.g.,* ''soy milk,'' ''almond milk''), ''cultured milk'' (*e.g.,* ''coconut kefir''), ''yogurt'' (*e.g.,* ''soy yogurt,'' ''almond milk yogurt''), and ''cheese'' (*e.g.,* ''vegan mozzarella cheese''). These products are often packaged in the same kinds of cartons, tubs, or bottles as their dairy counterparts and sometimes are sold in or adjacent to the dairy display in stores. However, these plant-based products may not have the same basic nature, essential characteristics, and characterizing ingredients as their dairy counterparts and may differ in their performance characteristics (*e.g.,* physical properties, flavor characteristics, functional properties, or shelf life) such that they are not suitable substitutes for certain uses. Some plant-based products also may contain less nutrients than their dairy counterparts and may not meet the recommendation for dairy food group intake in the ''2015–2020 Dietary Guidelines for Americans'' (Dietary Guidelines) (Ref. 1).

We are interested in learning how consumers use these plant-based products and how they understand terms such as, for example, ''milk'' or ''yogurt'' when included in the labeling of plant-based products. We are interested in learning whether consumers are aware of and understand the basic nature, essential characteristics, characterizing ingredients, and nutritional differences between plant-based products and dairy foods.

B. Legal Authority

1. What is FDA's statutory and regulatory authority relating to the naming of food?

The Federal Food, Drug, and Cosmetic Act (FD&C Act) provides for two general categories of food: Standardized food and nonstandardized food. (See sections 401 and 403(g), (h), and (i) of the FD&C Act (21 U.S.C. 341 and 343(g), (h), and (i)).) Both standardized foods and nonstandardized foods are generally named by their common or usual names. When a food is standardized, the standard is promulgated in a regulation under the common or usual name of the food under section 401 of the FD&C Act. The common or usual name of the food must be declared on the principal display panel of the label when the food is in package form. (See § 101.3(b)(1) (21 CFR 101.3(b)(1).) Foods that are not standardized are also required to bear the common or usual name of the food on their labels when such a name exists (section 403(i)(1) of the FD&C Act and § 101.3(b)(2)). The common or usual name of a food is the name by which it is known to the American public and is generally established by common usage (§ 102.5(d) (21 CFR 102.5(d)).

However, in certain instances where the common or usual name of a nonstandardized food is found to be misleading or to cause confusion,[1] we have established a new common or usual name by regulation (see 21 CFR part 102, subpart B). When establishing the name, we consider the principles set forward in § 102.5(a) through (c), such as whether the name accurately identifies the food or describes its basic nature or characterizing properties or ingredients. We also consider whether the name is uniform among similar products and is not confusingly similar to the name of any other food that is not reasonably encompassed within the same name. The common or usual name established by regulation is then the name required to be declared on the label of the food (§ 101.3(b)(1)).

2. What is FDA's statutory and regulatory authority regarding food standards?

Our authority to establish food standards is set forth in section 401 of the FD&C Act, which provides, in part, that to promote honesty and fair dealing in the interest of consumers we can promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, or reasonable standards of fill of container.

Under section 403(g) of the FD&C Act, a food is misbranded if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulation, unless it conforms to such definition and standard. Misbranded food is prohibited from introduction or delivery for introduction into interstate commerce (section 301(a) of the FD&C Act) (21 U.S.C. 331(a))). The factors considered

[1] The FD&C Act prohibits labeling that is false or misleading (sections 403(a)(1) and 201(n) of the FD&C Act).

in determining whether a food purports to be or is represented as a standardized food are not limited to the name or labeling of the food; other factors (for example, location in the grocery store or appearance of the package or container) may be relevant.

3. FDA's Standard of Identity Regulations for Certain Dairy Foods: Milk, Cultured Milk, Yogurt, and Cheese

Standards of identity are established for milk and cream in 21 CFR part 131, subpart B. Each of these standards requires the use of milk or ingredients derived from milk (*e.g.,* cream, nonfat milk). In this document, we discuss the standards of identity for milk, cultured milk, yogurt, lowfat yogurt, and nonfat yogurt for illustration purposes. We also discuss 21 CFR part 133, which sets forth definitions and standards of identity for cheeses and related cheese products.

Milk is a standardized food and is described in § 131.110(a) (21 CFR 131.110(a)), in part, as the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows. Generally, milk serves as a dietary source of protein, calcium, vitamin A, and potassium. The standard of identity permits optional fortification with vitamins A and D to increase nutrient content (§ 131.110(b)). The common or usual name of food that purports to be or is represented as milk and conforms to the standard of identity is ''milk.''

Cultured milk is a standardized food and is produced by culturing cream, milk, partially skimmed milk, and/or skim milk with characterizing microbial organisms (§ 131.112(a) and (c) (21 CFR 131.112(a) and (c))). The standard of identity permits optional fortification with vitamins A and D to increase nutrient content (§ 131.112(b)). The common or usual name of a food that purports to be or is represented as cultured milk and conforms to the standard of identity is ''cultured milk.'' However, the name of the food may be accompanied by a declaration such as the traditional name of the food or the generic name of the organisms used, thereby indicating the presence of the characterizing microbial organisms or ingredients, *e.g.,* ''kefir cultured milk'' (§ 131.112(f)).

Yogurt is a standardized food produced by culturing cream, milk, partially skimmed milk, and/or skim milk with a characterizing bacterial culture (§ 131.200(a) (21 CFR 131.200(a))). The common or usual name of a food that purports to be or is represented as yogurt and conforms to the standard of identity is ''yogurt.'' Lowfat yogurt and nonfat yogurt are also standardized foods produced by culturing cream, milk, partially skimmed milk, and/or skim milk with a characterizing bacterial culture (§ 131.203(a) and § 131.206(a) (21 CFR 131.203(a) and 131.206(a))); their common or usual names are ''lowfat yogurt'' and ''nonfat yogurt,'' respectively. We note that certain provisions of the standards of identity for yogurt, lowfat yogurt, and nonfat yogurt have been stayed (47 FR 41519, September 21, 1982). We also note that, in the **Federal Register** of January 15, 2009 (74 FR 2443), we issued a proposed rule that would amend the standard of identity for yogurt and revoke the standards of identity for lowfat yogurt and nonfat yogurt. Revocation of the standards of identity for lowfat yogurt and nonfat yogurt would result in lower fat yogurt products being covered under the general standard in § 130.10 (21 CFR 130.10).

Standards of identity are established for cheeses and related cheese products in 21 CFR part 133, subpart B. Each of these standards requires the use of milk or ingredients derived from milk (*e.g.,* cream, nonfat milk). Milk is defined in § 133.3(a) (21 CFR 133.3(a)), in part, as the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows. However, some standardized cheeses (*e.g.,* Caciocavallo siciliano cheese (§ 133.111 (21 CFR 133.111)) and mozzarella cheese (§ 133.155 (21 CFR 133.155)) allow for the use of milk from other mammals like sheep, goat, or water buffalo. When cheese is made from sheep's milk, goat's milk, or water buffalo's milk, the animal source of the milk is often declared on the label in conjunction with the name of the cheese (*e.g.,* see § 133.111(e)). The common or usual name of a food that purports to be or is represented as a standardized cheese or cheese product and conforms to the standard of identity is the name specified in the corresponding standard (*e.g.,* cheddar cheese, provolone cheese, and swiss cheese).

Standardized foods that have been modified in accordance with a nutrient content claim defined by regulation (*e.g.,* ''low fat,'' ''skim'') and that substitute for the standardized food are subject to the general standard under § 130.10. If the modification results in loss of essential nutrients, the general standard requires the nutrients to be restored so that the modified food is not nutritionally inferior to the standardized food (§ 130.10(b)). Both the nutrient content claim and the name of the standardized food are included in the name of the modified food (*e.g.,* ''low fat milk,'' ''skim milk''). In general, a standardized food that has been modified in accordance with a nutrient content claim defined by regulation and that substitutes for the standardized food is subject to the general standard under § 130.10, unless a specific standard of identity related to the modification exists (*e.g.,* lowfat yogurt, nonfat yogurt, low sodium cheddar cheese).

Plant-based products that resemble dairy foods, such as milk, cultured milk, yogurt, and cheese do not have standards of identity, and therefore are nonstandardized foods. Thus, these foods are subject to section 403(i)(1) of the FD&C Act and their labels must bear the common or usual name of the food.

II. Additional Issues for Consideration and Request for Information

We invite comment, particularly data and other evidence, about: (A) The current market conditions and labeling costs of plant-based products; (B) consumer understanding, perception, purchase, and consumption of plant-based products, particularly those manufactured to resemble dairy foods such as, for example, milk, cultured milk, yogurt, and cheese; (C) consumer understanding regarding the basic nature, characteristics, and properties of these plant-based products; (D) consumer understanding of the nutritional content of plant-based products and dairy foods and the effect, if any, on consumer purchases and use; and (E) the role of plant-based products and dairy foods in meeting the recommendations in the Dietary Guidelines (Ref. 1). Specifically, we are interested in responses to the following questions. In responding to these questions, please identify the question by its associated letter and number (such as ''B.1'') so that we can easily associate your response with a specific question.

A. The Current Market Conditions and Labeling Costs of Plant-Based Products

1. How many different types of plant-based products that are manufactured to resemble dairy foods such as, for example, milk, cultured milk, yogurt, and cheese, are on the market? Please provide any data or evidence to support your answer.

2. What percentage of each subclass (*e.g.,* soy or almond) of plant-based products is marketed as a substitute for its dairy counterpart (*e.g.,* milk, cultured milk, yogurt, or cheese)? What percentages of each subclass of plant-based products are marketed with names that include the name of a dairy

food (*e.g.,* ''milk'') versus names that include another term (*e.g.,* ''beverage'' or ''drink'')? Please provide any data or evidence to support your answer.

3. What are the costs associated with label changes? How often are labels revised?

4. How are plant-based products displayed in stores? For example, are they sold in grocery stores next to or mixed with their dairy counterparts or are they sold in areas of the store that are separate or distinct from the areas where their dairy counterparts are sold? Does the packaging or display of these plant-based products affect consumers' perception or expectation about the nutritional properties or performance of these products?

B. Consumer Understanding, Perception, Purchase, and Consumption of Plant-Based Products, Particularly Those Manufactured To Resemble Dairy Foods Such as, for Example, Milk, Cultured Milk, Yogurt, and Cheese

1. Why do consumers purchase and consume these types of plant-based products? How do they use these products? Specifically, do consumers purchase these plant-based products for use as substitutes for their dairy counterparts, or do consumers purchase these plant-based products for distinct uses? If consumers use these plant-based products as substitutes for dairy foods (for example plant-based beverages as alternatives to milk), what are their reasons? Do consumers think they are healthier, and if so, why? Are consumers purchasing these plant-based products because they may be allergic to dairy or are lactose-intolerant? Are consumers purchasing these plant-based products for reasons related to their personal consumption habits, such as a vegan diet? If consumers do not use these plant-based products as substitutes for dairy foods, what are their reasons for choosing these products? (For example, do these products provide unique taste, flavor, or texture?) Does consumer purchasing behavior differ if the consumer is purchasing the product for himself/herself as opposed to purchasing the product for a family member? Please provide any data or evidence to support your answer.

2. Do consumers perceive these plant-based products to be more nutritious, as nutritious, or less nutritious than their dairy counterparts? If consumers perceive these plant-based products to be more nutritious or as nutritious as their dairy counterparts, to what extent does this affect their decision to buy plant-based products? Please provide any data or evidence to support your answer.

3. Do consumers perceive or expect these plant-based products to perform in the same manner as their dairy counterparts? For example, milk can be an ingredient in preparing other foods. Do consumers expect plant-based beverage products to perform in the same manner as milk when preparing other foods or in recipes that use milk? Please provide any data or evidence to support your answer.

4. How do consumers perceive or understand labeling of these plant-based products? For example, do consumers perceive the labeling as suggesting that these plant-based products are equivalent to or can be substituted for their dairy counterparts? Do consumers perceive the labeling as suggesting that plant-based products are different or distinct from their dairy counterparts? Please provide any data or evidence to support your answer.

5. We are aware that some plant-based beverage manufacturers use the term ''milk'' as part of the name of these foods while other manufacturers use terms such as ''beverage'' or ''drink'' as part of the name of these foods. Do consumers perceive plant-based beverages to be different if the term ''milk'' is used instead of ''beverage'' or ''drink''? For example, how do consumers perceive or understand ''soy milk'' in comparison to ''soy-based beverage'' or ''soy drink''? Please provide any data or evidence to support your answer.

C. Consumer Understanding Regarding the Basic Nature, Characteristics, and Properties of Plant-Based Products

1. What do consumers believe to be the basic nature, characteristics, or properties of plant-based products manufactured to resemble dairy foods such as, for example, milk, cultured milk, yogurt, and cheese? Is consumer understanding of the basic nature of plant-based products influenced by inclusion of terms such as milk, cultured milk, yogurt, and cheese in the names in the labeling of these products? Do consumers expect plant-based products labeled with such names to have physical characteristics, performance characteristics, or properties of their dairy counterparts? If so, in what ways? Please provide any data or evidence to support your answer.

2. What do consumers believe are the main ingredients of plant-based products? What do consumers understand/think about the different protein sources being used to make these plant-based products? Do they understand that some of these plant-based products contain proteins from more than one plant source (*e.g.,* almond and pea protein)? Are these beliefs or understanding influenced by the inclusion of dairy food names, particularly ''milk,'' ''cultured milk,'' ''yogurt,'' or ''cheese,'' in the product name? Please provide any data or evidence to support your answer.

3. What is consumers' understanding of the amount or proportion of plant-based ingredient(s) relative to other ingredients in plant-based products? Are consumers aware that other ingredients (*e.g.,* emulsifiers, thickeners, sweeteners, and added nutrients such as vitamins and minerals) are used in the manufacture of these plant-based products? How does the use of these ingredients impact consumer perception of these products? Please provide any data or evidence to support your answer.

4. Do these plant-based products vary in ingredients, even when manufactured using the same type of plant source (*e.g.,* soy or almond)? If so, how? What are consumers' expectations regarding the ingredients of different brands of each subclass (*e.g.,* soy or almond) of plant-based products? What impact, if any, does the compositional variation have on purchase and consumption decisions? Please provide any data or evidence to support your answer.

D. Consumer Understanding of the Nutritional Content of Plant-Based Products and Dairy Foods and the Effect, if Any, on Consumer Purchases and Use

1. Dairy foods, such as milk, cultured milk, yogurt, and cheese, may differ in nutritional content compared to plant-based products manufactured to resemble these dairy foods. What nutrients, if any, do consumers believe to be provided from dairy foods such as milk, cultured milk, yogurt, and cheese? What nutrients, if any, do consumers believe to be in plant-based products that resemble dairy foods, such as milk, cultured milk, yogurt, and cheese? Do consumers expect certain nutrients to be present in both plant-based products and their dairy counterparts, and, if so, what nutrients do they expect? Do these expectations change depending on the terms included in the names of plant-based products, *e.g.,* ''milk,'' ''beverage,'' ''drink,'' ''yogurt,'' ''yogurt alternative,'' ''vegan cheddar cheese,'' ''cheese shreds''? Please provide any data or evidence to support your answer.

2. Do parents and caregivers who purchase these plant-based products for young children or other family members

believe that these plant-based products are nutritionally equivalent to their dairy counterparts and can replace them as a food choice? Are expectations of nutritional equivalency a factor in parents' and caregivers' decisions to purchase these plant-based products as part of young children's or other family members' balanced diet? Please provide any data or evidence to support your answer.

3. Do these plant-based products vary in nutrient composition, even when manufactured using the same type of plant ingredients (*e.g.,* soy or almond)? If so, how? What are consumers' expectations regarding the nutrient compositions of different brands of each subclass (*e.g.,* soy or almond) of plant-based products? What impact, if any, does the compositional variation have on purchase and consumption decisions? Please provide any data or evidence to support your answer.

4. We are aware that the United States Department of Agriculture's National Nutrient Database for Standard Reference (USDA Nutrient Database) provides information about the nutritional content of dairy foods as well as some plant-based products that resemble dairy foods (Ref. 2). However, we believe the USDA Nutrient Database may not be a full representation of all the varieties of dairy foods, including milk, cultured milk, yogurt, cheese, and of the plant-based products manufactured to resemble these dairy foods, currently in the United States marketplace. We are interested in any data regarding the nutritional profiles of different dairy foods, such as, for example, milk, modified milk, cultured milk, yogurt, and cheese products, and any data regarding the nutritional profiles of the various plant-based products that resemble dairy foods, including fortified versions of those plant-based products. We are particularly interested in obtaining data that compares the amounts of protein, calcium, vitamin D, and potassium in these plant-based products and their dairy counterparts.

5. How do the protein qualities of plant-based products compare to their dairy counterparts? How does the variation, if any, impact consumer perception, and purchasing and consumption decisions? Please provide any data or evidence to support your answer.

E. The Role of Plant-Based Products and Dairy Foods in Meeting the Recommendations in the Dietary Guidelines

The Dietary Guidelines contain nutritional and dietary information and guidelines for the public. The Dietary Guidelines are based on the preponderance of current scientific and medical knowledge and are intended to help individuals ages 2 years and older consume a healthy, nutritionally adequate diet. As part of these recommendations, the Dietary Guidelines refer to several ''food groups,'' including a ''dairy group,'' which includes fortified soy beverages. [*Note:* Although the Dietary Guidelines refer to a ''dairy group,'' as indicated in section I.A., by ''dairy foods,'' FDA is referring to foods such as milk, cheese, and yogurt, and not to their plant-based counterparts.]

The Dietary Guidelines state that healthy eating patterns in the dairy group include fat-free and low-fat (1 percent) dairy, including milk, yogurt, cheese, or fortified soy beverages (see Ref. 1 at page 23). The Dietary Guidelines explain that soy beverages fortified with calcium, vitamin A, and vitamin D, are included as part of the dairy group because they are similar to fortified low- and non-fat milk based on nutrient composition and in their use in meals. The Dietary Guidelines also state that other plant-based beverages sold as ''milks'' (such as almond, rice, coconut, and hemp ''milks'') are not included as part of the dairy group because their overall nutritional content is not similar to that of milk and fortified soy beverages (id.).

According to the Dietary Guidelines, the key nutrient contributions in the dairy group include calcium, phosphorus, vitamin A, vitamin D (in products fortified with vitamin D), riboflavin, vitamin B12, protein, potassium, zinc, choline, magnesium, and selenium (id.).

1. Do consumers understand that certain plant-based products might have a nutritional content that is not adequate to place them in the dairy group as described in the Dietary Guidelines? How does this influence their purchasing behavior with respect to plant-based products and dairy foods? Please provide any data or evidence to support your answer.

2. Do consumers who purchase or consume plant-based products instead of dairy foods, such as yogurt or cheese, believe that these plant-based products meet the dairy group recommendation described in the Dietary Guidelines? Please provide any data or evidence to support your answer.

III. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. U.S. Department of Health and Human Services and U.S. Department of Agriculture. ''Dietary Guidelines for Americans, 2015–2020.'' Eighth Edition. December 2015. Accessed online at *https://health.gov/dietaryguidelines/2015/guidelines/.*
2. U.S. Department of Agriculture. National Nutrient Database for Standard Reference (Release 23), Food items with NDB Numbers: 01077, 01079, 01082, 01085, 16222, 16229, 16230, 14091, and 14639 accessed online at *http://www.nal.usda.gov/fnic/foodcomp/search* on August 1, 2018.

Dated: September 25, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21200 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2018–N–0073; FDA–2018–N–0074; FDA–2010–N–0155; FDA–2014–N–0987; FDA–2016–D–1164; FDA–2014–N–2029; FDA–2012–N–0369; FDA–2017–N–6730; FDA–2009–N–0025; FDA–2014–N–2294; and FDA–2018–N–1129]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for

each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Irradiation in the Production, Processing, and Handling of Food	0910–0186	7/31/2021
State Enforcement Notifications	0910–0275	7/31/2021
Veterinary Feed Directive	0910–0363	7/31/2021
Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications	0910–0796	7/31/2021
Quality Facility Attestation	0910–0854	7/31/2021
Administrative Practices and Procedures; Formal Evidentiary Public Hearing	0910–0191	8/31/2021
Regulations Under the Federal Import Milk Act	0910–0212	8/31/2021
Medical Device Reporting	0910–0437	8/31/2021
Animal Food Labeling; Declaration of Certifiable Color Additives	0910–0721	8/31/2021
Evaluation of the Food and Drug Administration's Fresh Empire Multicultural Youth Tobacco Prevention Campaign	0910–0788	8/31/2021
National Agriculture and Food Defense Strategy Survey	0910–0855	8/31/2021

Dated: September 25, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21209 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0438]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 29, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0583. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use

OMB Control Number 0910–0583—Extension

Since May 29, 1992, when FDA issued a policy statement on foods derived from new plant varieties, including those varieties that are developed through biotechnology, we have encouraged developers of new plant varieties to consult with us early in the development process to discuss possible scientific and regulatory issues that might arise (57 FR 22984).

The guidance, entitled ''Recommendations for the Early Food Safety Evaluation of New Non-Pesticidal Proteins Produced by New Plant Varieties Intended for Food Use,'' (available at *https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm096156.htm*) continues to foster early communication by encouraging developers to submit to us their evaluation of the food safety of their new protein. Such communication helps to ensure that any potential food safety issues regarding a new protein in a new plant variety are resolved early in development, prior to any possible inadvertent introduction into the food supply of the new protein.

We believe that any food safety concern related to such material entering the food supply would be limited to the potential that a new protein in food from the plant variety could cause an allergic reaction in susceptible individuals or could be a toxin. The guidance describes the recommended procedures for early food safety evaluation of new proteins produced by new plant varieties, including bioengineered food plants, and the procedures for communicating with us about the safety evaluation.

Interested persons may use Form FDA 3666 to transmit their submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition. Form FDA 3666 is entitled, ''Early Food Safety Evaluation of a New Non-Pesticidal Protein Produced by a New Plant Variety (New Protein Consultation),'' (*https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM350010.pdf*) and may be used in lieu of a cover letter for a New Protein Consultation (NPC). Form FDA 3666 prompts a submitter to include certain elements of an NPC in a standard format and helps the respondent organize their submission to focus on the information needed for our safety review. The form, and elements that would be prepared as attachments to the form, may be submitted in electronic format via the Electronic Submission Gateway, or may be submitted in paper format, or as electronic files on physical media with paper signature page. The information is used by us to evaluate the food safety of

a specific new protein produced by a new plant variety.

Description of Respondents: The respondents to this collection of information are developers of new plant varieties intended for food use.

In the **Federal Register** of May 25, 2018 (83 FR 24315), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but did not respond to any of the four information collection topics solicited and is therefore not addressed.

We therefore estimate the burden for the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Category	Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
First four data components	3666	6	1	6	4	24
Two other data components	3666	6	1	6	16	96
Total						120

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. The estimated number of annual responses and average burden per response are based on our experience with early food safety evaluations. Completing an early food safety evaluation for a new protein from a new plant variety is a one-time burden (one evaluation per new protein). Many developers of novel plants may choose not to submit an evaluation because the field testing of a plant containing a new protein is conducted in such a way (*e.g.,* on such a small scale, or in such isolated conditions, etc.) that cross-pollination with traditional crops or commingling of plant material is not likely to be an issue. Also, other developers may have previously communicated with us about the food safety of a new plant protein, for example, when the same protein was expressed in a different crop.

We estimate the annual number of NPCs submitted by developers will be six or fewer. The early food safety evaluation for new proteins includes six main data components. Four of these data components are easily and quickly obtainable, having to do with the identity and source of the protein. We estimate that completing these data components will take about 4 hours per NPC. We estimate the reporting burden for the first four data components to be 24 hours (4 hours × 6 responses).

Two data components ask for original data to be generated. One data component consists of a bioinformatics analysis which can be performed using publicly available databases. The other data component involves ''wet'' lab work to assess the new protein's stability and the resistance of the protein to enzymatic degradation using appropriate in vitro assays (protein digestibility study). The paperwork burden of these two data components consists of the time it takes the company to assemble the information on these two data components and include it in an NPC. We estimate that completing these data components will take about 16 hours per NPC. We estimate the reporting burden for the two other data components to be 96 hours (16 hours × 6 responses). Thus, we estimate the total annual hour burden for this collection of information to be 120 hours.

Dated: September 25, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–21148 Filed 9–27–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Cell Therapies for Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the **SUPPLEMENTARY INFORMATION** section of this Notice to Tailored Therapeutics, LLC. (''Tailored''), located in Potomac, MD.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before October 15, 2018 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Senior Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, Rm. 1E530, MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702; Telephone: (240) 276–5484; Facsimile: (240) 276–5504; Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

Group A

E–028–2015: Anti-Mutated KRAS T Cell Receptors

1. U.S. Provisional Patent Application 62/084,654, filed November 26, 2014 (E–028–2015–0–US–01);
2. International Patent Application PCT/US2015/062269, filed November 24, 2015 (E–028–2015–1–PCT–01);
3. Australian Patent Application 2015353720, filed May 18, 2017 (E–028–2015–1–AU–02);
4. Canadian Patent Application 2968399, filed May 18, 2017 (E–028–2015–1–CA–03);
5. Chinese Patent Application 201580070673.7, filed June 23, 2017 (E–028–2015–1–CN–04);
6. European Patent Application 15807756.0 filed June 23, 2017 (E–028–2015–1–EP–05);
7. Israeli Patent Application 252258, filed May 14, 2017 (E–028–2015–1–IL–06);
8. Japanese Patent Application 527874/2017, filed May 24, 2017 (E–028–2015–1–JP–07);
9. Korean Patent Application 2017–7017289, filed June 23, 2017 (E–028–2015–1–KR–08);
10. Mexican Patent Application MX/a/2017/006865, filed May 25, 2017 (E–028–2015–1–MX–09);

11. New Zealand Patent Application 732045, filed May 18, 2017 (E–028–2015–1–NZ–10);

12. Saudi Arabian Patent Application 517381608, filed May 25, 2017 (E–028–2015–1–SA–11);

13. Singapore Patent Application 11201704155U, filed May 23, 2017 (E–028–2015–1–SG–12);

14. United States Utility Patent Application 15/528,813, filed May 23, 2017 (E–028–2015–1–US–13); and

15. Hong Kong Patent Application 18103250.9, filed March 7, 2018 (E–028–2015–1–HK–14).

E–180–2015: Anti-Mutated KRAS T Cell Receptors

1. U.S. Provisional Patent Application 62/171,321, filed June 5, 2015 (E–180–2015–0–US–01).

E–265–2015: T Cell Receptors Recognizing HLA–CW8 Restricted Mutated KRAS

1. U.S. Provisional Patent Application 62/218,688, filed September 15, 2015 (E–265–2015–0–US–01);

2. International Patent Application PCT/US2016/050875, filed September 9, 2016 (E–265–2015–0–PCT–02);

3. Australian Patent Application 2016323017, filed March 6, 2018 (E–265–2015–0–AU–03);

4. Canadian Patent Application 2998869, filed March 15, 2018 (E–265–2015–0–CA–04);

5. Chinese Patent Application 201680058891.3, filed April 3, 2018 (E–265–2015–0–CN–05);

6. European Patent Application 16770408.9 filed March 7, 2018 (E–265–2015–0–EP–06);

7. Israeli Patent Application 257840, filed March 4, 2018 (E–265–2018–0–IL–07);

8. Japanese Patent Application 513423/2018, filed March 13, 2018 (E–265–2015–0–JP–08);

9. Korean Patent Application 2018–7010326, filed April 12, 2018 (E–265–2015–0–KR–09);

10. Mexican Patent Application MX/a/2018/003062, filed March 12, 2018 (E–265–2015–0–MX–10);

11. New Zealand Patent Application 740714, filed March 14, 2018 (E–265–2015–0–NZ–11);

12. Saudi Arabian Patent Application 518391109, filed March 13, 2018 (E–265–2015–0–SA–12);

13. Singapore Patent Application 11201802069U, filed March 13, 2018 (E–265–2015–0–SG–13); and

14. United States Utility Patent Application 15/758,954, filed March 9, 2018 (E–265–2015–0–US–14).

E–175–2016: Anti-KRAS G12D T Cell Receptors

1. U.S. Provisional Patent Application 62/369,883, filed August 2, 2016 (E–175–2016–0–US–01); and

2. International Patent Application PCT/US2017/044615, filed July 31, 2017 (E–175–2016–0–PCT–02).

E–181–2017: HLA Class II-Restricted T Cell Receptors Against Mutated RAS

1. U.S. Provisional Patent Application 62/560,930, filed September 20, 2017 (E–181–2017–0–US–01).

E–239–2017: HLA Class I-Restricted T Cell Receptors Against Mutated RAS

1. U.S. Provisional Patent Application 62/594,244, filed December 4, 2017 (E–239–2017–0–US–01).

Group B

E–237–2017–0: T Cell Receptors Recognizing Mutated P53

1. U.S. Provisional Patent Application 62/565,383, filed September 29, 2017 (E–237–2017–0–US–01).

Group C

E–237–2017–1: Methods of Isolating T Cells Having Antigenic Specificity for a P53 Cancer-Specific Mutation

1. U.S. Provisional Patent Application 62/565,464, filed September 29, 2017 (E–237–2017–1–US–01).

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the fields of use may be limited to the following:

Fields of Use Applying to Intellectual Property Group A

''Development, manufacture and commercialization of autologous, peripheral blood T cell therapy products engineered by CRISPR to express T cell receptors reactive to mutated KRAS, as claimed in the Licensed Patent Rights, for the treatment of human cancers. Specifically excluded from this field of use are retrovirally-engineered peripheral blood T cell therapy products for the treatment of human cancers.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.''

Fields of Use Applying to Intellectual Property Group B

''Development, manufacture and commercialization of autologous, peripheral blood T cell therapy products engineered by CRISPR to express T cell receptors reactive to mutated p53, as claimed in the Licensed Patent Rights, for the treatment of cancer in humans.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.''

Fields of Use Applying to Intellectual Property Group C

''Development, manufacture and commercialization of autologous, tumor infiltrating lymphocyte-based adoptive T cell therapy products reactive to mutated p53, isolated as claimed in the Licensed Patent Rights, for the treatment of human cancers. Specifically excluded from this field of use are genetically engineered TIL cell therapy products for the treatment of human cancers.

Development, manufacture and commercialization of companion diagnostics approved or cleared by the FDA or equivalent foreign regulatory agency for Licensee-proprietary T cell therapy products.''

Intellectual Property Group A is primarily directed to isolated T cell receptors (TCRs) reactive to mutated Kirsten rat sarcoma viral oncogene homolog (KRAS), within the context of several human leukocyte antigens (HLAs). Mutated KRAS, which plays a well-defined driver role in oncogenesis, is expressed by a variety of human cancers, including: Pancreatic, lung, endometrial, ovarian and prostate. Due to its restricted expression in precancerous and cancerous cells, this antigen may be targeted on mutant KRAS-expressing tumors with minimal normal tissue toxicity.

Intellectual Property Group B is primarily directed to isolated TCRs reactive to mutated tumor protein 53 (TP53 or P53), within the context of several HLAs. *P53* is the archetypal tumor suppressor gene and the most frequently mutated gene in cancer. Contemporary estimates suggest that >50% of all tumors carry mutations in *P53*. Because of its prevalence in cancer and its restricted expression to precancerous and cancerous cells, this antigen may be targeted on mutant P53-expressing tumors with minimal normal tissue toxicity.

Intellectual Property Group C is primarily directed to methods of isolating T cells which are reactive to mutated P53 antigens. Briefly, pools of 25-mer peptides covering known P53 ''hotspot'' mutations have been generated. These peptides may be pulsed into autologous antigen

presenting cells which are subsequently co-cultured with the patient's isolated T cells. Reactive T cells may be purified and expanded *in vitro* to generate an autologous cell therapy product. The expanded cells may be administered to the patient and mediate tumor regression.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 18, 2018.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2018–21096 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–2 Subcommittee.

Date: October 25, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Alexandrian, 480 King Street, Alexandria, VA 22314.

Contact Person: Elizabeth A. Webber, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–1917, *webbere@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NSD Member Conflict.

Date: October 29, 2018.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–3562, *neuhuber@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.

Date: November 5, 2018.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 435–6033, *rajarams@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NIH StrokeNet Clinical Trial Application Review.

Date: November 5, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3285, MSC 9529, Bethesda, MD 20892–9529, (301) 827–9087, *mooremar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 24, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21173 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings of the NHLBI Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; T4 Implementation Research for Heart, Lung, and Blood Diseases and Sleep Disorders.

Date: October 19, 2018.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–827–7940, *carolko@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Single-Site Clinical Trials Review.

Date: October 23, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924, 301–827–7940, *carolko@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases

and Resources Research, National Institutes of Health, HHS)

Dated: September 21, 2018.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21092 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Genome Research Review Committee.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: November 8–9, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda Downtown, Building 7355, Conference Room Calvert I & II, Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, MSC 9306, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, Advanced Nucleic Acid Sequencing Technology.

Date: December 6–7, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, Room 204, Conference Rooms B & C, Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 24, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21175 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; AD & Related Dementias (2019/01 ZAG1 ZIJ–P (J4)).

Date: October 26, 2018.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 24, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21090 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Listing of Members of the National Institutes of Health's Senior Executive Service 2018 Performance Review Board (PRB)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) announces the persons who will serve on the National Institutes of Health's Senior Executive Service 2018 Performance Review Board.

FOR FURTHER INFORMATION CONTACT: For further information about the NIH Performance Review Board, contact Mr. Kha Nguyen, Director, Division of Senior and Scientific Executive Management, Office of Human Resources, National Institutes of Health, Building 2, Room 5W07, Bethesda, Maryland 20892, telephone 301–451–3231 (not a toll-free number), email *kha.nguyen@nih.gov.*

SUPPLEMENTARY INFORMATION: This action is being taken in accordance with Title 5, U.S.C., Section 4314 (c) (4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the NIH Performance Review Board, which oversees the evaluation of performance appraisals of NIH Senior Executive Service (SES) members:

Alfred Johnson, Chair

Michael Gottesman

Ann Huston

Richard Ikeda

Michael Lauer

Ellen Rolfes

LaVerne Stringfield

Lawrence Tabak

Daniel Wheeland

Dated: September 24, 2018.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2018–21169 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences; National Cancer Institute.

Date: November 5, 2018.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, Wing C, 6th Floor, Conference Room 6, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mehrdad M. Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center, Room 3W302, Bethesda, MD 20892–9750, 240–276–5664, *tondravim@mail.nih.gov*.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology; National Cancer Institute.

Date: November 6, 2018.

Time: 9:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, Wing C, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center, Room 3W414, Bethesda, MD 20892–9750, 240–276–5664, *wojcikb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 24, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21093 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 52b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Investigations on Primary Immunodeficiency Diseases.

Date: October 23, 2018.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions.

Date: October 24, 2018

Time: 7:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632, *hfriedman@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel; Understanding and Modifying Temporal Dynamics of Coordinated Neural Activity.

Date: October 24, 2018.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW, Washington, DC 20037.

Contact Person: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21176 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cell Biology Integrated Review Group; Molecular and Integrative Signal Transduction Study Section.

Date: October 16, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5187 MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: October 22–23, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C.L. Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Interactive Digital Media STEM Resources for Pre-College and Informal Science Education Audiences (SBIR/STTR).

Date: October 24, 2018.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.

Date: October 29–30, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Bioengineering of Neuroscience, Vision and Low Vision Technologies Study Section.

Date: October 29–30, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Darcy, 1515 Rhode Island Ave NW, Washington, DC 20005.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Research to Improve Native American Health.

Date: October 29, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Martha L. Hare, RN, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, MSC 7770, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mechanisms of Cancer Therapeutics 2.

Date: October 29–30, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Riverwalk, 420 W Market Street, San Antonio, TX 78205.

Contact Person: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: October 29–30, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Stacey FitzSimmons, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology A Study Section.

Date: October 29–30, 2018.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3138, MSC 7770, Bethesda, MD 20892, (301) 437–3478, *wieschd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 24, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21177 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Institutional Training Grant Review.

Date: October 30, 2018.

Time: 3:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Translational R01 Review.

Date: October 31, 2018.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Center Review.

Date: November 8, 2018.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Translational R01 Hearing and Balance Review.

Date: November 14, 2018.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Virtual Meeting).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 24, 2018.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–21174 Filed 9–27–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4387–DR; Docket ID FEMA–2018–0001]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–4387–DR), dated August 27, 2018, and related determinations.

DATES: The declaration was issued August 27, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of June 17 to July 1, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Constance C. Johnson-Cage, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Cedar, Colfax, Cuming, Dakota, Dixon, Harlan, Logan, Thomas, Thurston, and Wayne Counties for Public Assistance.

All areas within the State of Nebraska are eligible for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21116 Filed 9–27–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–B–1854]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The

flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
California: San Joaquin.	City of Lathrop (18–09–0879P).	The Honorable Sonny Dhaliwal, Mayor, City of Lathrop, 390 Towne Centre Drive, Lathrop, CA 95330.	City Hall, 390 Towne Centre Drive, Lathrop, CA 95330.	*https://mscfemagov/portal/advanceSearch.*	Dec. 24, 2018	060738
Kansas:						
Douglas	City of Lawrence (17–07–2396P).	The Honorable Stuart Moley, Mayor, City of Lawrence, P.O. Box 708, Lawrence, KS 66044.	City Hall, 6 East 6th Street, Lawrence, KS 66044.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2018	200090
Douglas	Unincorporated Areas of Douglas County (17–07–2396P).	Mr. Mike Gaughan, Chairman, Douglas County Commission, County Courthouse, 1100 Massachusetts Street, Lawrence, KS 66044.	Douglas County Courthouse, 1100 Massachusetts Street, Lawrence, KS 66044.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2018	200087
Missouri: Jackson ..	City of Oak Grove (18–07–0728P).	The Honorable Jeremy Martin, Mayor, City of Oak Grove, P.O. Box 805, Oak Grove, MO 64075.	Mayor's Office, 1300 South Broadway Street, Oak Grove, MO 64075.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2018	290694
Nevada: Clark	City of Henderson (18–09–1453P).	The Honorable Debra March, Mayor, City of Henderson, 240 South Water Street, Henderson, NV 89015.	Public Works Department, 240 South Water Street, Henderson, NV 89015.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 14, 2018	320005
New Jersey: Essex	Township of Cedar Grove (18–02–1154P).	The Honorable Peter Tanella, Mayor, Township of Cedar Grove, Municipal Building, 525 Pompton Avenue, Cedar Grove, NJ 07009.	Municipal Building, 525 Pompton Avenue, Cedar Grove, NJ 07009.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 18, 2018	340180
Texas: Tarrant	City of Euless (18–06–1471P).	The Honorable Linda Martin, Mayor, City of Euless, City Hall, 201 North Ector Drive, Euless, TX 76039.	Planning and Engineering Building, 201 North Ector Drive, Building C, Euless, TX 76039.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 17, 2018	480593

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Washington: Spokane.	Unincorporated Areas of Spokane County (17–10–1920P).	The Honorable Josh Kerns, Chair, Board of County Commissioner, Spokane County Courthouse, 1116 West Broadway Avenue, Spokane, WA 99260.	Spokane County Public Works Building, 1026 West Broadway Avenue, Spokane, WA 99201.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 14, 2018	530174

[FR Doc. 2018–21122 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of January 3, 2019 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.* The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Valdez-Cordova Census Area, Alaska Docket No.: FEMA–B–1747	
City of Valdez	City Hall, 212 Chenega Avenue, Valdez, AK 99686.

[FR Doc. 2018–21119 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4390–DR; Docket ID FEMA–2018–0001]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–4390–DR), dated September 5, 2018, and related determinations.

DATES: The declaration was issued September 5, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 5, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, tornadoes, straight-line winds, and flooding during the period of June 15 to July 11, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Steven W. Johnson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Aitkin, Beltrami, Blue Earth, Brown, Carlton, Cass, Clearwater, Cottonwood, Faribault, Itasca, Jackson, Koochiching, Lake, Lyon, Martin, Murray, Nicollet, Nobles, Pine, Pipestone, Polk, Redwood, Renville, Rock, St. Louis, Sibley, and Watonwan Counties, as well as the Leech Lake Band of Ojibwe, Red Lake Nation, and White Earth Nation for Public Assistance.

All areas within the State of Minnesota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2018–21117 Filed 9–27–18; 8:45 am]

BILLING CODE 9111–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2018–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The date of November 16, 2018 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for

floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Summit County, Colorado and Incorporated Areas Docket No.: FEMA–B–1601	
Town of Blue River	Town Hall, 0110 Whispering Pines Circle, Blue River, CO 80424.
Town of Breckenridge	Public Works, 1095 Airport Road, Breckenridge, CO 80424.
Town of Frisco	Town Hall, 1 Main Street, Frisco, CO 80443.
Town of Silverthorne	Town Hall, 601 Center Circle, Silverthorne, CO 80498.
Unincorporated Areas of Summit County	Summit County Commons, 0037 Peak One Drive, Frisco, CO 80443.
Warren County, Iowa and Incorporated Areas Docket No.: FEMA–B–1728	
City of Ackworth	City Hall, 105 College Street, Ackworth, IA 50001.
City of Bevington	City Hall, 202 Jefferson Street, Bevington, IA 50033.
City of Carlisle	City Hall, 195 North 1st Street, Carlisle, IA 50047.
City of Des Moines	Permit and Development Center, 602 Robert D. Ray Drive, Des Moines, IA 50309.
City of Hartford	City Hall, 150 West Elm Street, Hartford, IA 50118.
City of Indianola	City Hall, 110 North 1st Street, Indianola, IA 50125.
City of Lacona	City Hall, 109 East Main Street, Lacona, IA 50139.
City of Martensdale	City Hall, 380 Iowa Avenue, Martensdale, IA 50160.
City of Norwalk	Community Development and Planner's Office, 705 North Avenue, Norwalk, IA 50211.
City of Spring Hill	Clerk's Office, 10110 Carson Street, Spring Hill, IA 50125.
Unincorporated Areas of Warren County	Warren County Planning and Zoning Department, 301 North Buxton Street, Indianola, IA 50125.
Curry County, Oregon and Incorporated Areas Docket No.: FEMA–B–1673	
City of Brookings	City Hall, 898 Elk Drive, Brookings, OR 97415.
City of Gold Beach	City Hall, 29592 Ellensburg Avenue, Gold Beach, OR 97444.
City of Port Orford	City Hall, 555 West 20th Street, Port Orford, OR 97465.
Unincorporated Areas of Curry County	Curry County Courthouse, 94235 Moore Street, Gold Beach, OR 97444
Newton County, Texas and Incorporated Areas Docket No.: FEMA–B–1724	
Community	Community map repository address.
City of Newton	City Hall, 101 West North Street, Newton, TX 75966.
Unincorporated Areas of Newton County	Newton County Courthouse, 110 Court Street, Newton, TX 75966.

[FR Doc. 2018–21123 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Extension From OMB of One Current Public Collection of Information: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0058, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

DATES: Send your comments by November 27, 2018.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

OMB Control Number 1652–0058; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. This information collection provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

From the TSA perspective, qualitative customer and stakeholder feedback provides useful insights on perceptions and opinions. Unlike the results of statistical surveys, which yield quantitative results that can be generalized to the population of study, this qualitative feedback provides insights into customer or stakeholder perceptions, experiences, and expectations regarding TSA products or services. Such feedback also provides TSA with an early warning of issues with service, and focuses attention on areas where improvement is needed regarding communication, training, or changes in operations that might improve delivery of products or services. These collections allow for ongoing, collaborative, and actionable communications between the Agency and its customers and stakeholders. They also allow feedback to contribute directly to the improvement of program management. The solicitation of feedback targets areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses are assessed to plan and inform efforts to improve or maintain the quality of service offered by TSA. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary.
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government.
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.

The aggregate burden estimate is based on a review of past behavior of participating program offices and several individual office estimates. The likely respondents to this proposed information request are State, local, or tribal government and law enforcement; traveling public; individuals and households; and businesses and organizations. TSA estimates an average of 10 annual surveys with approximately 94,100 responses total. TSA further estimates a frequency of one response per request with an average response time of 10 to 30 minutes resulting in an estimated annual hour burden of 13,317 hours. TSA will provide more refined individual estimates of burden in its subsequent generic information collection applications.

Dated: September 20, 2018.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2018–21011 Filed 9–27–18; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0116]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration

(USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 27, 2018.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0116 in the body of the letter, the agency name and Docket ID USCIS–2010–0008. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2010–0008;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW,

Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Reason for Changes

USCIS is permitted by regulations to waive certain fees provided the party requesting the benefit is unable to pay the prescribed fee. The proposed revision would reduce the evidence required for Form I–912 to only a person's household income and no longer require proof of whether or not an individual receives a means-tested benefit. USCIS policy since 2011 has been to permit a fee waiver where an applicant received a means-tested benefit, even for a short period of time. USCIS has found that the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Therefore, the revised form will not permit a fee waiver based on receipt of a means- tested benefit, but will retain the poverty-guideline threshold and financial hardship criteria. If USCIS decides to proceed with the form revision after considering public comments, USCIS will rescind Policy Memorandum, PM–602–0011.1, *Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9,* AFM Update AD11–26 (Mar. 13, 2011) and issue new guidance on the documentation acceptable for individuals to present to demonstrate that they are unable to pay a fee when requesting a fee waiver. The applications and petitions that are eligible for a fee waiver are provided in 8 CFR 103.7(c)(3) and will not be changed by this form and policy change.

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2010–0008 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner clearly demonstrates that he or she is unable to pay the fee. Form I–912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I–912 also streamlines and expedites USCIS's review, approval, or denial of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay. Officers evaluate all factors, circumstances, and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct him or her to file a new application with the appropriate fee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–912 is 350,000 and the estimated hour burden per response is 1.17 hours; for the information collection DACA Exemptions the estimated total number of respondents is 108 and the estimated hour burden per response is 1.17 hours; for the information collection 8 CFR 103.7(d) Director's exception request the estimated total number of respondents is 20 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 409,650 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,312,980.

Dated: September 24, 2018.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2018–21101 Filed 9–27–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–SM–2018–N126; FXRS12610700000–189–FF07J00000; FBMS#4500089778; OMB Control Number 1018–0075]

Agency Information Collection Activities; Federal Subsistence Regulations and Associated Forms

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise an existing information collection.

DATES: Interested persons are invited to submit comments on or before November 27, 2018.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0075 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to the Office of Management and Budget (OMB) to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111–3126), and regulations in the Code of Federal Regulations (CFR) at 50 CFR part 100 and 36 CFR part 242, require persons engaged in taking fish, shellfish, and wildlife on public lands in Alaska for subsistence uses apply for and obtain a permit to do so, and comply with reporting provisions of that permit.

We use the following forms to collect information from qualified rural residents for subsistence harvest:

(1) FWS Form 3–2326, ''Federal Subsistence Hunt Application, Permit, and Report.''

(2) FWS Form 3–2327, ''Designated Hunter Permit Application, Permit, and Report.''

(3) FWS Form 3–2328, ''Federal Subsistence Fishing Application, Permit, and Report.''

(4) FWS Form 3–2378, ''Designated Fishing Permit Application, Permit, and Report.''

(5) FWS Form 3–2379, ''Federal Subsistence Customary Trade Recordkeeping Form.''

We use the information collected to evaluate:

- Eligibility of applicant.
- Subsistence harvest success.
- Effectiveness of season lengths, harvest quotas, and harvest restrictions.
- Hunting patterns and practices.
- Hunter use.

Three forms are used in the recruitment and selection of members for regional advisory councils:

(1) FWS Form 3–2321, ''Federal Subsistence Regional Advisory Council Membership Application/Nomination.''

(2) FWS Form 3–2322, ''Regional Advisory Council Candidate Interview.''

(3) FWS Form 3–2323, ''Regional Advisory Council Reference/Key Contact Interview.''

The member selection process begins with the information that we collect on the application. Ten interagency review panels interview all applicants and nominees, their references, and regional key contacts. These contacts are based on the information that the applicant provides on the application form. The information that we collect through the application form and subsequent interviews is the basis of the Federal Subsistence Board's recommendations to the Secretaries of the Interior and Agriculture for appointment and reappointment of council members.

A fourth form is being proposed for incumbent members, this would be a shorter form simply asking if there are any updates to previously submitted information.

The Federal Subsistence Board uses the harvest data, along with other information, to set future season dates and harvest limits for Federal subsistence resource users. These seasons and harvest limits are set to meet the needs of subsistence users without adversely impacting the health of existing animal populations.

In addition to the above forms, regulations at 50 CFR part 100 and 36 CFR part 242 contain requirements for the collection of information. We collect nonform information on:

(1) Repeal of Federal subsistence rules and regulations (50 CFR 100.14 and 36 CFR 242.14).

(2) Proposed changes to Federal subsistence regulations (50 CFR 100.18 and 36 CFR 242.18).

(3) Special action requests (50 CFR 100.19 and 36 CFR 242.19).

(4) Requests for reconsideration (50 CFR 100.20 and 36 CFR 242.20).

(5) Requests for permits and reports, such as traditional religious/cultural/educational permits, fishwheel permits, fyke net permits, and under-ice permits (50 CFR 100.25–27 and 36 CFR 242.25–27).

Title of Collection: Federal Subsistence Regulations and Associated Forms, 50 CFR 100 and 36 CFR 242.

OMB Control Number: 1018–0075.

Form Number: FWS Forms 3–2321 through 3–2323, 3–2326 through 3–2328, 3–2378 through 3–2379.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; private sector; and State, local, and tribal governments. Most respondents are individuals who are federally defined rural residents in Alaska.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Form/activity	Number of annual respondents	Number of annual responses	Completion time per response	Total annual burden hours *
3–2321 Membership Application	76	76	2 hours	152
3–2322 Applicant Interview	76	76	30 minutes	38
3–2323 Reference/Contact Interview	189	189	15 minutes	47
3–XXXX Incumbent Application	22	22	5 minutes	2
3–2326 Hunt Application and Permit	11,141	11,141	10 minutes	1,857
3–2326 Hunt Report	11,141	11,141	5 minutes	928
3–2327 Designated Hunter Application and Permit	701	701	10 minutes	117
3–2327 Designated Hunter—Hunt Report	701	701	5 minutes	58
3–2328 Fishing Application and Permit	2,136	2,136	10 minutes	356
3–2328 Fishing Report	2,136	2,136	5 minutes	178
3–2378 Designated Fishing Application and Permit	58	58	10 minutes	10
3–2378 Designated Fishing Report	58	58	5 minutes	5
3–2379 Customary Trade Recordkeeping Application and Permit	18	18	10 minutes	3
3–2379 Customary Trade Recordkeeping—Report	18	18	5 minutes	2
Petition to Repeal	1	1	2 hours	2
Proposed Changes	70	70	30 minutes	35
Special Actions Request	17	17	30 minutes	9
Request for Reconsideration (Appeal)	741	741	4 hours	2,964
Traditional/Cultural/Educational Permits and Reports	5	5	30 minutes	3
Fishwheel, Fyke Net, and Under-Ice Permits and Reports	7	7	15 minutes	2
Totals	29,290	29,290		6,766

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: September 25, 2018.

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2018–21160 Filed 9–27–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[17XL LLIDI00000.L71220000. EO0000.LVTFD1700100 241A 4500116174]

Notice of Availability of Draft Environmental Impact Statement for the Proposed East Smoky Panel Mine Project at Smoky Canyon Mine, Caribou County, ID

AGENCY: Bureau of Land Management, Interior; Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Land Management (BLM) and the U.S. Department of Agriculture, Forest Service (USFS) Caribou-Targhee National Forest (CTNF), have prepared a Draft Environmental Impact Statement (EIS) for the proposed East Smoky Panel Mine Project (Project), and by this Notice announce the opening of the public comment period.

DATES: To ensure consideration, the Agencies must receive written comments on the East Smoky Panel Mine Project Draft EIS no later than 90 days after the Environmental Protection Agency publishes its notice of availability of the Draft EIS in the **Federal Register**. The BLM will announce any future public meetings and any other public involvement activities at least 15 days in advance through public notices, media news releases, and/or mailings.

ADDRESSES: You may submit comments related to the Project Draft EIS by any of the following methods:

- *Website: https://go.usa.gov/xnYTG.*
- *Email: blm_id_espm_eis@blm.gov.*
- *Mail:* East Smoky Panel Mine Draft EIS, c/o Stantec Consulting Services Inc., 3995 South 700 East, Suite 300, Salt Lake City, Utah 84107.

Please reference ''East Smoky Panel Mine Draft EIS'' on all correspondence. CD–ROM and print copies of the East Smoky Panel Mine Draft EIS are available in the BLM Pocatello Field Office at the following address: 4350 Cliffs Drive, Pocatello, ID 83204. In addition, an electronic copy of the Draft EIS is available online at:

- *BLM Land Use Planning and NEPA Register: https://go.usa.gov/xnYTG*
- *Caribou-Targhee National Forest Current and Recent Projects: http://www.fs.usda.gov/projects/ctnf/landmanagement/projects.*

FOR FURTHER INFORMATION CONTACT: Kyle Free, BLM Pocatello Field Office, 4350 Cliffs Drive, Pocatello, ID 83204; phone 208–478–6352; email: *kfree@blm.gov;* fax 208–478–6376. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Free. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Free. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM, as the Federal lease administrator, is the lead agency, and the USFS is the co-lead agency. The Idaho Department of Environmental Quality, Idaho Department of Lands, and Idaho Governor's Office of Energy and Mineral Resources are cooperating agencies. J.R. Simplot Company has submitted a proposed lease modification and Mine and Reclamation Plan (M&RP) for agency review for the East Smoky Panel leases (IDI–015259, IDI–26843, and IDI–012890) at the Smoky Canyon Phosphate Mine in Caribou County, Idaho. Existing Smoky Canyon mining and milling operations were authorized in 1982 by a mine plan approval issued by the BLM and Special Use Authorizations (SUAs) issued by the USFS for off-lease activities, supported by the Smoky Canyon Mine Final EIS and Record of Decision (ROD). Mining operations began in Panel A in 1984 and have continued ever since, with the mining of Panels A through G. The

proposed East Smoky Panel Project Area is located approximately one-half mile directly east of Panel A and, in the northern portion, adjacent to Panel B. The BLM prepared a supplemental EIS for mining of Panels B and C, addressing selenium and endangered species issues, in 2002; a subsequent ROD approved the mining of Panels B and C. The BLM and USFS approved the mining of Panels F and G in 2008 and a subsequent Mine Plan modification in 2015.

The Proposed Action would consist of mining the East Smoky Panel as outlined in the Draft EIS. The Draft EIS fully evaluates Alternatives to the Proposed Action, including a No Action Alternative, and addresses issues identified during scoping.

The BLM and USFS will make separate but coordinated decisions related to the proposed Project. The BLM will either approve, approve with modifications, or deny the M&RP; and recommend whether to modify lease IDI–015259. In addition, the BLM will decide whether to approve a modification to the existing B-Panel Mine Plan. The BLM will base its decisions on public and agency input on the Draft EIS, the Final EIS, and any recommendations the USFS may have regarding surface management of leased National Forest System lands. The USFS will make recommendations to the BLM concerning surface management and mitigation on leased lands within the CTNF and will issue decisions on SUAs for off-lease activities. SUAs from the USFS would be necessary for any off-lease disturbances/structures located within the CTNF and associated with the Project. A Forest Plan amendment by the USFS would also be necessary as outlined in the Draft EIS.

On April 3, 2015, the **Federal Register** published a Notice of Intent to prepare this EIS (80 FR 18250), initiating a 30-day public scoping period for the Proposed Action during which the BLM accepted written comments. The scoping process identified concerns involving impacts to water resources and watersheds from potentially elevated levels of selenium; potential effects and/or cumulative effects of the Project regarding air quality, human health and safety, socioeconomics, wildlife, reclamation and financial assurance; and mitigation and monitoring of mine operations.

To facilitate understanding and comments on the Draft EIS, the BLM has planned public meetings for Afton, Wyoming, and Pocatello, Idaho. Meetings will be open-house style, with displays explaining the Project and a forum for commenting on the Project. The BLM will announce dates, times, and locations of the public scoping meetings in mailings and local media at least 15 days in advance.

Stakeholders, interested parties and members of the public should submit written and electronic comments regarding the Draft EIS no later than 90 days after the Environmental Protection Agency publishes its notice of availability of the Draft EIS in the **Federal Register**. To assist the BLM and the USFS in identifying issues and concerns related to this project, comments should be as specific as possible. The portion of the proposed project related to special use authorizations for off-lease activities are subject to the USFS objection process. Due to the need for a Forest Plan amendment, this proposed project is subject to the predecisional administrative review process pursuant to 36 CFR part 218 subparts A and B and 36 CFR part 219 subpart B. Only those who provide comment during this comment period or who have previously submitted specific written comments on the Proposed Action, either during scoping or other designated opportunity for public comment, will be eligible as objectors (36 CFR 218.5(a) and 219.53(a)). BLM appeal procedures found in 43 CFR part 4, subpart E apply to the portion of the Project related to the Federal mineral lease(s).

Before including your phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 42 U.S.C. 4321 *et seq.*; 43 U.S.C. 1701; 40 CFR parts 1500 through 1508; 43 CFR part 4; 43 CFR part 3590.

Dated: July 16, 2018.

Peter J. Ditton,

Acting State Director, Bureau of Land Management, Idaho State Office.

Mel Bolling,

Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 2018–21204 Filed 9–27–18; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–609 and 731–TA–1421 (Preliminary)]

Steel Trailer Wheels From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of steel trailer wheels from China that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of China.[2] [3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 83 FR 45100, September 5, 2018; *Certain Steel Wheels 12 to 16.5 Inches in Diameter From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation,* 83 FR 45095, September 5, 2018.

[3] Commissioner Meredith M. Broadbent did not participate in the determinations.

Background

On August 8, 2018, Dexstar Wheel, Elkhart, Indiana, filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of steel trailer wheels from China and LTFV imports of steel trailer wheels from China. Accordingly, effective August 8, 2018, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–609 and antidumping duty investigation No. 731–TA–1421 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 15, 2018 (83 FR 40551). The conference was held in Washington, DC, on August 29, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on September 24, 2018. The views of the Commission are contained in USITC Publication 4830 (October 2018), entitled *Steel Trailer Wheels from China: Investigation Nos. 701–TA–609 and 731–TA–1421 (Preliminary).*

By order of the Commission.

Issued: September 24, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21130 Filed 9–27–18; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–344 (Fourth Review)]

Tapered Roller Bearings From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on July 3, 2017 (82 FR 30898) and determined on October 6, 2017 that it would conduct a full review (82 FR 48527, October 18, 2017). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 26, 2018 (83 FR 8297). The hearing was held in Washington, DC, on July 31, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on September 24, 2018. The views of the Commission are contained in USITC Publication 4824 (September 2018), entitled *Tapered Roller Bearings from China: Investigation No. 731–TA–344 (Fourth Review).*

By order of the Commission.

Issued: September 24, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–21095 Filed 9–27–18; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number: 1110–0068]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection: Records Modification Form (FD–1115)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until November 27, 2018.

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 Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (telephone: 304–625–4320) or email *glbrovey@fbi.gov.* 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. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Records Modification Form.

(3) *Agency form number:* FD–1115.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by criminal justice and affiliated judicial agencies to request appropriate modification of criminal history information from an individual's record.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 43,584 respondents are authorized to complete the form which would require approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 19,882 total annual burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: September 14, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–20353 Filed 9–27–18; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0041]

FM Approvals LLC: Grant of Expansion of Recognition and Modification to the Nationally Recognized Testing Laboratory (NRTL) Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for FM Approvals, LLC (FM), as a NRTL to include twenty six additional test standards. In addition, OSHA announces the addition of four test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes applicable on September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, telephone: (202) 693–1999, email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110 or email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of FM Approvals, LLC, as a NRTL. FM's expansion covers the addition of 24 test standards to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details its scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

FM submitted an application, dated July 15, 2016, (OSHA–2007–0041–0008) to expand its recognition to include 28 additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. In reviewing the application, OSHA determined that three of the requested standards had been withdrawn by the controlling standards development organization; therefore, OSHA cannot add those three standards to FM's NRTL scope of recognition. Additionally, one of the requested standards, ISA 60079–26, has been superseded by UL 60079–26, which was also included in FM's expansion application. Accordingly, OSHA will add the active standard, not the superseded one, and OSHA will grant recognition to 24 standards in the final expansion. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing FM's expansion application in the **Federal Register** on May 15, 2018, (83 FR 22523). The agency requested comments by May 30, 2018, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion of FM's scope of recognition.

To obtain or review copies of all public documents pertaining to FM's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2007–0041 contains all materials in the record concerning FM's recognition.

II. Final Decision and Order

OSHA staff examined FM's expansion application, capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that FM meets the requirements of 29 CFR 1910.7 for expansion of recognition, subject to the specified limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant FM's scope of recognition. OSHA limits the expansion of FM's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN FM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 50	Enclosures for Electrical Equipment, Non-Environmental Considerations.
UL 50E	Enclosures for Electrical Equipment, Environmental Considerations.
UL 60079–0	Explosive Atmospheres—Part 0: Equipment—General Requirements.
ISA 60079–0	Explosive Atmospheres—Part 0: Equipment—General Requirements.
UL 60079–1	Standard for Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures "d".
ISA 60079–1	Standard for Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures "d".
UL 60079–2	Standard for Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosure "p".
UL 60079–5	Standard for Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling "q".
UL 60079–6	Standard for Explosive Atmosphere—Part 6: Equipment Protection by Liquid Immersion "o".
ISA 60079–6	Standard for Explosive Atmosphere—Part 6: Equipment Protection by Liquid Immersion "o".
UL 60079–7	Standard for Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety "e".
ISA 60079–7	Standard for Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety "e".
UL 60079–11	Standard for Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety "i".
ISA 60079–11	Standard for Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety "i".
UL 60079–15	Standard for Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection "n".
ISA 60079–15	Standard for Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection "n" (Edition 4).
UL 60079–18	Standard for Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation "m".
UL 60079–25	Standard for Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
ISA 60079–25 *	Standard for Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079–26 *	Standard for Explosive Atmospheres—Part 26: Equipment with Equipment Protection Level (EPL) Ga.
UL 60079–28 *	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
ISA 60079–28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation, Edition 1.1.
UL 60079–31 *	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure "t".
ISA 60079–31	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure "t".

* Represents a standard that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards

In this notice, OSHA also announces the addition of four new test standards to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA has determined that these test standards are appropriate test standards and will include them in the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
ISA 60079–25	Standard for Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL 60079–26	Standard for Explosive Atmospheres—Part 26: Equipment with Equipment Protection Level (EPL) Ga.
UL 60079–28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60079–31	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection Enclosure "t".

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, FM must abide by the following conditions of the recognition:

1. FM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. FM must meet all the terms of recognition and comply with all OSHA policies pertaining to this recognition; and

3. FM must continue to meet the requirements for recognition, including all previously published conditions on FM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of FM, subject to the limitation and conditions specified above.

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 24, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–21159 Filed 9–27–18; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

Underwriters Laboratories, Inc.: Grant of Expansion of Recognition and Modification to the Nationally Recognized Testing Laboratory (NRTL) Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for Underwriters Laboratories, Inc., (UL) as a NRTL to include 26 additional test standards. In addition, OSHA announces the addition of 22 test standards to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes applicable on September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of Underwriters Laboratories, Inc., as a NRTL. UL's expansion covers the addition of 26 test standards to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the Agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details its scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

UL submitted an application, dated May 31, 2017, (OSHA–2009–0025–0020) to expand its recognition to include 26 additional test standards. This application was updated on November 1, 2017, (OSHA–2009–0025–0021) to include an additional standard, for a total of 27 standards. OSHA determined that one of the standards requested in UL's application, UL 2703, ''Standard for Mounting System, Mounting Devices, Clamping/Retention Devices, and Ground Lugs for Use with Flat-Plate Photovoltaic Modules and Panels,'' does not meet the requirements for an appropriate test standard in 29 CFR 1910.7; indeed, this standard is not included on the NRTL Program's List of Appropriate Test Standards. The types of products covered by UL 2703 do not fit into any of the categories covered by OSHA's NRTL Program. Specifically, the standard covers mechanical products, while OSHA's NRTL Program addresses mainly electrical end products. Accordingly, OSHA declines to add UL 2703 to the NRTL Program's List of Appropriate Test Standards and rejects UL's application to add the standard to its scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing UL's expansion application in the **Federal Register** on April 20, 2018, (83 FR 17568). The agency requested comments by May 7, 2018, but it received no timely comments in response to this notice. OSHA is now proceeding with this final notice to grant expansion of UL's scope of recognition.

To obtain or review copies of all public documents pertaining to UL's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2009–0025 contains all materials in the record concerning UL's recognition.

II. Final Decision and Order

OSHA staff examined UL's expansion application, capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the specified limitation and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant UL's scope of recognition. OSHA limits the expansion of UL's recognition to testing and certification of products for demonstration of conformance to the test standards listed, below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
TIA 4950*	Requirements for Battery-Powered, Portable Land Mobile Radio Applications in Class I, II, and III, Division 1, Hazardous (Classified) Locations.
UL 25A*	Standard for Meters for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION—Continued

Test standard	Test standard title
UL 25B *	Meters for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 79A *	Standard for Power-Operated Pumps for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 79B *	Standard for Power-Operated Pumps for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 87A *	Standard for Power-Operated Dispensing Devices for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 87B *	Power-Operated Dispensing Devices for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 486F *	Bare and Covered Ferrules.
UL 567A *	Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 567B *	Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 842A *	Standard for Valves for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 842B *	Standard for Valves for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 962	Standard for Household and Commercial Furnishings.
UL 1973 *	Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications.
UL 2054 *	Standard for Household and Commercial Batteries.
UL 2271 *	Standard for Batteries for Use in Light Electric Vehicle (LEV) Applications.
UL 2586A *	Standard for Hose Nozzle Valves for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 2586B *	Standard for Hose Nozzle Valves for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 2594	Standard for Electric Vehicle Supply Equipment.
UL 2775 *	Standard for Fixed Condensed Aerosol Extinguishing System Units.
UL 4703 *	Standard for Photovoltaic Wire.
UL 8753 *	Standard for Field-Replaceable Light Emitting Diode (LED) Light Engines.
UL 60335–2–24	Household and Similar Electric Appliances—Safety—Part 2–24: Particular Requirements for Refrigerating Appliances, Ice-Cream Appliances and Ice-Makers.
UL 60730–2–5 *	Automatic Electrical Controls for Household and Similar Use, Part 2–5: Particular Requirements for Automatic Electrical Burner Control Systems.
UL 60947–5–1 *	Low-Voltage Switchgear and Controlgear—Part 5–1: Control Circuit Devices and Switching Elements—Electromechanical Control Circuit Devices.
UL 62109–1	Standard for Safety of Power Converters for Use in Photovoltaic Power Systems—Part 1: General Requirements.

* Represents the standards that OSHA will add to the NRTL Program's List of Appropriate Test Standards

In this notice, OSHA also announces the addition of 22 new test standards to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standards that are new to the NRTL Program. OSHA has determined that these test standards are appropriate test standards and will include them in the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
TIA 4950	Requirements for Battery-Powered, Portable Land Mobile Radio Applications in Class I, II, and III, Division 1, Hazardous (Classified) Locations.
UL 25A	Standard for Meters for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 25B	Meters for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 79A	Standard for Power-Operated Pumps for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 79B	Standard for Power-Operated Pumps for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 87A	Standard for Power-Operated Dispensing Devices for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 87B	Power-Operated Dispensing Devices for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 486F	Bare and Covered Ferrules.
UL 567A	Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 567B	Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.

TABLE 2—TEST STANDARDS OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS—Continued

Test standard	Test standard title
UL 842A	Standard for Valves for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 842B	Standard for Valves for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 1973	Standard for Batters for Use in Light Electric Rail (LER) Applications and Stationary Applications.
UL 2054	Standard for Household and Commercial Batteries.
UL 2271	Standard for Batteries for Use in Light Electric Vehicle (LEV) Applications.
UL 2586A	Standard for Hose Nozzle Valves for Gasoline and Gasoline/Ethanol Blends with Nominal Ethanol Concentrations up to 85 Percent (E0–E85).
UL 2586B	Standard for Hose Nozzle Valves for Diesel Fuel, Biodiesel Fuel, Diesel/Biodiesel Blends with Nominal Biodiesel Concentrations up to 20 Percent (B20), Kerosene, and Fuel Oil.
UL 2775	Standard for Fixed Condensed Aerosol Extinguishing System Units.
UL 4703	Standard for Photovoltaic Wire.
UL 8753	Standard for Field-Replaceable Light Emitting Diode (LED) Light Engines.
UL 60730–2–5	Automatic Electrical Controls for Household and Similar Use, Part 2–5: Particular Requirements for Automatic Electrical Burner Control Systems.
UL 60947–5–1	Low-Voltage Switchgear and Controlgear—Part 5–1: Control Circuit Devices and Switching Elements—Electromechanical Control Circuit Devices.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, UL must abide by the following conditions of the recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. UL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. UL must continue to meet the requirements for recognition, including all previously published conditions on UL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of UL, subject to the limitation and conditions specified above.

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 24, 2018.

Loren Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2018–21158 Filed 9–27–18; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–071)]

Heliophysics Advisory 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 Heliophysics Advisory Committee (HPAC). This Committee functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, October 22, 2018, 2:00 p.m.–4:00 p.m.; Tuesday, October 23, 2018, 1:00 p.m.–2:30 p.m., Eastern Time.

ADDRESSES: This meeting will take place telephonically and via WebEx. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–888–809–8966, or toll number 1–210–234–8402, passcode 2100562 followed by the # sign to participate in this meeting by telephone on both days. The WebEx link is *https://nasa.webex.com/*. The meeting number for October 22 is 990 826 227 and the password is HPAC20181! (case sensitive). The meeting number for October 23 is 990 232 943 and the password is HPAC20181! (case sensitive).

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topic:

• Heliophysics Program Annual Performance Review According to the

Government Performance and Results Act Modernization Act.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–21201 Filed 9–27–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 29, 2018 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5080, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0117.

Type of Review: Revision of a currently approved collection.

Title: Designation of Low Income Status, 12 CFR 701.34(a).

Abstract: The Federal Credit Union Act (12 U.S.C. 1752(5)) authorizes the NCUA Board to define low-income members so that credit unions with a membership serving predominantly low-income members can benefit from certain statutory relief and receive assistance from the Community Development Revolving Loan Fund. To utilize this authority a credit union must receive a low-income designation from NCUA as defined in NCUA's regulations at 12 CFR 701.34. NCUA uses the information from credit unions to determine whether they meet the criteria for the low-income designation.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 303.

OMB Number: 3133–0121.

Type of Review: Revision of a currently approved collection.

Title: Notice of Change of Officials and Senior Executive Officers.

Forms: NCUA Forms 4063 and 4063a.

Abstract: In order to comply with statutory requirements, the agency must obtain sufficient information from new officials or senior executive officers of troubled or newly chartered credit unions to determine their fitness for the position. This is established by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. 101–73). The forms provide a standardize format to collect the information needed.

Affected Public: Private Sector: Not-for-profit institutions; Individual or Household.

Estimated Total Annual Burden Hours: 884.

OMB Number: 3133–0154.

Type of Review: Extension of a currently approved collection.

Title: Prompt Corrective Action, 12 CFR 702 (Subparts A–D).

Abstract: Section 216 of the Federal Credit Union Act (12 U.S.C. 1790d) mandates prompt corrective action (PCA) requirements for federally insured credit unions (FICUs) that become less than well capitalized. Section 216 requires the NCUA Board to (1) adopt, by regulation, a system of prompt corrective action to restore the net worth of inadequately capitalized FICUs; and (2) develop an alternative system of prompt corrective action for new credit unions that carries out the purpose of PCA while allowing an FICU reasonable time to build its net worth to an adequately capitalized level. The purpose of PCA is to resolve the problems of FICUs at the least possible long-term loss to the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 3,420.

OMB Number: 3133–0169.

Title: Purchase of Assets and Assumption of Liabilities.

Type of Review: Extension of a currently approved collection.

Abstract: In accordance with § 741.8, federally insured credit unions (FICUs) must request approval from the NCUA prior to purchasing assets or assuming liabilities of a privately insured credit union, other financial institution, or their successor interest. A FICU seeking approval must submit a letter to the appropriate NCUA Regional Director stating the nature of the transaction, and include copies of relevant transaction documents. Relevant transaction documents may include, but are not limited to: the credit union's financial statements, strategic plan, and budget, inventory of the assets and liabilities to be transferred, and any relevant contracts or agreements regarding the transfer. NCUA will use the information to determine the safety and soundness of the transaction and risk to the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 840.

OMB Number: 3133–0192.

Type of Review: Extension of a currently approved collection.

Title: Involuntary Liquidation Proof of Claim Form.

Form: NCUA Form 7250.

Abstract: In accordance with 12 CFR part 709, the NCUA is appointed liquidating agent of a credit union when the credit union is placed into involuntary liquidation. Section 709.6 instructs creditors to present a written claim to the liquidating agent by the date specified in the notice to creditors. Those creditors making a claim must document their claim in writing and submit a form to the liquidating agent. In addition, the liquidating agent may require a claimant to submit supplemental evidence to support its claim. This collection of information is necessary to protect the National Credit Union Share Insurance Fund in determining valid claims.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 220.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on September 25, 2018.

Dated: September 25, 2018.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2018–21157 Filed 9–27–18; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 29, 2018. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, at the above address, 703–292–8030, or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2016–020) to Laura K.O. Smith, Owner, Operator Quixote Expeditions, on December 23, 2015. The issued permit allows the permit holder to conduct waste management activities associated with the operation of the ''Ocean Tramp,'' a reinforced ketch rigged sailing yacht in the Antarctic Peninsula region. Activities to be conducted by Quixote include: Passenger landings, hiking, photography, wildlife viewing, and possible station visits.

A recent modification to this permit, dated November 22, 2017, permitted coastal camping activities in select locations and resupply of fresh food to the Quixote Expeditions vessel as part of fly/cruise operations.

Now the permit holder proposes a modification to the permit to add a second vessel to support Quixote Expeditions activities, to conduct ship-to-ship fuel transfers, to release comminuted food waste (excepting poultry) at sea, and to operate a remotely piloted aircraft for educational and commercial purposes. In addition to the sailboat, Ocean Tramp, Quixote Expeditions would operate the motor vessel, Hans Hansson, in the Antarctic Peninsula region. The Hans Hansson would carry four or five crew members and up to 12 passengers. The vessel is capable of carrying up to 54,000 liters of diesel fuel in internal tanks; 500 liters of gasoline in a closed tank; four, 11 kg bottles of propane; and two liters of white gas in bottles. The permit holder proposes to conduct fuel transfers from the Hans Hansson to the Ocean Tramp, should it become necessary. Any such fuel transfers would follow precise fuel transfer procedures, with a shipboard oil pollution emergency plan kit readily available, and with no other concurrent activities happening. The permit holder proposes to release food waste, except poultry products, that has been reduced to small particles or ground into the sea at least 12 nautical miles from land. Quixote Expeditions would continue to hold all poultry waste, including eggs and eggshells, onboard for eventual disposal north of 60 degrees South or once in port outside Antarctica. The permit holder proposes to operate a small, battery-operated remotely piloted aircraft system (RPAS) consisting, in part, of a quadcopter equipped with a camera to collect commercial and educational footage of the Antarctic, as well as for ice reconnaissance. The quadcopter would not be flown over concentrations of birds or mammals, or over Antarctic Specially Protected Areas or Historic Sites and Monuments. The RPAS would only be operated by experienced pilots (≤20 hours). Several measures would be taken to prevent against loss of the quadcopter including a highly visible paint color; only operating when the wind is less than 15 knots; operating for only to within 70% of battery life; having prop guards on propeller tips; using a flotation device if operated over water; having an observer on the lookout for wildlife, people, and other hazards; and ensuring that the separation between the operator and quadcopter does not exceed visual contact. The applicant is seeking a Waste Permit to cover any accidental releases that may result from operating the RPAS.

Location: Antarctic Peninsula; For camping, possible locations include Dorian Cove, Enterprize Isand, Cuverville are/Errera Channel, Damoy Point/Dorian Bay, Danco Island, Rongé Island, Paradise Bay, Argentine Islands, Andvord bay, Pleneau Island, Hovgaard Island, Orne Harbour, Leith Cove, Prospect Point, Portal Point.

Dates of Permitted Activities: December 1, 2018–February 6, 2021.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–21125 Filed 9–27–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On August 16, 2018, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on September 20, 2018 to:

1. Caitlin Scarano—Permit No. 2019–003
2. Brenda Hall—Permit No. 2019–004
3. Michelle LaRue—Permit No. 2019–006

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–21124 Filed 9–27–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0176]

Proposed Revisions to Standard Review Plan Section 2.4.6, Tsunami Hazards; Section 2.4.9, Channel Migration or Diversion; and Section 2.3.3, Onsite Meteorological Measurements Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on proposed updates to NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition'' (or SRP). The staff is proposing changes to a select number of sections of SRP Chapter 2 taking into account some of the lessons-learned from the flooding hazard re-evaluations performed by the operating power reactor fleet. Specific changes are being proposed to Section 2.4.6, ''Tsunami Hazards''; Section 2.4.9, ''Channel Migration or Diversion''; and Section 2.3.3, ''Onsite Meteorological Measurements Program''.

DATES: Comments must be filed no later than October 29, 2018. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0176. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Mark D. Notich, Office of New Reactors, telephone: 301–415–3053; email: *Mark.Notich@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0176 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0176.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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–2018–0176 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 *http://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. Background

In connection with the current update to the SRP hydrology chapter, the staff is proposing to place greater emphasis on reviewing the flood-causing mechanism (or mechanisms) consequential to defining the site characteristic for flooding. Consistent with the Commission's policy approach to risk-informed regulation, the updates the staff is proposing will support a simplified review by staff of flood-causing mechanisms determined to not pose a threat to the safe operation of a nuclear power plant. The staff proposes making additional revisions to some of the remaining SRP sections in Chapters 2.3 and 2.4 in the next fiscal year. The scope of these revisions and a timetable for updates would be discussed at a public meeting later this calendar year. In addition, the staff is looking to apply the type of risk-informed approach used in the SRP Sections 2.3 and 2.4 in other SRP sections in the future. Additional meetings will be scheduled in FY19 to discuss specific revisions to the remaining SRP sections in Chapters 2.3, 2.4, and/or other SRP sections. The current update cycle for NRC's SRP Chapter 2.4 on hydrology coincides with the NRC staff's recent completion of its reviews of section 50.54(f) of title 10 of the *Code of Federal Regulations* (10 CFR), flooding hazard re-evaluations performed by the operating power reactor fleet in response to the Fukushima—Dai-ichi nuclear power plant accident. A key focus of the flood hazard re-evaluations was to determine whether the current design basis flood elevation had been exceeded based on the hazard re-evaluations. The flood-causing mechanisms examined in connection with the flood hazard re-evaluations correspond implicitly to review areas currently found in Chapter 2.4 of the SRP for license applications to construct new nuclear power plants. The flood-causing mechanisms that were examined either alone or in combination included:

1. Local Intense Precipitation and Associated Drainage
2. Streams and Rivers
3. Failure of Dams and Onsite Water Control/Storage Structures
4. Storm Surge
5. Seiche
6. Tsunami
7. Ice-Induced
8. Channel Migrations or Diversions

In its March 12, 2012, 10 CFR 50.54(f) letter to operating reactor licensees[1], the NRC staff requested that licensees reevaluate all flood-causing hazards for their respective sites using present-day methods and regulatory guidance used by the NRC staff when reviewing applications for early site permits (ESPs) and combined licenses (COLs). In connection with those flood hazard re-evaluations, licensees were to address information on the flood event duration associated with the respective flood hazards, which included warning times necessary to take preventive measures, the expected duration of site

[1] Letter from Michael R. Johnson, Director, Office of New Reactors, to All Power Reactor Licensees and Holders of Construction Permits in Active or Deferred Status, March 12, 2012 (ADAMS Accession No. ML12053A340).

inundation, and flood recession times until unimpeded site access could be restored. Licensees were also to estimate the effects associated with the respective consequential flood-causing mechanisms being investigated, such as hydrostatic and hydrodynamic loads, water velocities, potential for erosion, and other parameters. In response to the March 12, 2012, 10 CFR 50.54(f) flood information request, hazard re-evaluations at approximately 60 operating reactor sites were submitted by licensees. In most cases, licensees reported that local intense precipitation (LIP) in addition to one or more other flood-causing mechanisms could be consequential enough to exceed the level (water surface elevation) of the current design basis flood. Following a review of the information provided, the staff identified which flood-causing mechanisms were consequential for defining, and in some cases redefining, the design basis flood for each of the operating nuclear power plants covered by the 10 CFR 50.54(f) flooding reviews.[2]

The staff is now proposing changes to Chapter 2.4 of the SRP taking into account some of the lessons-learned from the 10 CFR 50.54(f) flooding reevaluation reviews as well as the ESP/COL reviews. For example, where simplified analytical (manual) solutions were performed decades ago and prior to the widespread availability of digital computers, licensees are now relying on more-detailed numerical models to perform these very same calculations. It was also learned that licensees made extensive use of geo-spatial databases in connection with those computer simulations. Through these efforts, many of the licensees submitted flood inundation maps for the first time comparing the elevations of the power plant site and as-built structures with the water surface elevations produced by the respective flood-causing mechanisms.

Another key lesson-learned was that a majority of the sites had multiple re-evaluated flooding hazards in excess of the design basis previously used in licensing. In particular, the majority of the exceedances were associated with LIP, which was a flooding hazard not generally evaluated as part of the original design basis for several of the operating-reactor sites. Previously, it was assumed that the consequences of LIP would be addressed by a combination of site grading and some type of storm water management system integrated into the site's drainage design. In many cases it was found that earlier design decisions underestimated the effects of LIP and associated drainage on structures, systems, and components (SSCs) important to safety. Consequently, the staff intends to propose that one of the current SRP chapters be repurposed (SRP Section 2.4.2—''Floods'') to specifically focus on evaluating the effects of LIP and associated site drainage.

III. Discussion of Update Rationale by SRP Section

In the past the Commission has adopted the concept of the ''probable maximum event'' when estimating the design bases for nuclear power plants. The probable maximum event, which is determined by accounting for the physical limits of a natural phenomenon, is considered to be the most severe event reasonably (physically) possible at the location of interest and is thought to exceed the severity of all historically-observed events. The concept of ''probable maximum event'' is consistent with General Design Criterion (GDC) 2 of Appendix A (''*General Design Criteria for Nuclear Power Plants*'') to CFR part 50 (''Domestic Licensing of Production And Utilization Facilities'') which requires that nuclear power plant SSCs important to safety be designed to withstand the most severe effects of natural phenomena such as earthquakes, tornadoes, hurricanes, floods, tsunami, and seiches without loss of capability to perform their intended safety functions.

The Commission's reactor siting criteria at 10 CFR 100.20(c)(3) calls for the estimation of the ''. . . maximum probable flood [PMF] . . . using historical data.'' Floods (or flooding), corresponding to the hypothetical PMF, is thus one of the *site characteristics*[3] to be evaluated in the context of GDC 2. Historically, the PMF at a nuclear power plant has been estimated based on some plausible maximum water surface elevation that would occur across the footprint of the power plant site in relation to the elevations of SSCs important to safety. As noted below, the staff is now proposing to expand the flood hazard definition to more explicitly address what is meant by associated flooding effects and the flood event duration.

The focus of the hydrology reviews in Chapter 2.4 has always been to review and assess applications for the potential flood elevations at the site for the purposes of designing SSCs important to safety. Having reviewed the various flood-causing mechanisms listed in Chapter 2.4, applicants for new power reactors have historically selected the flood-causing mechanism (or mechanisms) consequential to defining the flood elevation site characteristic. The results of that decision-making by the applicant were documented in the Safety Analysis Report (SAR). In many cases, the SAR documentation would be extensive, irrespective of whether the flooding hazard in question was consequential to defining the site characteristic flood. The staff observed that licensees still adhered to this practice in their responses to the staff's recent 10 CFR 50.54(f) flood reevaluation request.

In connection with the current update to the SRP hydrology chapter, the staff has decided to place greater emphasis in its SER on reviewing the flood-causing mechanism (or mechanisms) consequential to defining the site characteristic for flooding. In August 1995, the Commission issued a *Policy Statement* concerning the use of probabilistic risk assessment (PRA) methods. In that *Policy Statement,* the Commission stated that the use of those methods should be ''. . . increased to the extent supported by the state of the art in PRA methods and data, and in a manner that complements the NRC's deterministic approach and supports the NRC's traditional defense-in-depth philosophy. . . .'' (60 FR 42628). Consistent with the Commission's policy, the staff is now proposing to simplify the SER review requirements by focusing on those flood-causing mechanisms determined to pose a threat to the safe operation of a nuclear power plant. In conducting its review of the 10 CFR 50.54(f) flood hazard re-evaluations submitted by licensees, the staff found that consequences (location, magnitude, duration, timing) of a flooding event within the reactor powerblock could vary depending on the particular flood-causing mechanism under consideration. In light of this observation, it is now being proposed that only those mechanisms producing a *consequential flood* (defined in the appendix included in this document) at the site in question would be reviewed in detail in the SER. Under this

[2] In parallel with the March 12, 2012, 10 CFR 50.54(f) flooding request, the NRC staff were also in the process of reviewing a handful of ESPs and COLs for new operating power reactors. In connection with those reviews, the licensees also evaluated the potential for flooding consistent with guidance found in the SRP.

[3] Section 52.1(a) defines *site characteristics* ''. . . as the actual physical, environmental and demographic features of a site. Site characteristics are specified in an early site permit or in a final safety analysis report for a combined license. Site characteristics are specified in an early site permit or in a final safety analysis report for a combined operating license.'' (63 FR 1897) The staff considers the identification of flooding hazards, such as tsunamis, as one of the physical features of the site to be described in an ESP or COL.

proposal, applicants would still be required to perform their due diligence and evaluate all flood-causing mechanisms described in the SRP against GDC 2. However, only those flood-causing mechanisms found to be instrumental in identifying consequential flooding at a site would be subject to a detailed regulatory review in the SER.

In identifying consequential flooding, the staff would review and assess flood inundation and topographic maps for those consequential flood-causing mechanisms, if available. The staff's review would focus primarily on the flood-causing mechanism (or mechanisms) found to be consequential for the purposes of defining the site characteristic flood elevations. Similarly, the detailed discussion contained in the SER would focus primarily on those identified consequential flood-causing mechanisms, including LIP. With this change in emphasis, the SER discussions for those inconsequential flood-causing mechanisms would not need to be fully developed because they are not relevant to defining the site characteristic flood elevations. The only exception to this proposal is LIP. As mentioned above, LIP occurs at all reactor sites, and in many cases was found to exceed the current design basis as part of the recent 10 CFR 50.54(f) flood reevaluation request.

Generic Flooding Changes Proposed to SRP Chapter 2.4

There are several areas for which the staff seeks public comment on the generic changes now being proposed to Chapter 2.4 of the SRP. To determine the bounding flood causing mechanism consequential to defining the site characteristic flood, the staff will review and assess which flood-causing mechanisms are physically plausible and capable of inundating SSCs important to safety at the site. For some sites, based on the physical geography, certain flood-causing mechanisms may be eliminated from consideration by virtue of being located at inland locations well away from large bodies of water such as an ocean or large lake. Such sites would not be expected to be threatened by the effects of storm surge or tsunamis of marine origin. Still other sites might be located in Mediterranean or Subtropical climatic settings for which average daily temperatures do not drop below the freezing point of water and thus may not be susceptible to ice effects. Lastly, some sites might be located adjacent to large inland lakes or the open coast for which there is an absence of rivers or streams; such sites can be expected to be free from flooding due to riverine-based events. Hence, the need for water surface elevation estimates within the reactor powerblock due to these flooding mechanisms would be obviated. However, there could be a scenario in which a proposed reactor site might be vulnerable to flooding by multiple scenarios; for example, a site located in a watershed occupied by multiple upstream dams of different impoundment volumes and distances from the reactor site. The timing and sequencing of the failure of any of these dams could result in significantly different inundation depths at the site in question. As a result, all potential flooding scenarios need to be examined and considered in detail to calculate the site's inundation map, associated effects, and flood event duration for those consequential (bounding) flood-causing mechanisms.

As illustrated by the examples described above, the staff's proposed detailed review of the hydrology portion of the application would focus primarily only on those flood-causing mechanisms, including LIP, which could result in consequential flooding at a reactor site. Under such an approach, the staff may also need to review multiple scenarios for the same flood-causing mechanism to determine which scenario is the bounding flooding event. The staff intends to review and assess inundation maps to assure that they are prepared consistent with Federal standards for inundation mapping, such as the Federal Emergency Management Agency (FEMA) Publication 64–P, entitled ''Federal Guidelines for Dam Safety: Emergency Action Planning for Dams'' [4].

The staff also proposes to expand the flood hazard PMF definition to include associated flooding effects and the flood event duration and reduce the use of terms in the respective SRP chapters such as ''maximum,'' ''probable maximum,'' and ''PMF'' when referring to flood-causing mechanisms and instead refer to consequential and non-consequential flood-causing mechanisms. As part of staff's recent 10 CFR 50.54(f) flood reevaluation, staff noted the terms ''maximum,'' or ''probable maximum,'' could be misinterpreted since these terms refer to deterministic methodologies that are not frequency based. In addition, staff continues to pursue probabilistic flood hazard analysis (PFHA) methodologies, and removal of staff's discussion of maximum flood elevation is aligned with this pursuit.

[4] Available on-line at *https://www.fema.gov/technical-manuals-and-guides.*

The term ''safety-related SSCs'' is being replaced with the term ''SSCs important to safety'' to better track with the definition of that phrase currently found in Appendix A to 10 CFR part 50 of the Commission's regulations.

The staff is also proposing to introduce a glossary of some standard flooding terms to avoid confusion between applicants and the NRC staff when communicating on certain flooding concepts. A tentative list of those concepts and their definitions is included as an appendix to this document. Some of these definitions have been previously published by the Nuclear Energy Institute (NEI) and used by the NRC staff with the recent 10 CFR 50.54(f) flood reevaluation. Included in the list of terms is a proposed definition for ''consequential flooding.'' Public comment on these concepts and definitions is welcomed as the staff intends to propose that they will be added to an update of SRP Section 2.4.1 (''Hydrologic Description'') at a later date.

Lastly, other generic changes proposed to SRP Chapter 2.4 include technical editing, as appropriate, to improve the readability of the various SRP sections as well as to better convey lessons-learned from the recent 10 CFR 50.54(f) flooding reviews. For example, among the lessons-learned was the need to re-organize and update the ''References'' Section (Section VI) to the respective SRP sections.

Proposed Future Changes to SRP Chapter 2.4 Sections

The staff plans on making additional revisions to the remaining SRP sections in Chapter 2.4 next fiscal year (FY19) based on the lessons-learned from the 10 CFR 50.54(f) and ESP/COL flooding reviews. The scope of these future revisions is consistent with the generic revisions described above (*e.g.,* focus on descriptions of the consequential mechanism(s), preparation of inundation maps, updating of references, etc.). In addition to the generic changes being proposed, the staff also plans specific changes to other SRP sections as described below.

Hydrologic Description—SRP Section 2.4.1: The staff intends to propose in the future that this SRP section be re-written to place increased emphasis on differentiating between consequential and inconsequential flood-causing mechanisms. Consequential flood-causing mechanism (or mechanisms), including LIP, that would be used to define the site characteristic for design-basis flooding, will continue to be fully-developed in the appropriate hazard-mechanism specific section of Chapter

2.4. However, staff will propose that the discussion for those inconsequential flood-causing mechanisms at the site does not need to be fully developed in a hazard-specific section of Chapter 2.4. Documentation of inconsequential mechanisms can be simplified because they were found to be not relevant to defining the site characteristic flood elevations for SSCs important-to-safety. Applicants would still be expected to account for the effects of plausible combined event hazards when describing the flood-causing mechanism (or mechanisms) consequential for defining the site characteristic for flooding. SRP Section 2.4.1 currently requests detailed discussions of the hydrosphere without clear acceptance guidelines. Staff will propose that topics not directly associated with defining the flooding site characteristic, and hence the staff's safety conclusion, no longer be required for the FSAR.[5] A glossary of terms (attached as an appendix to this notice) would be added to the document.

Floods—SRP Section 2.4.2: The staff intends to propose in the future that this SRP section be re-purposed to focus on defining the characteristic flood due to LIP and associated site drainage in and around the powerblock and controlled area. All applicants would be expected to prepare a flood inundation map for their sites showing the effects of LIP. Depending on a site's climate, applicants may need to consider different types of storms, including general and tropical storms, to obtain a bounding LIP value for a precipitation event that produces plausible maximum associated flooding effects and flood event duration, in addition to water level variations. If applicants choose to rely on a site-specific precipitation estimate from sources other than the *Hydrometeorological Reports* (or HMRs) prepared by the National Weather Service,[6] then the staff would describe how those site-specific estimates would be reviewed. Review instructions for riverine-based floods currently in this section would be migrated into Section 2.4.3 (''Streams and Rivers'').

Groundwater—SRP Section 2.4.12: The staff intends to propose in the future that this SRP section will be updated based on the experience gained through the review of the recent design certification (DC)/ESP/COL applications. The main purpose of this SRP section is to establishing the future maximum groundwater elevations associated with the reactor site and its environs. In examining the water table, this section also discusses the pathway and travel time of potential plumes containing radionuclide contaminants. In connection with any radionuclide fate and transport analysis, the staff must consider the effects of any geotechnical backfill used during site construction on groundwater flow. The review activities associated with the specific engineering properties of backfill are reviewed in SRP Section 2.5.4, ''Stability of Subsurface Materials and Foundations.'' Review activities associated with the groundwater monitoring programs required by the regulations would be incorporated into one section describing groundwater use and characteristics, aquifers, pathways and, radionuclide fate and transport scenarios in SRP Section 2.4.13, ''Accidental Releases of Radioactive Liquid Effluents in Ground and Surface Water.'' Content from DC/COL–ISG–014, ''Assessing the Radiological Consequences of Accidental Releases of Radioactive Materials from Liquid Waste Tanks in Ground and Surface Waters for Combined License Applications,'' would be incorporated into this new SRP section.

Probabilistic Flood Hazard Analyses in the SRP

Following publication of the 1995 PRA *Policy Statement,* the Advisory Committee on Reactor Safeguards and the Advisory Committee on Nuclear Waste prepared a White Paper defining certain PRA-related terms. In that White Paper, designated SECY–98–144, the two NRC Advisory Committees defined what was meant by a *risk-informed, performance-based approach.* A *risk-informed approach* was defined to be a regulatory decision-making philosophy whereby risk insights are considered together with other factors to establish requirements that better focus licensee and regulatory attention on design and operational issues commensurate with their importance to health and safety. A risk-informed approach enhances the traditional approach by: (a) Allowing explicit consideration of a broader set of potential challenges to safety, (b) providing a logical means for prioritizing these challenges based on risk significance, operating experience, and/or engineering judgment, (c) facilitating consideration of a broader set of resources to defend against these challenges, (d) explicitly identifying and quantifying sources of uncertainty in the analysis, and (e) leading to better decision-making by providing a means to test the sensitivity of the results to key assumptions. Where appropriate, a risk-informed regulatory approach can also be used to reduce unnecessary conservatism in deterministic approaches, or can be used to identify areas with insufficient conservatism and provide the bases for additional requirements or regulatory actions.

SECY–98–144 also noted that the Commission's regulations requirements that are either prescriptive or *performance-based.* A prescriptive requirement specifies particular features, actions, or programmatic elements to be included in the design or process, as the means for achieving a desired objective. A performance-based requirement relies upon measurable (or calculable) outcomes (*i.e.,* performance results) to be met, but provides more flexibility to the licensee as to the means of meeting those outcomes.

Risk-informed, performance-based approaches are becoming more widespread in regulatory decision-making owing to improved methods, models, and approaches. Probabilistic seismic hazard analysis is just one example that has been in use in regulatory applications since the early 1980s. As the staff prepares updates to Chapter 2.4 of the SRP in FY19, the staff intends to seek stakeholder views on review methods and acceptance criteria that might be appropriate for implementation in the context of probabilistic flood hazard analyses for nuclear power plants. Later in FY19, the staff will issue a second **Federal Register** Notice announcing a public meeting on this topic to be held in connection with additional SRP updates for Chapter 2.4.

Specific Changes to Chapter 2.4 SRP Sections Covered in This Document

In light of the new review philosophy envisioned for future license applications (as described above), the staff seeks public comment on other specific revisions proposed in the following SRP chapters. Electronic copies of these SRP chapters are available through the NRC's Agencywide Documents Access and Management System (ADAMS), at *http://www.nrc.gov/reading-rm/adams.html,* under the ADAMS accession numbers indicated below along with a summary of the section-specific changes.

Tsunami—SRP Section 2.4.6 (ADAMS Accession No. ML18190A200): New language has been proposed to this SRP section reflecting the nuances of the recently-completed 10 CFR 50.54(f) flooding reviews (for example, the potential for multiple water surface elevations across the reactor site due to

[5] This information would still be called for in any EIS/EA prepared for the site as currently required by 10 CFR part 51.

[6] Available on-line at *http://nws.noaa.gov/oh/hdsc/studies/pmp.html.*

variable site topography; the need to account for impact of combined hazard effects on estimated water surface elevations; consideration of the impact of associated effects on the design of SSCs important to safety; etc.). The reference list has also been amended to now only cite the Commission's regulations as well as those NRC regulatory guides pertinent to the tsunami review. The staff made this decision taking into account two factors. The first is that approximately 20 licensees recently completed tsunami-based flood evaluations in connection with the 10 CFR 50.54(f) request. The respective analyses were computer-based and reflected an up-to date knowledge of tsunami wave science as well as associated generating mechanisms. The second factor is that the staff intends to prepare a knowledge management document in the future that will summarize the results of those 10 CFR 50.54(f) reviews bearing on tsunami risk. That knowledge management document will also address current scientific literature on the subject and will include a summary of NRC-sponsored tsunami research produced over the last decade.

Channel Migration or Diversions—SRP Section 2.4.9 (ADAMS Accession No. ML18190A201): New language placing increased emphasis on the use of spatial data sets has been proposed for this SRP section. There are new recommendations encouraging the reviewer to consult aerial and satellite imagery that is now widely available. When reviewed in time series, temporal changes in the locations of streams and/or rivers can confirm whether this flood-causing mechanism is present at a particular site. Additional language has also been added to reflect the staff's intent that if a site is found to be susceptible to flooding due to channel migration or diversion, the applicant would then need to review this flood-causing mechanism in the context of a riverine-type flood, as outlined in SRP Section 2.4.3 (''Streams and Rivers''). Lastly, the reference list has also been limited to essentially citing the Commission's regulations as well as those NRC regulatory guides pertinent to the channel migration or diversion review.

Specific Changes to SRP Chapter 2.3 (''Meteorology'') Section Covered in This Document

A revision to SRP Section 2.3.3 (''Onsite Meteorological Measurement Programs'') is also being proposed that captures lessons-learned from the staff's review of DC, ESP, and COL applications received during the previous decade.

Changes to SRP Section 2.3.3 were made to update the text with editorial and clarifying statements, including utilizing consistent terminology within this SRP section and within planned updates to the other SRP Chapter 2.3 sections. For example, the term ''atmospheric diffusion'' was replaced with ''atmospheric dispersion'' because atmospheric dispersion is generally recognized as having two components: Transport and diffusion. The term ''atmospheric stability class'' was also replaced with ''atmospheric stability'' due to the recognition that newer atmospheric dispersion models may be using direct measurements of atmospheric turbulence instead of classifying atmospheric stability into seven district classes as is currently discussed in Regulatory Guide 1.23, Revision 1.[7] Previous standard boiler-plate statements in the SRP that are not applicable to this SRP section were also eliminated and the suite of references were updated as well.

The staff plans on making additional revisions to some of the remaining SRP sections in Chapter 2.3 in the next fiscal year.

The staff intends to conduct a public meeting later this calendar year to discuss the changes being proposed to SRP Chapters 2.3 and 2.4. The timing and location of that public meeting will be announced in the **Federal Register** at a later date.

IV. Further Information

In addition to the lessons-learned from the section 50.54(f) reviews, the changes proposed to SRP Chapter 2 also reflect the current staff reviews, methods, and practices based on lessons-learned from the NRC's reviews of design certification and combined license applications completed since the last revision of this chapter.

Following NRC staff evaluation of public comments, the NRC intends to finalize SRP Sections 2.4.6, 2.4.9, and 2.3.3 in ADAMS and post it on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.* The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

V. Backfitting and Issue Finality

Issuance of this draft SRP section, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. The draft SRP positions, if finalized, would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff directed at the NRC staff with respect to their regulatory responsibilities.

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. The NRC staff has no intention to impose the SRP positions on current licensees or already-issued regulatory approvals either now or in the future.

The NRC staff does not intend to impose or apply the positions described in the draft SRP to existing (already issued) licenses and regulatory approvals. Hence, the issuance of a final SRP, even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52, would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff

[7] Entitled ''Meteorological Monitoring Programs for Nuclear Power Plants.''

does not, at this time, intend to impose the positions represented in the draft SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the draft SRP in a manner which does not provide issue finality as described in the applicable issue finality provisions, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

VI. Availability of Documents

The documents identified in the following table are available to interested persons through the following methods, as indicated.

Document	ADAMS Accession No.
Draft NUREG–0800, Section 2.4.6, ''Tsunami Hazards''	ML18190A200
Current Revision of NUREG–0800, Section 2.4.6, ''Tsunami Hazards''	ML070160659
Draft revision to NUREG–0800, Section 2.4.9, ''Channel Migration or Diversion''	ML18190A201
Current revision to NUREG–0800, Section 2.4.9, ''Channel Migration or Diversion''	ML070730434
The redline-strikeout version comparing the Revision 4 of Draft NUREG–0800, Section 2.4.6, ''Tsunami Hazards'' and the current version of Revision 3	ML18267A055
The redline-strikeout version comparing the draft Revision 4 of Draft revision to NUREG–0800, Section 2.4.9, ''Channel Migration or Diversion'' and the current version of Revision 3	ML18264A035
Draft NUREG–0800, Section 2.3.3, ''Onsite Meteorological Measurements Program''	ML18183A446
Current Revision NUREG–0800, Section 2.3.3, ''Onsite Meteorological Measurements Program''	ML063600394
The redline-strikeout version comparing the draft Revision 4 of Draft revision to NUREG–0800, Section 2.3.3, ''Onsite Meteorological Measurements Program'' and the current version of Revision 3	ML18267A076

Dated at Rockville, Maryland, this 25th day of September, 2018.

For the Nuclear Regulatory Commission.

Jennivine K. Rankin,

Acting Chief, Licensing Branch 3, Division of Licensing, Siting and Environmental Analysis, Office of New Reactors.

APPENDIX: Proposed Definitions

▪ *Active flood protection feature:* A flood protection feature that requires the change of a component's state in order for it to perform as intended. Examples include sump pumps, portable pumps, isolation and check valves, flood detection devices (*e.g.,* level switches), and flood doors (*e.g.,* watertight doors).

▪ *Associated effects:* Defined to include those factors such as wind waves and run-up effects; hydrostatic loading; hydrodynamic loading, including debris and water velocities; effects caused by sediment deposition and erosion; concurrent site conditions, including adverse weather conditions; and groundwater ingress.

▪ *Cliff-edge effect:* A relatively-large increase in the safety consequences due to a relatively small increase in flood severity (*e.g.,* flood height (elevation), associated effects, or flood event duration).

▪ *Concurrent hazard:* A hazard that occurs along with the occurrence of another hazard as a result of a common cause (*e.g.,* local intense precipitation and/or riverine flood event concurrent with a storm surge event caused by the same hurricane).

▪ *Consequential flooding:* For Construction Permits, Operating Licenses, and COL applications, a term used to identify conditions in which the flood severity exceeds the capability of protection features (if available), including considerations for flood level, duration and/or associated effects, such that SSCs important-to-safety may be impacted. For ESP applications, the flood severity is expected to be in reference to the site characteristic flood. Consequential flooding may occur for events that are less severe and with differing characteristics (*e.g.,* shorter warning time) than the deterministically defined probable maximum events.

▪ *Flood event duration:* Defines the length of time that a flood event affects the site. Flood event duration typically begins with conditions being met for entry into a flood procedure or notification of an impending flood and end when the plant is in a safe and stable state. It typically includes site warning time (or preparation time, if available) and period of inundation and recession.

▪ *Flood hazard:* Those hydrometeorologic, geoseismic, or structural failure phenomena (or combination thereof) that may produce flooding at or near nuclear power plant site.

▪ *Flood-response SSCs:* SSCs that may be used to maintain key safety functions during conditions that might occur during an external flood scenario, including SSCs that are indirectly related to maintenance of key safety functions (*e.g.,* barriers that protect SSCs from floodwaters or other related effects).

▪ *Local intense precipitation (LIP):* A locally-heavy rainfall event, which is typically defined by specifying three parameters: Total rainfall depth, total rainfall duration, and spatial extent (area). LIP is typically associated with small-scale events over geographic areas on the scale of the reactor powerblock and the controlled area (typically on the order of one to ten mi^2) and using an assumption that the short-term rainfall rate is aerially uniform although the rainfall rate (intensity) typically varies over the total rainfall event duration. Although the rainfall duration parameter selected as part of evaluating this flood-causing mechanism will depend on site-specific characteristics (*e.g.,* site drainage, susceptibility to ponding of water, etc.), LIP events are typically associated with a relatively short duration (*e.g.,* 1- to 6-hrs) of intense rainfall compared to the duration of rainfall events applied to the evaluation of basin-wide flooding involving streams and rivers. Smaller-scale intense rainfall events may be imbedded within longer rainfall events for streams and rivers and, depending on site drainage characteristics, may affect a reactor site for longer durations. In the context of the Standard Review Plan, LIP is defined generically and is not limited to stylized deterministic events, such as the so-called 1-hr, 1- mi^2, probable maximum precipitation (PMP) event with specified duration and temporal distribution that produces the maximum rainfall inundation at a given plant site.

▪ *Passive flood protection feature:* A flood protection feature that does not require the change of state of a component in order for it to perform as intended. Examples include dikes, berms, sumps, drains, basins, yard drainage systems, walls, floors, structures, penetration seals, and barriers exterior to the immediate plant area that is under licensee control.

▪ *Powerblock elevation* (for purposes of plant design and flood hazard assessment): The as-built elevation of the ground surface in the area of the site's powerblock.

[FR Doc. 2018–21140 Filed 9–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Structural Analysis

The ACRS Subcommittee on Structural Analysis will hold a meeting on October 3, 2018, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, October 3, 2018—1:00 p.m. Until 4:00 p.m.

The Subcommittee will review the Nuclear Regulatory Commission (NRC) Office of Nuclear Regulatory Research report NUREG/CR–7237, ''Correlation of Seismic Performance in Similar SSCs (Structures, Systems, and

Components).'' The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate. This briefing is independent of the ACRS Research Quality Review.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–5844 or Email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702 or 301–415–8066) to be escorted to the meeting room.

Dated: September 21, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–21120 Filed 9–27–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0178]

Proposed Revisions to Standard Review Plan Section 2.5.3, Surface Deformation

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on draft NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 2.5.3, ''Surface Deformation.'' SRP Section 2.5.3, Surface Deformation, was last updated in 2014. This proposed update to the SRP focuses on risk-informing the staff's review in this area on the potential for tectonic or non-tectonic surface deformation that could adversely affect the safe operation of a nuclear power plant at the proposed site.

DATES: Comments must be filed no later than October 29, 2018. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0178. Address questions about NRC dockets 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:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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: Mark D. Notich, Office of New Reactors, telephone: 301–415–3053; email: *Mark.Notich@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0178 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 *http://www.regulations.gov* and search for Docket ID NRC–2018–0178.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then 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 draft revision and current revision to NUREG–0800, Section 2.5.3, ''Surface Deformation'' are available in ADAMS under Accession Nos. ML18183A044 and ML13316C064, respectively. The redline-strikeout version comparing the draft Revision 6 and the current version of Revision 5 is available in ADAMS under Accession No. ML18267A203.
- *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–2018–0178 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 *http://www.regulations.gov* and 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. Background

In the area of geology, seismology, and geotechnical engineering, section 100.23(c) of title 10 of the *Code of Federal Regulations* (10 CFR) requires, in part, that applicants for a construction permit, operating license, early site permit, or combined license evaluate the potential for tectonic and non-tectonic surface deformation at a site. Therefore, the consideration of information related to the potential for tectonic and non-tectonic surface deformation is important to the staff review guidance in SRP Section 2.5.3.

Since the last update to SRP Section 2.5.3 in 2014, the staff completed review of licensee submittals of reevaluated seismic hazards in response to 10 CFR 50.54(f) information requests that were sent to licensees after the near-term task force review of the Fukushima Dai-ichi accident (ADAMS Accession No. ML12056A046). In addition to reviewing the hazard reevaluations for the operating reactor fleet submitted in response to the 10 CFR 50.54(f) information requests, the NRC staff remained actively engaged in several ESP and COL application reviews for new power reactors. In connection with those reviews, ESP and COL applicants evaluated the potential for tectonic and non-tectonic surface deformation consistent with the guidance found in the SRP. One of the lessons-learned from the 10 CFR 50.54(f) information reviews and the reviews for new power reactors was that a risk-informed focus on hazards most likely to affect a site would be appropriate for the consideration of the potential for tectonic and non-tectonic surface deformation at a site.

III. Discussion of Update Rationale

Staff's 2018 Update Philosophy

Consistent with the Commission's approach to risk-informed regulation, the staff proposes that SRP Section 2.5.3 be simplified to focus the review on the potential for tectonic and non-tectonic surface deformation that could adversely affect the safe operation of a nuclear power plant at the proposed site.

Since the 2014 update to SRP Section 2.5.3, the staff completed the review of licensee submittals of reevaluated seismic hazards in response to the 10 CFR 50.54(f) information request regarding the Fukushima Dai-ichi nuclear power plant accident in 2011. A risk-informed focus was successfully used for the 10 CFR 50.54(f) flooding reviews and allowed licensees to focus the reevaluation on those hazards that are most likely to impact the site and adversely affect SSCs important to safety. Using this approach, licensees provided a brief explanation of why a particular hazard does not affect the site and a more detailed evaluation for those hazards that could adversely affect the safe operation of the plant. Due to its success, this risk-informed approach is being incorporated into various sections of the SRP.

Upon review of the various causes of surface deformation described in SRP Section 2.5.3, the staff proposes that only the mechanisms that could adversely affect the functionality of the SSCs important to safety need to be described in detail in future license applications. Applicants would still be expected to perform their due diligence and consider the potential for tectonic and non-tectonic surface deformation identified in SRP Section 2.5.3 against the applicable siting criteria in 10 CFR part 100, but the staff proposes that the applicant's level of detail be focused on the potential for tectonic and non-tectonic surface deformation most likely to impact the site and adversely affect SSCs important to safety.

Specific Changes to SRP Section 2.5.3

Changes to SRP Section 2.5.3 include technical editing, as appropriate, to improve the readability of the various SRP subsections as well as to better convey lessons-learned from the recent 10 CFR 50.54(f) reviews. The term ''safety-related SSCs'' is replaced with the term ''SSCs important to safety'' to better align with the regulatory terminology in 10 CFR parts 50 and 54. The references in SRP Section 2.5.3 were also updated, deleted or added, as appropriate.

Technical changes to SRP Section 2.5.3 include the addition of anthropogenic activities as a possible cause of non-tectonic surface deformation and the aforementioned focused review of those causes of surface deformation that could adversely affect the safe operation of a nuclear power plant at the proposed site. Similar to the 2014 update to SRP 2.5.3, the risk-informed approach to the 2018 update focuses on the distinction between the different types of surface deformation, primarily tectonic and non-tectonic deformation. Surface deformation includes non-tectonic deformation due to dissolution, salt diapirism, and anthropogenic activities, such as mine collapse. The addition of anthropogenic activities as a potential source of non-tectonic surface deformation is in keeping with recognized mechanisms of non-tectonic deformation that could potentially affect a proposed nuclear power plant site. The acceptance review section was also revised to reflect the changes made to the Office of New Reactors' (NRO) office instruction related to acceptance reviews.

IV. Further Information

The NRC seeks public comment on the proposed draft section revision of SRP Section 2.5.3. The changes to SRP Chapter 2 reflect the current staff reviews, methods, and practices based on lessons learned from the NRC's reviews of design certification and combined license applications completed since the last revision of this chapter. The draft SRP section would also provide guidance for reviewing an application for a combined license under 10 CFR part 52.

Following NRC staff evaluation of public comments, the NRC intends to finalize SRP Section 2.5.3 in ADAMS and post it on the NRC's public website at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*. The SRP is guidance for the NRC staff. The SRP is not a substitute for the NRC regulations, and compliance with the SRP is not required.

V. Backfitting and Issue Finality

Issuance of this draft SRP section, if finalized, would not constitute backfitting as defined in 10 CFR 50.109, (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is guidance directed to the NRC staff with respect to its regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in guidance intended for use by only the staff are not matters that constitute backfitting as that term is defined in 10 CFR 50.109(a)(1) or involve the issue finality provisions of 10 CFR part 52.

2. *Backfitting and issue finality—with certain exceptions discussed below—do not apply to current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, the subject of either the Backfit Rule or any

issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions of 10 CFR part 52 were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever a 10 CFR part 50 operating license applicant references a construction permit or a 10 CFR part 52 combined license applicant references a license (*e.g.,* an early site permit) and/or an NRC regulatory approval (*e.g.,* a design certification rule) for which specified issue finality provisions apply.

The NRC staff does not currently intend to impose the positions represented in this draft SRP section in a manner that constitutes backfitting or is inconsistent with any issue finality provision of 10 CFR part 52. If in the future the NRC staff seeks to impose positions stated in this draft SRP section in a manner that would constitute backfitting or be inconsistent with these issue finality provisions, the NRC staff must make the showing as set forth in the Backfit Rule or address the regulatory criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

3. *The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licensees either now or in the future (absent a voluntary request for a change from the licensee, holder of a regulatory approval or a design certification applicant).*

The NRC staff does not intend to impose or apply the positions described in this draft SRP section to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals. Hence, the issuance of this SRP guidance—even if considered guidance subject to the Backfit Rule or the issue finality provisions in 10 CFR part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with these issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that would constitute backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff must make a showing as set forth in the Backfit Rule or address the criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

Dated at Rockville, Maryland, on September 25, 2018.

For the Nuclear Regulatory Commission.

Jennivine K. Rankin,

Acting Chief, Licensing Branch 3, Division of Licensing, Siting and Environmental Analysis, Office of New Reactors.

[FR Doc. 2018–21165 Filed 9–27–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2018–2; Order No. 4828]

Public Inquiry on Service Performance Measurement Systems

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service request proposing modifications to its market dominant service performance measurement systems. This document informs the public of this proceeding and the technical conference, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 12, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On September 20, 2018, the Postal Service filed a notice, pursuant to 39 CFR 3055.5, proposing modifications to its market dominant service performance measurement systems.[1] The systems that are the subject of this proceeding were recently approved for implementation on July 5, 2018, in Docket No. PI2015–1.[2] Accompanying the Notice is a library reference, which contains a copy of the United States Postal Service, Service Performance Measurement plan, revised September 20, 2018 (both redline and clean versions), a chart outlining the proposed modifications, and other associated materials.[3]

The Postal Service's proposed modifications focus on accurately describing procedures in regard to ''Non-Airlift Days.'' These are typically days before a non-Monday holiday where air transportation is limited on the day of mail induction (the day before the holiday) or the following day (the day of the holiday). Notice at 1. The Postal Service proposes to modify its service performance measurement plan for mailpieces that are dropped at a collection box, business mail chute, or Post Office location on a Non-Airlift Day to start-the-clock on measurement on the date of the following applicable acceptance day. *Id.* at 2.

Other proposed modifications focus on correcting areas of the service performance measurement plan to reflect current operations. These include removing references to certain parcels products that were recently moved from the market dominant to the competitive category, a product name change, and other applicable updates.

Interested persons are invited to comment on any or all aspects of the Postal Service's proposed modifications concerning the service performance measurement systems. Comments are due October 12, 2018. The Commission does not anticipate the need for reply comments at this time. The Commission intends to evaluate the comments received and use those suggestions to help carry out its service performance measurement responsibilities under the Postal Accountability and Enhancement Act. Material filed in this docket will be available for review on the Commission's website, *http://www.prc.gov.*

It is ordered:

1. Docket No. PI2018–2 is established for the purpose of considering the Postal Service's proposed modifications to its market dominant service performance measurement systems.

2. Interested persons may submit written comments on any or all aspects of the Postal Service's proposals no later than October 12, 2018.

3. Lyudmila Y. Bzhilyanskaya is designated to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register.**

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–21136 Filed 9–27–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] United States Postal Service Notice of Service Performance Measurement System Modification, September 20, 2018 (Notice).

[2] Docket No. PI2015–1, Order Approving Use of Internal Measurement Systems, July 5, 2018; Docket No. PI2015–1, Docket No. PI2015–1, Errata to Order No. 4697, August 21, 2018.

[3] Library Reference USPS–LR–PI2018–2/1, September 20, 2018.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84275; File No. SR–NYSEArca–2018–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Regarding Investments of the REX BKCM ETF

September 24, 2018.

On June 26, 2018, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to modify certain investments of the REX BKCM ETF (''Fund''), a series of the Exchange Listed Funds Trust (''Trust''), the shares (''Shares'') of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E, Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on July 3, 2018.[3]

On August 14, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal [7]

The Trust is registered under the Investment Company Act of 1940 (''1940 Act'').[8] The Shares are listed and traded on the Exchange under Commentary .01 to NYSE Arca Rule 8.600–E,[9] which sets forth the generic criteria applicable to the listing and trading of Managed Fund Shares on the Exchange.[10] According to the Exchange, the investment objective of the Fund is to seek total return. The Fund will seek to achieve its investment objective, under normal market conditions, by obtaining investment exposure to an actively managed portfolio consisting of equity securities of cryptocurrency-related and other blockchain technology-related companies.[11]

The Fund intends to change its investment strategy such that the Shares would no longer qualify for generic listing on the Exchange. Specifically, the Fund's portfolio would continue to satisfy all of the generic listing requirements except that:

- The Fund, through its Subsidiary,[12] would be able to invest up to 15% of its total assets in shares of the Bitcoin Investment Trust (''GBTC''), an over-the-counter (''OTC'') equity security, which investments would not meet the requirements of Commentary .01(a)(1)(E) to Rule 8.600–E; and
- the Fund and the Subsidiary would be able to invest in the securities of non-exchange-traded open-end investment companies (*i.e.,* mutual funds), which investments would not meet the requirements of Commentary .01(a)(1)(A)–(E) to Rule 8.600–E.[13]

According to the Exchange, GBTC is a private, open-ended trust available to accredited investors that derives its value from the price of bitcoin.[14] The Subsidiary's investment in GBTC will be reflected in the net asset value of the Fund's Shares based on the closing price of GBTC on OTC Markets Group, Inc.'s (''OTC Markets'') OTCQX Best Marketplace.[15] According to the Exchange, GBTC has demonstrated significant liquidity and the liquid market in the shares of GBTC alleviates valuation concerns. In addition, the Exchange represents that substantial and sustained trading volume in shares of GBTC, as well as the limitation of such investment to 15% of the Fund's assets, would help to limit any adverse effect on the Fund's arbitrage mechanism.[16]

The Exchange represents that the investments in securities of non-exchange-traded open-end investment companies will not be principal investments of the Fund. These investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. According to the Exchange, such securities have a net asset value based on the value of securities and financial assets the investment company holds.[17]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2018–40 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83546 (June 28, 2018), 83 FR 31214 (July 3, 2018) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 83844 (Aug. 14, 2018), 83 FR 42178 (Aug. 20, 2018). The Commission designated October 1, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] The Commission notes that additional information regarding, among other things, the Shares, Fund, investment objective, permitted investments, investment strategies and methodology, investment restrictions, investment adviser and subadviser, creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures, can be found in the Notice (*see supra* note 3) and the Registration Statement (*see infra* note 8), as applicable.

[8] On May 7, 2018, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 and the 1940 Act relating to the Fund (File Nos. 333–180871 and 811–22700) (''Registration Statement''). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30445 (Apr. 2, 2013) (File No. 812–13969).

[9] The Shares commenced trading on the Exchange on May 16, 2018. *See* Notice, *supra* note 3, 83 FR at 31215.

[10] *See* NYSE Arca Rule 8.600–E (permitting the listing and trading of ''Managed Fund Shares,'' defined as a security that (a) represents an interest in a registered investment Company (''Investment Company'') organized as an open-ended management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value).

[11] *See* Notice, *supra* note 3, 83 FR at 31215.

[12] According to the Exchange, the Fund expects to obtain exposure to certain investments by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund's taxable year, in a wholly-owned and controlled Cayman Islands subsidiary (''Subsidiary''). *See id.* at 31216.

[13] *See id.* at 31216, 31218. The Exchange represents that the Fund will not hold listed or OTC derivatives based on bitcoin or other cryptocurrencies. *See id.* at 31216 nn.10–11.

[14] *See id.* at 31216 n.9. The Exchange states that GBTC's investment objective is for the net asset value per share to reflect the performance of the market price of bitcoin, less GBTC's expenses. *See id.* at 31218.

[15] *See id.* at 31216.

[16] *See id.* at 31218. According to the Exchange, shares of GBTC have a minimum monthly trading volume of 250,000 shares, or a minimum notional volume traded per month of $25 million, averaged over the last six months, and a market value in excess of the required $75 million. Shares of GBTC have been quoted on OTC Markets' OTCQX Best Marketplace under the symbol ''GBTC'' since March 26, 2015. The Exchange represents that, as of May 7, 2018, approximately 187,572,000 shares of GBTC were outstanding, with a market capitalization of $2,807,852,840 based on the last traded price. Average trading volume for the 6 months ended May 7, 2018, was 7,107,650 shares per day, and total trading volume for 2017 was 1,576,551,613 shares. *See id.*

[17] *See id.* at 31218–19.

19(b)(2)(B) of the Act [18] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[19] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [20]

According to the Exchange, the Fund, through its Subsidiary, may invest up to 15% of its total assets in OTC shares of GBTC. In addition, the Exchange represents that the liquid market in the shares of GBTC alleviates valuation concerns, and that the substantial and sustained trading volume in shares of GBTC would help to limit any adverse effect on the Fund's arbitrage mechanism. What are commenters' views on the Exchange's assertions that the liquid market in the shares of GBTC alleviates valuation and arbitrage concerns? What are commenters' views on whether any premium or discount in the market price of GBTC compared to the value of its portfolio assets would affect valuation and arbitrage concerns? What are commenters' views, generally, on whether exposure to spot bitcoin markets through investment in GBTC would render the Shares of the Fund susceptible to manipulation?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[21]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 19, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 2, 2018. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[22] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2018–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–40 and should be submitted by October 19, 2018. Rebuttal comments should be submitted by November 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21107 Filed 9–27–18; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(2)(B).

[19] *Id.*

[20] 15 U.S.C. 78f(b)(5).

[21] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[22] *See* Notice, *supra* note 3.

[23] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84276; File No. SR–NYSE–2018–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend NYSE Rule 104 Governing Transactions by Designated Market Makers

September 24, 2018.

On July 31, 2018, New York Stock Exchange LLC (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 104 governing transactions by designated market makers. The proposed rule change was published for comment in the **Federal Register** on August 16, 2018.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83821 (Aug. 10, 2018), 83 FR 40808 (Aug. 16, 2018).

Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 30, 2018. 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 November 14, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2018–34).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21108 Filed 9–27–18; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84274; File No. SR–CBOE–2018–063]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Rename the "Extended Trading Hours" to "Global Trading Hours" in Its Rules and Fees Schedule

September 24, 2018.

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 September 18, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rename the ''Extended Trading Hours'' to ''Global Trading Hours'' in its rules and Fees Schedule.

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 purpose of this filing is to reflect in the Exchange's rulebook and Fees Schedule, a non-substantive branding change with respect to the Exchange's ''Extended Trading Hours'' session.[3] Particularly, references to ''Extended Trading Hours'' or ''ETH'' will be deleted and revised to state the new session name of ''Global Trading Hours'' or ''GTH'', respectively, throughout the Exchange's rulebook and Fees Schedule. No other substantive changes are being proposed in this filing. The Exchange represents that these changes are concerned solely with the administration of the Exchange and do not affect the meaning, administration, or enforcement of any rules of the Exchange or the rights, obligations, or privileges of Exchange members or their associated persons is any way.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act10,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed change is a non-substantive change and does not impact the governance, ownership or operations of the Exchange. The Exchange believes that by ensuring that its rules and Fees Schedule reflect the new branding name for the Extended Trading Hours session, the proposed rule change would reduce potential investor or market participant confusion.

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 proposed rule change does not address competitive issues, but rather is concerned solely with updating the Exchange's rules and Fees Schedule to reflect the abovementioned name change.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''Extended Trading Hours'' session refers to the hours outside of Regular Trading Hours during which the Exchange may be open for trading as set forth in Rule 6.1 and may be referred to as a ''trading session'' in the Rules.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and paragraph (f) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–063 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–2018–063. 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. All submissions should refer to File Number SR–CBOE–2018–063 and should be submitted on or before October 19, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–21110 Filed 9–27–18; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.875 percent for the October–December quarter of FY 2019.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Dianna L. Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2018–21118 Filed 9–27–18; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15675; Florida Disaster Number FL–00138 Declaration of Economic Injury]

Administrative Declaration Amendment of an Economic Injury Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of an Economic Injury Disaster Loan (EIDL) declaration for the State of Florida, dated 09/04/2018.

Incident: Red Tide Algal Bloom.

Incident Period: 11/01/2017 and continuing.

DATES: Issued on 09/20/2018.

Economic Injury (EIDL) Loan Application Deadline Date: 06/04/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of an Economic Injury declaration for the State of FLORIDA dated 09/04/2018, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Pinellas

Contiguous Counties:

Florida: Pasco

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: September 20, 2018.

Linda E. McMahon,

Administrator.

[FR Doc. 2018–21113 Filed 9–27–18; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 10570]

Certification Pursuant to Section 7041(a)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a)(1) of the Department of State, Foreign Operations, and Related

Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141), I hereby certify that the Government of Egypt is sustaining the strategic relationship with the United States and meeting its obligations under the 1979 Egypt-Israel Peace Treaty.

This determination shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: August 20, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–21187 Filed 9–27–18; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 10569]

Determination Pursuant to Section 7041(A)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017

By virtue of the authority vested in me as Secretary of State pursuant to section 7041(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2017 (Div. J, Pub. L. 115–31) (the ''Act''), I hereby determine that it is important to the national security interest of the United States to waive the certification requirement under section 7041(a)(3)(A) of the Act. I hereby waive that requirement.

This determination shall be published in the **Federal Register** and shall be reported to Congress, along with the accompanying Memorandum of Justification.

Dated: August 20, 2018.

Michael R. Pompeo,

Secretary of State.

[FR Doc. 2018–21189 Filed 9–27–18; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice: 10564]

Notice of Public Meeting of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a meeting of the Department of State's International Telecommunication Advisory Committee (ITAC). The ITAC will meet on October 17, 2018, at AT&T, 1120, 20th Street NW, Washington DC at 2:00 p.m. to review the results of recent multilateral meetings', update on preparations for the International Telecommunication Union (ITU) 2018 Plenipotentiary Conference (PP–18), and discuss preparations for other upcoming multilateral meetings at the ITU. The meeting will focus on the following topics:

1. ITU Council
2. CITEL Meetings
3. Preparations for the ITU PP–18
4. Regional PP–18 Preparatory Groups
5. Asia Pacific Economic Cooperation Telecommunications Working Group 58 (TEL 58)
6. Organization for Economic Cooperation and Development (OECD) Committee on Digital Economy Policy (CDEP)
7. G20 Digital Economy Task Force
8. G7 Innovation/ICT Track

PP–18 will take place in Dubai, United Arab Emirates, from October 29 to November 17, 2018. The Plenipotentiary Conference, which takes place every four years, is the highest policy-making body of the ITU. PP–18 is expected to determine the overall policy direction of the ITU; adopt the strategic and financial plans for the next four years; and elect the 48 members of Council, 12 members of the Radio Regulations Board, and five senior ITU elected officials.

The OECD is scoping possible principles to foster trust in and adoption of artificial intelligence. The Department of State would welcome any written comments on this work to the ITAC email address.

Attendance at the ITAC meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting at the invitation of the chair. Persons wishing to request reasonable accommodation during the meeting should send their requests to *ITAC@state.gov* no later than October 11, 2018. Requests made after that time will be considered, but might not be able to be accommodated.

Further details on this ITAC meeting will be announced through the Department of State's email list, *ITAC@lmlist.state.gov.* Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents. The Department welcomes any U.S. citizen or legal permanent resident to remain on or join the ITAC listserv by registering by email via *ITAC@state.gov* and providing his or her name, email address, telephone contact and the company, organization, or community that he or she is representing, if any. Please send all inquiries to *ITAC@state.gov.*

Adam W. Lusin,

Director, Multilateral Affairs, International Communications and Information Policy, U.S. Department of State.

[FR Doc. 2018–21170 Filed 9–27–18; 8:45 am]

BILLING CODE 4710–07–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21083]

National Express LLC—Acquisition of Control—Wise Coaches, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On August 31, 2018, National Express LLC (National Express) and Alan Wise (collectively, Applicants), noncarriers, jointly filed an application under 49 U.S.C. 14303 for National Express to acquire control of Wise Coaches, Inc. d/b/a Wise Coach of Nashville (Wise). The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 & 1182.8.

DATES: Comments must be filed by November 13, 2018. Applicants may file a reply by November 27, 2018. If no opposing comments are filed by November 13, 2018, this notice shall be effective on November 14, 2018.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21083 to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, send one copy of comments to National Express' representative: Andrew K. Light, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 W Market Street, Suite 1400, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher (202) 245–0355. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: According to the application, National Express is a non-carrier holding company organized under the laws of the state of Delaware that is indirectly controlled by a British corporation, National Express Group, PLC (Express Group). (Appl. 1–2.) Applicants state that Express Group indirectly controls the following passenger motor carriers (collectively, National Express Affiliated Carriers):

Aristocrat Limousine and Bus, Inc. (Aristocrat); Beck Bus Transportation Corp. (Beck); Durham School Services, L.P. (Durham); MV Student Transportation, Inc. (MV); National Express Transit—Yuma (NETY); Petermann Ltd. (Petermann); Petermann Northeast LLC (Northeast); Petermann Southwest LLC (Southwest); Petermann STSA, LLC (STSA); Queen City Transportation, LLC (Queen City); Trans Express, Inc. (Trans Express); Trinity, Inc. (Trinity); Trinity Student Delivery LLC (Trinity Student); and White Plains Bus Company, Inc., d/b/a Suburban Paratransit Service (White Plains). (*Id.* at 2.)

Applicants assert the following facts regarding the National Express Affiliated Carriers held by Express Group (*id.* at 2–7):

• Aristocrat is a passenger motor carrier providing to the public interstate passenger charter services in the states of New Jersey, New York, and Pennsylvania, and intrastate passenger charter services in the state of New Jersey. The USDOT Number assigned to Aristocrat is 141894, and Aristocrat has a ''Satisfactory'' USDOT Safety Rating. Aristocrat holds interstate carrier authority from the Federal Motor Carrier Safety Administration (FMCSA) under MC–173839.

• Beck is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services in the state of Illinois under contracts with regional and local school jurisdictions. Beck also provides charter passenger services to the public. The USDOT Number assigned to Beck is 277593, and Beck has a ''Satisfactory'' USDOT Safety Rating. Beck holds interstate carrier authority under MC–143528.

• Durham is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services in several states under contracts with regional and local school jurisdictions. Durham also provides charter passenger services to the public. The USDOT Number assigned to Durham is 350651, and Durham has a ''Satisfactory'' USDOT Safety Rating. Durham holds interstate carrier authority under MC–163066.

• MV is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services in the state of Illinois under contracts with regional and local school jurisdictions. MV also provides charter passenger services to the public. The USDOT Number assigned to MV is 1049130, and MV has a ''Satisfactory'' USDOT Safety Rating. MV holds interstate carrier authority under MC–148934.

• NETY is a passenger motor carrier primarily engaged in providing paratransit services in the area of Yuma, Ariz. The USDOT Number assigned to NETY is 2532398, and NETY has a ''Satisfactory'' USDOT Safety Rating. NETY holds interstate carrier authority under MC–960629.

• Petermann is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services in the state of Ohio under contracts with regional and local school jurisdictions. Petermann also provides charter passenger services to the public. The USDOT Number assigned to Petermann is 821384, and Petermann has a ''Satisfactory'' USDOT Safety Rating. Petermann holds interstate carrier authority under MC–364668.

• Northeast is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services, primarily in the states of Ohio and Pennsylvania under contracts with regional and local school jurisdictions. Northeast also provides charter passenger services to the public. The USDOT Number assigned to Northeast is 2058860, but Northeast does not yet have a USDOT Safety Rating. Northeast holds interstate carrier authority under MC–723926.

• Southwest is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services in the state of Texas under contracts with regional and local school jurisdictions. Southwest also provides charter passenger services to the public. The USDOT Number assigned to Southwest is 1765359, but Southwest does not yet have a USDOT Safety Rating. Southwest holds interstate carrier authority under MC–644996.

• STSA is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services, primarily in the state of Kansas under contracts with regional and local school jurisdictions. STSA also provides charter passenger services to the public. The USDOT Number assigned to STSA is 2133951, and STSA has a ''Satisfactory'' USDOT Safety Rating. STSA holds interstate carrier authority under MC–749360.

• Queen City is a passenger motor carrier primarily engaged in providing non-regulated student school bus transportation services in the metropolitan area of Cincinnati, Ohio, and charter passenger services to the public. The USDOT Number assigned to Queen City is 224683, and Queen City has a ''Satisfactory'' USDOT Safety Rating. Queen City holds interstate carrier authority under MC–163846.

• Trans Express provides interstate and intrastate passenger transportation services in the state of New York. The USDOT Number assigned to Trans Express is 530250, and Trans Express has a ''Satisfactory'' USDOT Safety Rating. Trans Express holds interstate carrier authority under MC–187819.

• Trinity is a passenger motor carrier engaged in providing non-regulated school bus transportation services in southeastern Michigan and also operates charter service to the public. The USDOT Number assigned to Trinity is 822553, but Trinity does not yet have a USDOT Safety Rating. Trinity holds interstate carrier authority under MC–364003.

• Trinity Student is a passenger motor carrier primarily engaged in providing non-regulated school bus transportation services in northern Ohio. Trinity Student also provides charter passenger services. The USDOT Number assigned to Trinity Student is 2424638, but Trinity Student does not yet have a USDOT Safety Rating. Trinity Student holds interstate carrier authority under MC–836335.

• White Plains is a passenger motor carrier and operates primarily as a provider of non-regulated school bus transportation services in the state of New York, paratransit services, and charter service to the public. The USDOT Number assigned to White Plains is 25675, and White Plains has a ''Satisfactory'' USDOT Safety Rating. White Plains holds interstate carrier authority under MC–160624.

Applicants assert the following facts about Wise (Appl. at 7–8):

• Wise is a Tennessee corporation. It operates primarily as a motor carrier providing interstate passenger charter services in the state of Tennessee and surrounding states, and intrastate passenger charter and shuttle services in the state of Tennessee. The USDOT Number assigned to Wise is 763412, and Wise has a ''Satisfactory'' USDOT Safety Rating. Wise holds interstate carrier authority under MC–343763.

Applicants state that Wise is not affiliated with any other passenger carrier that has interstate passenger motor carrier authority. (*Id.* at 8.)

According to the Application, Alan Wise holds all of the issued and outstanding equity stock of Wise. Applicants assert that National Express would acquire all of the outstanding equity stock, resulting in 100% control of Wise through the stock acquisition. (*Id.*) Applicants further state that, other than the National Express Affiliated Carriers and Wise, there are no other affiliated carriers with regulated interstate operations that are involved in this application. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result, and (3) the interest of affected carrier employees. Applicants submitted information, as required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a statement that the aggregate gross operating revenues of the National Express Affiliated Carriers and Wise exceeded $2 million for the preceding 12-month period. *See* 49 U.S.C. 14303(g).[1]

Applicants submit that the proposed transaction would have no material

[1] Parties must certify that the transaction involves carriers whose aggregate gross operating revenues exceed $2 million, as required under 49 CFR 1182.2(a)(5).

impact on the adequacy of transportation services to the public, as Wise would continue to provide the services it currently provides using the same name. (Appl. 9.) Applicants state that Wise ''will continue to operate, but going forward, will be operating within the National Express corporate family, an organization that is very experienced in passenger transportation operations.'' (*Id.*)

According to Applicants, ''[t]he addition of Wise to the carriers held by National Express is consistent with the practices within the passenger motor carrier industry of strong, well-managed transportation organizations adapting their corporate structure to operate several different passenger carriers within the same services markets, but in different geographic areas.'' (*Id.*) Applicants assert that Wise is experienced in some of the same market segments already served by some of the National Express Affiliated Carriers. (*Id.* at 9–10.) Applicants expect the transaction to result in improved operating efficiencies, increased equipment utilization rates, and cost savings derived from economies of scale, all of which, Applicants state, would help to ensure the provision of adequate service to the public. (*Id.* at 10.) Applicants further assert that bringing Wise within the National Express corporate family would serve to enhance the viability of the overall organization and the operations of the National Express Affiliated Carriers, which would ensure the continued availability of adequate passenger transportation service for the public. (*Id.*)

Applicants also claim that neither competition nor the public interest would be adversely affected by the contemplated transaction. Applicants state that the population and demand for charter and shuttle services in Nashville, Tenn., and the surrounding area (the Service Area) have consistently grown and are expected to increase in the foreseeable future. (*Id.* at 11.) According to Applicants, Wise competes directly with other passenger charter and shuttle service providers in the Service Area, including Anchor Tours, First Class Charter, Grand Avenue, and Gray Line Nashville. (*Id.* at 11–12.) Applicants state that the Service Area is geographically dispersed from the service areas of the National Express Affiliated Carriers, and there is very limited overlap in the service areas and customer bases among the National Express Affiliated Carriers and Wise. (*Id.* at 12.) Thus, Applicants state that the impact of the contemplated transaction on the regulated motor carrier industry would be minimal at most and that neither competition nor the public interest would be adversely affected. (*Id.*)

Applicants assert that there are no significant fixed charges associated with the contemplated transaction. (*Id.* at 10.) Applicants also state that National Express does not anticipate a measurable reduction in force or changes in compensation levels or benefits to employees. (*Id.*) Applicants submit, however, that staffing redundancies could result in limited downsizing of back-office or managerial-level personnel. (*Id.*)

The Board finds that the acquisition proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our website at *www.stb.gov*.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective November 14, 2018, unless opposing comments are filed by November 13, 2018.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: September 24, 2018.

By the Board, Board Members Begeman and Miller.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2018–21142 Filed 9–27–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36217]

San Pedro Valley Railroad, LLC—Operation Exemption—San Pedro Valley Holdings, LLC in Cochise County, Ariz.

San Pedro Valley Railroad, LLC (SPVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate two rail lines being acquired by San Pedro Valley Holdings, LLC: (1) From point of connection to Union Pacific Railroad (UP) at milepost 1033.25 at or near Benson, to milepost 1040.15 at or near St. David, a distance of 6.9 miles in Cochise County, Ariz.; and (2) from point of connection to UP at milepost 1074 at or near Wilcox, to all tracks at Wilcox Yard, a total of 8,281 feet or 1.57 miles, in Cochise County (collectively, the Lines). The Lines total approximately 8.47 miles.

This transaction is related to a concurrently filed verified notice of exemption in *Gregory B. Cundiff—Continuance in Control Exemption—San Pedro Valley Railroad, LLC in Cochise County, Ariz.,* Docket No. FD 36219, in which Ironhorse Resources, Inc., seeks Board approval to continue in control of SPVR upon SPVR's becoming a Class III rail carrier.

SPVR certifies that, as a result of the proposed transaction, its projected annual revenues will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million. SPVR also certifies that the proposed transaction does not involve any interchange commitments as defined in 49 CFR 1150.43(h).

The earliest this transaction may be consummated is October 17, 2018, the effective date of the exemption (30 days after the verified notice was filed).[1] SPVR states that it intends to consummate the transaction no sooner than 30 days after the filing of this notice of exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by October 10, 2018 (at least seven days before the exemption becomes effective).

[1] SPVR filed its verified notice of exemption on August 30, 2018. On September 17, 2018, however, SPVR supplemented its verified notice to clarify references to Docket No. FD 36219. Therefore, September 17, 2018, is deemed the verified notice's filing date.

An original and 10 copies of all pleadings, referring to Docket No. FD 36217, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SPVR's counsel, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604–1228.

According to SPVR, no environmental or historic documentation or report is required pursuant to 49 CFR 1105.6(c) and 1105.8(b).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: September 25, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–21181 Filed 9–27–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval of Collections: Rail Carrier Financial Reports

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (Board) gives notice of its intent to request from the Office of Management and Budget (OMB) approval without change of the six existing collections described below. The Board previously published a notice about this collection in the **Federal Register** (July 11, 2018). That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: Comments on these information collections should be submitted by October 29, 2018.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Rail Carrier Financial Reports.'' These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael McManus, Surface Transportation Board Desk Officer: By email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503. Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *pra@stb.gov.*

FOR FURTHER INFORMATION CONTACT: For further information regarding these collections, contact Pedro Ramirez at (202) 245–0333 or *pedro.ramirez@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and/or summarized in the Board's request for OMB approval.

Subjects: In this notice, the Board is requesting comments on the following information collections:

Description of Collection 1

Title: Quarterly Report of Revenues, Expenses, and Income—Railroads (Form RE&I).

OMB Control Number: 2140–0013.

Form Number: Form RE&I.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: Six hours.

Frequency of Response: Quarterly.

Total Annual Hour Burden: 168 hours annually.

Total Annual ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: This collection is a report of railroad operating revenues, operating expenses and income items. It is also a profit and loss statement, disclosing net railway operating income on a quarterly and year-to-date basis for current and prior years. *See* 49 CFR 1243.1. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other federal agencies, and industry groups to monitor and assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Some of the information from these reports is compiled by the Board in our quarterly Selected Earnings Data Report, which is published on the Board's website, *https://www.stb.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Description of Collection 2

Title: Quarterly Condensed Balance Sheet—Railroads (Form CBS).

OMB Control Number: 2140–0014.

Form Number: Form CBS.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: Six hours.

Frequency of Response: Quarterly.

Total Annual Hour Burden: 168 hours annually.

Total Annual ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: This collection shows the balance, quarterly and cumulative, for the current and prior year of the carrier's assets and liabilities, gross capital expenditures, and revenue tons carried. *See* 49 CFR 1243.2. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through specific regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other federal agencies, and industry groups to assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Revenue ton-miles, which are reported in these reports, are compiled and published by the Board in its quarterly Selected Earnings Data Report, which is published on the Board's website, *https://www.stb.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Description of Collection 3

Title: Report of Railroad Employees, Service and Compensation (Wage Forms A and B).

OMB Control Number: 2140–0004.

Form Number: Wage Form A; and Wage Form B.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: No more than 3 hours per quarterly report and 4 hours per annual summation.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: No more than 112 hours annually.

Total Annual ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: This collection shows the number of employees, service hours, and compensation, by employee group (*e.g.,* executive, professional, maintenance-of-way and equipment, and transportation), of the reporting railroads. *See* 49 CFR pt. 1245. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other federal agencies and industry groups, including the Railroad Retirement Board (RRB), Bureau of Labor Statistics (BLS), and Association of American Railroads (AAR), use the information contained in the reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's website, *https://www.stb.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Description of Collection 4

Title: Monthly Report of Number of Employees of Class I Railroads (Wage Form C).

OMB Control Number: 2140–0007.

Form Number: STB Form C.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: 1.25 hours.

Frequency of Response: Monthly.

Total Annual Hour Burden: 105 hours annually.

Total Annual ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: This collection shows, for each reporting carrier, the average number of employees at mid-month in the six job-classification groups that encompass all railroad employees. *See* 49 CFR pt. 1246. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate the impact on rail employees of proposed regulated transactions, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other federal agencies and industry groups, including the RRB, BLS, and AAR, use the information contained in these reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's website, *https://www.stb.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Description of Collection 5

Title: Annual Report of Cars Loaded and Cars Terminated.

OMB Control Number: 2140–0011.

Form Number: Form STB–54.

Type of Review: Extension with change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: Four hours.

Frequency of Response: Annual.

Total Annual Hour Burden: 28 hours annually.

Total Annual ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. *See* 49 CFR pt. 1247. Information in this report is entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS, which was developed by the Board pursuant to 49 U.S.C. 11161, is used as a tool in rail rate proceedings, in accordance with 49 U.S.C. 10707(d), to calculate the variable costs associated with providing a particular service. The Board also uses URCS to carry out more effectively other of its regulatory responsibilities, including: Acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, *see* 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, *see* 49 CFR pt. 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the ''rail cost adjustment factors,'' in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings. This collection is compiled and published on the Board's website, *https://www.stb.gov/stb/industry/econ_reports.html.* There is no other source for the information contained in this report.

Description of Collection 6

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

OMB Control Number: 2140–0001.

Form Number: Form QCS.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: One hour.[1]

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 35 hours annually.

Total Annual ''Non-Hour Burden'' Cost: None identified. Filings are submitted electronically to the Board.

Needs and Uses: This collection, which is based on information contained in carload waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. *See* 49 CFR pt. 1248. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 5. This collection is compiled and published on the Board's website, *https://www.stb.gov/stb/industry/econ_reports.html.* There is no other source for the information contained in this report.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information.

[1] The 60-day notice indicated that the estimated time per report was 0.25 hours, but staff has adjusted its estimate to one hour. Therefore, the total burden hours are adjusted from 8.75 hours annually to 35 hours in this notice.

Dated: September 25, 2018.

Jeff Herzig,

Clearance Clerk.

[FR Doc. 2018–21138 Filed 9–27–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36218; Docket No. FD 36219]

Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.—Continuance in Control Exemption—San Pedro Valley Holdings, LLC in Cochise County, Ariz.; Gregory B. Cundiff, Connie Cundiff, CGX, Inc. and Ironhorse Resources, Inc.—Continuance in Control Exemption—San Pedro Valley Railroad, LLC in Cochise County, Ariz.

In Docket No. FD 36218, Gregory B. Cundiff, Connie Cundiff, CGX, Inc. (CGX), and Ironhorse Resources, Inc. (IHR),[1] (collectively, applicants) filed a verified notice of exemption under 49 CFR 1180.2(d)(2) for CGX to continue in control of San Pedro Valley Holdings, LLC (SPVH), upon SPVH's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *San Pedro Valley Holdings, LLC—Acquisition Exemption—San Pedro & Southwestern Railroad in Cochise County, Ariz.,* Docket No. FD 36216. In that proceeding, SPVH seeks an exemption under 49 CFR 1150.31 to acquire two rail lines owned by the San Pedro and Southwestern Railroad Company: (1) From point of connection to Union Pacific Railroad (UP) at milepost 1033.25 at or near Benson, to milepost 1040.15 at or near St. David, a distance of 6.9 miles in Cochise County, Ariz.; and (2) from point of connection to UP at milepost 1074 at or near Wilcox, to all tracks at Wilcox Yard, a total of 8,281 feet or 1.57 miles, in Cochise County (collectively, the Lines). The Lines total approximately 8.47 miles.

In Docket No. FD 36219, applicants filed a verified notice of exemption under 49 CFR 1180.2(d)(2) for IHR to continue in control of San Pedro Valley Railroad, LLC (SPVR), upon SPVR's becoming a Class III rail carrier. This transaction is related to a concurrently filed verified notice of exemption in *San Pedro Valley Railroad—Operator Exemption—San Pedro Valley Holdings, LLC in Cochise County, Ariz.,* Docket No. FD 36217, in which SPVR seeks an exemption under 49 CFR 1150.31 to assume operations over the Lines.

According to applicants, CGX will continue in control of SPVH upon SPVH's becoming a Class III rail carrier and will remain in control of the following Class III carriers: Crystal City Railroad, Inc; Lone Star Railroad, Inc.; Rio Valley Railroad, Inc.; and Mississippi Tennessee Holdings, Inc. Applicants state that IHR will continue in control of SPVR upon SPVR's becoming a Class III rail carrier and will remain in control of the following Class III carriers: Texas Railroad Switching, Inc.; Rio Valley Switching Company; Mississippi Tennessee Railroad, LLC; Southern Switching Company; Gardendale Railroad, Inc.; Caney Fork & Western Railroad; and Santa Teresa Southern Railroad.

The earliest these transactions may be consummated is October 17, 2018, the effective date of the exemptions (30 days after the verified notices were filed).[2] CGX and IHR state that they intend to consummate the transactions no sooner than 30 days after the filing of the notices of exemption.

Applicants state that: (1) The properties to be acquired by SPVH and operated by SPVR, and the properties of the rail carriers controlled by CGX and IHR do not connect with each other; (2) the proposed continuances in control are not part of a series of anticipated transactions that would connect the carriers with each other or any railroad in their corporate families; and (3) the transactions do not involve a Class l rail carrier. Therefore, the transactions are exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under Sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the notices contain false or misleading information, the exemptions are void ab initio. Petitions to revoke the exemptions under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemptions. Petitions for stay must be filed no later than October 10, 2018 (at least seven days before the exemptions become effective).

An original and 10 copies of all pleadings, referring to Docket Nos. FD 36218 and FD 36219, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on the applicants' counsel, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604–1228.

According to applicants, these actions are categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: September 25, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–21184 Filed 9–27–18; 8:45 am]

BILLING CODE 4915–01–P

[1] CGX, a noncarrier holding company, owns IHR—also a noncarrier holding company. CGX is owned in equal parts by the Gregory B. Cundiff Trust and the Connie Cundiff Trust, both of which are noncarrier individual trusts.

[2] The verified notices of exemption in Docket Nos. FD 36218 and FD 36219 originally were filed on August 30, 2018, but were supplemented on September 17, 2018, to clarify the common control of the entities involved in the transactions. Therefore, September 17 is deemed the verified notices' filing date.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1261]

New York State Department of Environmental Conservation—Adverse Abandonment—Saratoga and North Creek Railway in Town of Johnsburg, NY

On September 10, 2018, the New York State Department of Environmental Conservation (the Department) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (the Board) authorize the third-party, or adverse, abandonment of Saratoga and North Creek Railway (SNCR) over approximately 29.71 miles of rail line extending between milepost NC 0.0 at North Creek, NY, and its terminus at milepost NC 29.71 near the former Tahawus Mine (Tahawus Line or the Line). The Line traverses United States Postal Service Zip Codes 12842, 12843, 12851, 12852, 12853, and 12857.

According to the Department, the Line was built by the United States during the Second World War to facilitate the transportation of strategic materials from a former mine owned and operated by NL Industries. In 2012, SNCR obtained Board authority to operate over the Tahawus Line, which it had purchased from NL Industries the year

before. *See Saratoga & N. Creek Ry.—Operation Exemption—Tahawus Line,* FD 35631 (STB served June 1, 2012). According to the Department, since obtaining Board authority, SNCR has moved at most a few carloads of industrial garnet as well as carloads of ballast purchased by SNCR for its own use. The Department further claims that there is currently no freight service on the Line and there are only two potential shippers. The Department states that SNCR has resorted to using the right-of-way, which runs through the state-owned Forest Preserve within New York's Adirondack Park, as a storage facility for obsolete railcars. The Department states that it is seeking an adverse abandonment to protect the Forest Preserve.

In a decision served on February 27, 2018, the Department was granted exemptions from several statutory provisions as well as waivers of certain Board regulations that were not relevant to its adverse discontinuance application or that sought information not available to the Department.

According to the Department, there is no documentation in its possession that indicates that the Line contains federally granted rights-of-way. Any documentation in the Department's possession will be made available promptly to those requesting it. The Department's entire case-in-chief for adverse abandonment was filed with the application.

The Department states that the interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed adverse abandonment or protests (including protestant's entire opposition case) by October 25, 2018. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements of 49 CFR 1152.25. The Department's reply is due by November 9, 2018.

All filings in response to this notice must refer to Docket No. AB 1261 and must be sent to: (1) Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001; and (2) Joshua M. Tallent, New York State Office of the Attorney General, Environmental Protection Bureau, The Capitol, Albany, NY 12224–0341.

Any request for an interim trail use/railbanking condition under 16 U.S.C. 1247(d) and 49 CFR 1152.29 must be filed by October 25, 2018, and should address whether the issuance of a certificate of interim trail use in this case would be consistent with the grant of an adverse abandonment application. Each trail use request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's ''*www.stb.gov*'' website, at the ''E–FILING'' link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR pt.1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact OEA by phone at the number listed below. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR pt. 1152. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: September 25, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2018–21161 Filed 9–27–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36216]

San Pedro Valley Holdings, LLC—Acquisition Exemption—San Pedro and Southwestern Railroad Company in Cochise County, Ariz.

San Pedro Valley Holdings, LLC (SPVH), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire two rail lines owned by the San Pedro and Southwestern Railroad Company: (1) From point of connection to Union Pacific Railroad (UP) at milepost 1033.25 at or near Benson, to milepost 1040.15 at or near St. David, a distance of 6.9 miles in Cochise County, Ariz.; and (2) from point of connection to UP at milepost 1074 at or near Wilcox, to all tracks at Wilcox Yard, a total of 8,281 feet or 1.57 miles, in Cochise County (collectively, the Lines). The Lines total approximately 8.47 miles.

This transaction is related to a concurrently filed verified notice of exemption in *Gregory B. Cundiff—Continuance in Control Exemption—San Pedro Valley Holdings, LLC in Cochise County, Ariz.,* Docket No. FD 36218, in which CGX, Inc., seeks Board approval to continue in control of SPVH upon SPVH's becoming a Class III rail carrier.

SPVH certifies that, as a result of the proposed transaction, its projected annual revenues will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million. SPVH also certifies that the proposed transaction does not involve any interchange commitments as defined in 49 CFR 1150.43(h).

The earliest this transaction may be consummated is October 17, 2018, the effective date of the exemption (30 days after the verified notice was filed).[1] SPVH states that it intends to consummate the transaction no sooner than 30 days after the filing of this notice of exemption.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the

[1] SPVH filed its verified notice of exemption on August 30, 2018. On September 17, 2018, however, SPVH supplemented its verified notice to clarify references to Docket No. FD 36218. Therefore, September 17, 2018, is deemed the verified notice's filing date.

exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by October 10, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36216, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on SPVH's counsel, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604–1228.

According to SPVH, no environmental or historic documentation or report is required pursuant to 49 CFR 1105.6(c) and 1105.8(b).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: September 25, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–21185 Filed 9–27–18; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Conforming Amendment and Modification to Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of modification and amendment of action.

SUMMARY: In a notice published on September 21, 2018 (September 21st Notice), the U.S. Trade Representative (Trade Representative) adopted a supplemental action in this 301 investigation by imposing additional duties on goods of China classified in subheadings of the Harmonized Tariff Schedule of the United States (HTSUS) listed in Annex A of that Notice. Pursuant to a Presidential Proclamation of July 30, 2018, certain HTSUS subheadings covered by the supplemental action will be modified as of October 1, 2018. This notice conforms the September 21 supplemental action to the HTSUS modifications in the Presidential Proclamation and amends the prior action taken in the investigation by removing certain subheadings of the HTSUS listed in Annex A to the September 21st Notice.

DATES:

October 1, 2018: The supplemental 301 action is modified to conform to the HTSUS modifications in the Presidential Proclamation of July 30, 2018 (Proclamation 9771), as set out in the Annex to this notice.

September 24, 2018: The modification removing certain HTSUS subheadings applies to the date of the imposition of the additional tariff, as set out in paragraph C to the Annex to this notice.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Assistant General Counsels Arthur Tsao or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For questions on customs classification or implementation of additional duties on products covered in the supplemental action, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: In the September 21st Notice (83 FR 47974), the Trade Representative, in accordance with the specific direction of the President, determined to modify the action being taken in this Section 301 investigation by imposing additional duties on products of China classified in the full and partial subheadings of the HTSUS set out in Annex A to the September 21st Notice, while maintaining the prior action being taken in the investigation. This supplemental action was effective on September 24, 2018.

Proclamation 9771 (83 FR 37993), among other things, modifies the HTSUS to ensure conformity with U.S. obligations under the International Convention on the Harmonized Commodity Description and Coding System, based on a recommendation of the U.S. International Trade Commission. These HTSUS modifications are effective October 1, 2018.

The HTSUS modifications in Proclamation 9771 include certain subheadings in chapter 44 of the HTSUS covered by the action in the September 21st Notice. Paragraph A of the Annex to this notice makes the appropriate conforming amendments to the supplemental action set out in the September 21st Notice. In particular, 14 subheadings in chapter 44 deleted by Proclamation 9771 are accordingly deleted from Annex A of the September 21st Notice, and are replaced by the corresponding 38 new subheadings in chapter 44 of the HTSUS that were added by Proclamation 9771. These changes to the September 21 action are effective on October 1, 2018.

Paragraph B of the Annex to this notice corrects a typographical error in the fourth paragraph of U.S. Note 20(a) to subchapter III of chapter 99, as set out in Annex C of the notice published at 83 FR 40823 (August 16, 2018).

To account fully for the extensive public comments and testimony previously provided in response to the **Federal Register** notices seeking public comments (83 FR 33608, 83 FR 38760), the Trade Representative has determined to further modify the action being taken in the investigation. Paragraph C of the Annex to this notice removes two subheadings from the list of subheadings of the HTSUS subject to the additional duties set forth in Annex A of the September 21st Notice.

Jeffrey Gerrish,

Deputy U.S. Trade Representative.

BILLING CODE 3290–F8–P

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on October 1, 2018, U.S. Note 20(f) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. by deleting the following subheading numbers:

"4401.10.00	4403.92.00	4407.10.01	4412.32.32
4401.39.40	4403.99.00	4407.99.01	4412.32.57";
4403.10.00	4406.10.00	4412.32.06	
4403.20.00	4406.90.00	4412.32.26	

2. and by inserting, in numerical sequence, the following subheading numbers:

"4401.11.00	4407.99.02
4401.12.00	4412.33.06
4401.39.41	4412.33.26
4401.40.00	4412.33.32
4403.11.00	4412.33.57
4403.12.00	4412.34.26
4403.21.00	4412.34.32
4403.22.00	4412.34.57".
4403.23.00	
4403.24.00	
4403.25.00	
4403.26.00	
4403.93.00	
4403.94.00	
4403.95.00	
4403.96.00	
4403.97.00	
4403.98.00	
4403.99.01	
4406.11.00	
4406.12.00	
4406.91.00	
4406.92.00	
4407.11.00	
4407.12.00	
4407.19.05	
4407.19.06	
4407.19.10	
4407.96.00	
4407.97.00	

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018, U.S. note 20(a) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified:

1. by deleting: "except for goods entered subheadings 9802.00.40, 9802.00.50, and 9802.00.60,"; and

2. by inserting in lieu thereof: "except for goods entered under subheadings 9802.00.40, 9802.00.50, and 9802.00.60,".

C. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, U.S. Note 20(f) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting the following subheading numbers:

"0304.81.10

0304.81.50".

[FR Doc. 2018–21303 Filed 9–27–18; 8:45 am]
BILLING CODE 3290–F8–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Summer 2019 Scheduling Season

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

ACTION: Notice of submission deadline.

SUMMARY: Under this notice, the FAA announces the submission deadline of October 4, 2018, for summer 2019 flight schedules at Chicago O'Hare International Airport (ORD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO). The deadline coincides with the schedule submission deadline for the International Air Transport Association (IATA) Slot Conference for the summer 2019 scheduling season.

DATES: Schedules must be submitted no later than October 4, 2018.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Avenue SW, Washington, DC 20591; facsimile: 202–267–7277; or by email to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Bonnie C. Dragotto, Regulations Division, FAA Office of the Chief Counsel, AGC–240, Room 916N, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3808; email *Bonnie.Dragotto@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has designated EWR, LAX, ORD, and SFO as IATA Level 2 airports [1] and JFK as an IATA Level 3 airport under the Worldwide Slot Guidelines (WSG). The FAA currently limits scheduled operations at JFK by Order until October 24, 2020.[2]

The FAA is primarily concerned about scheduled and other regularly conducted commercial operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours for the summer 2019 scheduling season are 0700 to 2100 Central Time (1200 to 0200 UTC), at LAX and SFO from 0600 to 2300 Pacific Time (1300 to 0600 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1000 to 0300 UTC). These hours are unchanged from previous scheduling seasons. Carriers should submit schedule information in sufficient detail including, at minimum, the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. IATA standard schedule information format and data elements for communications at Level 2 and Level 3 airports in the IATA Standard Schedules Information Manual (SSIM) Chapter 6 may be used. The WSG provides additional information on schedule submissions at Level 2 and Level 3 airports.

The U.S. summer scheduling season is from March 31, 2019, through October 26, 2019, in recognition of the IATA northern summer scheduling period. The FAA understands there may be differences in schedule times due to different U.S. daylight saving time dates and will accommodate these differences to the extent possible.

General Information for All Airports

As stated in the WSG, schedule facilitation at a Level 2 airport is based on schedule adjustments mutually agreed between the airlines and the facilitator; the intent is to avoid exceeding the airport's coordination parameters; the concepts of historic precedence and series of slots do not apply at Level 2 airports; and the facilitator should adjust the smallest number of flights by the least amount of time necessary to avoid exceeding the airport's coordination parameters.

[1] These designations will remain effective at these airports until the FAA announces a change.

[2] Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008), as amended 83 FR 46865 (September 17, 2018).

Consistent with the WSG, the success of Level 2 in the U.S. depends on the voluntary cooperation of all carriers.

The FAA considers several factors and priorities as it reviews schedule requests at Level 2 airports, which are consistent with the WSG, including—services from the previous equivalent season over new demand for the same timings, services that are unchanged over services that plan to change time or other capacity relevant parameters, introduction of year-round services, effective period of operation, regularly planned operations over *ad hoc* operations, and other operational factors that may limit a carrier's timing flexibility. In addition to applying these Level 2 priorities from the WSG, the U.S. Government has adopted a number of measures and procedures to promote competition and new entry at U.S. slot controlled and schedule facilitated airports.

At Level 2 airports, the FAA seeks to improve communications with carriers and schedule facilitators on potential runway schedule issues or terminal and gate issues that may affect the runway times. The FAA also seeks to reduce the time that carriers consider proposed offers on schedules. Retaining open offers for extended periods of time may delay the facilitation process for the airport. Reducing this delay is particularly important to allow the FAA to make informed decisions at airports where operations in some hours are at or near the scheduling limits. The agency recognizes that there are circumstances that may require some schedules to remain open. However, the FAA expects to substantially complete the process on initial submissions each scheduling season within 30 days of the end of the Slot Conference. After this time, the agency would confirm the acceptance of proposed offers, as applicable, or issue a denial of schedule requests. At Level 3 airports, the FAA follows the slot offer and acceptance procedures set forth in the WSG.

Slot management in the United States differs from other countries that follow the WSG in some respects. In the United States, the FAA is responsible for facilitation and coordination of runway access for takeoffs and landings at Level 2 and Level 3 airports; however, the airport authority or its designee is responsible for facilitation and coordination of terminal/gate/airport facility access. The process with the individual airports for terminal access and other airport services is separate from, and in addition to, the FAA schedule review based on runway capacity. Approval from both the FAA and the airport authority for runway and airport availability, respectively, is necessary before implementing schedule plans. Contact information for Level 2 and Level 3 airports is available at *http://www.iata.org/policy/slots/Pages/slot-guidelines.aspx.*

Generally, the FAA uses average hourly runway capacity throughput for airports and performance metrics in its schedule reviews at Level 2 airports and for the scheduling limits at Level 3 airports.[3] The FAA also considers other factors that can affect operations, such as capacity changes due to runway, taxiway, or other airport construction, air traffic control procedural changes, airport surface operations, and historical or projected flight delays and congestion.

Finally, the FAA notes that the schedule information submitted by carriers to the FAA may be subject to disclosure under the Freedom of Information Act (FOIA). The WSG also provides for release of information at certain stages of slot coordination and schedule facilitation. In general, once it acts, the FAA may release information on slot allocation or similar slot transactions or schedule information reviewed as part of the schedule facilitation process. The FAA does not expect that practice to change and most slot and schedule information would not be exempt from release under FOIA. The FAA recognizes that some airlines may submit information on schedule plans that is not available to the public and may be considered by the carrier to be proprietary. Carriers that submit slot or schedule information deemed proprietary should clearly mark such information accordingly. The FAA will take the necessary steps to protect properly designated information to the extent allowable by law.

JFK Schedules

The Port Authority of New York and New Jersey (PANYNJ) plans construction on JFK Runway 13L/31R that will close the runway from April 1, 2019, through November 15, 2019. The FAA will develop an operational ''playbook'' for runway configurations that would be used under various weather and operating conditions while Runway 13L/31R is closed. The FAA worked with MITRE's Center for Advanced Aviation System Development on modeling the expected runway configuration and the results indicate that average arrival delays could increase modestly while departure delays would remain close to current levels or decrease due to runway configurations that have higher departure and lower arrival capacities. As with the three prior runway construction projects and closures, delays in the early and late months of the summer 2019 scheduling season are projected to increase over the typical delays in those months but remain below the average delays in the peak June to August months.

The FAA will work closely with the airport and operators to efficiently manage operations during construction. The PANYNJ meets regularly with airlines and other stakeholders to discuss construction plans and consults with the FAA and local air traffic control facilities to minimize operational impacts. Carriers should contact the PANYNJ for the latest information on airport construction plans. The FAA New York District and the New York Area Program Integration Office also holds a regular Delay Initiatives Meeting that addresses construction and operational plans. These local meetings are the best sources of current construction-related information to assist in planning schedules and operations.

EWR Schedules

The FAA is continuing to monitor operations and delays at EWR and to identify ways to improve performance metrics and operational efficiency, and achieve delay reductions in a Level 2 environment. Demand for access to EWR and the New York City area remains high. Recent requests for flights at EWR have exceeded the scheduling limits in the 8 a.m. and 1300–2159 local hours. The FAA has advised carriers in prior seasons that it would not be able to accommodate all requests for new or retimed operations in peak hours and worked with carriers to identify times that were available. In some limited cases, carriers were able to swap with other airlines for their preferred times in the peak for winter 2018. Carriers may continue to seek swaps in order to operate within the peak. However, the FAA also continues to seek the voluntary cooperation of all carriers operating in peak hours to retime operations out of the peak to improve performance at EWR.

For the summer 2019 season, the hourly scheduling limit remains at 79

[3] The FAA typically determines an airport's average adjusted runway capacity or throughput for Level 2 and Level 3 airports by reviewing hourly data on the arrival and departure rates that air traffic control indicates could be accepted for that hour, commonly known as ''called'' rates. We also review the actual number of arrivals and departures that operated in the same hour. Generally, the FAA uses the higher of the two numbers, called or actual, for identifying trends and schedule review purposes. Some dates are excluded from analysis, such as during periods when extended airport closures or construction could affect capacity.

operations and 43 operations per half-hour. To help with a balance between arrivals and departures, the maximum number of scheduled arrivals or departures, respectively, is 43 in an hour and 24 in a half-hour. This would allow some higher levels of operations in certain periods (not to exceed the hourly limits) and some recovery from lower demand in adjacent periods. The FAA will accept flights above the limits if the flights were operated on a regular basis in summer 2018, but again, the FAA seeks cooperation of carriers to retime operations, to the extent feasible, out of the peak period. Additionally, the FAA will consider whether demand exceeds the limits in adjacent periods and consider average demand before determining whether there is availability for new flights in a particular period. However, the operational performance of the airport is unlikely to improve unless peak demand is reduced and schedules remain within the airport's arrival and departure limits.

The FAA notes that despite efforts to facilitate voluntary scheduling cooperation at EWR, and reductions in the hourly scheduling limits,[4] average demand for summer 2018 in the afternoon and evening hours remains at 81 operations per hour as it was in summer 2017. There are periods when the demand in half-hours or consecutive half-hours exceeds the optimum runway capacity and the scheduling limits in this notice. The imbalance of scheduled arrivals and departures in certain periods has contributed to increased congestion and delays when the demand exceeds the arrival or departure rates. In particular, retiming a minimal number of arrivals in the early afternoon hours from the 1400 local hour to the 1300 and 1200 hours could have significant delay reduction benefits and help preserve the Level 2 designation at EWR.

Based on historical demand, the FAA anticipates the 0700 to 0859 and 1330 to 2159 periods to be unavailable for new flights. Consistent with the WSG, carriers should be prepared to adjust schedules to meet the hourly limits in order to minimize potential congestion and delay. Carriers are again reminded that runway approval must be obtained from the FAA in addition to any requirements for approval from airport terminal or other facilities prior to operation.

The PANYNJ also plans construction on EWR Runway 11/29 during 2019. The plans currently include night and weeknight closures and a 12-day full closure in late August. The FAA will assess the potential operational impacts and any necessary mitigations once the construction plans are finalized. As indicated for the JFK runway construction, the PANYNJ is the best source of information on the construction and FAA meetings such as the Delay Initiative Meeting is the best source for operational plans.

Issued in Washington, DC, on September 24, 2018.

Jeffrey Planty,

Deputy Vice President, System Operations Services.

[FR Doc. 2018–21217 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

[4] The FAA has reduced the hourly scheduling limits from 81 per hour to 79 and effective with the winter 2018/2019 season, applied additional half-hour and arrival and departure limits. The FAA explained that operations approved previously at the higher limits and operated in the prior season would be accepted by the FAA even if they were above the limits, but new flights would not be approved above the current scheduling limits. The FAA continues to encourage carriers to retime flights to less congested periods to keep operations at or below the new scheduling limit to improve performance at the airport.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Indianapolis International Airport, Indianapolis, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 97.507 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Indianapolis International Airport, Indianapolis, Indiana. The aforementioned land is not needed for aeronautical use.

The land consists of 155 original airport acquired parcels. The parcels were acquired under grants 6–18–0038–14, 3–18–0038–17, 3–18–0038–18, 3–18–0038–23, 3–18–0038–24, 3–18–0038–43, 3–18–0038–45, 3–18–0038–47, 3–18–0038–51, 3–18–0038–54, 3–18–0038–67, 3–18–0038–78, 3–18–0038–81, 3–18–0038–83, 3–18–0038–88, 3–18–0038–96, 3–18–0038–112, Passenger Facility Charges, and local funding.

There are no impacts to the airport by allowing the Indianapolis Airport Authority to dispose of the property. The land is not needed for future aeronautical development.

DATES: Comments must be received on or before October 29, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Melanie Myers, Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046 and Eric Anderson, Director of Properties, Indianapolis Airport Authority, 7800 Col. H. Weir Cook Memorial Drive, Indianapolis, IN 46241 Telephone: 317–487–5135.

Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Indianapolis International Airport, Indianapolis, Indiana from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Land Description

Lots Numbered 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, and 21 through 33 of Hill Top Addition, as per plat thereof, recorded in Plat Book 4, pages 134 through 135 in the Office of the Recorder of Hendricks County, Indiana, Lots Numbered 1 through 8 and part of Lots 9 and 12 of Applecreek, as per plat thereof, recorded in Plat Book 8, page 85 in said Recorder's Office, Lots

Numbered 1, 2, 8, 9, 10, 11, and 12 and part of Lots Numbered 3 through 7 of Peaceful Acres, as per plat thereof, recorded in Plat Book 6, pages 111 through 112 in said Recorder's Office, and part of the Northeast Quarter of Section 32, Township 15 North, Range 2 East in Hendricks County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of the Northeast Quarter of said Section 32; thence North 00 degrees 51 minutes 41 seconds West (all bearings are based on the Indiana State Plane Coordinate system, West Zone (NAD83)) along the West line of said Northeast Quarter 660.00 feet to the Westerly extension of the south boundary of said Applecreek; thence North 88 degrees 44 minutes 48 seconds East along said Westerly extension and parallel with the South line of said Northeast Quarter 30.00 feet to the southwest corner of said Applecreek; thence North 00 degrees 51 minutes 41 seconds West along the west boundary of said Applecreek and parallel with the West line of said Northeast Quarter 330.00 feet to the northwest corner thereof; thence South 88 degrees 44 minutes 48 seconds West along the Westerly extension of the north boundary of said Applecreek and parallel with the South line of said Northeast Quarter 30.00 feet to the West line of said Northeast Quarter; thence North 00 degrees 51 minutes 41 seconds West along said West line 1550.17 feet to a point that is 132.00 feet South of the Northwest corner of said Northeast Quarter; thence North 89 degrees 02 minutes 59 seconds East parallel with the North line of said Northeast Quarter 1163.00 feet to the Northeast corner of land described in Deed Book 342, pages 168 through 169, recorded in said Recorder's Office and a ⅝ inch diameter rebar with a yellow plastic cap stamped ''Cripe Firm No. 0055'' (hereinafter referred to as ''a rebar''); thence South 00 degrees 51 minutes 41 seconds East along the east line thereof and parallel with the West line of said Northeast Quarter 134.00 feet to the center line of a 30 foot right of way as described in Miscellaneous Record 35, pages 507 through 508, recorded in said Recorder's Office and a mag nail with washer stamped ''Cripe Firm No. 0055'' (hereinafter referred to as ''a mag nail''); thence North 89 degrees 02 minutes 59 seconds East along said center line and parallel with the North line of said Northeast Quarter 248.10 feet to the northeast corner of land described in Deed Book 337, pages 705, recorded in said Recorder's Office and ''a mag nail''; thence South 00 degrees 51 minutes 41 seconds East along the east line of said described land and parallel with the West line of said Northeast Quarter 134.00 feet to the north line of land described as Tract III in Instrument No. 200000012704, recorded in said Recorder's Office and ''a rebar''; thence North 89 degrees 02 minutes 59 seconds East along said north line and parallel with the North line of said Northeast Quarter 64.00 feet to the southwest corner of land described in Deed Book 340, page 84 and ''a rebar'' (the following three courses are along the west and north boundary of said described land); (1) thence North 00 degrees 51 minutes 41 seconds West parallel with the West line of said Northeast Quarter 134.00 feet to ''a mag nail''; (2) thence North 89 degrees 02 minutes 59 seconds East parallel with the North line of said Northeast Quarter 53.96 feet to a tangent curve to the right having a radius of 25.00 feet, the radius point of which bears South 00 degrees 57 minutes 01 seconds East and ''a mag nail''; (3) thence Southerly along said curve 39.31 feet to a point which bears North 89 degrees 08 minutes 19 seconds East from said radius point and ''a mag nail''; thence South 00 degrees 51 minutes 41 seconds East along the east boundary of said described land and the east boundary of land described as Tract III in said Instrument No. 200000012704 and the parallel with the West line of said Northeast Quarter 218.00 feet to tangent curve to the right having a radius of 25.00 feet, the radius point of which bears South 89 degrees 08 minutes 19 seconds West and ''a rebar''; thence Southwesterly along said curve and said east boundary 31.96 feet a point which bears South 17 degrees 37 minutes 10 seconds East from said radius point, the northeast corner of Tract II of land described in said Instrument No. 200000012704 and ''a rebar''; thence South 17 degrees 53 minutes 01 seconds East along the east line of said Tract II a distance of 139.03 feet to the South line of the North Half of the North Half of said Northeast Quarter and ''a rebar''; thence North 88 degrees 58 minutes 26 seconds East along said South line 102.41 feet to the west boundary of land described in Deed Book 238, page 164, recorded in said Recorder's Office and ''a rebar''; thence North 00 degrees 59 minutes 47 seconds West along said west boundary 533.82 feet to ''a rebar''; thence North 89 degrees 11 minutes 28 seconds East 70.98 feet to ''a rebar''; thence South 00 degrees 53 minutes 25 seconds East 653.82 feet to ''a rebar''; thence South 89 degrees 06 minutes 35 seconds West 63.81 feet to ''a rebar''; thence South 00 degrees 53 minutes 25 seconds East 101.61 feet to ''a rebar''; thence North 89 degrees 06 minutes 35 seconds East 63.81 feet to ''a rebar''; thence South 00 degrees 53 minutes 25 seconds East 1750.31 feet to the north right of way of Stafford Road and ''a rebar''; thence South 88 degrees 44 minutes 48 seconds West along the north right of way of Stafford Road and parallel with the South line of said Northeast Quarter 895.12 feet to the east line of land described in Deed Book 306, page 513, recorded in said Recorder's Office; thence South 00 degrees 51 minutes 41 seconds East along said east line and parallel with the East line of said Northeast Quarter 25.00 feet to the South line of said Northeast Quarter; thence South 88 degrees 44 minutes 48 seconds West along said South line 855.30 feet to the *point of beginning*, containing 97.507 acres, more or less.

Issued in Des Plaines, Illinois, on September 13, 2018.

Deb Bartell,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2018–21216 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2018–75]

Petition for Exemption; Summary of Petition Received; Wing Aviation, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 18, 2018.

ADDRESSES: Send comments identified by docket number FAA–2018–0835 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels, (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 20, 2018.

Lirio Liu,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2018–0835.

Petitioner: Wing Aviation, LLC.

Sections of 14 CFR Affected: 43.2(a)(2); 43.3(a), (j), and (k)(1); 43.7(d); 43.9(d); 43.10(c)(5) and (d); 91.119(b) and (c); 91.121; 91.126(d); 91.127(c); 91.129(c) and (d); 91.130(c) and (d); 91.131(a)(1), (b), (c)(2), and (d); 91.144(a); 91.151(a); 91.155(a) and (c); 91.167(a)(3); 91.203(a)(1); 91.205(a), (b)(1) through (4), (b)(7), (b)(9), (b)(11) and (b)(12), and (c)(1) through (c)(4); 91.209(a)(1); 91.213(a) through (c); 91.215(b)(1) and (2); 91.225(b), (d)(1) and (2), and (f); 119.71(b), (d) and (e); 135.25(a)(1); 135.63(c) and (d); 135.79; 135.93; 135.109(b); 135.149(a); 135.161; 135.179(a); 135.203(a); 135.205(a); 135.209(a); 135.227(a) through (c), (e), and (f); 135.243(b)(1) through (3); 135.267; 135.337(b)(5) through (7); 135.337(c)(5) and (e); 135.338(b)(5) and (6); 135.339(e)(3) and (4); 135.340(e)(3) and (4); 135.341(b)(2) through (4); 135.415(a), (b), and (d); 135.417; 135.423(c); 135.429(a); 135.435; 135.437(b); 135.439(a)(2); 135.443(b)(3); and 135.501(a).

Description of Relief Sought: Wing Aviation, LLC (Wing) applies for an exemption to allow it to conduct part 119 air carrier operations for compensation or hire under part 135 using small unmanned aircraft systems (sUAS). Specifically, Wing seeks permission to conduct sUAS air carrier operations for commercial package delivery in the United States.

[FR Doc. 2018–21206 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Industry Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Aviation Administration (FAA) is hosting an industry day to introduce the Four-Dimensional Trajectory (4DT) Live Flight Demonstration Project to the aviation community. The FAA will present and discuss the 4DT Live Flight Demonstration Project vision, objectives, partnership requirements, and project timelines. The Industry Day will provide the initial platform for interested organizations to collaborate and strategize on project partnerships to execute the live flight demonstrations with the FAA.

DATES: The public meeting will be held on October 24, 2018, from 1:00 p.m. to 4:30 p.m. Teaming proposals will be due 1 month following Industry Day.

ADDRESSES: The public meeting will be held at the FAA's Florida NextGen Testbed (FTB), 557 Innovation Way, Daytona Beach, FL 32114.

FOR FURTHER INFORMATION CONTACT: Biruk Abraham, 4DT Live Flight Project Manager, Technology Development & Prototyping Division (ANG–C5), Federal Administration, 800 Independence Ave. SW, Washington, DC 20591; telephone (202) 267–8816; email: *biruk.abraham@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The current Air Traffic Management (ATM) environment is dependent on the exchange of information via a combination of voice and digital means. As ATM continues to evolve into a more collaborative decision making (CDM) environment to support the increasing operational density, the demand for digitally exchanging more and increasingly complex information will continue to grow. In a CDM environment, the current systems and mixed aircraft equipage of communication capabilities could lead to inefficient use of airspace and airport operations. The FAA envisions that leveraging emerging technologies and data exchange standards will result in the exchange of significantly more and high-quality aviation information via commercially available high-bandwidth air/ground (A/G) communications infrastructure. This will enable an efficient CDM environment, leading to the realization of trajectory-based operations benefits within the National Airspace System (NAS) and its airspace users.

The FAA is establishing a 4DT Live Flight Demonstration Project in collaboration with partners in the aviation community to showcase applications supporting A/G capabilities for the exchange of trajectory information, negotiation of trajectories and execution of agreed upon trajectories throughout all phases of flight, utilizing a commercially available communications architecture and flight deck technologies.

To solicit industry partnership teams, the FAA is hosting an Industry Day to introduce the 4DT Live Flight Demonstration Project. The FAA invites the aviation community—commercial and corporate operators, aircraft avionics manufacturers, aircraft connectivity service providers, and all others interested in participating in the live flight demonstrations to attend the 4DT Live Flight Demonstration Industry Day. The Industry Day will provide a platform for interested organizations to collaborate and strategize on project partnerships to execute the live flight demonstrations with the FAA.

The 4DT Live Flight Demonstration will leverage the FAA's System Wide Information Management capabilities, Controller-Pilot Data Link Communications services, and FAA ATM and air traffic control (ATC) ground automation capabilities. The FAA is seeking to engage industry partner teams to provide complementary industry resources required for the demonstration. These

resources include, but are not limited to personnel and subject matter experts (Pilots, Aircraft Dispatchers, etc.), aircraft equipped with FANS 1/A, Airline Operations Center/Flight Operations Center flight planning and dispatch applications, Electronic Flight Bags hardware and software applications, Aircraft Interface Devices, A/G broadband internet services, ground automation system applications, commercial data management services, and other capabilities that industry may see beneficial to support the future ATM environment. The Live Flight Demonstration will provide a platform to showcase the benefits of trajectory sharing and synchronization and begin to establish the policies and procedures for their routine usage with the National Airspace System.

Registration

Space at the FTB facility is limited and therefore, attendance will be on a first come first served basis. However, a webcast will be provided for those that cannot attend in person. To attend the Industry Day (in person or via webcast), participants must register via the following link: *https://www.eventbrite.com/e/4dt-live-flight-demonstration-industry-day-tickets-48876809854.*

Issued in Washington, DC, on September 25, 2018.

Paul Fontaine,

Director, Portfolio Management & Technology Development Office (ANG–C).

[FR Doc. 2018–21205 Filed 9–27–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) 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 Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to revise and extend the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), and the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $1 Billion (FFIEC 051), which are currently approved collections of information. The Consolidated Reports of Condition and Income are commonly referred to as Call Reports. The FFIEC has also approved the Board's publication for public comment, on behalf of the agencies, of a proposal to revise and extend the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S) as well as the agencies' publication for public comment of proposals to revise and extend the Foreign Branch Report of Condition (FFIEC 030), the Abbreviated Foreign Branch Report of Condition (FFIEC 030S), and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), all of which are currently approved collections of information.

The proposed revisions generally address the revised accounting for credit losses under the Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU) No. 2016–13, ''Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments'' (ASU 2016–13). This proposal also includes reporting changes for regulatory capital related to implementing the agencies' recent notice of proposed rulemaking on the implementation and capital transition for the current expected credit losses methodology (CECL).

In addition, this notice includes other revisions to the Call Reports and the FFIEC 101 resulting from two sections of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), effective upon enactment on May 24, 2018, that affect the information reported in these reports and for which the agencies submitted emergency review requests to OMB that OMB has approved.

The proposed revisions related to ASU 2016–13 would begin to take effect March 31, 2019, for reports with quarterly report dates and December 31, 2019, for reports with an annual report date, with later effective dates for certain respondents. At the end of the comment period for this notice, the comments received will be reviewed to determine whether the FFIEC and the agencies should modify the proposed revisions to one or more of the previously identified reports. As required by the PRA, the agencies will then publish a second **Federal Register** notice for a 30-day comment period and submit the final Call Reports, FFIEC 002, FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101 to OMB for review and approval.

DATES: Comments must be submitted on or before November 27, 2018.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''CECL and EGRRCPA Reporting Revisions,'' will be shared among the agencies.

OCC: You may submit comments, which should refer to ''CECL and EGRRCPA Reporting Revisions,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''CECL and EGRRCPA Reporting Revisions,'' by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the

instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Email: regs.comments@federalreserve.gov*. Include ''CECL Reporting Revisions'' 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 *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''CECL and EGRRCPA Reporting Revisions,'' by any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal/*. Follow the instructions for submitting comments on the FDIC's website.

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

• *Email: comments@FDIC.gov*. Include ''CECL Reporting Revisions'' in the subject line of the message.

• *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the reporting forms for the reports within the scope of this notice can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, (202) 649–5490, or for persons who are hearing impaired, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

A. ASU 2016–13, ''Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments''

In June 2016, the FASB issued ASU 2016–13, which introduced CECL for estimating allowances for credit losses and added Topic 326, Credit Losses, to the Accounting Standards Codification (ASC). The new credit losses standard changes several aspects of existing U.S. generally accepted accounting principles (U.S. GAAP) as follows:

• *Introduction of a new credit loss methodology.*

The new accounting standard developed by the FASB has been designed to replace the existing incurred loss methodology in U.S. GAAP. Under CECL, the allowance for credit losses is an estimate of the expected credit losses on financial assets measured at amortized cost, which is measured using relevant information about past events, including historical credit loss experience on financial assets with similar risk characteristics, current conditions, and reasonable and supportable forecasts that affect the collectability of the remaining cash flows over the contractual term of the financial assets. In concept, an allowance will be created upon the origination or acquisition of a financial asset measured at amortized cost. At subsequent reporting dates, the allowance will be reassessed for a level that is appropriate as determined in accordance with CECL. The allowance for credit losses under CECL is a valuation account, measured as the difference between the financial assets' amortized cost basis and the amount expected to be collected on the financial assets, *i.e.,* lifetime expected credit losses.

• *Reduction in the number of credit impairment models.*

Impairment measurement under existing U.S. GAAP has often been considered complex because it encompasses five credit impairment models for different financial assets.[1] In contrast, CECL introduces a single measurement objective to be applied to all financial assets measured at amortized cost, including loans held-for-investment (HFI) and held-to-maturity (HTM) debt securities. CECL does not, however, specify a single method for measuring expected credit losses; rather, it allows any reasonable approach, as long as the estimate of expected credit losses achieves the objective of the FASB's new accounting standard. Under the existing incurred loss methodology, institutions use various methods, including historical loss rate methods, roll-rate methods, and discounted cash flow methods, to estimate credit losses. CECL allows the continued use of these methods; however, certain changes to these methods will need to be made in order to estimate lifetime expected credit losses.

• *Purchased credit-deteriorated (PCD) financial assets.*

CECL introduces the concept of PCD financial assets, which replaces purchased credit-impaired (PCI) assets under existing U.S. GAAP. The differences in the PCD criteria compared to the existing PCI criteria will result in more purchased loans HFI, HTM debt securities, and available-for-sale (AFS) debt securities being accounted for as PCD financial assets. In contrast to the existing accounting for PCI assets, the new standard requires the estimate of expected credit losses embedded in the purchase price of PCD assets to be estimated and separately recognized as an allowance as of the date of

[1] Current U.S. GAAP includes five different credit impairment models for instruments within the scope of CECL: ASC Subtopic 310–10, Receivables-Overall; ASC Subtopic 450–20, Contingencies-Loss Contingencies; ASC Subtopic 310–30, Receivables-Loans and Debt Securities Acquired with Deteriorated Credit Quality; ASC Subtopic 320–10, Investments-Debt and Equity Securities—Overall; and ASC Subtopic 325–40, Investments-Other-Beneficial Interests in Securitized Financial Assets.

acquisition. This is accomplished by grossing up the purchase price by the amount of expected credit losses at acquisition, rather than being reported as a credit loss expense. As a result, as of the acquisition date, the amortized cost basis of a PCD financial asset is equal to the principal balance of the asset less the non-credit discount, rather than equal to the purchase price as is currently recorded for PCI loans.

• *AFS debt securities.*

The new accounting standard also modifies the existing accounting practices for impairment on AFS debt securities. Under this new standard, institutions will recognize a credit loss on an AFS debt security through an allowance for credit losses, rather than a direct write-down as is required by current U.S. GAAP. The recognized credit loss is limited to the amount by which the amortized cost of the security exceeds fair value. A write-down of an AFS debt security's amortized cost basis to fair value, with any incremental impairment reported in earnings, would be required only if the fair value of an AFS debt security is less than its amortized cost basis and either (1) the institution intends to sell the debt security, or (2) it is more likely than not that the institution will be required to sell the security before recovery of its amortized cost basis.

Although the measurement of credit loss allowances is changing under CECL, the FASB's new accounting standard does not address when a financial asset should be placed in nonaccrual status. Therefore, institutions should continue to apply the agencies' nonaccrual policies that are currently in place. In addition, the FASB retained the existing write-off guidance in U.S. GAAP, which requires an institution to write off a financial asset in the period the asset is deemed uncollectible.

Institutions [2] must apply ASU 2016–13 in their Call Report, FFIEC 002,[3] FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101 submissions in accordance with the effective dates set forth in the ASU, if an institution is required to file such form. For institutions that are public business entities (PBE) and also are Securities and Exchange Commission (SEC) filers, as both terms are defined in U.S. GAAP, the new credit losses standard is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Thus, for an SEC filer that has a calendar year fiscal year, the standard is effective January 1, 2020, and the institution must first apply the new credit losses standard in its Call Report, FFIEC 002,[4] FFIEC 002S, FFIEC 030, and FFIEC 101 for the quarter ended March 31, 2020 (and in its FFIEC 030S for December 31, 2020), if the institution is required to file these forms.

For a PBE that is not an SEC filer, the credit losses standard is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. Thus, for a PBE that is not an SEC filer and has a calendar year fiscal year, the standard is effective January 1, 2021, and the institution must first apply the new credit losses standard in its Call Report, FFIEC 002,[5] FFIEC 002S, FFIEC 030, and FFIEC 101 for the quarter ended March 31, 2021 (and in its FFIEC 030S for December 31, 2021), if the institution is required to file these forms.

For an institution that is not a PBE, the credit losses standard is effective for fiscal years beginning after December 15, 2020, and for interim period financial statements for fiscal years beginning after December 15, 2021.[6] Thus, an institution with a calendar year fiscal year that is not a PBE must first apply the new credit losses standard in its Call Report, FFIEC 002,[7] FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101 for December 31, 2021, if the institution is required to file these forms.[8] However, such an institution would include the ASU 2016–13 credit loss provisions for the entire year ended December 31, 2021, in the income statement in its Call Report for year-end 2021. The institution would also recognize in its year-end 2021 Call Report a cumulative-effect adjustment to the beginning balance of retained earnings as of January 1, 2021, resulting from the adoption of the new standard as of the beginning of the 2021 fiscal year.

For regulatory reporting purposes, early application of the new credit losses standard will be permitted for all institutions for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years.

The following table provides a summary of the effective dates for ASU 2016–13.

EFFECTIVE DATES FOR ASU 2016–13

	U.S. GAAP effective date	Regulatory report effective date *
PBEs That Are SEC Filers	Fiscal years beginning after 12/15/2019, including interim periods within those fiscal years.	3/31/2020.
Other PBEs (Non-SEC Filers)	Fiscal years beginning after 12/15/2020, including interim periods within those fiscal years.	3/31/2021.
Non-PBEs	Fiscal years beginning after 12/15/2020, and interim periods for fiscal years beginning after 12/15/2021 [9].	12/31/2021.[10]
Early Application	Early application permitted for fiscal years beginning after 12/15/2018, including interim periods within those fiscal years.	First calendar quarter-end after effective date of early application of the ASU.

** For institutions with calendar fiscal year-ends and reports with quarterly report dates.*

[2] Institutions include banks, savings associations, holding companies, U.S. branches and agencies of foreign banks, and foreign branches of U.S. banks and U.S. savings associations.

[3] As stated in the instructions for the FFIEC 002, U.S. branches and agencies of foreign banks may choose to, but are not required to, maintain credit loss allowances on an office level.

[4] See footnote 3.

[5] See footnote 3.

[6] On August 20, 2018, the FASB issued a proposed ASU that would amend the transition and effective date provisions in ASU 2016–13 for entities that are not PBEs (non-PBEs) so that the credit losses standard would be effective for non-PBEs for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years.

[7] See footnote 3.

[8] If the FASB issues a final Accounting Standards Update amending the transition and effective date provisions in ASU 2016–13 as described in footnote 6, a non-PBE with a calendar year fiscal year would first apply the new credit losses standard in its reports for March 31, 2022, if an institution is required to file these report forms.

[9] See footnote 6.

[10] See footnote 8.

For additional information on key elements of the new accounting standard and initial supervisory views with respect to measurement methods, use of vendors, portfolio segmentation, data needs, qualitative adjustments, and allowance processes, refer to the agencies' Joint Statement on the New Accounting Standard on Financial Instruments—Credit Losses issued on June 17, 2016, and Frequently Asked Questions on the New Accounting Standard on Financial Instruments—Credit Losses (CECL FAQs), which were last updated on September 6, 2017.[11]

B. EGRRCPA

On May 24, 2018, EGRRCPA amended various statutes administered by the agencies and affected regulations issued by the agencies.[12] Two of the amendments made by EGRRCPA, as described below, took effect on the day of EGRRCPA's enactment and impact institutions' regulatory reports. In response to emergency review requests, the agencies received approval from OMB to revise the reporting of information in the Call Reports on certain high volatility commercial real estate (HVCRE) exposures and reciprocal deposits and in the FFIEC 101 report on certain HVCRE exposures for the June 30, 2018, report date. As a result of OMB's emergency approval of revisions to the information collections affected by the above statutory changes, the expiration date of these collections has been revised to February 28, 2019. The agencies are now undertaking the regular PRA process for revising and extending these information collections for three years as described in this notice.

- HVCRE Exposures

Section 214 of EGRRCPA adds a new Section 51 to the Federal Deposit Insurance Act (FDI Act) governing the risk-based capital requirements for certain acquisition, development, or construction (ADC) loans. EGRRCPA provides that, effective upon enactment, the agencies may only require a depository institution to assign a heightened risk weight to an HVCRE exposure if such exposure is an ''HVCRE ADC Loan,'' as defined in Section 214 of EGRRCPA. Accordingly, a depository institution is permitted to use the definition of HVCRE ADC Loan in place of the existing definition of HVCRE loan when reporting HVCRE exposures held for sale, held for investment, and held for trading on Schedule RC–R, Regulatory Capital, Part II, Risk-Weighted Assets, in the Call Reports, as well as on Schedule B and Schedule G in the FFIEC 101 for institutions required to file that form.

- Reciprocal Deposits

Section 29 of the FDI Act (12 U.S.C. 1831f), as amended by Section 202 of EGRRCPA, excepts a capped amount of reciprocal deposits from treatment as brokered deposits for qualifying institutions, effective upon enactment. The current Call Report instructions, consistent with the law prior to the enactment of EGRRCPA, treat all reciprocal deposits as brokered deposits. When reporting in the Call Report, institutions should apply the newly defined terms and other provisions of Section 202 to determine whether they and their reciprocal deposits are eligible for the statutory exclusion and report as brokered deposits in Schedule RC–E, and reciprocal brokered deposits in Schedule RC–O, only those reciprocal deposits that are considered brokered deposits under the new law.

II. Affected Reports and Specific Revisions

A. Call Reports

The agencies propose to extend for three years, with revision, the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Numbers: FFIEC 031 (for banks and savings associations with domestic and foreign offices), FFIEC 041 (for banks and savings associations with domestic offices only),[13] and FFIEC 051 (for banks and savings associations with domestic offices only and total assets less than $1 billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,252 national banks and federal savings associations.

Estimated Average Burden per Response: 45.98 burden hours per quarter to file.

Estimated Total Annual Burden: 230,268 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 808 state member banks.

Estimated Average Burden per Response: 49.87 burden hours per quarter to file.

Estimated Total Annual Burden: 161,180 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,596 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 43.85 burden hours per quarter to file.

Estimated Total Annual Burden: 630,738 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 121.74 (FFIEC 031), 55.57 (FFIEC 041), and 38.59 (FFIEC 051). The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the banks and savings associations under each agency's supervision (*e.g.,* size distribution of such institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

The Call Report information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Abstract

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as

[11] The CECL FAQs and a related link to the joint statement can be found on the following agency websites: Board: *https://www.federalreserve.gov/supervisionreg/srletters/sr1708a1.pdf*; FDIC: *https://www.fdic.gov/news/news/financial/2017/fil17041a.pdf*; OCC: *https://www.occ.gov/topics/bank-operations/accounting/cecl/cecl-faqs.html.*

[12] Public Law 115–174, 132 Stat. 1296 (2018).

[13] Banks and savings associations with domestic offices only and total consolidated assets of $100 billion or more file the FFIEC 031 report rather than the FFIEC 041 report.

agency-specific missions affecting national and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including, in particular, interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' and federal savings associations' semiannual assessment fees.

B. FFIEC 002 and 002S

The Board proposes to extend for three years, with revision, on behalf of the agencies the FFIEC 002 and FFIEC 002S reports.

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

OMB control number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

Estimated Number of Respondents: FFIEC 002—209; FFIEC 002S—38.

Estimated Average Burden per Response: FFIEC 002—23.87 hours; FFIEC 002S—6.0 hours.

Estimated Total Annual Burden: FFEIC 002—19,955 hours; FFIEC 002S—912 hours.

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

Abstract

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping with respect to assets or liabilities for that foreign branch, resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

C. FFIEC 030 and 030S

The agencies propose to extend for three years, with revision, the FFIEC 030 and FFIEC 030S reports.

Report Title: Foreign Branch Report of Condition.

Form Numbers: FFIEC 030 and FFIEC 030S.

Frequency of Response: Annually, and quarterly for significant branches.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0099.

Estimated Number of Respondents: 199 annual branch respondents (FFIEC 030); 57 quarterly branch respondents (FFIEC 030); 30 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 1,467 burden hours.

Board

OMB Number: 7100–0071.

Estimated Number of Respondents: 14 annual branch respondents (FFIEC 030); 24 quarterly branch respondents (FFIEC 030); 11 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 380 burden hours.

FDIC

OMB Number: 3064–0011.

Estimated Number of Respondents: 8 annual branch respondents (FFIEC 030); 1 quarterly branch respondent (FFIEC 030); 8 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 45 burden hours.

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

This information collection is mandatory: 12 U.S.C. 602 (Board); 12 U.S.C. 161 and 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

Abstract

The FFIEC 030 collects asset and liability information for foreign branches of insured U.S. banks and insured U.S. savings associations (U.S. depository institutions) and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. institutions. All foreign branches of U.S. institutions regardless of charter type file this report as provided in the instructions to the FFIEC 030 and FFIEC 030S.

A U.S. depository institution generally must file a separate report for each foreign branch, but in some cases may consolidate filing for multiple foreign branches in the same country, as described below. A branch with either total assets of at least $2 billion or commitments to purchase foreign

currencies and U.S. dollar exchange of at least $5 billion as of the end of a calendar quarter is considered a ''significant branch'' and an FFIEC 030 report is required to be filed quarterly. A U.S. depository institution with a foreign branch having total assets in excess of $250 million that does not meet either of the criteria to file quarterly must file the entire FFIEC 030 report for this foreign branch on an annual basis as of December 31.

A U.S. depository institution with a foreign branch having total assets of $50 million, but less than or equal to $250 million that does not meet the criteria to file the FFIEC 030 report must file the FFIEC 030S report for this foreign branch on an annual basis as of December 31. A U.S. depository institution with a foreign branch having total assets of less than $50 million is exempt from filing the FFIEC 030 and 030S reports.

D. FFIEC 101

The agencies propose to extend for three years, with revision, the FFIEC 101 report.

Report Title: Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0239.

Estimated Number of Respondents: 20 national banks and federal savings associations.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 53,920 burden hours to file.

Board

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 6 state member banks; 16 bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Time per Response: 674 burden hours per quarter for state member banks to file, 677 burden hours per quarter for bank holding companies and savings and loan holding companies to file; and 3 burden hours per quarter for intermediate holding companies to file.

Estimated Total Annual Burden: 16,176 burden hours for state member banks to file; 43,328 burden hours for bank holding companies and savings and loan holding companies to file; and 72 burden hours for intermediate holding companies to file.

FDIC

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 2 insured state nonmember banks and state savings associations.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 5,392 burden hours to file.

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

Each advanced approaches institution [14] is required to report quarterly regulatory capital data on the FFIEC 101. The FFIEC 101 information collection is mandatory for advanced approaches institutions: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies). Certain data items in this information collection are given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

Abstract

The agencies use data reported in the FFIEC 101 to assess and monitor the levels and components of each reporting entity's capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework; [15] to evaluate the impact of the Advanced Capital Adequacy Framework on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches institutions in understanding expectations relating to the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework. Submitted data that are released publicly will also provide other interested parties with information about advanced approaches institutions' regulatory capital.

Current Actions

I. Introduction

In response to the new credit losses standard, key elements of which were outlined above in Section A of ''Supplementary Information, I. Background,'' the agencies reviewed the existing FFIEC reports to determine which reports may be affected by ASU 2016–13. As a result, revisions are proposed to the following FFIEC reports: (1) Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051), (2) FFIEC 002 and FFIEC 002S, (3) FFIEC 030 and FFIEC 030S, and (4) the FFIEC 101.

The agencies also reviewed the existing FFIEC reports to determine which reports may be affected by EGRRCPA. As a result, additional revisions are proposed for the Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051) and the FFIEC 101.

A detailed description of the proposed revisions resulting from both ASU 2016–13 and EGRRCPA follows.

II. Call Report Revisions

A. General Discussion of Proposed Call Report Revisions

1. ASU 2016–13 Proposed Call Report Revisions

In response to the changes in accounting for credit losses under ASU 2016–13, the agencies are proposing revisions to the manner in which data on credit losses is reported in the Call Report. These changes are necessary to align the information reported in the Call Report with the new accounting standard as it relates to the credit losses for loans and leases, including off-balance sheet credit exposures.[16] The revisions also address the broader scope of financial assets for which an allowance for credit losses must be established and maintained, and the elimination of the existing model for PCI assets, as described in more detail later in this section.

In developing these proposed Call Report revisions, the agencies followed the guiding principles for evaluating potential additions and deletions of Call Report data items and other revisions to the Call Report. In general, data items collected in the Call Report must meet three guiding principles: (1) The data items serve a long-term regulatory or public policy purpose by assisting the FFIEC member entities in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and the protection of consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions; (2) the data items to be collected maximize practical utility and minimize, to the extent practicable and appropriate, burden on financial

[14] See 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); 12 CFR 324.100(b) (FDIC).

[15] 12 CFR part 3, subpart E (OCC); 12 CFR part 217, subpart E (Board); 12 CFR part 324, subpart E (FDIC).

[16] See 12 U.S.C. 1831n(a).

institutions; and (3) equivalent data items are not readily available through other means. The agencies also applied these principles in developing the proposed revisions to the other FFIEC reports within the scope of this notice. In following these principles, the agencies sought to limit the number of data items being added to the Call Report and the other reports within the scope of this notice to address the changes in accounting for credit losses. The majority of the proposed changes address the broader scope of assets subject to an allowance for credit losses assessment under ASU 2016–13. Throughout the Call Report, the agencies generally propose to request credit loss information on loans and leases, HTM debt securities, and AFS debt securities given the materiality of these asset types to institutions' overall balance sheets as well as the potential materiality of the allowances for credit losses on these assets.

The existing Call Report schedules impacted by ASU 2016–13 and included in the development of this proposal are:

- Schedule RI—Income Statement
- Schedule RI–B—Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses
- Schedule RI–C—Disaggregated Data on the Allowance for Loan and Lease Losses [FFIEC 031 and FFIEC 041 only]
- Schedule RI–D—Income from Foreign Offices [FFIEC 031 only]
- Schedule RI–E—Explanations
- Schedule RC—Balance Sheet
- Schedule RC–B—Securities
- Schedule RC–C—Loans and Lease Financing Receivables
- Schedule RC–F—Other Assets
- Schedule RC–G—Other Liabilities
- Schedule RC–H—Selected Balance Sheet Items for Domestic Offices [FFIEC 031 only]
- Schedule RC–K—Quarterly Averages
- Schedule RC–N—Past Due and Nonaccrual Loans, Leases, and Other Assets
- Schedule RC–R—Regulatory Capital
- Schedule RC–V—Variable Interest Entities [FFIEC 031 and FFIEC 041 only]
- Schedule SU—Supplemental Information [FFIEC 051 only]

As noted previously, ASU 2016–13 broadens the scope of financial assets for which allowances for credit losses must be estimated. CECL is applicable to all financial instruments measured at amortized cost (including loans held for investment and HTM debt securities, as well as trade and reinsurance receivables and receivables that relate to repurchase agreements and securities lending agreements), net investments in leases, and off-balance-sheet credit exposures not accounted for as insurance, including loan commitments, standby letters of credit, and financial guarantees. In addition, under ASU 2016–13, institutions will record credit losses on AFS debt securities through an allowance for credit losses rather than as a write-down through earnings for other-than-temporary impairment (OTTI). The broader scope of financial assets for which allowances must be estimated under ASU 2016–13 results in the proposed reporting of additional allowances, and related charge-off and recovery data, in the Call Report and proposed changes to the terminology used to describe allowances for credit losses within the Call Report. To address the broader scope of assets that will have allowances under ASU 2016–13, the agencies propose to change the allowance nomenclature to consistently use ''allowance for credit losses'' followed by the specific asset type as relevant, *e.g.,* ''allowance for credit losses on loans and leases'' and ''allowance for credit losses on HTM debt securities.''

By broadening the scope of financial assets for which the need for allowances for credit losses must be assessed to include HTM and AFS debt securities, the new standard eliminates the existing OTTI model for such securities. Subsequent to an institution's adoption of ASU 2016–13, the concept of OTTI will no longer be relevant and information on OTTI will no longer be captured in the Call Report.

The new standard also eliminates the separate impairment model for PCI loans and debt securities. Under CECL, credit losses on PCD financial assets measured at amortized cost are subject to the same credit loss measurement standard as all other financial assets measured at amortized cost. Subsequent to an institution's adoption of ASU 2016–13, information on PCI loans will no longer be captured in the Call Report.

While the standard generally does not change the scope of off-balance sheet credit exposures subject to an allowance for credit loss assessment, the standard does change the period over which an institution should estimate expected credit losses. For off-balance-sheet credit exposures, an institution will estimate expected credit losses over the contractual period in which it is exposed to credit risk via a present contractual obligation to extend credit. For the period of exposure, the estimate of expected credit losses should consider both the likelihood that funding will occur and the amount expected to be funded over the estimated remaining life of the commitment or other off-balance-sheet exposure. In contrast to existing practices, the FASB decided that no credit losses should be recognized on off-balance-sheet credit exposures that are unconditionally cancellable by the issuer. The exclusion of unconditionally cancellable off-balance sheet exposures from the allowance for credit losses assessment requires clarification in the Call Report instructions.

The agencies also note that, because of the different effective dates for ASU 2016–13 for PBEs that are SEC filers, other PBEs (non-SEC filers), and all other entities, as well as the option for early adoption and the varying fiscal years across the population of institutions that file Call Reports, the period over which institutions may be implementing this ASU ranges from the first quarter of 2019 through the fourth quarter of 2022. December 31, 2022, will be the first quarter-end Call Report date as of which all institutions would be required to prepare their Call Reports in accordance with ASU 2016–13.[17] As a result, the agencies are proposing revisions to the reporting of information on credit losses in response to the ASU that would be introduced in the Call Report effective March 31, 2019, but would not be fully phased in until the Call Report for December 31, 2022.[18]

As of the new accounting standard's effective date for an individual institution, the institution will apply the standard based on the characteristics of financial assets as follows:

- *Financial assets measured at amortized cost (that are not PCD assets) and net investments in leases:* A cumulative-effect adjustment for the changes in the allowances for credit losses on these assets will be recognized in retained earnings, net of applicable taxes, as of the beginning of the fiscal year in which the new standard is adopted. The cumulative-effect adjustment to retained earnings should be reported in Call Report Schedule RI–A, item 2, ''Cumulative effect of changes in accounting principles and corrections of material accounting errors,'' and explained in Schedule RI–E, item 4.a, for which a preprinted caption, ''Adoption of Current Expected Credit

[17] If the FASB issues a final Accounting Standards Update amending the transition and effective date provisions in ASU 2016–13 as described in footnote 6, December 31, 2022, would continue to be the first quarter-end Call Report date as of which all institutions would be required to prepare their Call Reports in accordance with ASU 2016–13.

[18] See CECL FAQs, question 36, for examples of how and when institutions with non-calendar fiscal years must incorporate the new credit losses standard into their regulatory reports.

Losses Methodology—ASC Topic 326,'' will be provided in the text field for this item.

• *Purchased credit-deteriorated financial assets:* Financial assets classified as PCI assets prior to the effective date of the new standard will be classified as PCD assets as of the effective date. For all financial assets designated as PCD assets as of the effective date, an institution will be required to gross up the balance sheet amount of the financial asset by the amount of its allowance for expected credit losses as of the effective date, resulting in an adjustment to the amortized cost basis of the asset to reflect the addition of the allowance for credit losses as of that date. For loans held for investment and held-to-maturity debt securities, this allowance gross-up as of the effective date of ASU 2016–13 should be reported in the appropriate columns of Schedule RI–B, Part II, item 6, ''Adjustments,'' and should be included in the amount reported in Schedule RI–E, item 6.b, for which a preprinted caption, ''Effect of adoption of current expected credit losses methodology on allowances for credit losses on loans and leases held for investment and held-to-maturity debt securities,'' will be provided in the text field for this item. Subsequent changes in the allowances for credit losses on PCD financial assets will be recognized by charges or credits to earnings through provisions for credit losses. The institution will accrete the noncredit discount or premium to interest income based on the effective interest rate on the PCD financial assets determined after the gross-up for the CECL allowance as of the effective date, except for PCD financial assets in nonaccrual status.

• *AFS and HTM debt securities:* A debt security on which OTTI had been recognized prior to the effective date of the new standard will transition to the new guidance prospectively (*i.e.,* with no change in the amortized cost basis of the security). The effective interest rate on such a debt security before the adoption date will be retained and locked in. Amounts previously recognized in accumulated other comprehensive income related to cash flow improvements will continue to be accreted to interest income over the remaining life of the debt security on a level-yield basis. Recoveries of amounts previously written off relating to improvements in cash flows after the date of adoption will be recognized in income in the period received.

2. EGRRCPA Proposed Call Report Revisions

This proposal addresses the changes to the reporting of reciprocal deposits and HVCRE exposures in the Call Report resulting from EGRRCPA. The guiding principles, noted above, were applied in determining these proposed changes to the Call Report.

The existing Call Report schedules impacted by EGRRCPA and for which revisions are included in this proposal are:

▪ Schedule RC–E—Deposit Liabilities
▪ Schedule RC–O—Other Data for Deposit Insurance and FICO Assessments
▪ Schedule RC–R—Regulatory Capital: Part II. Risk-Weighted Assets

B. Detail of Specific Proposed Call Report Revisions

The proposed Call Report revisions are consistent across the FFIEC 031, FFIEC 041, and FFIEC 051 reporting forms to the extent that the same schedule and data items within these schedules currently exist within each reporting form. Throughout this detailed discussion of specific proposed Call Report revisions, for each schedule discussed, the agencies have included the affected form numbers next to the schedule name. Unless otherwise stated, all changes relating to a particular schedule apply to all forms listed.

1. ASU 2016–13 Proposed Call Report Revisions

Due to the staggered effective dates, ASU 2016–13 will not be implemented by all institutions until December 2022. It is expected that the majority of institutions will implement the standard in the first or fourth quarter of 2021. As such, the proposed revisions to schedule titles or specific data item captions resulting from the change in nomenclature upon the adoption of CECL generally would not be reflected in the reporting forms until March 31, 2021, as outlined in the following schedule-by-schedule descriptions of the proposed changes to the affected Call Report schedules. Effective for the March 31, 2021, report date, unless otherwise indicated, the schedule titles or specific data item captions referencing the ''provision for loan and lease losses'' and the ''allowance for loan and lease losses'' would be changed to the ''provision for credit losses'' and the ''allowance for credit losses on loans and leases,'' respectively.

From March 31, 2019, through December 31, 2020, the reporting form and instructions for each schedule title or data item impacted by the change in nomenclature would include guidance stating how institutions that have adopted ASU 2016–13 would report the data items related to the ''provision for credit losses'' and ''allowance for credit losses,'' as applicable. For the transition period from March 31, 2021, through December 31, 2022, the reporting form and instructions for each impacted schedule title or data item would be updated to include guidance stating how institutions that have not adopted ASU 2016–13 would report the ''provision for loan and lease losses'' or the ''allowance for loan and lease losses,'' as applicable.

Schedule RI (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the broader scope of financial assets for which provisions will be calculated under ASU 2016–13, the agencies propose to revise Schedule RI, item 4, from ''Provision for loan and lease losses'' to ''Provisions for credit losses on financial assets,'' effective March 31, 2021. To address the elimination of the concept of OTTI by ASU 2016–13, effective December 31, 2022, the agencies propose to remove Schedule RI, Memorandum item 14, ''Other-than-temporary impairment losses on held-to-maturity and available-for-sale debt securities recognized in earnings.'' Under the new standard, institutions will recognize credit losses on HTM and AFS debt securities through an allowance for credit losses, and the agencies propose to collect information on the allowance for credit losses on these two categories of debt securities in Schedule RI–B as described below. From March 31, 2019, through September 30, 2022, the reporting form and instructions for Memorandum item 14 will include guidance stating that Memorandum item 14 is to be completed only by institutions that have not adopted ASU 2016–13.

Schedule RI–B (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the broader scope of financial assets for which allowances will be calculated under ASU 2016–13 and for which charge-offs and recoveries will be applicable, the agencies propose to change the title of Schedule RI–B effective March 31, 2019, from ''Charge-offs and Recoveries on Loans and Leases and Changes in Allowance for Loan and Lease Losses'' to ''Charge-offs and Recoveries on Loans and Leases and Changes in Allowances for Credit Losses.''

In addition, for the FFIEC 031 and FFIEC 041 only, effective March 31,

2021, to address the change in allowance nomenclature arising from the broader scope of allowances under ASU 2016–13, the agencies propose to revise Schedule RI–B, Part I, Memorandum item 4, from ''Uncollectible retail credit card fees and finance charges reversed against income (*i.e.,* not included in charge-offs against the allowance for loan and lease losses)'' to ''Uncollectible retail credit card fees and finance charges reversed against income (*i.e.,* not included in charge-offs against the allowance for credit losses on loans and leases).''

To further address the broader scope of financial assets for which allowances will be calculated under ASU 2016–13, the agencies propose to revise Schedule RI–B, Part II, to also include changes in the allowances for credit losses on HTM and AFS debt securities. Effective March 31, 2019, the agencies propose to change the title of Schedule RI–B, Part II, from ''Changes in Allowance for Loan and Lease Losses'' to ''Changes in Allowances for Credit Losses.''

In addition, effective March 31, 2019, Schedule RI–B, Part II, would be expanded from one column to a table with three columns titled:

—Column A: Loans and leases held for investment
—Column B: Held-to-maturity debt securities
—Column C: Available-for-sale debt securities

From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RI–B, Part II, would include guidance stating that Columns B and C are to be completed only by institutions that have adopted ASU 2016–13.

In addition, effective March 31, 2019, Schedule RI–B, Part II, item 4, will be revised from ''Less: Write-downs arising from transfers of loans to a held-for-sale account'' to ''Less: Write-downs arising from transfers of financial assets'' to capture changes in allowances from transfers of loans from held-to-investment to held-for-sale and from transfers of securities between categories, *e.g.,* from the AFS to the HTM category. Further, effective March 31, 2019, Schedule RI–B, Part II, item 5, will be revised from ''Provision for loan and lease losses'' to ''Provisions for credit losses'' to capture the broader scope of financial assets included in the schedule.

Effective March 31, 2019, or the first quarter in which an institution reports its adoption of ASU 2016–13, whichever is later, Schedule RI–B, Part II, item 6, ''Adjustments,'' would be used to capture the initial impact of applying ASU 2016–13 as of the effective date in the period of adoption, including the initial allowance gross-up for PCD assets as of the effective date. Item 6 also would be used to report the allowance gross-up upon the acquisition of PCD assets on or after the effective date. These adjustments would be explained in items for which preprinted captions would be provided in place of the existing text fields in Schedule RI–E, items 6.a and 6.b, respectively, as proposed below.

In the memorandum section of Schedule RI–B, Part II, on the FFIEC 031 and the FFIEC 041, to address the change in allowance nomenclature arising from the broader scope of allowances under ASU 2016–13, the agencies propose to revise the caption for Memorandum item 3, effective March 31, 2021, from ''Amount of allowance for loan and lease losses attributable to retail credit card fees and finance charges'' to ''Amount of allowance for credit losses on loans and leases attributable to retail credit card fees and finance charges.'' Also in the memorandum section of Schedule RI–B, Part II, on the FFIEC 031 and the FFIEC 041, effective December 31, 2022, the agencies propose to remove existing Memorandum item 4, ''Amount of allowance for post-acquisition credit losses on purchased credit impaired loans accounted for in accordance with FASB ASC 310–30,'' as ASU 2016–13 eliminates the concept of PCI loans and the separate credit impairment model for such loans. From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RI–B, Part II, Memorandum item 4, would specify that this item should be completed only by institutions that have not yet adopted ASU 2016–13.

Given that the scope of ASU 2016–13 is broader than the three financial asset types proposed to be included in the table in Schedule RI–B, Part II, effective March 31, 2019, the agencies propose to also add new Memorandum item 5, ''Provisions for credit losses on other financial assets measured at amortized cost,'' and Memorandum item 6, ''Allowance for credit losses on other financial assets measured at amortized cost,'' to Schedule RI–B, Part II, at the same time. For purposes of Memorandum items 5 and 6, other financial assets would include all financial assets measured at amortized cost other than loans and leases held for investment and held-to-maturity debt securities. From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RI–B, Part II, would include guidance stating that Memorandum items 5 and 6 are to be completed only by institutions that have adopted ASU 2016–13.

Schedule RI–C (FFIEC 031 and FFIEC 041)

Schedule RI–C currently requests allowance information for specified categories of loans held for investment that is disaggregated on the basis of three separate credit impairment models, and the amounts of the related recorded investment, from institutions with $1 billion or more in total assets. ASU 2016–13 eliminates these separate credit impairment models and replaces them with CECL for all financial assets measured at amortized cost. As a result of this change, effective March 31, 2021, the agencies propose to change the title of Schedule RI–C from ''Disaggregated Data on the Allowance for Loan and Lease Losses'' to ''Disaggregated Data on Allowances for Credit Losses.''

To capture disaggregated data on allowances for credit losses from institutions that have adopted ASU 2016–13, the agencies propose to create Schedule RI–C, Part II, ''Disaggregated Data on Allowances for Credit Losses,'' effective March 31, 2019. The existing table in Schedule RI–C, which includes items 1 through 6 and columns A through F, would be renamed ''Part I. Disaggregated Data on the Allowance for Loan and Lease Losses.'' From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RI–C, Part I, would include guidance stating that only those institutions that have not adopted ASU 2016–13 should complete Schedule RI–C, Part I.

The proposed Part II of this schedule would contain the same six loan portfolio categories and the unallocated category for which data are currently collected in existing Schedule RI–C along with the following portfolio categories for which allowance information would begin to be reported for HTM debt securities:

1. Securities issued by states and political subdivisions in the U.S.
2. Mortgage-backed securities (MBS) (including CMOs, REMICs, and stripped MBS)
   a. Mortgage-backed securities issued or guaranteed by U.S. Government agencies or sponsored agencies
   b. Other mortgage-backed securities
3. Asset-backed securities and structured financial products
4. Other debt securities
5. Total

For each category of loans in Part II of Schedule RI–C, institutions would

report the amortized cost and the related allowance balance in Columns A and B, respectively. The amortized cost amounts to be reported would exclude any accrued interest receivable that is reported in ''Other assets'' on the balance sheet. For each category of HTM debt securities in Part II of Schedule RI–C, institutions would report only the related allowance balance. The amortized cost and allowance information on loans and the allowance information on HTM debt securities would be reported quarterly only by institutions with $1 billion or more in total assets, as is currently done with existing Part I of Schedule RI–C.

The agencies will use the securities-related information gathered in proposed Part II of the schedule to monitor the allowance levels and changes in these levels for the categories of HTM debt securities specified above, which would serve as a starting point for assessing the appropriateness of these levels. Further, with the proposed removal of the Call Report item for OTTI losses recognized in earnings (Schedule RI, Memorandum item 14), proposed Schedule RI–C, Part II, will become another source of information regarding credit losses on HTM debt securities, in addition to data proposed to be reported in Schedule RI–B, Part II. From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RI–C, Part II, would include guidance stating that only those institutions with $1 billion or more in total assets that have adopted ASU 2016–13 should complete Schedule RI–C, Part II.

In addition, effective December 31, 2022, the agencies propose to remove the existing Schedule RI–C, Part I. Schedule RI–C, Part II, would then be the only table remaining within this schedule and the ''Part II'' designation would be removed.

Schedule RI–D (FFIEC 031)

To address the broader scope of financial assets for which provisions will be calculated under ASU 2016–13, effective March 31, 2021, the agencies propose to revise Schedule RI–D, item 3, from ''Provision for loan and lease losses in foreign offices'' to ''Provisions for credit losses in foreign offices.''

Schedule RI–E (FFIEC 031, FFIEC 041, and FFIEC 051)

Institutions use item 4 of Schedule RI–E to itemize and describe amounts included in Schedule RI–A, item 2, ''Cumulative effect of changes in accounting principles and corrections of material accounting errors.'' Effective March 31, 2019, the agencies propose to replace the existing text field for Schedule RI–E, item 4.a, with a preprinted caption that would be titled ''Adoption of Current Expected Credit Losses Methodology—ASC Topic 326.'' Institutions will use this item to report the cumulative-effect adjustment (net of applicable income taxes) recognized in retained earnings for the changes in the allowances for credit losses on financial assets and off-balance sheet credit exposures as of the beginning of the fiscal year in which the institution adopts ASU 2016–13. Providing a preprinted caption for this data item, rather than allowing each institution to enter its own description for this cumulative-effect adjustment in the text field for item 4.a, will enhance the agencies' ability to compare the impact of the adoption of ASU 2016–13 across institutions. From March 31, 2019, through December 31, 2022, the reporting form and instructions for Schedule RI–E, item 4.a, would specify that this item is to be completed only in the quarter-end Call Reports for the remainder of the calendar year in which an institution adopts ASU 2016–13. The agencies anticipate that the preprinted caption for Schedule RI–E, item 4.a, would be removed after all institutions have adopted ASU 2016–13.

For Schedule RI–E, item 6, to address the broader scope of financial assets for which allowances will be maintained under ASU 2016–13, effective March 31, 2019, the agencies propose to revise this item from ''Adjustments to allowance for loan and lease losses'' to ''Adjustments to allowances for credit losses.'' In addition, effective March 31, 2019, the agencies propose to replace the existing text field for Schedule RI–E, item 6.a, with a preprinted caption that would be titled ''Initial allowances for credit losses recognized upon the acquisition of purchased credit-deteriorated assets on or after the effective date of ASU 2016–13.'' Also, effective March 31, 2019, the agencies propose to replace the existing text field for Schedule RI–E, item 6.b, with a preprinted caption that would be titled ''Effect of adoption of current expected credit losses methodology on allowances for credit losses on loans and leases held for investment and held-to-maturity debt securities.'' Item 6.b would be used to capture the change in the amount of allowances from initially applying ASU 2016–13 to these two categories of assets as of the effective date of the accounting standard in the period of adoption, including the initial allowance gross-up for any PCD assets held as of the effective date. From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RI–E, items 6.a and 6.b, would specify that these items are to be completed only by institutions that have adopted ASU 2016–13. The instructions for item 6.b would further state that this item is to be completed only in the quarter-end Call Reports for the remainder of the calendar year in which an institution adopts ASU 2016–13. The agencies anticipate that the preprinted caption for Schedule RI–E, item 6.b, would be removed after all institutions have adopted ASU 2016–13.

Schedule RC (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the broader scope of financial assets for which allowances will be estimated under ASU 2016–13, the agencies propose revisions to the reporting form and instructions to specify which asset categories should be reported net of an allowance for credit losses on the Call Report balance sheet and which asset categories should be reported gross of such an allowance. The agencies determined that the only financial asset category for which separate (*i.e.,* gross) reporting of the amortized cost [19] and the allowance is needed on Schedule RC continues to be item 4.b, ''Loans and leases held for investment,'' because of the large size and overall importance of this asset category and its related allowances in comparison to the total assets reported on the balance sheet by most institutions. For other financial assets within the scope of CECL, the agencies propose that institutions report these assets at amortized cost [20] net of the related allowance for credit losses on Schedule RC.

Effective March 31, 2021, the agencies propose to revise Schedule RC, item 2.a, from ''Held-to-maturity securities'' to ''Held-to-maturity securities, net of allowance for credit losses.'' From March 31, 2019, through December 31, 2020, the agencies propose to add a footnote to Schedule RC, item 2.a, specifying that institutions should ''report this amount net of any applicable allowance for credit losses.'' Additionally, for Schedule RC, item 3.b, ''Securities purchased under agreements to resell,'' and Schedule RC, item 11, ''Other assets,'' effective March 31, 2019, the agencies propose to add a footnote to these items specifying that institutions should ''report this amount net of any applicable allowance for

[19] Amortized cost amounts to be reported by asset category would exclude any accrued interest receivable on assets in that category that is reported in ''Other assets'' on the Call Report balance sheet.

[20] See footnote 19.

credit losses.'' From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RC, items 2.a, 3.b, and 11, would specify that reporting such items net of any related allowances for credit losses is applicable only to those institutions that have adopted ASU 2016–13. Given that AFS debt securities are reported on Schedule RC at fair value, the agencies are not proposing any changes to Schedule RC, item 2.b, ''Available-for-sale securities,'' and instead propose reporting allowances for credit losses on AFS debt securities only in Schedule RI–B, Part II.

In addition, to address the change in allowance nomenclature under ASU 2016–13, the agencies propose to revise Schedule RC, item 4.c, from ''LESS: Allowance for loan and lease losses'' to ''LESS: Allowance for credit losses on loans and leases'' effective March 31, 2021.

Schedule RC–B (FFIEC 031, FFIEC 041, and FFIEC 051)

Effective March 31, 2019, the agencies propose to revise the instructions to Schedule RC–B to clarify that for institutions that have adopted ASU 2016–13, allowances for credit losses should not be deducted from the amortized cost amounts reported in columns A and C of this schedule.[21] In other words, institutions should continue reporting the amortized cost of HTM and AFS debt securities in these two columns of Schedule RC–B gross of their related allowances for credit losses.

Schedule RC–C (FFIEC 031, FFIEC 041, and FFIEC 051)

Effective March 31, 2021, to address the change in allowance nomenclature, the agencies propose to revise the reporting form and instructions for Schedule RC–C by replacing references to the allowance for loan and lease losses in statements indicating that the allowance should not be deducted from the loans and leases reported in this schedule with references to the allowance for credit losses. Thus, loans and leases will continue to be reported gross of any related allowances or allocated transfer risk reserve in Schedule RC–C, Part I.

In addition, to address the elimination of PCI assets by ASU 2016–13, the agencies propose to remove Schedule RC–C, Part I, Memorandum items 7.a and 7.b, in which institutions report the outstanding balance and balance sheet amount, respectively, of PCI loans held for investment effective December 31, 2022. The agencies determined that these items were not needed after the transition to PCD loans under ASU 2016–13 because the ASU eliminates the separate credit impairment model for PCI loans and applies CECL to all loans held for investment measured at amortized cost. From March 31, 2019, through September 30, 2022, the reporting form and instructions for Schedule RC–C, Part I, Memorandum items 7.a and 7.b, would specify that these items should be completed only by institutions that have not yet adopted ASU 2016–13.

Additionally, since ASU 2016–13 supersedes ASC 310–30, the agencies propose to revise Schedule RC–C, Part I, Memorandum item 12, ''Loans (not subject to the requirements of FASB ASC 310–30 (former AICPA Statement of Position 03–3)) and leases held for investment that were acquired in business combinations with acquisition dates in the current calendar year,'' effective December 31, 2022. As revised, the loans held for investment to be reported in Memorandum item 12 would be those not considered purchased credit deteriorated per ASC 326. From March 31, 2019, through September 30, 2022, the agencies propose to revise the reporting form and instructions for Schedule RC–C, Part I, by adding a statement explaining that, subsequent to adoption of ASU 2016–13, an institution should report only loans held for investment not considered purchased credit deteriorated per ASC 326 in Schedule RC–C, Part I, Memorandum item 12.

Schedule RC–F (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the broader scope of financial assets for which allowances will be applicable under ASU 2016–13, the agencies propose to specify that assets within the scope of the ASU that are included in Schedule RC–F should be reported net of any applicable allowances for credit losses. Effective March 31, 2019, the agencies propose to revise the reporting form and the instructions for Schedule RC–F by adding a statement explaining that, subsequent to adoption of ASU 2016–13, an institution should report asset amounts in Schedule RC–F net of any applicable allowances for credit losses.

In addition, effective March 31, 2019, the agencies propose to add a footnote to item 1, ''Accrued interest receivable,'' on the reporting form and a statement to the instructions for item 1 that specify that institutions should exclude from this item any accrued interest receivable that is reported elsewhere on the balance sheet as part of the related financial asset's amortized cost.

Schedule RC–G (FFIEC 031, FFIEC 041, and FFIEC 051)

To address ASU 2016–13's exclusion of off-balance sheet credit exposures that are unconditionally cancellable from the scope of off-balance sheet credit exposures for which allowances for credit losses should be measured, the agencies propose to revise the reporting form and instructions for Schedule RC–G, item 3, ''Allowance for credit losses on off-balance-sheet credit exposures,'' effective March 31, 2019. As revised, the reporting form and instructions would state that institutions that have adopted ASU 2016–13 should report in item 3 the allowance for credit losses on those off-balance-sheet credit exposures that are not unconditionally cancellable.

Schedule RC–H (FFIEC 031)

Effective March 31, 2019, the agencies propose to revise the instructions to Schedule RC–H to clarify that institutions that have adopted ASU 2016–13 should report Schedule RC–H, item 3, ''Securities purchased under agreements to resell,'' at amortized cost net of any related allowance for credit losses, which would be consistent with the proposed reporting of this asset category in Schedule RC—Balance Sheet. Also effective March 31, 2019, the agencies propose to revise the instructions to items 10 through 17 of Schedule RC–H to clarify that, for institutions that have adopted ASU 2016–13, allowances for credit losses should not be deducted from the amortized cost amounts reported for HTM debt securities in column A.[22] This proposed reporting treatment for HTM debt securities is consistent with proposed reporting of the cost amounts of such securities in Schedule RC–B, column A.

Schedule RC–K (FFIEC 031, FFIEC 041, FFIEC 051)

Effective March 31, 2019, the agencies propose to revise the instructions to Schedule RC–K to clarify that, for institutions that have adopted ASU 2016–13, allowances for credit losses should not be deducted from the related amortized cost amounts when calculating the quarterly averages for all debt securities.

[21] Amortized cost amounts to be reported by securities category in Schedule RC–B would exclude any accrued interest receivable on the securities in that category that is reported in ''Other assets'' on the Call Report balance sheet.

[22] Amortized cost amounts to be reported by securities category in Schedule RC–H would exclude any accrued interest receivable on the securities in that category that is reported in ''Other assets'' on the Call Report balance sheet.

Schedule RC–N (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the elimination of PCI assets by ASU 2016–13, the agencies propose to remove Schedule RC–N, Memorandum items 9.a and 9.b, in which institutions report the outstanding balance and balance sheet amount, respectively, of past due and nonaccrual PCI loans effective December 31, 2022. The agencies determined that these items were not needed for PCD loans under ASU 2016–13 given that the ASU eliminates the separate credit impairment model for PCI loans and applies CECL to PCD loans and all other loans held for investment measured at amortized cost. From March 31, 2019, through September 30, 2022, the reporting form and the instructions for Schedule RC–N, Memorandum items 9.a and 9.b, would specify that these items should be completed only by institutions that have not yet adopted ASU 2016–13.

Schedule RC–R (FFIEC 031, FFIEC 041, and FFIEC 051)

In connection with the agencies' recently issued proposed rule on the implementation of CECL and the related transition for regulatory capital (CECL NPR),[23] the agencies are proposing a number of revisions to Schedule RC–R to incorporate new terminology and the proposed optional regulatory capital transition. The proposed reporting changes to Schedule RC–R are tied to the revisions proposed in the CECL NPR. To the extent the agencies revise proposed elements of the CECL NPR when issuing a final rule, the agencies would make any necessary corresponding adjustments to the proposed Schedule RC–R reporting revisions discussed in this notice and describe these adjustments in their required second **Federal Register** notice for this proposal to revise the Call Report and other FFIEC reports prior to submitting the revised reports for OMB review. Unless otherwise indicated, the proposed revisions to Schedule RC–R discussed below would take effect March 31, 2019 (or the first quarter-end report date thereafter following the effective date on any final rule) and would apply to those institutions that have adopted CECL.

The CECL NPR would introduce a newly defined regulatory capital term, allowance for credit losses (ACL), which would replace the term ALLL, as defined under the existing capital rules, for institutions that have adopted CECL. The CECL NPR also proposes that credit loss allowances for PCD assets held by these institutions would be netted when determining the carrying value, as defined in the CECL NPR, and, therefore, only the resulting net amount would be subject to risk-weighting. In addition, under the CECL NPR, the agencies are proposing to provide each institution the option to phase in over the three-year period beginning with the institution's CECL effective date the day-one regulatory capital effects that may result from the adoption of ASU 2016–13.[24]

Allowances for Credit Losses Definition and Treatment of Purchased Credit Deteriorated Assets

In general, under the CECL NPR, institutions that have adopted CECL would report ACL amounts in Schedule RC–R items instead of ALLL amounts that are currently reported. Effective December 31, 2022, the agencies are proposing to remove references to ALLL and replace them with references to ACL on the reporting form for Schedule RC–R. From March 31, 2019, through September 30, 2022, the agencies are proposing to revise the instructions to Schedule RC–R to direct institutions that have adopted CECL to use ACL amounts instead of ALLL amounts in calculating regulatory capital. The instructional revisions would affect Schedule RC–R, Part I. Regulatory Capital Components and Ratios, item 30 (FFIEC 051) and item 30.a (FFIEC 031 and 041), ''Allowance for loan and lease losses includable in tier 2 capital''; and Schedule RC–R, Part II. Risk-Weighted Assets, item 6, ''LESS: Allowance for loan and lease losses''; item 26, ''Risk-weighted assets base for purposes of calculating the allowance for loan and lease losses 1.25 percent threshold''; item 28, Risk-weighted assets before deductions for excess allowance for loan and lease losses and allocated transfer risk reserve''; and item 29, ''LESS: Excess allowance for loan and lease losses''.

In addition, under the CECL NPR, assets and off-balance sheet credit exposures for which any related credit loss allowances are eligible for inclusion in regulatory capital would be calculated and reported in Schedule RC–R, Part II. Risk-Weighted Assets, on a gross basis. Therefore, the agencies are proposing to revise the instructions for Schedule RC–R, Part II, Risk-Weighted Assets, item 2.a, ''Held-to-maturity securities''; item 3.b, ''Securities purchased under agreements to resell''; item 5.a, ''Residential mortgage exposures'' held for investment; item 5.b, ''High volatility commercial real estate exposures'' held for investment; item 5.c, Held-for-investment ''Exposures past due 90 days or more or on nonaccrual''; item 5.d, ''All other exposures'' held for investment; item 8, ''All other assets,'' and item 9.a, ''On-balance sheet securitization exposures: Held-to-maturity securities''; to explain that institutions that have adopted CECL should report and risk weight their loans and leases held for investment, HTM securities, and other financial assets measured at amortized cost gross of their credit loss allowances, but net of any associated allowances on PCD assets.[25]

In addition, effective March 31, 2019, the agencies propose to add a new Memorandum item 4 to Schedule RC–R, Part II, that would collect data by asset category on the ''Amount of allowances for credit losses on purchased credit-deteriorated assets.'' The amount of such allowances for credit losses would be reported separately for ''Loans and leases held for investment'' in Memorandum item 4.a, ''Held-to-maturity debt securities'' in Memorandum item 4.b, and, ''Other financial assets measured at amortized cost'' in Memorandum item 4.c. The instructions for Schedule RC–R, Part II, Memorandum item 4, would specify that these items should be completed only by institutions that have adopted ASU 2016–13.

The agencies also would include footnotes for the affected Schedule RC–R items on the reporting forms to highlight the revised treatment of those items for institutions that have adopted CECL.

CECL Transition Provision

Under the CECL NPR, an institution that experiences a reduction in retained earnings as of the effective date of CECL for the institution as a result of the institution's adoption of CECL may elect to phase in the regulatory capital impact of adopting CECL (electing institution). As described in the CECL NPR, an

[23] 83 FR 22312 (May 14, 2018).

[24] A non-PBE with a calendar year fiscal year that does not early adopt CECL would first report under CECL as of December 31, 2021, even though the non-PBE's CECL effective date is January 1, 2021. Thus, under the CECL NPR, such a non-PBE would use the phase-in percentage applicable to the first year of the three-year transition period only for the December 31, 2021, report date (*i.e.,* one quarter), not the four quarters that begin with the first report under CECL. The non-PBE may use the applicable phase-in percentages for all four quarters of the second and third years after the CECL effective date (*i.e.,* 2022 and 2023). The same principle would apply to the optional phase-in by a non-PBE with a non-calendar fiscal year.

[25] Amortized cost amounts to be reported by asset category in Schedule RC–R, Part II, would exclude any accrued interest receivable on assets in that category that is reported in ''Other assets'' on the Call Report balance sheet.

electing institution would indicate in its Call Report whether it has elected to use the CECL transition provision beginning in the quarter that it first reports its credit loss allowances as measured under CECL. To identify which institutions are electing institutions, the agencies are proposing to revise Schedule RC–R, Part I. Regulatory Capital Components and Ratios, by adding a new item 2.a in which an institution that has adopted CECL would report whether it has or does not have a CECL transition election in effect as of the quarter-end report date. Each institution would complete item 2.a beginning in the Call Report for its first reporting period under CECL and in each subsequent Call Report thereafter until item 2.a is removed from the report. Until an institution has adopted CECL, it would leave item 2.a blank. Effective March 31, 2025, the agencies propose to remove item 2.a from Schedule RC–R, Part I, because the optional three-year phase-in period will have ended for all electing institutions by the end of the prior calendar year. If an individual electing institution's three-year phase-in period ends before item 2.a is removed (*e.g.,* its phase-in period ends December 31, 2022), the institution would change its response to item 2.a and report that it does not have a CECL transition election in effect as of the quarter-end report date.

During the CECL transition period, an electing institution would need to make adjustments to its retained earnings, temporary difference deferred tax assets (DTAs), ACL, and average total consolidated assets for regulatory capital purposes. An advanced approaches electing institution also would need to make an adjustment to its total leverage exposure. These adjustments are described in detail in the CECL NPR.

The agencies are proposing to revise the instructions to Schedule RC–R, Part I. Regulatory Capital Components and Ratios, item 2, ''Retained earnings''; items 30 (FFIEC 051) and 30.a (FFIEC 031 and 041), ''Allowance for loan and lease losses includable in tier 2 capital''; item 36, ''Average total consolidated assets''; and item 45.a (FFIEC 031 and 041), ''Total leverage exposure''; and Schedule RC–R, Part II. Risk-Weighted Assets, item 8, ''All other assets,'' consistent with the adjustments to these items for the applicable transitional amounts as described in the CECL NPR for the reporting by electing institutions of the adjusted amounts. The agencies also propose to include footnotes on the reporting forms to highlight the changes to these items for electing institutions.

Schedule RC–V (FFIEC 031 and FFIEC 041)

The agencies propose to clarify in the instructions effective March 31, 2019, that all assets of consolidated variable interest entities should be reported net of applicable allowances for credit losses by institutions that have adopted ASU 2016–13. Net reporting on Schedule RC–V by such institutions is consistent with the proposed changes to Schedules RC and RC–F. Similarly, effective March 31, 2019, the reporting form for Schedule RC–V will also specify that institutions that have adopted ASU 2016–13 should report assets net of applicable allowances.

Schedule SU (FFIEC 051)

To address the change in allowance nomenclature arising from the broader scope of allowances under ASU 2016–13, the agencies propose to revise Schedule SU, item 8.c, effective March 31, 2021, from ''Amount of allowance for loan and lease losses attributable to retail credit card fees and finance charges'' to ''Amount of allowance for credit losses on loans and leases attributable to retail credit card fees and finance charges.''

2. EGRRCPA Proposed Call Report Revisions

As mentioned above in Section B of ''Supplementary Information, I. Background,'' Sections 202 and 214 of EGRRCPA on reciprocal deposits and HVCRE ADC loans, respectively, were effective upon enactment on May 24, 2018, and affect the reporting of information in the Call Reports effective beginning with the June 30, 2018, report date. To assist institutions in preparing their Call Reports for that report date, the Call Report Supplemental Instructions for June 2018 included information regarding the reporting of HVCRE exposures and reciprocal deposits.

In amending Section 29 of the FDI Act to except a capped amount of reciprocal deposits from treatment as brokered deposits for qualifying institutions, Section 202 defines ''reciprocal deposits'' to mean ''deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks.'' The terms ''agent institution,'' ''deposit placement network,'' ''covered deposit,'' and ''network member bank,'' all of which are used in the definition of ''reciprocal deposit,'' also are defined in Section 202.

In particular, an ''agent institution'' is an FDIC-insured depository institution that meets at least one of the following criteria:

- The institution is well-capitalized *and* has a composite condition of ''outstanding'' or ''good'' when most recently examined under section 10(d) of the FDI Act (12 U.S.C. 1820(d));
- The institution has obtained a waiver from the FDIC to accept, renew, or roll over brokered deposits pursuant to section 29(c) of the FDI Act (12 U.S.C. 1831f(c)); or
- The institution does not receive reciprocal deposits in an amount that is greater than a ''special cap'' (discussed below).

Under the ''general cap'' set forth in Section 202, an agent institution may classify reciprocal deposits up to the lesser of the following amounts as non-brokered reciprocal deposits:

- $5 billion, or
- An amount equal to 20 percent of the agent institution's total liabilities.

Any amount of reciprocal deposits in excess of the ''general cap'' would be treated as, and should be reported in the Call Report as, brokered deposits.

A ''special cap'' applies if an agent institution is either *not* ''well-rated'' or *not* well capitalized. In this situation, the institution may classify reciprocal deposits as non-brokered in an amount up to the lesser of the ''general cap'' or the average amount of reciprocal deposits held by the agent institution on the last day of each of the four calendar quarters preceding the calendar quarter in which the agent institution was found to not have a composite condition of ''outstanding'' or ''good'' or was determined to be not well capitalized.

Section 51 of the FDI Act, as added by Section 214 of EGRRCPA, governs the risk-based capital requirements for HVCRE ADC Loans and defines this term. Under Section 214, the assignment of a heightened risk weight to HVCRE exposures may be required only if the exposure meets the statutory definition of an HVCRE ADC Loan.

The revisions discussed in this section have already been submitted to OMB under the emergency review process, and OMB has approved these changes. However, the agencies are requesting comment on whether there should be any further changes for these items or revisions to the items or instructions developed by the agencies.

Schedule RC–E (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the change in the treatment of certain reciprocal deposits under Section 202 of EGRRCPA in the Call Report, the agencies, through the

issuance of Call Report Supplemental Instructions for June 2018, explained how institutions could report certain data on brokered deposits in accordance with EGRRCPA or based on the reporting instructions in effect prior to passage of EGRRCPA. The agencies explained that institutions that chose to report based on the new law should include in Memorandum items 1.b through 1.d only those reciprocal deposits that are still considered brokered deposits under Section 202. The agencies plan to reissue these Supplemental Instructions for September 2018. Revised instructions for Memorandum item 1.b will be incorporated into the Call Report instruction books at a future date.

In addition, the agencies plan to add a new Memorandum item 1.g to Schedule RC–E in which institutions would report their ''Total reciprocal deposits'' (as of the report date) in accordance with the definition of this term in Section 202, starting with the September 30, 2018, Call Report. The new Memorandum item 1.g of Schedule RC–E would be used in determining an institution's ''special cap'' if the institution were found to not have a composite condition of ''outstanding'' or ''good'' or was determined not to be well capitalized. The measurement of an institution's ''special cap'' would be the average of reciprocal deposits held on the last day of each of the four calendar quarters preceding the calendar quarter in which the institution was found to not have a composite condition of ''outstanding'' or ''good'' or was determined not to be well capitalized.

From a supervisory perspective, a funding concentration could arise if a significant amount of an institution's deposits comes from reciprocal deposits obtained through a single deposit placement network, regardless of whether the reciprocal deposits are treated as brokered under Section 202. Examiners review funding concentrations on an institution-by-institution basis. The Memorandum item for ''Total reciprocal deposits'' would enable the agencies to identify significant changes in the reported amounts of such deposits at institutions for appropriate supervisory follow-up.

Schedule RC–O (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the change in the treatment of certain reciprocal deposits under Section 202 of EGRRCPA, the agencies, through the Supplemental Instructions for June 2018, explained that institutions that chose to report based on the new law should include in items 9, ''Reciprocal brokered deposits,'' and 9.a, ''Fully consolidated reciprocal brokered deposits,'' only those reciprocal deposits that are still considered brokered deposits after application of Section 202 of the new law. The agencies plan to reissue these Supplemental Instructions for September 2018. Revised instructions for items 9 and 9.a will be incorporated into the Call Report instruction books at a future date.

Schedule RC–R (FFIEC 031, FFIEC 041, and FFIEC 051)

To address the EGRRCPA change that applies to the reporting of HVCRE exposures for risk-based capital purposes, the agencies revised the instructions to Schedule RC–R, Part II, through the Call Report Supplemental Instructions for June 2018. The revised instructions explain that, pending further action by the agencies, when reporting HVCRE exposures in Schedule RC–R, Part II, institutions may use available information to reasonably estimate and report only ''HVCRE ADC Loans'' held for sale, held for investment, and held for trading in Schedule RC–R, Part II, items 4.b, 5.b and 7, respectively. The portion of any ''HVCRE ADC Loan'' that is secured by collateral or has a guarantee that qualifies for a risk weight lower than 150 percent may continue to be assigned a lower risk weight when completing Schedule RC–R, Part II. Pending further agency action, institutions may refine their estimates of ''HVCRE ADC Loans'' in good faith as they obtain additional information, but they will not be required to amend Call Reports previously filed for report dates on or after June 30, 2018, as these estimates are adjusted. Alternatively, institutions may continue to report and risk weight HVCRE exposures in a manner consistent with the current Call Report instructions for Schedule RC–R, Part II, until the agencies take further action. The agencies will incorporate the instructions for these items, currently in the Supplemental Instructions for June 2018, into the Call Report instruction books at a future date.

III. FFIEC 002/002S Revisions

FFIEC 002 Schedule M—Due From/Due to Related Institutions in the U.S. and in Foreign Countries

At present, a reporting U.S. branch or agency of a foreign bank is not required to, but may choose to, establish a general allowance for loan losses, which it would report in its FFIEC 002 report in Schedule M, Part IV, item 1, ''Amount of allowance for loan losses, if any, carried on the books of the reporting branch or agency including its IBF.'' In addition, any general allowance for loan losses is reported in Schedule M, Part I, item 2(a), column B, as part of the ''Gross due to'' the ''Head office of parent bank,'' as well as in either Schedule RAL, item 2(a), ''Net due from related depository institutions,'' or item 5(a), Net due to related depository institutions,'' as applicable. The institution would report the total amount of the allowance carried on the books of the reporting institution, even if part of that allowance is applicable to other branches.

To address the change in allowance nomenclature arising from the broader scope of allowances under ASU 2016–13, the agencies propose to revise Schedule M, Part IV, item 1, from ''Amount of allowance for loan losses'' to ''Allowance for credit losses on loans and leases,'' effective March 31, 2021. For the period from March 31, 2019, through December 31, 2020, the reporting form and instructions for this data item would include guidance stating that institutions that have adopted ASU 2016–13 would report the ''allowance for credit losses on loans and leases,'' as applicable. For the transition period from March 31, 2021, through December 31, 2022, the reporting form and instructions for this data item would be updated to include guidance stating that institutions that have not adopted ASU 2016–13 would report the amount of the ''allowance for loan losses,'' as applicable. In addition, for these same time periods, the agencies propose to revise the instructions for Schedule M, Part I, item 2(a), column B, as well as Schedule RAL, items 2(a) and 5(a), to incorporate language clarifying that institutions should include any allowance for loan losses or any allowances for credit losses in these items, as applicable. If an institution chooses to establish them, the allowances for credit losses reportable in item 2(a) or 5(a), as applicable, could apply to loans, leases, other financial assets measured at amortized cost, and off-balance sheet credit exposures (but not available-for-sale securities, which are reported at fair value on Schedule RAL).

Finally, effective March 31, 2019, the agencies propose to add a statement to the instructions for Schedule RAL, item 1(h), ''Other assets (including other claims on nonrelated parties,'' that specifies that institutions that have adopted ASU 2016–13 should exclude from this item any accrued interest receivable that is reported elsewhere on the balance sheet as part of the related financial asset's amortized cost.

FFIEC 002S

The General Instructions for the FFIEC 002S state that due from/due to relationships with related institutions (both depository and nondepository) are to be reported on a gross basis and that such relationships include all claims between the foreign branch and any related institutions (whether depository or nondepository) arising in connection with any accounting or regulatory allocations entered on the books of the reporting foreign branch that ultimately affect unremitted profits. As an example of such allocations, the General Instructions cite the ''allowance for possible loan losses.'' In addition, the instructions for item 2(c), ''Loans,'' states that loans (and leases) should be reported before deduction of any allowance for loan losses. To address the change in allowance nomenclature arising from the broader scope of allowances under ASU 2016–13, the agencies propose to revise the FFIEC 002S General Instructions and item 2(c) instructions to change the ''allowance for loan losses'' terminology to ''allowances for credit losses'' and ''allowances for credit losses on loans and leases,'' respectively, effective March 31, 2021. Allowances for credit losses could apply to loans, leases, other financial assets measured at amortized cost, and off-balance sheet credit exposures (but not available-for-sale securities). For the period from March 31, 2019, through December 31, 2020, the General Instructions for reporting due from/due to relationships would include guidance stating that institutions that have adopted ASU 2016–13 should interpret the ''allowance for loan losses'' as ''allowances for credit losses,'' as applicable. For the transition period from March 31, 2021, through December 31, 2022, these General Instructions would include guidance stating that institutions that have not adopted ASU 2016–13 should interpret ''allowances for credit losses'' as the ''allowance for loan losses,'' as applicable. Comparable changes would be made to the instructions for item 2(c) for these periods.

V. FFIEC 030/030S Revisions

FFIEC 030 Assets

All asset categories on the FFIEC 030 report are reported gross of any related allowances. Allowances for credit losses, including loan and lease losses, are reported in line item 16, ''Gross due to head office, U.S. branches, and other foreign branches of this bank.'' Currently, however, the instructions for line item 8, ''Gross due from head office, U.S. branches, and other foreign branches of this bank,'' also state that institutions should report any allowance for loan and lease losses and other valuation allowances in this line item. Effective March 31, 2019, the agencies propose to remove this language from the line item 8 instructions since the allowance for loan and lease losses and other valuation allowances are reported in line item 16. Additionally, the agencies propose to add a statement to the instructions for balance sheet item 10, ''Other assets,'' that specifies that institutions that have adopted ASU 2016–13 should exclude from this item any accrued interest receivable that is reported elsewhere on the balance sheet as part of the related financial asset's amortized cost.

FFIEC 030 Liabilities

The gross due to amounts reported in Liabilities item 16, ''Gross due to head office, U.S. branches, and other foreign branches of this bank,'' include any allowance for loan and lease losses on the books of the reporting branch. To address the change in allowance nomenclature arising from the broader scope of allowances under ASU 2016–13, effective March 31, 2019, the agencies propose to revise the reporting instructions for Liabilities item 16, to change ''any allowance for loan and lease losses'' to ''any allowances for credit losses.'' From March 31, 2019, through September 30, 2022, the instructions for item 16 would specify that institutions that have not adopted ASU 2016–13 should continue to include the allowance for loan and lease losses in this item.

FFIEC 030S Financial Data

Branches that file the FFIEC 030S report their ''Gross due to related institutions'' in item 3. The instructions for item 3 state that this item corresponds to FFIEC 030 Liabilities items 16 and 17.[26] Thus, the effect of the proposed revisions to the instructions for FFIEC 030 Liabilities item 16, described above, will carry over to FFIEC 030S item 3.

VI. FFIEC 101 Revisions

The proposed changes in the CECL NPR would revise the capital rules applicable to an advanced approaches institution[27] that has completed the parallel run process[28] by aligning the definition of eligible credit reserves (ECR) with the definition of ACL. In addition, as described in the CECL NPR, an advanced approaches institution may elect to phase in the impact of CECL by adjusting ECR, which could affect the reporting of certain items in the FFIEC 101.

To reflect the proposed changes in the CECL NPR and in the optional CECL transition provision, the agencies are proposing to revise the instructions to FFIEC 101, Schedule A—Advanced Approaches Regulatory Capital, item 50, ''Eligible credit reserves includable in tier 2 capital''; item 76, ''Total allowance for loan and lease losses (ALLL) under the standardized approach''; and item 77, ''Amount of ALLL includable in tier 2 capital under the standardized approach,'' effective March 31, 2019, for advanced approaches institutions that have adopted CECL. The proposed revisions to these instructions would incorporate the new definitions in the CECL NPR, as well as the mechanics of the CECL transition provision for electing advanced approaches institutions that have adopted CECL. The agencies also would include footnotes on the forms to highlight these items for these advanced approaches institutions.

In addition, the definition of HVCRE ADC Loan in Section 214 of EGRRCPA that applies to the reporting of such exposures held for sale, held for investment, and held for trading in Schedule RC–R, Part II, of the Call Report also impacts the reporting of information in the FFIEC 101 on HVCRE exposures in Schedule B, item 5, and Schedule G—High Volatility Commercial Real Estate.[29] The agencies have received OMB approval to revise the instructions to these schedules to allow institutions to report commercial

[26] Liabilities item 17 is used to report a branch's ''Gross due to consolidated subsidiaries of this bank.''

[27] An institution is an advanced approaches institution if it has consolidated assets of at least $250 billion or if it has consolidated on-balance sheet foreign exposures of at least $10 billion, or if it is a subsidiary of a depository institution, bank holding company, savings and loan holding company, or intermediate holding company that is an advanced approaches institution. An institution that elects to use the advanced approaches to calculate its total risk-weighted assets also is an advanced approaches institution. *See* 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

[28] An advanced approaches institution is considered to have completed the parallel run process once it has completed the advanced approaches qualification process and received notification from its primary federal regulator pursuant to section 121(d) of subpart E of the capital rules. *See* 12 CFR 3.121(d) (OCC); 12 CFR 217.121(d) (Board); 12 CFR 324.121(d) (FDIC).

[29] To assist advanced approaches institutions in preparing their FFIEC 101 reports for the June 30, 2018, report date, the FFIEC sent a letter to these institutions providing instructions regarding the reporting of HVCRE exposures in the FFIEC 101 as of that date. Guidance from this letter will be incorporated into the FFIEC 101 Instructions at a future date.

real estate exposures that meet the statutory definition of ''HVCRE ADC Loan'' in Section 214 of this new law. Therefore, to address the EGRRCPA change that applies to the reporting of HVCRE exposures in the FFIEC 101, the agencies revised the instructions for the FFIEC 101 to allow an advanced approaches institution to estimate and report HVCRE exposures on Schedules B and G of the FFIEC 101 using the definition under Section 214 of the new law. Pending further agency action, institutions may refine their estimates in good faith as they obtain additional information, but they will not be required to amend FFIEC 101 reports previously filed for report dates on or after June 30, 2018, as these estimates are adjusted. Alternatively, institutions may report HVCRE exposures in a manner consistent with the current definition contained in the agencies' regulatory capital rules until the agencies take further action.

VII. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) In Call Report Schedule RI, Income Statement, whether institutions should continue reporting the provision for credit losses on off-balance sheet credit exposures in item 7.d, ''Other noninterest expense,'' or whether institutions should report this expense as part of proposed item 4, ''Provisions for credit losses on financial assets'';

(b) In Call Report Schedule RI–C, Part II, Disaggregated Data on Allowances for Credit Losses, whether the agencies should retain item 5 for reporting unallocated allowances for loans and leases, as proposed, or whether ASU 2016–13 is viewed as eliminating the potential for unallocated allowances considering the accounting standard requires allowances to be estimated at a pool level when similar risk characteristics exist and at an individual asset level when similar risk characteristics do not exist;

(c) For proposed Schedule RI–C, Part II, whether the general categories of debt securities for which data are proposed to be collected are at the appropriate level of granularity or whether alternative categories should be used and, if so, what these categories should be;

(d) Also for proposed Schedule RI–C, Part II, whether the proposed annual reporting frequency for the disaggregation of data on the allowances for credit losses on HTM debt securities and AFS debt securities is appropriate or whether more frequent reporting of these data would be more appropriate and, if so, what the reporting frequency should be;

(e) Whether, after an institution adopts ASU 2016–13, all accrued interest receivable currently reported in ''Other assets'' should be reported as part of the balance sheet amount of the related financial asset, consistent with the definition of amortized cost in the ASU;

(f) Whether the agencies should consider according confidential treatment to Schedule RC–O, items 9 and 9.a, on reciprocal brokered deposits, and Schedule RC–E, Memorandum items 1.b through 1.d, on brokered deposits, because amounts an institution reports in these items in relation to the amount reported in proposed Schedule RC–E, Memorandum item 1.g, ''Total reciprocal deposits,'' and changes in these reported amounts over time, may enable users of Call Report data to make inferences about the institution's composite rating under the Uniform Financial Institutions Rating System, which is confidential supervisory information;

(g) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(h) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(i) Ways to enhance the quality, utility, and clarity of the information to be collected;

(j) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(k) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: September 20, 2018.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, September 21, 2018.

Ann Misback,

Secretary of the Board.

Dated at Washington, DC, on September 20, 2018.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2018–21105 Filed 9–27–18; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

FEDERAL REGISTER

Vol. 83 Friday,

No. 189 September 28, 2018

Part II

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 216, 247, and 252

Federal Acquisition Regulations; Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Additional Services'' (DFARS Case 2018–D027); Repeal of DFARS Clause Indefinite Quantities—No Fixed Charges; Repeal of DFARS Clause Award Fee; Repeal of DFARS Clause Indefinite Quantities—Fixed Charges; Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

[Docket DARS–2018–0043]

RIN 0750–AJ89

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Additional Services" (DFARS Case 2018–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is outdated and no longer used.

DATES: Effective September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove DFARS clause 252.247–7020, Additional Services, and the associated clause prescription at DFARS 247.271–3. DFARS clause 252.247–7020 applies to personal property movement and storage contracts when a need for services related to the contract, but not specifically addressed in the contract, occurs during contract performance.

The DFARS clause is included in contracts when acquiring services for the preparation of personal property for movement or storage, or for performance of intra-city or intra-area movement, and advises contractors that the rates billed to the US Government for additional services must be comparable to the rates for similar services on file with the Military Traffic Management Command at the time of the order.

The DFARS clause is no longer necessary, as the requirement for personal property movement and storage has evolved since the creation of this clause. Coordination with multi-functional teams and proactive communication with customers has better defined such additional services, and the requirement for these services is included in the performance work statement and resultant contract line item structure. As such, this clause is no longer necessary.

The removal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.247–7020, Additional Services, and determined that the DFARS coverage was redundant and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule merely removes obsolete DFARS clause 252.247–7020, Additional Services. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete clause from the DFARS.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 247—TRANSPORTATION

247.271–3 [Amended]

■ 2. Amend section 247.271–3 by—
■ a. Removing paragraph (n); and
■ b. Redesignating paragraph (o) as paragraph (n).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247–7020 [Removed and Reserved]

■ 3. Remove and reserve section 252.247–7020.

[FR Doc. 2018–20971 Filed 9–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

[Docket DARS–2018–0045]

RIN 0750–AJ96

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Indefinite Quantities—No Fixed Charges'' (DFARS Case 2018–D034)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the DFARS clause 252.247–7005, Indefinite Quantities—No Fixed Charges, and the associated clause prescription at DFARS 247.270–4(e). The DFARS clause is used in indefinite-delivery, indefinite-quantity contracts for stevedoring services to notify the contractor that the minimum value of an order placed under the contract shall not be less than $100.

Federal Acquisition Regulation (FAR) clause 52.216–19, Order Limitations, is prescribed for use in all indefinite-delivery contracts and notifies the contractor of the minimum and maximum values of orders to be placed under the contract. In the FAR clause, the minimum and maximum values are blank spaces to be filled-in by the contracting officer prior to solicitation. The FAR clause serves the same purpose as the DFARS clause and can be used to reflect the appropriate ordering limitations for stevedoring services. As such, this DFARS clause is unnecessary and can be removed.

The removal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.247–7005, Indefinite Quantities—No Fixed Charges, and determined that the DFARS clause was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes DFARS clause 252.247–7005, Indefinite Quantities—No Fixed Charges, which is obsolete. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review; and E.O. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete requirement from the DFARS.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 247—TRANSPORTATION

247.270–4 [Amended]

■ 2. Amend section 247.270–4 by—

■ a. Removing paragraph (e); and

■ b. Redesignating paragraph (f) as paragraph (e).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247–7005 [Removed and Reserved]

■ 3. Remove and reserve section 252.247–7005.

252.247–7007 [Amended]

■ 4. Amend section 252.247–7007, in the introductory text, by removing ''247.270–4(f)'' and adding ''247.270–4(e)'' in its place.

[FR Doc. 2018–20972 Filed 9–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216 and 252

[Docket DARS–2018–0044]

RIN 0750–AJ99

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Award Fee'' (DFARS Case 2018–D037)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the DFARS clause 252.216–7005, Award Fee, and the associated clause prescription at DFARS 216.406(e)(2). The DFARS clause advises contractors that: They may earn an award fee from zero dollars to the maximum amount stated in the award fee plan; an award fee will not be paid for any evaluation period in which the Government rates the contractor's overall cost, schedule, and technical performance below satisfactory; and, the contracting officer may unilaterally revise the award fee plan prior to the beginning of a rating period in order to redirect the contractor's emphasis on performance.

Federal Acquisition Regulation (FAR) 16.401 prescribes the award fee pool percentages that are available to the contractor and required for use by the Government in an award fee plan. Like the DFARS clause, these percentages permit the contractor to earn between 0% and 100% of the award fee pool. Also like the DFARS clause, the FAR requires all award fee plans to prohibit contractors from earning any award fee when the contractor's overall cost, schedule, and technical performance is below satisfactory. While the FAR does not address the unilateral ability to of the contracting officer to make revisions to the award fee plan, as discussed in the DFARS clause, the FAR does require award fee plans to contain reasonable and attainable targets that motivate contractors and discourage inefficiency or waste. Finally, DFARS 216.401 requires the award fee plan to be incorporated into the contract. This action provides contractors with an award fee plan that conveys all of the FAR information and requirements for award fee plans. As such, this DFARS clause is unnecessary and can be removed.

The removal of this DFARS clause supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.216–7005, Award Fee, and determined that the DFARS clause was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes DFARS clause 252.216–7005, Award Fee, which is obsolete. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review; and E.O. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of

appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete requirement from the DFARS.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 216—TYPES OF CONTRACTS

216.406 [Amended]

■ 2. Amend section 216.406 by—

■ a. Removing paragraph (e)(2); and

■ b. Redesignating paragraph (e)(1) as paragraph (e).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.216–7004 [Amended]

■ 3. Amend section 252.216–7004, in the introductory text, by removing ''216.406'' and adding ''216.406(e)'' in its place.

252.216–7005 [Removed and Reserved]

■ 3. Remove and reserve section 252.216–7005.

[FR Doc. 2018–20973 Filed 9–27–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 247 and 252

[Docket DARS–2018–0046]

RIN 0750–AK01

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Indefinite Quantities—Fixed Charges'' (DFARS Case 2018–D039)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Effective September 28, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the DFARS clause 252.247–7004, Indefinite Quantities—Fixed Charges, and the associated clause prescription at DFARS 247.270–4(d). When applicable, the DFARS clause is used in indefinite-delivery, indefinite-quantity contracts for stevedoring services to notify the contractor that the Government is obligated to pay the contractor the fixed monthly amount established in the contract.

This notification is not necessary, since line items are established in all contracts to describe the items being purchased, as well as the pricing, funding, and delivery information for each item. The award of the contract is the Government's agreement to pay the contractor for the line items, in accordance with the contract; therefore, this DFARS clause provides no additional benefit for the contractor or the Government. As such, this DFARS clause is unnecessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.247–7004, Indefinite Quantities—Fixed Charges, and determined that the DFARS clause was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes DFARS clause 252.247–7004, Indefinite Quantities—Fixed Charges, which is obsolete. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review; and E.O. 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

IV. Executive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under E.O. 12866.

V. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete notification from the DFARS.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section V. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 247 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 247 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 247—TRANSPORTATION

247.270–4 [Amended]

■ 2. Amend section 247.270–4 by—

■ a. Removing paragraph (d); and

■ b. Redesignating paragraph (e) as paragraph (d).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.247–7004 [Removed and Reserved]

■ 3. Remove and reserve section 252.247–7004.

252.247–7007 [Amended]

■ 4. Amend section 252.247–7007, in the introductory text, by removing ''247.270–4(e)'' and adding ''247.270–4(d)'' in its place.

[FR Doc. 2018–20974 Filed 9–27–18; 8:45 am]

BILLING CODE 5006–01–P

FEDERAL REGISTER

Vol. 83 Friday,

No. 189 September 28, 2018

Part III

Department of the Interior

Bureau of Land Management

43 CFR Parts 3160 and 3170

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 3170

[18X.LLWO310000.L13100000.PP0000]

RIN 1004–AE53

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: In this action, the Bureau of Land Management (BLM) is revising its regulations, as amended by the November 18, 2016, rule entitled, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation,'' in a manner that reduces unnecessary compliance burdens, is consistent with the BLM's existing statutory authorities, and re-establishes longstanding requirements that had been replaced. The BLM is rescinding the novel requirements pertaining to waste-minimization plans, gas-capture percentages, well drilling, well completion and related operations, pneumatic controllers, pneumatic diaphragm pumps, storage vessels, and leak detection and repair (LDAR). The BLM is also revising other provisions related to venting and flaring and is adding provisions regarding deference to appropriate State or tribal regulation in determining when flaring of associated gas from oil wells will be royalty-free.

DATES: The final rule is effective on November 27, 2018.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143 or *s1wells@blm.gov,* for information regarding the substance of this final rule or information about the BLM's Fluid Minerals program. For questions relating to regulatory process issues, contact Faith Bremner at 202–912–7441 or *fbremner@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Background
III. Discussion of the Final Rule
IV. Procedural Matters

I. Executive Summary

On November 18, 2016, the BLM published in the **Federal Register** a final rule entitled, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation'' (82 FR 83008) (''2016 rule''). The 2016 rule was intended to: Reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases; clarify when produced gas lost through venting, flaring, or leaks is subject to royalties; and clarify when oil and gas production may be used royalty-free on-site. The 2016 rule became effective on January 17, 2017, with some requirements taking effect immediately, but the majority of requirements were to phase-in on January 17, 2018, or later.

On March 28, 2017, President Trump issued Executive Order (E.O.) 13783, ''Promoting Energy Independence and Economic Growth,'' directing the BLM to review the 2016 rule and, if appropriate, to publish proposed and final rules suspending, revising, or rescinding it.

The BLM reviewed the 2016 rule and found that certain impacts were underestimated and many provisions of the rule would have added regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. The BLM also found that the 2016 rule's approach to reduction of fugitive emissions and flaring departed from the historic approach of considering ''waste'' in the context of a reasonable and prudent operator standard. This final rule revises the 2016 rule in a manner that ensures consistency with the policies set forth in section 1 of E.O. 13783, which states that ''[i]t is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.''

The BLM reviewed the 2016 rule and determined that it would have imposed costs exceeding its benefits. As detailed in the Regulatory Impact Analysis (RIA) prepared for this rule, and evidenced by the RIA prepared for the 2016 rule (2016 RIA), many of the provisions of the 2016 rule would have imposed compliance costs well in excess of the value of the resource (natural gas) that would have been conserved. In addition, the provisions of the 2016 rule, unlike the analogous Environmental Protection Agency (EPA) regulations with which many of them overlapped, would have affected existing wells, including a substantial number that are ''marginal,'' or low-producing, and therefore less likely to remain economical to operate if subjected to additional compliance costs. The BLM estimates that approximately 73 percent of wells on BLM-administered leases would be considered marginal wells and that the annual compliance costs associated with the 2016 rule would have constituted 24 percent of an operator's annual revenues from even the highest-producing marginal oil wells and 86 percent of an operator's annual revenues from the highest-producing marginal gas wells. Finally, the BLM has determined that the 2016 rule also contains numerous administrative and reporting requirements that would have imposed unnecessary burdens on operators and the BLM. For these reasons, the BLM revised the 2016 rule in a manner that reduces unnecessary compliance burdens and, in large part, re-establishes the longstanding requirements that the 2016 rule replaced.

With this final rule, the BLM is discouraging excessive venting and flaring by placing volume and/or time limits on royalty-free venting and flaring during production testing, emergencies, and downhole well maintenance and liquids unloading. The BLM has also retained the 2016 rule's subpart 3178 provisions, which incentivize the beneficial use of gas by making gas used for operations and production purposes royalty free. Finally, by rescinding the 2016 rule's prescriptive requirements for pneumatic equipment, storage tanks, and LDAR—many of which were not cost-effective and risked the early shut-in of marginal wells—this final rule allows operators to continue implementing waste reduction strategies and programs that they find successful and to tailor or modify their programs in a manner that makes sense for their operations.

II. Background

A. Background

The BLM manages more than 245 million acres of public land, known as the National System of Public Lands, primarily located in 12 Western States, including Alaska. The BLM also manages 700 million acres of subsurface mineral estate throughout the nation.

The BLM's onshore oil and gas management program is a major contributor to the nation's oil and gas production. In fiscal year (FY) 2017, sales volumes from Federal onshore production lands accounted for approximately 9 percent of domestic natural gas production, 5 percent of U.S. natural gas liquids production, and 5

percent of domestically produced oil.[1] Roughly $1.9 billion in royalties were collected from all oil, natural gas, and natural gas liquids transactions in FY 2017 on Federal Lands.[2] Royalties from Federal lands are shared with States. Royalties from Indian lands are collected for the benefit of the Indian owners.

The venting or flaring of some natural gas is a practically unavoidable consequence of oil and gas development. Whether during well drilling, production testing, well purging, or emergencies, it is not uncommon for gas to reach the surface that cannot be feasibly captured, used, or sold. When this occurs, the gas must either be combusted (''flared'') or released to the atmosphere (''vented''). Depending on the circumstances, operators may flare natural gas on a longer-term basis from production operations, predominantly in situations where an oil well co-produces natural gas (or ''associated gas'') in an exploratory area or a field that lacks adequate gas-capture infrastructure to bring the gas to market. Production equipment may be designed to vent or flare gas, *e.g.,* gas may be vented with the use of pneumatic controllers or combusted to generate power. Gas that accumulates in oil-storage tanks may also necessitate venting or flaring for safety. Finally, gas may be unintentionally lost through leaks from equipment and facilities.

In response to oversight reviews and a recognition of increased flaring from Federal and Indian leases, the BLM developed a final rule entitled, ''Waste Prevention, Production Subject to Royalties, and Resource Conservation,'' which was published in the **Federal Register** on November 18, 2016 (81 FR 83008). The 2016 rule replaced the BLM's existing policy at that time, Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A) (44 FR 76600 (Dec. 27, 1979)).

The 2016 rule was intended to: Reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian leases; clarify when produced gas lost through venting, flaring or leaks is subject to royalties; and clarify when oil and gas production may be used royalty free on-site. The 2016 rule applied to all wells producing Federal and Indian oil and gas and regulated new, modified, and existing sources of methane emissions on Federal and Indian leases, units, and communitized areas. The 2016 rule became effective on January 17, 2017, with some requirements taking effect immediately, but the majority of requirements were to phase-in over time.

On March 28, 2017, President Trump issued E.O. 13783, entitled, ''Promoting Energy Independence and Economic Growth,'' directing the BLM to review the 2016 rule. Section 7(b) of E.O. 13783 directs the Secretary of the Interior to review four specific rules, including the 2016 rule, for consistency with the policy articulated in section 1 of the Order and, if appropriate, to publish rules suspending, revising, or rescinding those rules. Among other things, section 1 of E.O. 13783 states that ''[i]t is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.''

To implement E.O. 13783, Secretary of the Interior Ryan Zinke issued Secretarial Order No. 3349, entitled, ''American Energy Independence'' on March 29, 2017, which, among other things, directs the BLM to review the 2016 rule to determine whether it is fully consistent with the policy set forth in section 1 of E.O. 13783.

The BLM reviewed the 2016 rule and determined it to be inconsistent with the policy in section 1 of E.O. 13783. The BLM found that some provisions of the 2016 rule would have added (once fully in effect) regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. The BLM estimates that approximately 73 percent of wells on BLM-administered leases would be considered marginal wells and that the annual compliance costs associated with the 2016 rule would have constituted 24 percent of the annual revenues of even the highest-producing marginal oil wells and 86 percent of the annual revenues of the highest-producing marginal gas wells. The BLM also finds that marginal oil and gas production on Federal lands supported an estimated $2.9 billion in economic output in the national economy in FY 2015. To the extent that the 2016 final rule would have adversely impacted production from marginal wells through premature shut-ins, this estimated economic output would have been jeopardized.

On February 22, 2018, the BLM published a proposal to revise the 2016 rule in a manner that would make it consistent with the policies set forth in section 1 of E.O. 13783. 83 FR 7924 (Feb. 22, 2018). The BLM provided for a 60-day public comment period, which generated more than 600,000 comments on the proposed rule. The BLM received comments from a wide variety of persons and entities, including individual citizens, environmental advocacy groups, industry advocacy groups, oil and gas exploration and production companies, public interest groups, state agencies, and tribes. The BLM has summarized and responded to these comments in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.) In addition, the BLM has noted the most salient comments on the proposed rule in its discussion of the final rule in this preamble. In response to comments and after further consideration, the BLM has made the following modifications to the proposed rule in this final rule: (1) Clarification that the 24-hour limit on royalty-free flaring during downhole well maintenance and liquids unloading in § 3179.104 applies ''per event''; (2) Addition of a standard for ''applicable rules, regulations, or orders'' of a State regulatory agency or tribe in § 3179.201(a); and (3) Addition of a provision allowing for tribes to seek BLM approval to have tribal rules apply in place of any or all of the provisions of subpart 3179. The final rule is otherwise the same as the proposed rule.

The BLM has several compelling reasons for modifying the requirements in the 2016 rule.

First, the BLM believes that many provisions of the 2016 rule exceeded the BLM's statutory authority to regulate for the prevention of ''waste'' under the Mineral Leasing Act (MLA). The MLA states that all leases ''shall be subject to the condition that the lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land . . . .''[3] The MLA further provides that ''[e]ach lease shall contain provisions for the purpose

[1] United States Department of the Interior, ''Budget Justifications and Performance Integration Fiscal Year 2019: Bureau of Land Management'' at VI–82, available at *https://www.doi.gov/sites/doi.gov/files/uploads/fy2019_blm_budget_justification.pdf.*

[2] Derived from data available on the Office of Natural Resources Revenue website's ''Statistical Information'' page, accessible at *https://revenuedata.doi.gov/explore/.*

[3] 30 U.S.C. 225. For convenience, where several statutes applicable to public lands support the same legal point, we refer hereinafter only to the MLA.

of insuring the exercise of reasonable diligence, skill, and care in the operation of [the lease],'' as well as ''a provision that such rules . . . for the prevention of undue waste as may be prescribed by [the Secretary] shall be observed . . . .''[4] The concept of ''waste'' underlying the 2016 rule constituted a drastic departure from the concept of ''waste'' applied by the Department of the Interior over many decades of implementing the MLA. The 2016 rule was based on the premise that essentially any losses of gas at the production site could be regulated as ''waste,'' without regard to the economics of conserving that lost gas. This is illustrated by the 2016 rule's ''capture percentage,'' storage vessel, and LDAR requirements, all of which, as explained in more detail in the section-by-section analysis, were expected to impose compliance costs well in excess of the value of the gas to be conserved.

The Department's implementation of the MLA has long been informed by an understanding that there is a certain amount of unavoidable loss of oil and gas that is inherent in oil and gas production and, therefore, not all losses of gas may be considered ''waste'' under the MLA. *See Marathon Oil Co.* v. *Andrus,* 452 F. Supp. 548, 551 (D. Wyo. 1978) (''For more than half a century, both the government, as lessor, and all of its lessees have understood and have been governed by the pertinent statutes to the end that all oil and gas used on the lease for ordinary production purposes or unavoidably lost were not subject to royalty payments to the government.''). Contrary to the novel interpretation of ''waste'' employed in the 2016 rule, the BLM has historically taken the lease-specific circumstances faced by an operator—including the economic viability of capturing and marketing the gas—into account before determining that a particular loss of gas constitutes ''waste.'' *See Rife Oil Properties, Inc.,* 131 IBLA 357, 376 (1994) (''[T]he ultimate issue in this case is whether it would have been economic to market gas from the well at issue . . . .''); *Ladd Petroleum Corp.,* 107 IBLA 5 (1989) (remanding for ''further consideration of whether it was uneconomic to capture that gas at that time'').

In the 2016 rule, the BLM recognized the inconsistency with its longstanding practice, but argued that past practice did not prohibit the BLM from pursuing a different approach. *See* 81 FR 83038. However, in adopting an interpretation of ''waste'' that is not informed by the economics of capturing and marketing the gas, the BLM ignored the longstanding concept of ''waste'' in oil and gas law, which Congress adopted in enacting the MLA. Oil and gas law applies a ''prudent operator'' standard to oil and gas lessees, thereby imposing an obligation of reasonable diligence in the developing and marketing of oil and gas from the lease, with due regard for the interest of both the lessee and the lessor. *See, e.g., Brewster* v. *Lanyon Zinc Co.,* 140 F. 801, 814 (8th Cir. 1905) (''It is only to the end that the oil and gas shall be extracted with benefit or profit to both [lessee and lessor] that reasonable diligence is required.''); *see also* Patrick H. Martin & Bruce M. Kramer, William & Meyers Oil and Gas Law section 806.3 (abridged 4th edition) (2010). This prudent-operator standard was incorporated into the MLA through the provisions requiring lessees to exercise ''reasonable diligence, skill, and care'' in the operation of the lease, and subjecting leases to the condition that the lessee will ''use all reasonable precautions to prevent waste of oil or gas developed in the land.''[5] The exercise of ''reasonable diligence'' and employment of ''reasonable precautions'' do not require an operator to lose money capturing and marketing uneconomic gas. To require that operators do so, as the 2016 rule did, is inconsistent with the prudent-operator standard incorporated in the MLA and exceeds the BLM's waste-prevention authority. Although the 2016 rule contained provisions allowing operators to apply for exemptions or variances from many of the rule's requirements based on economic considerations, the standard for approving these variances or exemptions was not whether capturing and marketing the gas would be economic (*i.e.,* whether capture would be expected of a prudent operator), but, rather, whether compliance would cause the operator to cease production and abandon significant recoverable oil or gas reserves under the lease.

The BLM's experience in the litigation of the 2016 rule reinforces the BLM's conclusion that the 2016 rule exceeded its statutory authority. Immediately after the 2016 rule was issued, petitions for judicial review of the rule were filed by industry groups and States with significant BLM-managed Federal and Indian minerals. *Wyoming* v. *U.S. Dep't of the Interior,* Case No. 2:16–cv–00285–SWS (D. Wyo.). Petitioners in this litigation argued that the BLM exceeded its statutory authority by promulgating a rule that, rather than regulating for the prevention of ''waste,'' was actually intended to regulate air quality, a matter within the regulatory jurisdiction of the EPA and the States under the Clean Air Act. Petitioners also argued that the 2016 rule exceeded the BLM's waste-prevention authority by requiring conservation without regard to economic feasibility, a key factor in determining whether a loss of oil or gas is prohibited ''waste'' under the MLA. Although the court denied petitioners' motions for a preliminary injunction, the court did very clearly express grave concerns that the BLM had usurped the authority of the EPA and the States under the Clean Air Act, and questioned whether it was appropriate for the 2016 rule to be justified based on its environmental and societal benefits, rather than on its resource conservation benefits alone. *Wyoming* v. *U.S. Dep't of the Interior,* 2017 WL 161428, *6–10 (D. Wyo.) (Jan. 16, 2017). The BLM has considered the court's concerns with the 2016 rule and finds them to be valid. In its revision of the 2016 rule, the BLM has sought to ensure that its regulations are justified as waste-prevention measures under the BLM's MLA authority and do not usurp the Clean Air Act authority of the EPA, the States, and tribes. To achieve this end, the BLM is rescinding the provisions of the 2016 rule that imposed costs in excess of their resource conservation benefits or created the potential for impermissible conflict with the regulation of air quality by the EPA or the States under the Clean Air Act. The BLM acknowledges that, because regulations that prevent wasteful losses of natural gas necessarily reduce emissions of that gas, there is some limited degree of overlap between the BLM's MLA authority and the Clean Air Act authority of the EPA, the States, and tribes. However, in the words of the court, ''the BLM cannot use overlap to justify overreach.'' *Wyoming,* 2017 WL 161428, *9.

Second, the BLM reviewed the 2016 rule's requirements and determined that the rule's compliance costs for industry and implementation costs for the BLM exceed the rule's benefits. Over the 10-year evaluation period (2019–2028), the total net benefits from the 2016 rule are estimated to be −$736 million to −$1.01 billion (net present value (NPV) and interim domestic social cost of methane (SC–CH_4) using a 7 percent discount rate) or −$722 million to −$1.09 billion (NPV and interim domestic SC–CH_4 using a 3 percent discount rate). For a more detailed explanation, see the analysis of the 2016 rule's requirements (baseline scenario) in the Regulatory Impact Analysis (RIA)

[4] 30 U.S.C. 187.

[5] 30 U.S.C. 187, 225.

prepared for this rule (RIA at Section 4.3). Although the 2016 RIA found that overall benefits of the 2016 rule would exceed its costs, this finding was dependent upon the use of a ''global'' social cost of methane metric based on Technical Support Documents that have since been rescinded. As described in more detail below, BLM's cost-benefit analysis for this revision of the 2016 rule followed longstanding guidance in Office of Management and Budget Circular A–4 (Sept. 17, 2003).

In addition, many of the 2016 rule's requirements placed a particular compliance burden on operators of marginal or low-producing wells, and there is a substantial risk that many of these wells would not be economical to operate with the additional compliance costs. Although the characteristics of what is considered to be a marginal well can vary, the percentage of the nation's oil and gas wells classified as marginal is high. The Interstate Oil and Gas Compact Commission (IOGCC) published a report in 2015 detailing the contributions of marginal wells to the nation's oil and gas production and economic activity.[6] According to the IOGCC, about 69.1 percent and 75.9 percent of the nation's operating oil and gas wells, respectively, are marginal (IOGCC 2015 at 22). The IOGCC defines a marginal well as ''a well that produces 10 barrels of oil or 60 Mcf of natural gas per day or less'' (IOGCC 2015 at 2).[7] The U.S. Energy Information Administration (EIA) reported that, in 2016, roughly 76.4 percent of oil wells produced less than or equal to 10 barrels of oil equivalent (BOE) per day and 81.3 percent of oil wells produced less than or equal to 15 BOE/day. For gas wells, EIA reported that roughly 71.6 percent produced less than or equal to 10 BOE/day and 78.2 percent less than or equal to 15 BOE/day. For both oil and gas wells, EIA estimates that 73.3 percent of all wells produce less than 10 BOE/day.[8] Applying these estimates to the overall number of BLM-administered wells indicates that about 69,000 wells producing Federal and/or Indian oil and gas are marginal.[9]

The 2016 rule's requirements that would have placed a particular burden on marginal wells were those pertaining to pneumatic controllers, pneumatic diaphragm pumps, and LDAR. To illustrate the impact on the economic viability of marginal oil and gas wells from the 2016 rule, the BLM calculated the per-well reduction in revenue from the costs imposed by the requirements in the 2016 rule. The reduction in revenue was calculated using both total and annualized costs at three different periods in EIA's 2018 Annual Energy Outlook (AEO) price forecast. The per-well revenue values are the product of estimated annual production and annual average prices less royalty payments and lifting costs. Based on EIA's projected 2019 prices, the estimated revenue reduction for marginal oil wells ranges from 24 percent for wells producing 10 bbl/day to 236 percent for wells producing 1 bbl/day. Revenue reductions to marginal gas wells range from 86 percent for wells producing 60 mcf/day to 1,037 percent for wells producing 5 mcf/day. These values are reduced when using annualized costs, however, the reductions in revenue are still substantial. Production from marginal wells represents a smaller fraction of total oil and gas production than that of non-marginal wells. However, as the BLM's analysis indicates, this means that any associated regulatory burdens would have a disproportionate impact on marginal wells, since the compliance costs represent a much higher fraction of oil and gas revenues for marginal wells than they do for non-marginal wells. Thus, the compliance burdens of the 2016 rule pose a greater cost to marginal-well producers. The BLM's analysis of the impact of the 2016 rule on marginal wells is explained in more detail in Section 4.5.6 of the RIA.

The 2016 rule attempted to address the marginal-well problem by providing operators with an opportunity to obtain exemptions from many of the most costly requirements when compliance would impose such costs that an operator would cease production and abandon significant recoverable reserves. Although the 2016 rule allowed operators to request an alternative LDAR program based on these considerations, there was no opportunity for a full exemption from the LDAR requirement in the 2016 rule.[10] Moreover, it was not clear what would constitute significant recoverable reserves for purposes of determining whether an operator would qualify for an exemption or an alternative LDAR program. In light of the fact that compliance costs for the 2016 rule represent 24 percent of the revenues of the highest-producing marginal oil wells and 86 percent of the revenues of the highest-producing marginal gas wells, the BLM expects that full compliance with the 2016 rule could have jeopardized the economic operations of many marginal wells and that many applications for exemptions or alternative LDAR programs would have been warranted. And, due to the prevalence of marginal and low-producing wells, the BLM expects that the burden imposed by the exemption/alternative processes would have been excessive, both for operators and the BLM. An operator would incur costs in obtaining an exemption or approval for an alternative LDAR program, as the operator would need to submit an application with economic and geologic information and analysis proving to BLM's satisfaction that compliance would cause the operator to cease production and abandon significant recoverable reserves. Considering this cost in light of the fact that the standard for obtaining an exemption or approval for an alternative LDAR program is unclear and subject to interpretation, the BLM believes that the costs and uncertainties involved in processes for receiving an exemption or approval for an alternative LDAR program could have led the operators of the lowest-

[6] IOGCC, ''Marginal Wells: Fuel for Economic Growth. 2015 Report.'' Available on the web at *http://iogcc.ok.gov/Websites/iogcc/images/MarginalWell/MarginalWell-2015.pdf.*

[7] By other definitions, marginal or stripper wells might include those with production of up to 15 barrels of oil or 90 Mcf of natural gas per day or less. The U.S. Energy Information Administration (EIA) reported that, in 2009, roughly 78.7 percent of oil wells produced less than or equal to 10 barrels of oil equivalent (BOE) per day and 85.4 percent of oil wells produced less than or equal to 15 BOE/day. For gas wells, EIA reported that roughly 64.5 percent produced less than or equal to 10 BOE/day and 73.3 percent less than or equal to 15 BOE/day. EIA, ''United States Total 2009: Distribution of Wells by Production Rate Bracket.'' December 2010. Available on the web at *https://www.eia.gov/naturalgas/archive/petrosystem/us_table.html.*

[8] EIA, ''The Distribution of U.S. Oil and Natural Gas Wells by Production Rate.'' December 2017. Available on the web at *https://www.eia.gov/petroleum/wells/,* Table B17. United States oil and gas well summary statistics, 2016.

[9] The BLM obtained this number by estimating the percent of marginal wells and by multiplying that percentage by the number of Federal and Indian wells reported in the BLM Oil and Gas Statistics, *available at https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics.* The BLM is not aware of any information indicating that the incidence of marginal wells producing Federal and Indian oil and gas is substantially different than the incidence of marginal wells nationally, and so it is appropriate to use the EIA's estimate of the national incidence of marginal wells in estimating the number of marginal wells producing Federal and Indian oil and gas. The BLM's estimate is further supported by comments that the American Petroleum Institute (API) submitted to the BLM's proposed rule. The API estimates that between 70 percent and 80 percent of the Federal and Indian wells that would have been impacted by the 2016 rule are marginal. See API comment at Appendix A, p. 3.

[10] The BLM estimates that, over 10 years from 2019–2028, the 2016 rule's LDAR requirements would have imposed costs of about $550 million to $688 million while only generating cost savings from product recovery of about $101 million to $128 million (RIA at Section 4.4).

producing marginal wells to shut them in prematurely, stranding otherwise recoverable resources in place.

In addition to the costs of complying with the 2016 rule's operational requirements, there were many reporting requirements in the 2016 rule and the cumulative effect of the burden would have been substantial. Specifically, the BLM estimates that the 2016 rule would have imposed administrative costs of about $14 million per year ($10.7 million to be borne by the industry and $3.27 million to be borne by the BLM). The BLM estimates that this final rule will alleviate the vast majority of these burdens and will pose administrative burdens of only $349,000 per year. (See RIA Section 3.2.2).

Beyond the cost-benefit analysis, the impact to marginal wells, and the reporting burdens, the BLM notes that the 2016 rule had many requirements that overlapped with the EPA's regulations issued under the Clean Air Act, namely EPA's New Source Performance Standards (NSPS) at 40 CFR part 60, subparts OOOO (NSPS OOOO) and OOOOa (NSPS OOOOa). The EPA's NSPS OOOO regulates new, reconstructed, and modified pneumatic controllers, storage tanks, and gas wells completed using hydraulic fracturing, while NSPS OOOOa regulates new, reconstructed, and modified pneumatic pumps, fugitive emissions from well sites and compressor stations, and oil and gas wells completed using hydraulic fracturing. The BLM's 2016 rule also would have regulated emissions of natural gas from these source categories. While the EPA regulates new, modified, and reconstructed sources, the BLM's 2016 rule applied to all wells and facilities producing Federal and Indian oil and gas and regulated emissions from new, modified, and existing sources. The 2016 rule's emissions-targeting provisions were informed by and were largely similar to EPA's requirements for the same sources of emissions. Therefore, the practical effect of the 2016 rule's emissions-targeting provisions was essentially to impose EPA requirements designed for new and reconstructed sources on existing sources producing Federal and Indian oil and gas.[11]

In addition, as the BLM acknowledged during the development of the 2016 rule,[12] some States with significant Federal oil and gas production have similar regulations addressing the loss of gas from these sources. For example, the State of Colorado has regulations that restrict hydrocarbon emissions during most oil and gas well completions and recompletions, impose requirements for pneumatic controllers and storage vessels, require a comprehensive LDAR program, and set standards for liquids unloading.[13] In addition, the Utah Department of Environmental Quality has issued regulations addressing emissions from pneumatic controllers and storage vessels as well as fugitive emissions from oil and gas wellsites.[14] Since the promulgation of the 2016 rule, the State of California has also issued new regulations that: Require quarterly monitoring of methane emissions from oil and gas wells, compressor stations and other equipment involved in the production of oil and gas; impose limitations on venting from natural-gas-powered pneumatic devices and pumps; and require vapor recovery from tanks under certain circumstances.[15] The existence of methane emissions regulations in these states highlights the unnecessary regulatory overlap and duplication created by the 2016 rule.

Finally, the 2016 rule also had requirements that limited the flaring of associated gas produced from oil wells. The 2016 rule sought to constrain the flaring of associated gas through the imposition of a ''capture percentage'' requirement, which required operators to capture a certain percentage of the gas they produce, after allowing for a certain volume of flaring per well. The requirement would have become more stringent over a period of years. As explained below, the BLM has chosen to rescind this requirement in favor of an approach that relies on State and tribal regulations and reinstates the NTL–4A standard for flaring in the absence of applicable State or tribal regulations. The BLM reviewed State regulations, rules, and orders designed to limit the waste of oil and gas resources and the flaring of natural gas, and determined that States with the most significant BLM-managed oil and gas production place restrictions or limitations on gas flaring from oil wells. For example, the State of North Dakota has requirements that are similar (but not identical) to the 2016 rule. Other States generally have flaring limits that trigger a review by a governing board to determine whether the gas should be conserved. A memorandum containing a summary of the statutory and regulatory restrictions on venting and flaring in the 10 States responsible for approximately 99 percent of Federal oil and gas production is available on the *Federal eRulemaking Portal: https://www.regulations.gov.* In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.

B. Legal Authority

Pursuant to a delegation of Secretarial authority, the BLM regulates the development of Federal and Indian onshore oil and gas resources under the following statutes: The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 188–287), the Mineral Leasing Act for Acquired Lands (MLAAL) (30 U.S.C. 351–360), the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701–1758), the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701–1785), the Indian Mineral Leasing Act of 1938 (IMLA) (25 U.S.C. 396a–g), the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101–2108), the Act of March 3, 1909 (25 U.S.C. 396), and the other statutes and authorities listed in 43 CFR 3160.0–3. These statutes authorize the Secretary of the Interior to promulgate such rules and regulations as may be necessary to carry out the statutes' various purposes.[16] Although the MLA authorizes the Secretary to prescribe rules and regulations for carrying out the purposes of the MLA, it also states that ''nothing in [the MLA] shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have.''[17]

The Federal mineral leasing statutes share a common purpose of promoting the development of Federal oil and gas resources for the financial benefit of the public.[18] The MLA states that all leases ''shall be subject to the condition that the lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the

[11] The EPA can regulate existing facilities through a process separate from how it regulates new, modified, and reconstructed sources. Challengers of the 2016 rule argued that the BLM circumvented that EPA process by promulgating the 2016 rule.

[12] 81 FR 6616, 6633–34 (Feb. 8, 2016).

[13] Colorado Air Quality Control Commission, Regulation 7, 5 CCR 1001–9, Sections XII, XVII, and XVIII.

[14] Utah Admin. Code r.307—501–510.

[15] Cal. Code Regs. Tit. 17, sections 95665–95677.

[16] *E.g.,* 30 U.S.C. 189 (MLA); 30 U.S.C. 359 (MLAAL); 30 U.S.C. 1751(a) (FOGRMA); 43 U.S.C. 1740 (FLPMA); 25 U.S.C. 396d (IMLA); 25 U.S.C. 2107 (IMDA); 25 U.S.C. 396.

[17] 30 U.S.C. 189.

[18] *See, e.g., California Co.* v. *Udall,* 296 F.2d 384, 388 (D.C. Cir. 1961) (noting that the MLA ''was intended to promote wise development of . . . natural resources and to obtain for the public a reasonable financial return on assets that 'belong' to the public.'').

land . . . .'' [19] The MLA further provides that ''[e]ach lease shall contain . . . a provision that such rules . . . for the prevention of undue waste as may be prescribed by [the Secretary] shall be observed . . . .'' [20] FOGRMA establishes royalty liability for ''oil or gas lost or wasted . . . when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order or citation issued under [the mineral leasing laws].'' [21] In FLPMA, Congress declared ''that it is the policy of the United States that . . . the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals . . . .'' [22]

The Indian minerals statutes require the Secretary to exercise his trust responsibilities in the best interests of the tribes or of the individual Indian mineral owners, considering all factors affecting their interests. *E.g., Kenai Oil & Gas, Inc.* v. *DOI*, 671 F.2d 383, 387 (10th Cir. 1982).

To assure that the development of Federal and Indian oil and gas resources will not be unnecessarily hindered by regulatory burdens, the BLM has, in this rulemaking, exercised its inherent authority [23] to reconsider the 2016 rule. The BLM's revision of the 2016 rule is intended to ensure that, consistent with its statutory authority, the BLM's waste prevention regulations target ''undue waste'' and require ''reasonable precautions'' on the part of operators, and that the BLM's regulations do not unnecessarily constrain domestic mineral production or oil and gas revenues from Indian lands.

The BLM received a number of comments addressing its statutory authority and obligations. The BLM did not make any changes to the rule based on these comments.

Some commenters argued that the 2016 rule exceeded the BLM's statutory authority and alleged that BLM was attempting to regulate air quality under the guise of waste prevention. These commenters argued that the authority to regulate air quality at oil and gas operations rests with the EPA and the States, not with the BLM. As evidence of the alleged overreach, these commenters cited a number of ''air quality'' provisions in the 2016 rule for which compliance costs outweighed conservation benefits. These commenters expressed support for the BLM's revision of the 2016 rule on the grounds that the revision brings the BLM's regulations back in line with its statutory authority.

Other commenters argued that the BLM's proposed revision of the 2016 rule would fail to meet what they saw as the BLM obligations under the MLA. They argued that the proposed revision of the 2016 rule would not require operators to use ''all reasonable precautions to prevent waste'' and would not prevent ''undue waste.'' They further argued that the BLM's policy determination that waste-prevention regulations should balance compliance costs against conservation benefits (*i.e.,* the value of the resource to be conserved) is inconsistent with the concept of ''waste'' in the MLA. Ultimately, however, these commenters failed to provide legal authorities or evidence sufficient to persuade the BLM that the MLA either does not provide the BLM with the discretion to determine what constitutes ''reasonable precautions'' and ''undue waste,'' or that the BLM's revision of the 2016 rule exceeds the BLM's discretion in this area.

Some commenters noted that the BLM gave less emphasis to operator economics in developing the 2016 rule. As explained above, the BLM believes that, by failing to give due regard to operator economics, the BLM exceeded its statutory authority in imposing many of the 2016 rule's requirements. The BLM's revision of the 2016 rule is consistent with the MLA and is consistent with the BLM's longstanding approach to regulating waste prior to the promulgation of the 2016 rule that considered the economic feasibility of marketing lost gas in making ''avoidable loss'' determinations. *See Rife Oil Properties, Inc.,* 131 IBLA 357, 373–76 (1994); *Ladd Petro. Corp.,* 107 IBLA 5, 7 (1989). And, even if the 2016 rule did not exceed the BLM's statutory authority, it is nonetheless within the BLM's authority to revise its ''waste prevention'' regulations in a manner that balances compliance costs against the value of the resources to be conserved.

Some commenters argued that the BLM's revision of the 2016 rule violates FLPMA because FLPMA states that the Secretary ''shall manage the public lands under principles of multiple use and sustained yield'' and that the Secretary ''shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the public lands.'' 43 U.S.C. 1732(a)–(b). The BLM acknowledges the quoted mandates of FLPMA, but disagrees that they support the commenters' conclusion. FLPMA's concern with ''unnecessary or undue degradation'' must be understood in light of the statute's overarching mandate that the BLM manage the public lands under ''principles of multiple use and sustained yield.'' *See Theodore Roosevelt Conservation P'ship* v. *Salazar*, 661 F.3d 66, 76 (D.C. Cir. 2011). FLPMA's multiple-use and sustained-yield mandate requires the BLM to balance potentially degrading uses, such as mineral extraction, with conservation of the natural environment so as to ensure valuable uses of the lands in the future. *Id.* Nothing in the revision of the rule precludes the BLM from managing the development of Federal oil and gas—a statutorily authorized use of the public lands—in accordance with the principles of multiple use and sustained yield and requiring the avoidance and minimization of impacts where appropriate. Commenters highlighted the noise, light, and air quality impacts expected to be associated with the revised regulations, but they failed to explain why it would be impossible for the BLM to balance these impacts with appropriate conservation measures as needed in order to comply with FLPMA. The BLM considers the environmental impacts of oil and gas production in complying with the National Environmental Policy Act at the resource management planning, lease sale, and well permitting stages of Federal oil and gas development, and the BLM may identify appropriate region- and site-specific environmental-impact avoidance and minimization measures at each of those stages. Commenters, therefore, failed to convince the BLM that its revision of the 2016 rule is inconsistent with FLPMA.

III. Discussion of the Final Rule

A. Summary

The 2016 rule replaced the BLM's prior policy, NTL–4A, which governed venting and flaring from BLM-administered leases for more than 35 years. Because the BLM has found the 2016 rule would impose excessive costs (when fully implemented), and believes that a regulatory framework similar to NTL–4A can be applied in a manner that limits waste without unnecessarily burdening production, the BLM has replaced the requirements contained in the 2016 rule with requirements similar

[19] 30 U.S.C. 225. For convenience, where several statutes applicable to public lands support the same legal point, we refer hereinafter only to the MLA.

[20] 30 U.S.C. 187.

[21] 30 U.S.C. 1756.

[22] 43 U.S.C. 1701.

[23] *See Ivy Sports Med., LLC* v. *Burwell,* 767 F.3d 81, 86 (D.C. Cir. 2014) (noting the ''oft-repeated'' principle that the ''power to reconsider is inherent in the power to decide'').

to, but with notable improvements on, those contained in NTL–4A.

The preamble to the 2016 rule suggested that NTL–4A was outdated and needed to be overhauled to account for technological advancements and to incorporate ''economical, cost-effective, and reasonable measures that operators can take to minimize gas waste.'' [24] But, as evidenced by the 2016 RIA and the RIA prepared for this final rule, many of the requirements imposed by the 2016 rule were not, in fact, cost-effective and actually imposed compliance costs well in excess of the value of the resource to be conserved. The BLM believes that a return to an improved NTL–4A framework, as explained in more detail in the section-by-section discussion below, is appropriate and will ensure that operators take ''reasonable precautions'' to prevent ''undue waste.'' Notable improvements on NTL–4A in this final rule include: Codifying a general requirement that operators flare, rather than vent, gas that is not captured (§ 3179.6); requiring persons conducting manual well purging to remain onsite in order to end the venting event as soon as practical (§ 3179.104); and, providing clarity about what does and does not constitute an ''emergency'' for the purposes of royalty assessment (§ 3179.103).

With this final rule, the BLM has rescinded the following requirements of the 2016 rule:

- Waste Minimization Plans;
- Well drilling requirements;
- Well completion and related operations requirements;
- Pneumatic controllers equipment requirements;
- Pneumatic diaphragm pumps equipment requirements;
- Storage vessels equipment requirements; and
- LDAR requirements.

In addition, the BLM has modified and/or replaced the following requirements of the 2016 rule with requirements that are similar to those that were in NTL–4A:

- Gas-capture requirements;
- Downhole well maintenance and liquids unloading requirements; and
- Measuring and reporting volumes of gas vented and flared.

The remaining requirements in the 2016 rule have either been retained, modified only slightly, or removed, but the impact of the removal is small relative to the items listed above.

Many of the rescinded provisions of the 2016 rule focused on controlling emissions from sources and operations, which are regulated by EPA under its Clean Air Act authority, and for which there are analogous EPA regulations at 40 CFR part 60, subparts OOOO and OOOOa. Specifically, these emissions-targeting provisions of the 2016 rule are §§ 3179.102, 3179.201, 3179.202, 3179.203, and 3179.301 through 3179.305. The BLM has chosen to rescind these provisions based on a number of considerations.

First, the BLM has reconsidered whether the substantial compliance costs associated with the emissions-targeting provisions are justified by the value of the gas that is expected to be conserved as a result of compliance. As detailed in the RIA, and evidenced by the 2016 RIA, many of the emissions-targeting provisions of the 2016 rule were expected to impose compliance costs well in excess of the value of the resource (natural gas) that would be conserved. The BLM has made the policy determination that it is not appropriate for ''waste prevention'' regulations to impose compliance costs greater than the value of the resources they are expected to conserve. Although the RIA for the 2016 rule found that, in total, the benefits of these provisions outweighed their costs, this finding depended on the use of a global social cost of methane (SC–CH_4) metric derived from Technical Support Documents which have since been rescinded. The SC–CH_4 metric is a societal metric that does not inform the ''prevention of undue waste'' or ''reasonable precautions to prevent waste'' under the MLA, which is statutory language that the BLM interprets in terms of the conservation of oil and gas resources. Although the BLM has employed the SC–CH_4 metric for the purpose of examining and disclosing the impacts of this regulatory action pursuant to E.O. 12866, it is not appropriate for the BLM to use the SC–CH_4 metric when determining whether a loss of natural gas is ''waste'' under the MLA.

E.O. 13783, at Section 5, disbanded the earlier Interagency Working Group on Social Cost of Greenhouse Gases (IWG) and withdrew the Technical Support Documents [25] upon which the RIA for the 2016 rule relied for the valuation of changes in methane emissions. The SC–CH_4 estimates presented by the BLM for this revision rule are interim values for use in regulatory analyses until an improved estimate of the impacts of climate change to the U.S. can be developed. In accordance with E.O. 13783, they are adjusted to reflect discount rates of 3 percent and 7 percent, and to focus on domestic—rather than global—impacts of climate change, which is consistent with OMB Circular A–4. The 7 percent rate is intended to represent the average before-tax rate of return to private capital in the U.S. economy. The 3 percent rate is intended to reflect the rate at which society discounts future consumption, which is particularly relevant if a regulation is expected to affect private consumption directly. When assessing domestic impacts of climate change, the benefits of many of the emissions-targeting provisions do not outweigh their costs. And, because the value of the conserved gas would not outweigh the costs, the BLM does not believe that its legal authority to prescribe rules ''for the prevention of undue waste'' [26] would cover the emissions-targeting provisions in the 2016 rule.

Several commenters argued that the SC–CH_4 approach taken in the economic analysis for the revision of the 2016 rule fails to adequately recognize the global nature of methane emissions impacts. These commenters asserted that the U.S. will likely be forced to increase humanitarian aid, deal with mass migrations, and manage changing security needs (*e.g.,* in the Arctic) as a result of overseas climate change impacts. They further argued that overseas impacts could also affect the U.S. economy, disrupting international trade and undermining financial markets. In response, the BLM reiterates that the Technical Support Documents that provided the basis for the use of the global social cost of methane in the 2016 RIA were rescinded by E.O. 13783 and that the BLM followed the guidance in OMB Circular A–4 in conducting its economic analysis of the anticipated climate impacts of this rule.[27] Finally, the BLM notes that its use of this same domestic social cost of methane analysis in a rulemaking to temporarily suspend certain provisions of the 2016 rule was recently examined by a U.S. District Court in the context of a preliminary injunction motion and that court found the BLM's social cost of methane analysis to be acceptable. *California* v. *BLM,* 286 F.Supp.3d 1054, 1070 (N.D. Cal. 2018) (''[BLM] has provided a factual basis for its change in position (the OMB circular and Executive Order 13793) as well as demonstrated that the

[24] 81 FR 83008, 83009, 83017 (Nov. 18, 2016).

[25] Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under E.O. 12866 (published August 26, 2016) and its Addendum.

[26] 30 U.S.C. 187.

[27] See the RIA at Section 3.3 for a discussion of how the BLM's analysis is consistent with Circular A–4.

change is within its discretion, at least with respect to this aspect of the RIA'').

In addition to cost-benefit concerns, the BLM believes that the emissions-targeting provisions of the 2016 rule create unnecessary regulatory overlap in light of EPA's Clean Air Act authority and its analogous regulations that similarly reduce losses of gas.[28] In general, the emissions-targeting provisions of the 2016 rule were crafted so that compliance with similar provisions within EPA's regulations would constitute compliance with the BLM's regulations. Although EPA's regulations apply to new, reconstructed, and modified sources, while the 2016 rule's requirements also applied to existing sources, the BLM notes that the EPA's regulations at 40 CFR part 60, subpart OOOO,[29] were published in 2012 and that over time, as existing well sites are modified or reconstructed and new well sites come online, the EPA's regulations at 40 CFR part 60, subparts OOOO and OOOOa, will displace the BLM's regulations, eventually rendering certain emissions-targeting provisions of the 2016 rule entirely duplicative. The rate by which we expect the EPA's regulations to become entirely duplicative of the 2016 rule varies by requirement and the specific equipment or operations being regulated. For example, assuming a pneumatic controller equipment life of 15 years, we would expect the EPA's subpart OOOO regulations to entirely duplicate the 2016 rule in 8 years (or by 2026) since those requirements have been in effect for 7 years. With respect to LDAR, an existing well would fall under EPA's subpart OOOOa regulations if any of the existing wells on the wellsite are modified or reconstructed, or if a new well is added to the wellsite. Therefore, existing wells might shift quickly from the 2016 rule to EPA's subpart OOOOa regulation (*e.g.,* if multiple existing wells shift to the EPA's regulations due to the modification of a single well on the wellsite) or not at all (*e.g.,* if a well or wellsite is never modified before being plugged and abandoned). By removing the duplicative emissions-targeting provisions, the final rule falls squarely within the scope of the BLM's authority to prevent waste and leaves the regulation of air emissions to the EPA, the agency with the experience, expertise, and clear statutory authority to do so.

The BLM received comments asserting that the BLM cannot rely on EPA's regulations to reduce waste from oil and gas operations on Federal and Indian leases for a variety of reasons, including that EPA's regulations do not apply to existing sources, that the EPA does not regulate for the purpose of preventing waste, and that the BLM has not quantified the extent to which EPA's regulations will reduce waste from Federal and Indian oil and gas operations in the time period before EPA's regulations entirely displace the 2016 rule's requirements. These comments are based on an incorrect belief that the BLM is relying on EPA regulations to limit waste. As discussed above, the BLM has found that many of the emissions-targeting provisions of the 2016 rule do not target waste because their compliance costs far exceed the value of the resource to be conserved. Even if the BLM were relying on EPA's regulations to address waste from these sources and operations—which it is not—this would be consistent with the 2016 rule, which provided exemptions for sources and operations compliant with or subject to analogous EPA regulations.[30]

Finally, the BLM recognizes that the oil and gas exploration and production industry continues to pursue reductions in methane emissions on a voluntary basis. For example, XTO Energy, Inc., which operates 2,572 BLM-administered leases and agreements, has publicly stated that it is undertaking a 3-year plan to phase out high-bleed pneumatic devices from its operations and will be implementing an enhanced LDAR program.[31] In December 2017, the American Petroleum Institute (API) announced a voluntary program to reduce methane emissions. The API announced that 26 companies, including ExxonMobil, Chevron, Shell, Anadarko and EOG Resources, would take action to implement LDAR programs and replace, remove, or retrofit high-bleed pneumatic controllers with low- or zero-emitting devices.[32]

With this final rule, the BLM did not revise the royalty provisions (43 CFR 3103.3–1) or the royalty-free use provisions (43 CFR part 3170, subpart 3178) that were part of the 2016 rule. Although the BLM sought and received comments on the royalty-free use provisions in subpart 3178, the BLM was not persuaded that any amendment of subpart 3178 is necessary at this time.

The BLM intends that each of the provisions of the final rule is severable. It is reasonable to consider the provisions severable because they do not inextricably depend on each other. For example, revised § 3179.4, which specifies when losses of oil or gas associated with common events and operations will be deemed ''avoidable'' or ''unavoidable,'' does not depend on, and may operate effectively in the absence of, revised § 3179.201, which determines when the flaring of associated gas from oil wells will be royalty-bearing.

B. Section-by-Section Discussion

1. 2016 Rule Requirements Rescinded

As was proposed, the BLM rescinds the following provisions of the 2016 rule in this final rule:

43 CFR 3162.3–1(j)—Drilling Applications and Plans

In the 2016 rule, the BLM added a paragraph (j) to 43 CFR 3162.3–1, which required that, when submitting an Application for Permit to Drill (APD) for an oil well, an operator must also submit a waste-minimization plan. Submission of the plan was required for approval of the APD, but the plan was not itself part of the APD, and the terms of the plan were not enforceable against the operator. The purpose of the waste-minimization plan was for the operator to set forth a strategy for how the operator would comply with the requirements of 43 CFR part 3170, subpart 3179, regarding the control of waste from venting and flaring from oil wells.

The waste-minimization plan was required to include information regarding: The anticipated completion date(s) of the proposed oil well(s); a description of anticipated production from the well(s); certification that the operator has provided one or more midstream processing companies with information about the operator's production plans, including the anticipated completion dates and gas production rates of the proposed well or wells; and identification of a gas

[28] The BLM is aware that the EPA has proposed a temporary stay of some of the requirements contained in NSPS OOOOa and that the EPA is undertaking a reconsideration of these requirements. See 82 FR 27645 (June 16, 2017). The BLM has coordinated with the EPA throughout the process of revising the 2016 rule.

[29] Subpart OOOO was finalized in 2012, but covers new, modified, reconstructed sources since 2011.

[30] See former 43 CFR 3179.102(b), 3179.201(a)(2), 3179.202(a)(2), 3179.203(a)(2), 3179.301(k).

[31] XTO Energy, ''Methane emissions reduction program'', *available at https://www.xtoenergy.com/en-us/responsibility/current-issues/air/xto-energy-methane-emissions-reduction-program.*

[32] Osborne, J., ''Oil companies clamping down on methane leaks,'' *Houston Chronicle* (Dec. 6, 2017); American Petroleum Institute, ''Natural Gas, Oil Industry Launch Environmental Partnership to Accelerate Reductions in Methane, VOCs,'' *available at http://www.api.org/news-policy-and-issues/news/2017/12/04/natural-gas-oil-environmental-partnership-accelerate-reductions-methane-vocs.*

pipeline to which the operator plans to connect.

Additional information was required when an operator could not identify a gas pipeline with sufficient capacity to accommodate the anticipated production from the proposed well, including: A gas pipeline system location map showing the proposed well(s); the name and location of the gas processing plant(s) closest to the proposed well(s); all existing gas trunklines within 20 miles of the well, and proposed routes for connection to a trunkline; the total volume of produced gas, and percentage of total produced gas, that the operator is currently venting or flaring from wells in the same field and any wells within a 20-mile radius of that field; and a detailed evaluation, including estimates of costs and returns, of potential on-site capture approaches.

The BLM estimates that the administrative burden of the waste-minimization plan requirements would be roughly $5 million per year for industry and $800,000 per year for the BLM (RIA at Section 7.1).

This final rule rescinds the waste minimization plan requirement of § 3162.3–1(j). The BLM believes that the waste minimization plan requirement imposed an unnecessary administrative burden on both operators and the BLM. The purpose of the waste-minimization-plan requirement was to guide an operator's behavior by forcing it to collect and consider information pertaining to gas capture. The BLM believes that there will be sufficient information-based safeguards against undue waste even in the absence of the waste-minimization-plan requirement for the following reasons. First, the BLM has found that comparable gas-capture-plan requirements in North Dakota and New Mexico will ensure that operators in those States take account of the availability of capture infrastructure. In New Mexico, the operator must submit a gas-capture plan when seeking permission to drill a well. In North Dakota, the operator must submit a gas-capture plan when seeking permission to drill a well if the operator has not been in compliance with the State's gas-capture requirements during any of the most recent 3 months. The BLM notes that more than half of the flaring of Federal and Indian gas occurs in the states of North Dakota and New Mexico. Second, State regulations in Utah, Wyoming, and Montana require operators to submit production information similar to that required under § 3162.3–1(j)(2) when operators seek approval for long-term flaring of associated gas. In these States, both operators and State regulators will be able to consider the potential for capture before long-term flaring of associated gas can be approved. Finally, under § 3179.201(c), applicable in the absence of State or tribal regulation for the flaring of associated gas, an operator is required to submit one of the following before it could receive approval for royalty-free flaring of associated gas under final § 3179.201(c): (1) A report supported by engineering, geologic, and economic data which demonstrates to the BLM's satisfaction that the expenditures necessary to market or use the gas are not economically justified; or (2) An action plan that will eliminate the flaring within a time period approved by the BLM. All of these requirements will help to fulfill the purpose of § 3162.3–1(j), which is to ensure that operators do not waste gas without giving due consideration to the possibility of marketing or using the gas.

In addition, the extensive amount of information that an operator must include in the waste-minimization plan makes compliance with the requirement cumbersome for operators. Operators have also expressed concern that the waste-minimization-plan requirement will slow down APD processing as BLM personnel take time to determine whether the waste-minimization plan submitted by an operator is ''complete and adequate,'' and whether the operator has provided all required pipeline information to the full extent that the operator can obtain it.

Some commenters expressed support for the rescission of § 3162.3–1(j), arguing that the BLM's waste-minimization-plan requirement was redundant with State requirements and reflected an inappropriate ''one size fits all'' approach to basin-specific infrastructure problems. These commenters further argued that the BLM had erroneously assumed that, unless operators are forced to gather information pertaining to gas capture infrastructure, they will not do so or will not pursue opportunities to capture and market associated gas when economically justified. Some commenters argued that the BLM has not justified the rescission of the waste-minimization-plan requirement because: New Mexico has not been enforcing its comparable requirement; the process for seeking approval for flaring in Utah, Wyoming, and Montana is not an adequate substitute since the information is submitted after the well has been approved and drilled; and, the BLM can allocate more resources to APD processing to ensure that the waste-minimization-plan requirement does not slow down APD processing. First, the BLM is aware of no evidence that New Mexico is not implementing its gas capture plan requirement. Second, the BLM does not agree that the timing of the applications to flare—whether under Utah, Wyoming, or Montana State regulations or § 3179.201(c)—precludes operators and regulators from using the information to make prudent determinations about whether flaring or capture is warranted. The fact that a well has already been drilled does not preclude State regulators from denying approval to flare where production and infrastructure information indicates that capture is warranted. Finally, the BLM does not see the need to allocate additional BLM resources to accommodate a requirement that is duplicative of State requirements in the two States with the highest rates of flaring and provides limited additional benefit (if any) in other States where flaring is less prevalent and/or State regulations require similar information to be submitted to regulators in order to obtain permission to flare.

In light of the foregoing, the BLM concludes that there is limited (if any) benefit to the waste minimization plan requirement of § 3162.3–1(j) and is therefore rescinding it in its entirety.

The BLM has summarized and responded to the comments received on the rescission of § 3162.3–1(j) in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.7—Gas-Capture Requirement

In the 2016 rule, the BLM sought to constrain the routine flaring of associated gas through the imposition of a ''capture percentage'' requirement, requiring operators to capture a certain percentage of the gas they produce, after allowing for a certain volume of flaring per well. The capture percentage requirement would have become more stringent over a period of years, beginning with an 85 percent capture requirement (5,400 Mcf per well flaring allowable) in January 2018, and eventually reaching a 98 percent capture requirement (750 Mcf per well flaring allowable) in January 2026. An operator could choose to comply with the capture targets on each of the operator's leases, units or communitized areas, or on a county-wide or state-wide basis.

As proposed, this final rule rescinds the 2016 rule's capture percentage

requirements for a number of reasons. First, the BLM estimates that this requirement, over 10 years from 2019–2028, would impose costs of $556 million to $1.10 billion and generate cost savings from product recovery of $381 to $507 million (RIA at Section 4.4). That is, the BLM's estimates indicate that the 2016 rule's capture-percentage requirements would have imposed costs that exceeded the value of the gas that they were expected to conserve. Because the capture-percentage requirements are expected to impose net costs, the BLM believes that it is appropriate to rescind them and replace them with a different approach to regulating the flaring of associated gas.

In addition, the BLM has identified a number of practical problems with the 2016 rule's capture percentage requirements. In the early years, when capture percentages would not be as high and allowable flaring would be high, the 2016 rule would have allowed for large amounts of royalty-free flaring. In the later years, the BLM believes that the 2016 rule would have introduced complexities that would have undermined its effectiveness. Because of the common use of horizontal drilling through multiple leaseholds of different ownership, the 2016 rule's coordination requirements in previous § 3179.12 (providing for coordination with States and tribes when any requirement would adversely impact production from non-Federal and non-Indian interests) created a high degree of uncertainty over how the capture requirements would have been implemented and what their impact would have been. Even if the capture percentage requirements were to be implemented and effective as written, the BLM is concerned that the prescriptive nature of the approach would have allowed for unnecessary flaring in some cases while prohibiting necessary flaring in others. For example, even if an operator could feasibly capture all of the gas it produces from a Federal well, the operator could still flare a certain amount of gas without violating previous § 3179.7's capture-percentage requirements. Thus, in situations where the operator faced transmission or processing-plant capacity limitations (*i.e.,* where a pipeline or processing plant does not have the capacity to take all of the gas that is being supplied to it), previous § 3179.7 would have allowed the operator to flare gas from a Federal well in order to produce more gas from a nearby non-Federal well for which there are tighter regulatory or contractual constraints on flaring.

Furthermore, the capture-percentage requirement afforded less flexibility for smaller operators with fewer operating wells than it would have for larger operators with a greater number of operating wells. A small operator with only a few wells in an area with inadequate gas-capture infrastructure would have likely been faced with curtailing production or violating § 3179.7's prescriptive limits. On the other hand, a larger operator with many wells would have had greater flexibility to average the flaring allowable over its portfolio and avoid curtailing production or other production constraints.

In place of the 2016 rule's capture-percentage requirements, the final rule, as was proposed, addresses the routine flaring of associated gas by deferring to State or tribal regulations where possible and codifying the familiar NTL–4A standard for royalty-free flaring as a backstop where no applicable State or tribal regulation exists. The final rule's approach to the routine flaring of associated gas is explained more fully below (see the discussion of § 3179.201).

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.7 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.) Many of the comments received about this section expressed dissatisfaction with BLM giving deference to state regulations in § 3179.201. Those comments are addressed in the discussion of final § 3179.201.

43 CFR 3179.8—Alternative Capture Requirement

Previous § 3179.8 allowed operators of leases issued before January 17, 2017, to request a lower capture percentage requirement than would otherwise be imposed under § 3179.7. In order to obtain this lower capture requirement, an operator would have had to demonstrate that the applicable capture percentage under § 3179.7 would ''impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease.'' Because the BLM is rescinding the capture percentage requirements of previous § 3179.7, the BLM is also rescinding the mechanism for obtaining a lower capture requirement, as was proposed. Because § 3179.7 is now rescinded, there is no need for previous § 3179.8.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.8 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.11—Other Waste Prevention Measures

Previous § 3179.11(a) stated that the BLM may exercise its existing authority under applicable laws and regulations, as well as under the terms of applicable permits, orders, leases, and unitization or communitization agreements, to limit production from a new well that is expected to force other wells off of a common pipeline. Previous § 3179.11(b) stated that the BLM could similarly exercise existing authority to delay action on an APD or impose conditions of approval on an APD. Previous § 3179.11 was not an independent source of authority or obligation on the part of the BLM. Rather, previous § 3179.11 was intended to clarify how the BLM could exercise existing authorities in addressing the waste of gas. However, the BLM understands that previous § 3179.11 could easily be misread to indicate that the BLM has plenary authority to curtail production or delay or condition APDs regardless of the circumstances. Because previous § 3179.11 is unnecessary and is susceptible to misinterpretation, the BLM is rescinding it, as proposed.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.11 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.12—Coordination With State Regulatory Authority

Previous § 3179.12 stated that, to the extent an action to enforce 43 CFR part 3170, subpart 3179, may adversely affect production of oil or gas from non-Federal and non-Indian mineral interests, the BLM will coordinate with the appropriate State regulatory authority. The purpose of this provision was to ensure that due regard was given

to the States' interests in regulating the production of non-Federal and non-Indian oil and gas. As was proposed, in this final rule the BLM has rescinded previous § 3179.12 because, as explained more fully below, the BLM revised subpart 3179 in a manner that defers to State and tribal requirements with respect to the routine flaring of associated gas. In light of this new approach, the BLM believes that there is much less concern that subpart 3179 could be applied in ways that State regulatory agencies find to be objectionable or in ways that would adversely affect oil or gas production from non-Federal and non-Indian mineral interests. The BLM continues to recognize the value of coordinating with State regulatory agencies, but no longer considers it necessary to include a coordination requirement in subpart 3179.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.12 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.101—Well Drilling

Previous § 3179.101(a) required gas reaching the surface as a normal part of drilling operations to be used or disposed of in one of four ways: (1) Captured and sold; (2) Directed to a flare pit or flare stack; (3) Used in the operations on the lease, unit, or communitized area; or (4) Injected. Previous § 3179.101(a) also specified that gas may not be vented, except under the circumstances specified in previous § 3179.6(b) or when it was technically infeasible to use or dispose of the gas in one of the ways specified above. Previous § 3179.101(b) stated that gas lost as a result of a loss of well control would be classified as avoidably lost if the BLM determined that the loss of well control was due to operator negligence.

As was proposed, the BLM is rescinding previous § 3179.101 because it would be duplicative under final subpart 3179. In essence, § 3179.101(a) required an operator to flare gas lost during well drilling rather than vent it (unless technically infeasible). This same requirement is contained in final § 3179.6(b). Previous § 3179.101(b) stated that where gas was lost during a loss of well control, the lost gas would be considered ''avoidably lost'' if the BLM determined that the loss of well control was due to operator negligence. This principle is contained in final § 3179.4(b), which requires an absence of operator negligence in order for lost gas to be considered ''unavoidably lost.''

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.101 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.) The comments that opposed the rescission of this section asserted that there would be no state or EPA backstop if BLM rescinds the section. In its response to these comments, BLM explains that the essential requirements of former § 3179.101 are retained in the revised rule.

43 CFR 3179.102—Well Completion and Related Operations

Previous § 3179.102 addressed gas that reached the surface during well-completion, post-completion, and fluid-recovery operations after a well has been hydraulically fractured or refractured. It required the gas to be disposed of in one of four ways: (1) Captured and sold; (2) Directed to a flare pit or stack, subject to a volumetric limitation in § 3179.103; (3) Used in the lease operations; or (4) Injected. Previous § 3179.102 specified that gas could not be vented, except under the narrow circumstances specified in previous § 3179.6(b) or when it was technically infeasible to use or dispose of the gas in one of the four ways specified above. Previous § 3179.102(b) provided that an operator would be deemed to be in compliance with its gas capture and disposition requirements if the operator was in compliance with the requirements for control of gas from well completions established under 40 CFR part 60, subparts OOOO or OOOOa, or if the well was not a ''well affected facility'' under those regulations. Previous § 3179.102(c) and (d) allowed the BLM to exempt an operator from the requirements of previous § 3179.102 where the operator demonstrated that compliance would cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

As was proposed, this final rule rescinds previous § 3179.102 in its entirety. The EPA finalized regulations in 40 CFR part 60, subpart OOOO and OOOOa, that are applicable to all of the well completions covered by previous § 3179.102. See 81 FR 35824 (June 3, 2016); 81 FR 83055–56. In light of the complete overlap with EPA regulations, and the fact that compliance with these regulations satisfies an operator's obligations under previous § 3179.102, the BLM has concluded that previous § 3179.102 is duplicative and unnecessary. In the 2016 rule, the BLM recognized the duplicative nature of § 3179.102, but sought to establish a ''backstop'' in the ''unlikely event'' that the analogous EPA regulations ceased to be in effect. See 81 FR 83056. The BLM no longer believes that it is appropriate to insert duplicative regulations into the Code of Federal Regulations as insurance against unlikely events. In addition, the BLM questions the appropriateness of issuing regulations that serve as a backstop to the regulations of other Federal agencies, especially when those agencies have promulgated their regulations under different authorities.

The BLM notes that, under revised § 3179.4(b)(2), the BLM reserves the right to limit royalty-free flaring during well-completion operations based on the operator's negligence or failure to take reasonable precautions to prevent the loss. Furthermore, the implicit requirement of previous § 3179.102 that gas that reaches the surface during well-completion operations be disposed of by some means other than venting is maintained in the general venting prohibition of final § 3179.6.

In light of the foregoing, the BLM is rescinding previous § 3179.102 in its entirety.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of §§ 3179.102 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.201—Equipment Requirements for Pneumatic Controllers

Previous § 3179.201 addressed pneumatic controllers that use natural gas produced from a Federal or Indian lease, or from a unit or communitized area that includes a Federal or Indian lease. Previous § 3179.201 applied to such controllers if the controllers: (1) Had a continuous bleed rate greater than 6 standard cubic feet per hour (scf/hour) (''high-bleed'' controllers); and (2) Were not covered by EPA regulations that prohibit the new use of high-bleed

pneumatic controllers (40 CFR part 60, subpart OOOO or OOOOa), but would have been subject to those regulations if the controllers were new, modified, or reconstructed. Previous § 3179.201(b) required the applicable pneumatic controllers to be replaced with controllers (including, but not limited to, continuous or intermittent pneumatic controllers) having a bleed rate of no more than 6 scf/hour, subject to certain exceptions. Previous § 3179.201(d) (as amended by the 2017 Suspension Rule) required that this replacement occur no later than January 17, 2019, or within 3 years from the effective date of the 2016 rule if the well or facility served by the controller had an estimated remaining productive life of 3 years or less. Previous § 3179.201(b)(4) and (c) allowed the BLM to exempt an operator from the requirements of previous § 3179.201 where the operator demonstrated that compliance would cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

The BLM estimates that this requirement, over 10 years from 2019–2028, would have imposed costs of about $12 million to $13 million and would have generated cost savings from product recovery of $20 million to $26 million (RIA at Section 4.4). As was proposed, this final rule rescinds previous § 3179.201 in its entirety. Low-bleed continuous pneumatic controllers are expected to generate revenue for operators when employed at sites from which gas is captured and sold and when the sale price of gas is generally higher than it is now. Thus, the BLM expects many operators to adopt low-bleed pneumatic controllers even in the absence of previous § 3179.201's requirements. This belief is supported by the fact that low-bleed continuous pneumatic controllers are already very common, representing about 89 percent of the continuous bleed pneumatic controllers in the petroleum and natural gas production sectors.[33] Because low-bleed pneumatic controllers are often cost-effective and are already very common, the BLM does not believe that it is necessary to maintain previous § 3179.201 in its regulations, even though it was expected to result in overall cost savings.

The BLM notes that the EPA has regulations in 40 CFR part 60, subparts OOOO and OOOOa, that require new, modified, or reconstructed continuous bleed controllers to be low-bleed. As new facilities on Federal and Indian leases come online and more of the existing high-bleed continuous controllers are replaced, these EPA regulations will require the installation of low-bleed continuous controllers. The BLM understands the typical lifespan of a pneumatic controller to be 10 to 15 years. Finally, as discussed above, the BLM recognizes that the oil and gas exploration and production industry continues to pursue reductions in methane emissions on a voluntary basis, and the BLM expects these efforts to result in a reduction in the number of high-bleed pneumatic devices employed by the industry.

In addition to the explanation provided here, which addresses most of the issues raised in the comments that BLM received about the rescission of this section, the BLM has summarized and responded to the comments received about the rescission of § 3179.201 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.202—Requirements for Pneumatic Diaphragm Pumps

Previous § 3179.202 established requirements for operators with pneumatic diaphragm pumps that use natural gas produced from a Federal or Indian lease, or from a unit or communitized area that included a Federal or Indian lease. It applied to such pumps if they were not covered under EPA regulations at 40 CFR part 60, subpart OOOOa, but would be subject to that subpart if they were a new, modified, or reconstructed source. For covered pneumatic pumps, previous § 3179.202 required that the operator either replace the pump with a zero-emissions pump or route the pump exhaust to processing equipment for capture and sale. Alternatively, an operator had the option of routing the exhaust to a flare or low-pressure combustion device if the operator made a determination (and notifies the BLM through a Sundry Notices and Reports on Wells, Form 3160–5) that replacing the pneumatic diaphragm pump with a zero-emissions pump or capturing the pump exhaust was not viable because: (1) A pneumatic pump was necessary to perform the function required; and (2) Capturing the exhaust was technically infeasible or unduly costly. If an operator made this determination and had no flare or low-pressure combustor on-site, or routing to such a device would have been technically infeasible, the operator was not required to route the exhaust to a flare or low-pressure combustion device. Under previous § 3179.202(h), an operator was required to replace its covered pneumatic diaphragm pump or route the exhaust gas to capture or flare beginning no later than January 17, 2018. Previous § 3179.202(f) and (g) would have allowed the BLM to exempt an operator from the requirements of previous § 3179.202 where the operator demonstrated that compliance would have caused the operator to cease production and abandon significant recoverable oil reserves under the lease.

The BLM estimates that the costs of compliance with previous § 3179.202 would have outweighed the value of its conservation effects. Specifically, the BLM estimates that § 3179.202, over 10 years from 2019–2028, would have imposed costs of about $29 million to $30 million, while only generating cost savings from product recovery of $15 million to $19 million (RIA at Section 4.4). Because previous § 3179.202 imposed compliance costs greater than the value of the resources it was expected to conserve, the BLM does not consider it to be an appropriate ''waste prevention'' requirement, and is rescinding it in its entirety, as was proposed.

The BLM notes that, as discussed above, industry is making ongoing efforts to retire old leak-prone equipment, including pneumatic pumps, on a voluntary basis. Furthermore, analogous EPA regulations in 40 CFR part 60, subpart OOOOa, will reduce the loss of gas from pneumatic diaphragm pumps on Federal and Indian leases as more and more of them are covered by the EPA regulations over time. These reasons further support rescission of previous § 3179.202.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.202 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.203—Storage Vessels

Previous § 3179.203 applied to crude oil, condensate, intermediate hydrocarbon liquid, or produced-water storage vessels that contained production from a Federal or Indian lease, or from a unit or communitized

[33] Environmental Protection Agency, Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015, Annex 3 (published April 2017). Data are available in Table 3.5–5 and Table 3.6–7.

area that included a Federal or Indian lease, and that were not subject to 40 CFR part 60, subparts OOOO or OOOOa, but would be if they were new, modified, or reconstructed sources. If such storage vessels had the potential for volatile organic compound (VOC) emissions equal to or greater than 6 tons per year (tpy), previous § 3179.203 required operators to route all gas vapor from the vessels to a sales line. Alternatively, the operator could have routed the vapor to a combustion device if it determined that routing the vapor to a sales line was technically infeasible or unduly costly. The operator could have also submitted a Sundry Notice to the BLM that demonstrated that compliance with the above options would cause the operator to cease production and abandon significant recoverable oil reserves under the lease.

As proposed, the BLM is rescinding previous § 3179.203 in its entirety. The BLM finds that the costs of compliance with previous § 3179.203 would have outweighed the value of its conservation effects. Specifically, the BLM estimates that previous § 3179.203, over 10 years from 2019–2028, would have imposed costs of about $51 million to $56 million while only generating cost savings from product recovery of about $1 million (RIA at Section 4.4). The BLM has always believed that previous § 3179.203 would have a limited reach, due to the 6 tpy emissions threshold and the carve-out for storage vessels covered by EPA regulations. The BLM estimated in the RIA for the 2016 rule that § 3179.203 would impact fewer than 300 facilities on Federal and Indian lands (2016 RIA at 69). Because previous § 3179.203 imposed compliance costs well in excess of the value of the resources it was expected to conserve, the BLM does not consider it to be an appropriate ''waste prevention'' requirement, and is rescinding it in its entirety.

Finally, the BLM notes that, even with § 3179.203 rescinded, the BLM retains the authority to impose royalties on vapor losses from storage vessels under final § 3179.4(b)(2)(vii) when the BLM determines that recovery of the vapors is warranted.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on the rescission of § 3179.203 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.301 Through 3179.305—Leak Detection and Repair

Previous §§ 3179.301 through 3179.305 established leak detection, repair, and reporting requirements for: (1) Sites and equipment used to produce, process, treat, store, or measure natural gas from or allocable to a Federal or Indian lease, unit, or communitization agreement; and (2) Sites and equipment used to store, measure, or dispose of produced water on a Federal or Indian lease. Previous § 3179.302 prescribed the instruments and methods that may have been used for leak detection. Previous § 3179.303 prescribed the frequency for inspections and previous § 3179.304 prescribed the time frames for repairing leaks found during inspections. Finally, previous § 3179.305 required operators to maintain records of their LDAR activities and submit an annual report to the BLM. Pursuant to previous § 3179.301(f), operators were required to begin to comply with the LDAR requirements of previous §§ 3179.301 through 3179.305 before: (1) January 17, 2018, for all existing sites; (2) 60 days after beginning production for sites that begin production after January 17, 2017; and (3) 60 days after a site that was out of service was brought back into service and re-pressurized.

As proposed, the BLM is rescinding previous §§ 3179.301 through 3179.305 in their entirety. The BLM finds that the costs of compliance with §§ 3179.301 through 3179.305 outweigh the value of their conservation effects. The BLM estimates that these requirements, over 10 years from 2019–2028, would have imposed costs of about $550 million to $688 million while only generating cost savings from product recovery of about $101 million to $128 million (RIA at Section 4.4). In addition, the BLM estimates that the administrative burdens associated with the LDAR requirements, at roughly $5 million, would have represented the bulk of the administrative burdens of the 2016 rule. Because the 2016 rule's LDAR requirements would have imposed compliance costs well in excess of the value of the resources they were expected to conserve, the BLM does not consider them to be appropriate ''waste prevention'' requirements, and is rescinding them in their entirety.

The BLM has identified additional problems with the 2016 rule's LDAR requirements—beyond their unjustified costs—that further support rescission. First, the LDAR requirements inappropriately applied to all wellsites equally. Wellsites that are not connected to deliver gas to market would not achieve any waste reduction because sales from the recovered gas would not be realized. Second, the LDAR requirements posed an unnecessary burden to operators of marginal wells, particularly marginal oil wells. The BLM does not estimate that the potential fugitive gas losses from marginal oil wells would be substantial enough to warrant the costs of maintaining an LDAR program with semi-annual inspection frequencies. As noted previously, the BLM estimates that over 73 percent of oil wells on the public lands are marginal.

Some commenters argued that, rather than rescinding the LDAR requirements in their entirety, the BLM should have considered alternative LDAR requirements that would have been less burdensome to operators. The BLM appreciates the commenters' concern with examining alternative approaches to LDAR. The BLM considered a reasonable range of LDAR alternatives and determined that the rescission of the LDAR requirements of the 2016 final rule is appropriate. This determination was based on the following information. In the RIA for the 2016 rule, the BLM examined the impacts of a range of alternative approaches for LDAR. See 2016 RIA at 91–93. Specifically the RIA examined the five following LDAR alternatives: (1) Semi-annual inspections (adopted in the 2016 rule); (2) Quarterly inspections; (3) Semi-annual inspections, but annual inspections for oil wells with <300 gas/oil ratio (GOR); (4) Semi-annual inspections, exempting oil wells with <300 GOR; and (5) Annual inspections. Note that the last three alternatives would have imposed fewer compliance costs than the alternative adopted in the 2016 rule. However, for all of the alternatives examined, compliance costs greatly outweighed cost savings (*i.e.,* the value of the gas conserved). The annual inspections alternative was the least burdensome in terms of compliance costs. However, the 2016 RIA estimated that this alternative would impose costs of about $48 million per year while generating only $8 million to $14 million in annual cost savings. Finally, even when including estimates of benefits associated with foregone emissions (using the domestic social cost of methane), the BLM found net costs for all of the alternatives analyzed in the 2016 RIA. In light of this information, the BLM continues to assess that the rescission of the LDAR requirements of the 2016 final rule is appropriate.

In addition to the explanation provided here, the BLM has summarized and responded to the

comments received on the rescission of §§ 3179.301 through 3179.305 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.401—State or Tribal Requests for Variances From the Requirements of This Subpart

Previous § 3179.401 would have allowed a State or tribe to request a variance from any provisions of subpart 3179 by identifying a State, local, or tribal regulation to be applied in place of those provisions and demonstrating that such State, local, or tribal regulation would perform at least equally well as those provisions in terms of reducing waste of oil and gas, reducing environmental impacts from venting and/or flaring of gas, and ensuring the safe and responsible production of oil and gas.

As was proposed, the BLM is rescinding previous § 3179.401 because it believes that the variance process established by this section was too restrictive and is no longer necessary in light of the BLM's action to re-institute NTL–4A standards and to defer to State and tribal regulations for the flaring of associated gas, as explained in the discussion of final § 3179.201. Notably, in this final rule, the BLM has chosen to include a new § 3179.401, described below, which will allow for additional deference to tribal regulations. We discuss tribal comments received on this section below.

2. Final Subpart 3179

With this final rule, the BLM is revising subpart 3179 as follows:

43 CFR 3179.1—Purpose

Section 3179.1 states that the purpose of 43 CFR part 3170, subpart 3179, is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian leases, the conservation of surface resources, and management of the public lands for multiple use and sustained yield. The BLM is not revising existing § 3179.1 as a part of this rulemaking. Section 3179.1 is presented here for context.

43 CFR 3179.2—Scope

This section specifies which leases, agreements, tracts, and facilities are covered by this subpart. The section also states that subpart 3179 applies to Indian Mineral Development Act (IMDA) agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement, and to agreements for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary of the Interior, unless specifically excluded in the agreement. Existing § 3179.2 remains largely unchanged. However, the BLM is revising paragraph (a)(5) by using the more-inclusive words ''well facilities'' instead of the words ''wells, tanks, compressors, and other equipment'' to describe the onshore equipment that is subject to this final rule. The purpose of the phrase ''wells, tanks, compressors, and other equipment'' was to specify components subject to LDAR requirements which, as described above, the BLM is rescinding.

43 CFR 3179.3—Definitions and Acronyms

As was proposed, this section keeps, in their entirety, four of the 18 definitions that appear in previous § 3179.3: ''Automatic ignition system,'' ''gas-to-oil ratio,'' ''liquids unloading,'' and ''lost oil or lost gas.'' The definition for ''capture'' is retained in this final rule as it appeared in previous § 3179.3, except, as proposed, the word ''reinjection'' has been changed to ''injection'' to be consistent with references to conservation by injection (as opposed to reinjection) elsewhere in subpart 3179.

A definition for ''gas well'' is also maintained in this final rule, however the second and third sentences in the existing definition are removed, as was proposed. The second-to-last sentence in the previous definition of ''gas well'' is removed because, although a well's designation as a ''gas'' well or ''oil'' well is appropriately determined by the relative energy values of the well's products, the 6,000 scf/bbl standard in previous § 3179.3 is not a commonly used standard. The last sentence in the existing definition of ''gas well,'' which states generally that an oil well will not be reclassified as a gas well when its gas-to-oil ratio (GOR) exceeds the 6,000 scf/bbl threshold, is removed and replaced with a simpler qualifier making clear that a well's status as a ''gas well'' is ''determined at the time of completion.''

As was proposed, a new definition for ''oil well'' is added in this final rule that defines an ''oil well'' as a ''well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, as determined at the time of completion.'' The addition of a definition of ''oil well'' should help to make clear when final § 3179.201's requirements for ''oil-well gas'' apply.

In the proposed rule, the BLM proposed to add a definition of ''waste of oil or gas'' that would define waste, for the purposes of subpart 3179, to mean any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production, where compliance costs are not greater than the monetary value of the resources they are expected to conserve, and which results in: (1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or (2) Avoidable surface loss of oil or gas. This proposed definition incorporated the definition of ''waste of oil or gas'' from the BLM's operating regulations at 43 CFR 3160.0–5, but added an economic limitation: Waste does not occur where the cost of conserving the oil or gas exceeds the monetary value of that oil or gas. The BLM requested public comment on this proposed definition. Some commenters expressed support for the economic standard contained in the definition and argued that it would be consistent with the MLA's concept of ''waste,'' as well as past BLM practice. Other commenters argued that ''waste of oil or gas'' expressed the same concept as ''avoidably lost'' production, and that the new definition of ''waste of oil or gas'' was therefore superfluous and could create confusion to the extent that it could be read as inconsistent with the definition of ''avoidably lost'' production in § 3179.4(a). Still other commenters noted that the practical application of the definition of ''waste of oil or gas'' would be difficult because the definition did not contain a time horizon over which the operator should evaluate its compliance costs and the value of the resources that compliance would be expected to conserve. The BLM has chosen to retain the proposed definition of ''waste of oil or gas'' in the final rule. This definition codifies the BLM's policy determination that it is not appropriate for ''waste prevention'' regulations to impose compliance costs greater than the value of the resources they are expected to conserve. Because the term ''waste of oil or gas'' is not used in subpart 3179 (outside of the definitions section), the BLM does not expect any conflict between this definition and the provisions of § 3179.4, which identify ''avoidably lost'' oil or gas. However, if a conflict ever arises, the BLM will view § 3179.4 as controlling on the question of what constitutes a royalty-bearing

''avoidable'' loss of oil or gas. Although the definition does not contain a specific time horizon for comparing the value of resources conserved to the cost of conservation, the BLM notes that, to the extent a technical application of this definition would ever be required under these regulations (which is unlikely given the fact that the phrase is not used in subpart 3179 outside of the definitions section), there is no reason to believe that the BLM would not employ a reasonable time frame in assessing costs and benefits.

As was proposed, this section removes 12 definitions from the previous regulations because they are no longer needed: ''Accessible component,'' ''capture infrastructure,'' ''compressor station,'' ''continuous bleed,'' ''development oil well,'' ''high pressure flare,'' ''leak,'' ''leak component,'' ''liquid hydrocarbon,'' ''pneumatic controller,'' ''storage vessel,'' and ''volatile organic compounds (VOC).'' These definitions pertain to requirements in previous subpart 3179 that the BLM is rescinding.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.3 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.4—Determining When the Loss of Oil or Gas is Avoidable or Unavoidable

Final § 3179.4 describes the circumstances under which lost oil or gas is classified as ''avoidably lost'' or ''unavoidably lost.'' None of the language in this section of the final rule has changed from the language that BLM proposed. Under final § 3179.5, royalty is due on all avoidably lost oil or gas, while royalty is not due on unavoidably lost oil or gas. Final § 3179.4 includes concepts from both previous § 3179.4 and NTL–4A, Sections II. and III.

Final paragraph (a) defines ''avoidably lost'' production and mirrors the ''avoidably lost'' definition in NTL–4A Section II.A. Final paragraph (a) defines avoidably lost gas as gas that is vented or flared without BLM approval, and produced oil or gas that is lost due to operator negligence, the operator's failure to take all reasonable measures to prevent or control the loss, or the operator's failure to comply fully with applicable lease terms and regulations, appropriate provisions of the approved operating plan, or prior written BLM orders. This paragraph replaces the ''avoidably lost'' definition that appears in the last paragraph of previous § 3179.4, which primarily defined ''avoidably lost'' oil or gas as lost oil gas that is not ''unavoidably lost'' and also expressly included ''excess flared gas'' as defined in previous § 3179.7, which the BLM is rescinding.

Final paragraph (b) defines ''unavoidably lost'' production. Final paragraph (b)(1) follows language from Section II.C(2) of NTL–4A. It states that oil or gas that is lost due to line failures, equipment malfunctions, blowouts, fires, or other similar circumstances is considered to be unavoidably lost production, unless the BLM determines that the loss was avoidable under § 3179.4(a)(2)—*i.e.,* the loss resulted from operator negligence, the failure to take all reasonable measures to prevent or control the loss, or the failure of the operator to comply fully with applicable lease terms and regulations, appropriate provisions of the approved operating plan, or prior written orders of the BLM.

Final paragraph (b)(2) is substantially similar to the definition of ''unavoidably lost'' oil or gas that appears in previous § 3179.4(a). This paragraph improves upon NTL–4A by providing clarity to operators and the BLM about which losses of oil or gas should be considered ''unavoidably lost.'' Paragraph (b)(2) introduces a list of operations or sources from which lost oil or gas is considered ''unavoidably lost,'' so long as the operator has not been negligent, has taken all reasonable measures to prevent or control the loss, and has complied fully with applicable laws, lease terms, regulations, provisions of a previously approved operating plan, or other written orders of the BLM, as provided in § 3179.4(a)(2).

Except for cross references, final § 3179.4(b)(2)(i) through (vi) are the same as paragraphs (a)(1)(i) through (vi) in previous § 3179.4. These paragraphs list the following operations or sources from which lost oil or gas would be considered ''unavoidably lost'': Well drilling; well completion and related operations; initial production tests; subsequent well tests; exploratory coalbed methane well dewatering; and emergencies.

This final rule removes normal operating losses from pneumatic controllers and pumps (previous § 3179.4(a)(1)(vii)) from the list of unavoidable losses because the use of gas in pneumatic controllers and pumps is already royalty free under previous § 3178.4(a)(3).

Final paragraph (b)(2)(vii) is similar to previous § 3179.4(a)(1)(viii), but has been rephrased to reflect the NTL–4A provisions pertaining to storage-tank losses (NTL–4A Section II.C(1)). Under final § 3179.4(b)(2)(vii), normal gas vapor losses from a storage tank or other low-pressure production vessel are unavoidably lost, unless the BLM determines that recovery of the vapors is warranted. Changing the phrase ''operating losses'' (as used in previous § 3179.4(a)(1)(viii)) to ''gas-vapor losses'' makes clear that this provision applies to low-pressure gas losses.

Final § 3179.4(b)(2)(viii) is the same as previous § 3179.4(a)(1)(ix). It states that well venting in the course of downhole well maintenance and/or liquids unloading performed in compliance with § 3179.104 is an operation from which lost gas is considered ''unavoidably lost.''

The final rule does not retain previous § 3179.4(a)(1)(x), which classified leaks as unavoidable losses when the operator has complied with the LDAR requirements in previous §§ 3179.301 through 3179.305. The BLM is rescinding these LDAR requirements and so there is no need to reference these requirements as a limitation on losses through leaks.

Final § 3179.4(b)(2)(ix) is the same as previous § 3179.4(a)(1)(xi), identifying facility and pipeline maintenance, such as when an operator must blow-down and depressurize equipment to perform maintenance or repairs, as an operation from which lost oil or gas would be considered ''unavoidably lost,'' so long as the operator has not been negligent and has complied with all appropriate requirements.

The final rule does not include previous § 3179.4(a)(1)(xii). This paragraph listed the flaring of gas from which at least 50 percent of natural gas liquids have been removed and captured for market as an unavoidable loss. This provision was included in the 2016 rule as part of the BLM's effort to adopt a gas-capture percentage scheme similar to that of North Dakota. The BLM is removing this provision because it is rescinding the gas-capture percentage requirements contained in the 2016 rule.

The final rule does not include previous § 3179.4(a)(2). Previous § 3179.4(a)(2) provided that gas that is flared or vented from a well that is not connected to a gas pipeline is unavoidably lost, unless the BLM has determined otherwise. Previous § 3179.4(a)(2) was essentially a blanket approval for royalty-free flaring from wells not connected to a gas pipeline. Flaring from these wells, however,

would no longer have been royalty free if the operator failed to meet the gas-capture requirements imposed by previous § 3179.7 and the flared gas thus became royalty-bearing ''excess flared gas.'' Because the BLM is rescinding previous § 3179.7, maintaining previous § 3179.4(a)(2) would amount to sanctioning unrestricted flaring from wells not connected to gas pipelines. The routine flaring of oil-well gas from wells not connected to a gas pipeline is addressed by final § 3179.201, which is discussed in more detail below.

Final § 3179.4(b)(3) states that produced gas that is flared or vented with BLM authorization or approval is unavoidably lost. This provision mirrors final § 3179.4(a), which states that gas that is flared or vented without BLM authorization or approval is avoidably lost, and provides clarity to operators about royalty obligations with respect to authorized venting and flaring.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.4 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.5—When Lost Production is Subject to Royalty

As proposed, the final rule does not change previous § 3179.5. This section continues to state that royalty is due on all avoidably lost oil or gas and that royalty is not due on any unavoidably lost oil or gas.

43 CFR 3179.6—Venting Limitations

The title of this section in the final rule has been changed from ''venting prohibitions'' to ''venting limitations.'' As was proposed, the final rule retains most of the provisions in previous § 3179.6. The purpose of both sections is to prohibit flaring and venting from gas wells, with certain exceptions, and to require operators to flare, rather than vent, any uncaptured gas, whether from oil wells or gas wells, with certain exceptions.

Final § 3179.6(a) is the same as the previous § 3179.6(a), except the cross reference has been updated. It states that gas-well gas may not be flared or vented, except where it is unavoidably lost, pursuant to § 3179.4(b). This same restriction on the flaring of gas-well gas was included in NTL–4A.

Both previous and final § 3179.6(b) state that operators must flare, rather than vent, any gas that is not captured, with the exceptions listed in subsequent paragraphs. Although the text of NTL–4A did not contain a similar requirement that, in general, lost gas should be flared rather than vented, the implementing guidance for NTL–4A in the United States Geological Survey's (USGS) Conservation Division Manual did contain a similar preference for flaring over venting. The flaring of gas is generally preferable to the venting of gas due to safety concerns. Final § 3179.6(b) therefore represents an improvement on NTL–4A by making clear in the regulation, rather than in implementation guidance, that lost gas should be flared when possible.

The first three flaring exceptions in both the previous and final § 3179.6 are identical: Paragraph (b)(1) allows for venting when flaring is technically infeasible; paragraph (b)(2) allows for venting in the case of an emergency, when the loss of gas is uncontrollable, or when venting is necessary for safety; and paragraph (b)(3) allows for venting when the gas is vented through normal operation of a natural-gas-activated pump or pneumatic controller.

The fourth flaring exception, listed in final § 3179.6(b)(4), allows gas vapors to be vented from a storage tank or other low-pressure production vessel, except when the BLM determines that gas-vapor recovery is warranted. Although this language is somewhat different than what appears in previous § 3179.6(b)(4), it has the same practical effect. As was proposed, it has been changed in this final rule to align the language with final § 3179.4(b)(vii) and to remove the cross-reference to the storage tank requirements in previous § 3179.203, which the BLM is rescinding.

The fifth exception, listed in final § 3179.6(b)(5), applies to gas that is vented during downhole well maintenance or liquids unloading activities. This is similar to previous § 3179.6(b)(5), except that the final rule, as was proposed, removes the cross reference to previous § 3179.204. Although the revision of subpart 3179 retains limitations on royalty-free losses of gas during well maintenance and liquids unloading in final § 3179.104, no cross-reference to those restrictions is necessary in this section, which simply addresses whether the gas may be vented or flared, not whether it is royalty-bearing.

The final rule removes the flaring exception listed in previous § 3179.6(b)(6), which applied to gas vented through a leak, provided that the operator had complied with the LDAR requirements in previous §§ 3179.301 through 3179.305. The BLM is rescinding these LDAR requirements so there is no need to reference these requirements as a limitation on venting through leaks.

The sixth flaring exception, listed in final § 3179.6(b)(6), is identical to the exception listed in previous § 3179.6(b)(7). This exception allows gas venting that is necessary to allow non-routine facility and pipeline maintenance to be performed.

The seventh flaring exception, listed in final § 3179.6(b)(7), is identical to the exception listed in previous § 3179.6(b)(8). This exception allows venting when a release of gas is unavoidable under § 3179.4, and Federal, State, local, or tribal law, regulation, or enforceable permit terms prohibit flaring.

Final § 3179.6(c) is identical to previous § 3179.6(c). Both sections require all flares or combustion devices to be equipped with automatic ignition systems. In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.6 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov*. (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

Authorized Flaring and Venting of Gas

43 CFR 3179.101—Initial Production Testing

As was proposed, final § 3179.101 establishes volume and duration standards which limit the amount of gas that may be flared royalty free during initial production testing. The gas is no longer royalty free after reaching either limit. Final § 3179.101 establishes a volume limit of 50 million cubic feet (MMcf) of gas that may be flared royalty free during the initial production test of each completed interval in a well. Additionally, final § 3179.101 limits royalty-free initial production testing to a 30 day period, unless the BLM approves a longer period.

The 2016 rule also used volume and duration thresholds to limit royalty-free initial production testing. Previous § 3179.103 provided for up to 20 MMcf of gas to be flared royalty free during well drilling, well completion, and initial production testing operations combined. Under previous § 3179.103, upon receiving a Sundry Notice request from the operator, the BLM could have increased the volume of royalty-free

flared gas up to an additional 30 MMcf. Under previous § 3179.103, similar to final § 3179.101, the BLM allowed royalty-free testing for a period of up to 30 days after the start of initial production testing. Under previous § 3179.103, the BLM could, upon request, extend the initial production testing period by up to an additional 60 days. Further, previous § 3179.103 provided additional time for dewatering and testing exploratory coalbed methane wells. Under previous § 3179.103, such wells had an initial royalty-free period of 90 days (rather than the 30 days applicable to all other well types), and the possibility of the BLM approving, upon request, up to two additional 90-day periods.

Under NTL–4A, gas lost during initial production testing was royalty free for a period not to exceed 30 days or the production of 50 MMcf of gas, whichever occurred first, unless a longer test period was authorized by the State and accepted by the BLM.

The volume and duration limits in final § 3179.101 are similar to those in previous § 3179.103 and NTL–4A. Both sections and NTL–4A allow 30 days from the start of the test, and all three allow for extensions of time. However, previous § 3179.103 limited an extension to no more than 60 days, whereas final § 3179.101 does not specify an extension limit. Final § 3179.101 allows for up to 50 MMcf of gas to be flared royalty free, with no express opportunity for an increase in the volume of royalty-free flaring during initial production testing. By comparison, previous § 3179.103 allowed for 20 MMcf to be flared royalty free, with the possibility of an additional 30 MMcf of gas flared with BLM approval, and no opportunity for additional royalty-free flaring beyond the cumulative 50 MMcf of gas.

Some commenters argued that the regulation should allow for operators to seek BLM approval for additional volumes of royalty-free flaring during initial production testing in the same way they can seek additional time for royalty-free flaring. Commenters also argued that the BLM should allow for additional time and volumes of royalty-free flaring when such longer periods or additional volumes of flaring are authorized by a State. The BLM does not agree with the comments and did not change § 3179.101 in response to them. Based on consultation with experienced BLM petroleum engineers and the fact that these limitations are consistent with longstanding standards in NTL–4A, the BLM believes the limitations in § 3179.101(a)(2) and (3) provide most operators sufficient time and volume for testing in a royalty-free status. Although an extension of the time period for initial production testing may sometimes be justified (as where the operator has failed to acquire adequate reservoir information), the volume threshold acts as a governor to ensure that the public and tribes are compensated for excessive losses of publicly or tribally owned gas during initial production testing. Beyond the 50 Mmcf threshold, the operator may continue initial production testing, but incurs a royalty obligation.

The provision for exploratory coalbed methane wells in previous § 3179.103 is the most notable difference between it and this final rule with regard to the initial production testing. Previous § 3179.103 provided for up to 270 cumulative royalty-free production testing days for exploratory coalbed methane wells, whereas the final rule contains no special provision for such wells. Exploratory coalbed methane wells are expected to be an exceedingly low percentage of future wells drilled, and so the BLM does not believe that a special provision addressing these wells is necessary.[34] In the future, if an exploratory coalbed methane well requires additional time for initial production testing, this can be handled under final § 3179.101(b), which allows an operator to request a longer test period without imposing an outside limit on the length of the additional test period the BLM might approve.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.101 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents).

43 CFR 3179.102—Subsequent Well Tests

As proposed, final § 3179.102(a) provides that gas flared during well tests subsequent to the initial production test is royalty free for a period not to exceed 24 hours, unless the BLM approves or requires a longer test period. Also as proposed, final § 3179.102(b) provides that the operator may request a longer test period and must submit its request using a Sundry Notice. Final § 3179.102 is functionally identical to previous § 3179.104.

NTL–4A included royalty-free provisions for ''evaluation tests'' and for ''routine or special well tests.'' Because NTL–4A also contained specific provisions for ''initial production tests,'' all of the other mentioned tests were presumed to be subsequent to the initial production tests. Under NTL–4A, royalty-free evaluation tests were limited to 24 hours, with no mention of a possibility for extension. Routine or special well tests, which are well tests other than initial production tests and evaluation tests, were royalty free under NTL–4A, but only after approval by the BLM.

The provisions for subsequent well tests in final § 3179.102 are essentially the same as those in both the 2016 rule and in NTL–4A. All three provide for a base test period of 24 hours, and all three have a provision for the BLM to approve a longer test period. Final § 3179.102 improves upon NTL–4A by dispensing with the distinction between ''evaluation tests'' and ''routine or special well tests,'' making the requirements for subsequent well tests more clear.

The comments about this section that the BLM received expressed support for the provision, as summarized in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

43 CFR 3179.103—Emergencies

Under final § 3179.4(b)(2)(vi), royalty is not due on gas that is lost during an emergency. As proposed, final § 3179.103 describes the conditions that constitute an emergency, and lists circumstances that do not constitute an emergency. As provided in final § 3179.103(d), an operator is required to estimate and report to the BLM on a Sundry Notice the volumes of gas that were flared or vented beyond the timeframe for royalty-free flaring under final § 3179.103(a) (*i.e.,* venting or flaring beyond 24 hours, or a longer necessary period as determined by the BLM).

The provisions in final § 3179.103 are nearly identical to those in previous § 3179.105. The most notable change from the 2016 rule is in describing those things that do not constitute an

[34] Exploratory coalbed methane (CBM) well completions have declined precipitously over the past 15 years, likely due to the drop in natural gas prices and the relative attractiveness of natural gas from shale formations. In 2004, the number of exploratory CBM well completions was 904, while in 2015, 2016, 2017, and 2018, the number of CBM well completions on Federal lands was 9, 8, 1, and 1, respectively. Meaning, from 2004 to 2018, exploratory CBM well completions on Federal lands dropped by 99.9%.

emergency. Where previous § 3179.105(b)(1) specifies that ''more than 3 failures of the same component within a single piece of equipment within any 365-day period'' is not an emergency, final § 3179.103(c)(4) simplifies that concept by including ''recurring equipment failures'' among the situations caused by operator negligence that do not constitute an emergency. This simplification addresses the practical difficulties involved in tracking the number of times the failure of a specific component of a particular piece of equipment causes emergency venting or flaring, and recognizes that recurring failures of the same equipment, even if involving different ''components,'' may not constitute a true unavoidable emergency.

The description of ''emergencies'' in NTL–4A was brief and was subject to misinterpretation. The purpose behind both previous § 3179.105 and final § 3179.103 is to improve upon NTL–4A by narrowing the meaning of ''emergency,'' such that it is uniformly understood and consistently applied.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.103 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.).

43 CFR 3179.104—Downhole Well Maintenance and Liquids Unloading

Under final § 3179.4(b)(2)(viii), gas lost in the course of downhole well maintenance and/or liquids unloading performed in compliance with final § 3179.104 is royalty free. Final § 3179.104(a) states that gas vented or flared during downhole well maintenance and well purging is royalty free for a period not to exceed 24 hours. Final § 3179.104(a) also states that gas vented from a plunger lift system and/or an automated well control system is royalty free. Final § 3179.104(b) states that the operator must minimize the loss of gas associated with downhole well maintenance and liquids unloading, consistent with safe operations. Final § 3179.104(c) states that, for wells equipped with a plunger lift system or automated control system, minimizing gas loss under paragraph (b) includes optimizing the operation of the system to minimize gas losses to the extent possible consistent with removing liquids that would inhibit proper function of the well. Final § 3179.104(d) provides that the operator must ensure that the person conducting manual well purging remains present on-site throughout the event in order to end the event as soon as practical, thereby minimizing any venting to the atmosphere. Final § 3179.104(e) defines ''well purging'' as blowing accumulated liquids out of a wellbore by reservoir gas pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, timers, or other well data, where the gas is vented to the atmosphere, and it does not apply to wells equipped with a plunger lift system. Final § 3179.104(e) is identical to previous § 3179.204(g).

Previous § 3179.204 required the operator to ''minimize vented gas'' in liquids unloading operations, but did not impose volume or duration limits. As with final § 3179.104, previous § 3179.204 allowed for gas vented or flared during well purging to be royalty free provided that the operator ensured that the person conducting the operation remained on-site throughout the event. Previous § 3179.204 also required plunger lift and automated control systems to be optimized to minimize gas loss associated with their effective operation. The main difference between previous § 3179.204 and final § 3179.104 is that previous § 3179.204(c) required the operator to file a Sundry Notice with the BLM the first time that each well was manually purged or purged with an automated control system. That Sundry Notice was required to include documentation showing that the operator evaluated the feasibility of using methods of liquids unloading other than well purging and that the operator determined that such methods were either unduly costly or technically infeasible. In addition to the apparent administrative burden of filing the Sundry Notice, this would have imposed additional costs on the operator by requiring it to evaluate and analyze other methods of liquids unloading. And, the evaluation may have led the operator to identify a more costly alternative that could not be ignored as ''unduly costly.'' Additionally, under previous § 3179.204, the operator would file a Sundry Notice with the BLM each time a well-purging event exceeded either a duration of 24 hours in a month or an estimated gas loss of 75 Mcf in a month. For each manual purging event, the operator would also have needed to keep a record of the cause, date, time, duration, and estimate of the volume of gas vented. The operator would have had to maintain these records and make them available to the BLM upon request.

With respect to royalty, gas vented during well purging was addressed in NTL–4A as follows: ''. . . operators are authorized to vent or flare gas on a short-term basis without incurring a royalty obligation . . . during the unloading or cleaning up of a well during . . . routine purging . . . not exceeding a period of 24 hours.'' As used in NTL–4A, it is unclear whether the ''24 hours'' limit was intended to be 24 hours per month or 24 hours per purging event. In this final rule, the BLM has modified proposed § 3179.104(a) to make clear that it imposes a 24-hour limit per event.

The available data show that the frequency of liquids unloading maintenance operations vary and that the events are relatively short in duration. A study by Shires and Lev-On [35] examined data from an API and American Natural Gas Alliance (ANGA) nationwide survey. The researchers found that, of the roughly 6,500 surveyed wells that vented to the atmosphere for liquids unloading (*i.e.,* not equipped with a plunger lift), the wells required an average of 32.57 events per year for an average of 1.9 hours per event.[36] A study by Allen et al.[37] examined a small sample of nine wells conducting manual well liquids unloading and found that the wells in the sample required an average of 5.9 events per year for an average of 1 hour per event.[38] While the BLM has finalized a 24-hour limit recognizing that certain instances or wells might require maintenance operations that exceed the averages noted, the BLM notes that the rule requires the person conducting manual well purging to remain present on-site throughout the event to end the event as soon as practical. Therefore, even though the 24-hour limit exceeds the average, we are convinced that the duration of events will be limited to the time necessary.

In terms of minimizing the loss of gas during well-purging events, final § 3179.104 and previous § 3179.204 are essentially the same. Differences between the two are found in the reporting and recordkeeping requirements imposed by the 2016 rule.

[35] Shires, T. & Lev-On, M. (2012). Characterizing Pivotal Sources of Methane Emissions from Unconventional Natural Gas Production: Summary and Analysis of API and ANGA Survey Responses. September 2012.

[36] See Table 7 on p. 15.

[37] Allen, D., Torres, V., et al. (2013). Measurements of methane emissions at natural gas production sites in the United States. Proceedings of the National Academy of Sciences or the United States of America.

[38] See appendix to study at S–37.

The intent of these recordkeeping requirements, as explained in the 2016 rule preamble, was to build a record of the amount of gas lost through these operations so that information might lead to better future management of liquids unloading operations. The BLM now believes that the reporting and recordkeeping requirements in previous § 3179.204 are unnecessary and unduly burdensome. In particular, the reporting requirement of previous § 3179.204(c) appears to be unnecessary because wells undergoing manual well purging are mature and the well pressure is in decline [39] and alternative methods of liquids unloading are likely to be costly for those wells.[40] And in light of the economic and production circumstances faced by wells undergoing manual well purging, the BLM does not realistically foresee the development of better waste-management techniques based on manual well-purging information collected pursuant to previous § 3179.204.

As mentioned above, final § 3179.104(d) requires the person conducting manual well purging to remain present on-site throughout the event to end the event as soon as practical. This provision was not a requirement in NTL–4A, and was first established in the 2016 rule.

The comments about section that the BLM received expressed support for the provision, as summarized in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

Other Venting or Flaring

43 CFR 3179.201—Oil-Well Gas.

As proposed, final § 3179.201 governs the routine flaring of associated gas from oil wells. The requirements of final § 3179.201 replace the ''capture percentage'' requirements of the 2016 rule. Short-term flaring, such as that experienced during initial production testing, subsequent well testing, emergencies, and downhole well maintenance and liquids unloading, are governed by final §§ 3179.101 through 3179.104.

Final § 3179.201(a) allows operators to vent or flare oil-well gas royalty free when the venting or flaring is done in compliance with applicable rules, regulations, or orders of the State regulatory agency (for Federal gas) or tribe (for Indian gas). This section establishes State or tribal rules, regulations, and orders as the prevailing regulations for the venting and flaring of oil-well gas on BLM-administered leases, unit participating areas (PAs), or communitization agreements (CAs).

Under the 2016 rule, an operator's royalty obligations for venting or flaring were determined by the avoidable/unavoidable loss definitions and the gas-capture-requirement thresholds. Operator royalty obligations for the flaring of associated gas from oil wells under NTL–4A were, for the most part, dependent on a discretionary authorization by the BLM based on the economics of gas capture or an action plan to eventually eliminate the flaring. NTL–4A also allowed for gas to be flared royalty free pursuant to the rules, regulations, or order of the appropriate State regulatory agency, when the BLM had ratified or accepted such rules, regulations, or orders. The final rule implements this concept from NTL–4A by deferring to the rules, regulations, or orders of State regulatory agencies or a tribe. This change both simplifies an operator's obligations by aligning Federal and State venting and flaring requirements for oil-well gas and allows for region-specific regulation of oil-well gas that accounts for regional differences in production, markets, and infrastructure. An operator owes royalty on any oil-well gas flared in violation of applicable State or tribal requirements.

The BLM has analyzed the statutory and regulatory restrictions on venting and flaring in the 10 States constituting the top eight producers of Federal oil and the top eight producers of Federal gas, which collectively produce more than 99 percent of Federal oil and more than 98 percent of Federal gas. The BLM found that each of these States have statutory or regulatory restrictions on venting and flaring that are expected to constrain the waste of associated gas from oil wells. Most of these States require an operator to obtain approval from the State regulatory authority (by justifying the need to flare) in order to engage in the flaring of associated gas.[41] North Dakota has a similar requirement, but, in the Bakken, Bakken/Three Forks, and Three Forks pools, restricts flaring through the application of gas-capture goals that function similarly to the capture percentage requirements of the 2016 rule. Summaries of the State statutory and regulatory restrictions on venting and flaring analyzed by the BLM are contained in a Memorandum that BLM has published for public access on *https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.) Final § 3179.201(a) defers to State and tribal statutes and regulations, like those described in the Memorandum, that provide a reasonable assurance to the BLM that operators will not be permitted to engage in the flaring of associated gas without limitation and that the waste of associated gas will be controlled. In order to make this clear in the final regulatory text, § 3179.201(a) states that applicable State or tribal rules, regulations, or orders are appropriate if they place limitations on the venting and flaring of oil-well gas, including through general or qualified prohibitions, volume or time limitations, capture percentage requirements, or trading mechanisms.

Some commenters expressed support for the deference to State and tribal regulations in § 3179.201(a). These commenters noted that the various oil and gas fields throughout the country possess different geological characteristics and that the primary fossil fuel resources extracted from the fields vary in type and quality. These commenters expressed support for § 3179.201(a) because it accounts for these regional differences. The BLM agrees with these commenters that regional geological differences make it difficult to develop a single standard for oil-well gas flaring that will be fair and effective when applied nationwide.

Other commenters objected to § 3179.201(a) on the grounds that State flaring regulations are less stringent than the 2016 rule, that State flaring regulations differ from State to State, that existing State regulations will not reduce flaring from current levels, that States may amend their regulations, and that North Dakota's flaring regulations have been, in the view of the commenters, ineffective. The BLM agrees that many of the State regulations it analyzed are not as stringent as the capture percentage requirements of the 2016 rule and that State flaring regulations vary from State to State. However, the BLM disagrees that this represents a flaw in § 3179.201(a). As explained above and evidenced by the 2016 RIA, BLM expected the capture percentage requirements of the 2016 rule to impose net costs. In § 3179.201(a), the BLM is replacing a regulatory requirement that imposed unreasonable costs with a policy that will reasonably constrain waste while

[39] EPA (2014). Oil and Natural Gas Sector Liquids Unloading Process: Report for Oil and Natural Gas Sector Liquids Unloading Process Review Panel. April 2014. pp. 2, 25.

[40] Ibid. pp. 16–19 of that report detail the costs of various possible interventions.

[41] These States are: New Mexico, Wyoming, Colorado, Utah, Montana, Texas, and Oklahoma.

accounting for the differing geological and infrastructure realities faced by operators in different regions. The BLM does not argue that each State's existing flaring regulations will necessarily reduce flaring rates in that State. However, this does not mean that the BLM is acting unreasonably or in violation of its statutory obligations in deferring to them under § 3179.201(a). As explained above, after reviewing the State regulations for the 10 states producing approximately 99 percent of Federal oil and gas, the BLM believes that these regulations require operators to take reasonable precautions to prevent undue waste. The BLM also recognizes that States may amend their regulations. If such an amendment were to propose a relaxation of a State's restrictions on flaring, and the BLM judged that it allowed for undue waste of Federal gas, then the BLM would move swiftly to amend § 3179.201 to preclude deference to that State's flaring regulations.

With respect to the efficacy of North Dakota's regulations, commenters submitted tabular data indicating that, of the top 30 producers of gas in the Bakken/Bakken-Three Forks/Three-Forks pools, 19 exceeded the applicable flaring percentage requirement in at least one month in 2017. The table submitted by the commenters highlighted each month in which an operator failed to meet the applicable capture target of 85 percent. The BLM notes that the table indicates that in many of these instances the operator appears to have narrowly missed the requirement (*e.g.,* capturing 84 percent instead of 85 percent). The BLM further notes that, for all but five or six of the 30 operators, the failure to meet the monthly capture target was an occasional, rather than routine, issue. The table submitted by commenters shows that: 11 of the 30 operators met their capture target for every month in 2017; 5 of the 30 operators failed to meet their capture target in only 1 month in 2017; and 5 of the 30 operators failed to meet their capture target in only 2 months in 2017. The BLM does not believe that these statistics indicate that North Dakota's flaring regulations are deficient. Commenters also claimed that North Dakota has been derelict in taking enforcement actions against operators that fail to meet the capture target. However, the extent of a State's enforcement of its regulations does not impact whether flared gas is royalty bearing under § 3179.201(a). If the flaring violates the applicable State regulation, it will be royalty bearing regardless of whether the State takes enforcement action. Finally, the BLM estimates that the flaring of Federal and Indian mineral estate oil-well gas in North Dakota has been reduced substantially from 64 Bcf in 2015 to 44 Bcf in 2016.

Final § 3179.201(b) exclusively addresses oil-well gas production from an Indian lease. Vented or flared oil-well gas from an Indian lease will be treated as royalty free pursuant to final § 3179.201(a) only to the extent it is consistent with the BLM's trust responsibility.

In the event a State regulatory agency or tribe does not currently have rules, regulations, or orders governing venting or flaring of oil-well gas, the BLM is retaining the NTL–4A approach as a backstop, providing a way for operators to obtain BLM approval to vent or flare oil-well gas royalty free by submitting an application with sufficient justification as described in final § 3179.201(c). Applications for royalty-free venting or flaring of oil-well gas must include either: (1) An evaluation report supported by engineering, geologic, and economic data demonstrating that capturing or using the gas is not economical; or (2) An action plan showing how the operator will minimize the venting or flaring of the gas within 1 year of the application. If an operator vents or flares oil-well gas in excess of 10 MMcf per well during any month, the BLM may determine the gas to be avoidably lost and subject to royalty assessment. The BLM notes that there was no similar provision in NTL–4A allowing for the BLM to impose royalties where flaring under an action plan exceeds 10 MMcf per well per month. However, this provision is based on guidance in the Conservation Division Manual [42] (at 644.5.3F), which was developed by the USGS and has long been used by the BLM as implementation guidance for NTL–4A.

As under NTL–4A, the evaluation report required under final § 3179.201(c)(1) must demonstrate to the BLM's satisfaction that the expenditures necessary to market or beneficially use the gas are not economically justified. Under final § 3179.201(d)(1), the evaluation report must include estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved, and estimates of the volumes of oil and gas that would be produced if the applicant was required to market or use the gas.

[42] Available at *https://www.ntc.blm.gov/krc/uploads/172/NTL-4A%20Royalty%20or%20Compensation%20for%20Oil%20and%20Gas%20Lost.pdf.*

From the information contained in the evaluation report, the BLM will determine whether the operator can economically operate the lease if it is required to market or use the gas, taking into consideration both oil and gas production, as well as the economics of a field-wide plan. Under final § 3179.201(d)(2), the BLM is able to require operators to provide updated evaluation reports as additional development occurs or economic conditions improve, but no more than once a year. NTL–4A did not contain a similar provision allowing the BLM to require an operator to update its evaluation report based on changing circumstances. Final § 3179.201(d)(2) thus represents a change from NTL–4A.

An action plan submitted under final § 3179.201(c)(2) must show how the operator will minimize the venting or flaring of the oil-well gas within 1 year. An operator may apply for an approval of an extension of the 1-year time limit. In the event the operator fails to implement the action plan, the entire volume of gas vented or flared during the time covered by the action plan would be subject to royalty.

Final § 3179.201(e) provides for grandfathering of prior approvals to flare royalty free. These approvals will continue in effect until no longer necessary because the venting or flaring is authorized by the rules, regulations, or orders of an appropriate State regulatory agency or tribe under final § 3179.201(a), or the BLM requires an updated evaluation report and determines to amend or revoke its approval.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.201 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

Measurement and Reporting Responsibilities

43 CFR 3179.301—Measuring and Reporting Volumes of Gas Vented and Flared

As proposed, final § 3179.301(a) requires operators to estimate or measure all volumes of lost oil and gas, whether avoidably or unavoidably lost, from wells, facilities, and equipment on a lease, unit PA, or CA and report those volumes under applicable Office of Natural Resources Revenue (ONRR)

reporting requirements. Under final § 3179.301(b), the operator may: (1) Estimate or measure the vented or flared gas in accordance with applicable rules, regulations, or orders of the appropriate State or tribal regulatory agency; (2) Estimate the volume of the vented or flared gas based on the results of a regularly performed GOR test and measured values for the volume of oil production and gas sales, to allow BLM to independently verify the volume, rate, and heating value of the flared gas; or, (3) Measure the volume of the flared gas.

Under final § 3179.301(c), the BLM may require the installation of additional measurement equipment whenever it determines that the existing methods are inadequate to meet the purposes of subpart 3179. NTL–4A contained essentially the same provision. Based on past experience in implementing NTL–4A, the BLM believes that final § 3179.301(c) would help to ensure accuracy and accountability in situations in which high volumes of royalty-bearing gas are being flared.

Final § 3179.301(d) allows the operator to combine gas from multiple leases, unit PAs, or CAs for the purpose of flaring or venting at a common point, but the operator is required to use a BLM-approved method to allocate the quantities of the vented or flared gas to each lease, unit PA, or CA. Commingling to a single flare is allowed because the BLM recognizes that the additional costs of requiring individual flaring measurement and meter facilities for each lease, unit PA, or communitized area are not necessarily justified by the incremental royalty accountability afforded by the separate meters and flares.

Final § 3179.301 is essentially the same as previous § 3179.9. The main difference between the two is that previous § 3179.9 required measurement or calculation under a particular protocol when the volume of flared gas exceeded 50 Mcf per day.

In addition to the explanation provided here, the BLM has summarized and responded to the comments received on § 3179.301 in a separate ''Responses to Comments'' document, available on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53,'' click the ''Search'' button, open the Docket Folder, and look under Supporting Documents).

Additional Deference to Tribal Regulations

§ 3179.401—Deference to Tribal Regulations

Tribal commenters stated that the revision of the 2016 rule should provide more opportunity for tribes to exercise their sovereignty over oil and gas development under their jurisdiction. In order to facilitate this, the BLM has chosen to modify the proposed rule to include a new provision that would allow for additional deference to Tribal rules, regulations, and orders concerning the matters addressed in subpart 3179. New § 3179.401(a) states that a Tribe that has rules, regulations, or orders that are applicable to any of the matters addressed in subpart 3179 may seek approval from the BLM to have such rules, regulations, or orders apply in place of any or all of the provisions of subpart 3179 with respect to lands and minerals over which that Tribe has jurisdiction. Under § 3179.401(b), the BLM will approve the tribe's request as long as it is consistent with the BLM's trust responsibility.

C. Summary of Estimated Impacts

The BLM reviewed the final rule and conducted an RIA and Environmental Assessment (EA) that examine the impacts of the final rule's requirements. The RIA and EA that the BLM prepared have been posted in the docket for the final rule on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.) The following discussion is a summary of the final rule's economic impacts. For a more complete discussion of the expected economic impacts of the final rule, please review the RIA.

The BLM's final rule will remove almost all of the requirements in the 2016 rule that we previously estimated would pose a compliance burden to operators and generate benefits of gas savings or reductions in methane emissions. The final rule replaces the 2016 rule's requirements with requirements largely similar to those that were in NTL–4A. Also, for the most part, the final rule removes the administrative burdens associated with the 2016 rule's subpart 3179.

In conducting this RIA, the BLM also revisited the underlying assumptions used in the RIA for the 2016 rule. Specifically, the BLM revisited the underlying assumptions pertaining to LDAR, administrative burdens, and climate benefits (see Sections 3.2, 3.3, and 7 of the RIA).

For this final rule, we track the impacts over the first 10 years of implementation against the baseline. The period of analysis in the RIA prepared for the 2016 rule was 10 years. Results are provided using the net present value (NPV) of costs and benefits estimated over the evaluation period, calculated using 7 percent and 3 percent discount rates.

Estimated Reductions in Compliance Costs

First, we examined the reductions in compliance costs, excluding the savings that would have been realized from product recovery. The final rule reduces compliance costs from the baseline. Over the 10-year evaluation period (2019–2028), we estimate a total reduction in compliance costs of $1.36 billion to 1.63 billion (NPV using a 7 percent discount rate) or $1.71 billion to 2.08 billion (NPV using a 3 percent discount rate). We expect very few compliance costs associated with the final rule, including the remaining administrative burdens.

Estimated Reduction in Benefits

The final rule reduces benefits from the baseline, since estimated cost savings that would have come from product recovery will be forgone and the emissions reductions would also be forgone. The final rule will result in forgone cost savings from natural gas recovery. Over the 10-year evaluation period (2019–2028), we estimate total forgone cost savings from natural gas recovery (from the baseline) of $559 million (NPV using a 7 percent discount rate) or $734 million (NPV using a 3 percent discount rate). The final rule also expects to result in forgone methane emissions reductions. Over the 10-year evaluation period (2019–2028), we estimate total forgone methane emissions reductions from the baseline valued at $66 million (NPV and interim domestic SC–CH4 using a 7 percent discount rate) or $259 million (NPV and interim domestic SC–CH4 using a 3 percent discount rate).

Estimated Net Benefits

The final rule is estimated to result in positive net benefits relative to the baseline. More specifically, we estimate that the reduction of compliance costs will exceed the forgone cost savings from recovered natural gas and the value of the forgone methane emissions reductions. Over the 10-year evaluation period (2019–2028), we estimate total net benefits from the baseline of $734 million to $1.01 billion (NPV and interim domestic SC–CH_4 using a 7 percent discount rate) or $720 million to

$1.08 billion (NPV and interim domestic SC–CH_4 using a 3 percent discount rate).

Energy Systems

The final rule is expected to influence the production of natural gas, natural gas liquids, and crude oil from onshore Federal and Indian oil and gas leases. However, since the relative changes in production are expected to be small, we do not expect that the final rule will significantly impact the price, supply, or distribution of energy. This is not to say that the rule would not have a positive effect on marginal wells and the production of oil and natural gas from marginal wells.

The BLM conducted an analysis to examine the impacts that the 2016 rule would have had on marginal wells. As described in Section II.b of this preamble and Section 4.5.6 of the RIA, the BLM estimates that approximately 73 percent of wells on BLM-administered leases are considered to be marginal wells and that the annual compliance costs associated with the 2016 rule would have constituted 24 percent of the annual revenues of even the highest-producing marginal oil wells and 86 percent of the annual revenues of the highest-producing marginal gas wells. Production from marginal wells represents a smaller fraction of total oil and gas production than that of non-marginal wells. However, as the BLM's analysis indicates, this means that any associated regulatory burdens would have a disproportionate impact on marginal wells, since the compliance costs represent a much higher fraction of oil and gas revenues for marginal wells than they do for non-marginal wells. Thus, the compliance burdens of the 2016 rule pose a greater cost to marginal well producers.

The BLM also finds that marginal oil and gas production on Federal lands supported an estimated $2.9 billion in economic output in the national economy in FY 2015. To the extent that the 2016 rule would have adversely impacted production from marginal wells through premature shut-ins, this estimated economic output would have been jeopardized. Therefore, while the BLM has determined that the 2018 final rule would not significantly impact the price, supply, or distribution of energy, the BLM acknowledges that the 2016 rule had the potential to harm the production of oil and natural gas from marginal wells and that this revision of the 2016 rule would avoid those potentially harmful effects.

The final rule will reverse the estimated incremental changes in crude oil and natural gas production associated with the 2016 rule. Over the 10-year evaluation period (2019–2028), we estimate that 18.4 million barrels of crude oil production and 22.7 Bcf of natural gas production will no longer be deferred (as it would have been under the 2016 rule). However, we also estimate that there will be 299 Bcf of forgone natural gas production (that would have been produced and sold under the 2016 rule, rather than vented or flared). See RIA at Section 4.5.1.

For context, we note the share of the total U.S. onshore production in 2015 that the incremental changes in production will represent. The per-year average of the estimated crude oil volume that will no longer be deferred represents 0.058 percent of the total onshore U.S. crude oil production in 2015.[43] The per-year average of the estimated natural gas volume that will no longer be deferred represents 0.008 percent of the total onshore U.S. natural gas production in 2015.[44] The per-year average of the estimated forgone natural gas production represents 0.109 percent of the total onshore U.S. natural gas production in 2015.[45]

Royalty Impacts

The 2016 rule would have been expected to impact the production of crude oil and natural gas from Federal and Indian oil and gas leases. In the RIA for the 2016 rule, the BLM estimated that the rule's requirements would generate additional natural gas production, but that substantial volumes of crude oil production would be deferred or shifted to the future. The BLM concluded that the 2016 rule would generate overall additional royalty, with the royalty gains from the additional natural gas produced outweighing the value of the royalty losses from crude oil production (and some associated gas) being deferred into the future.

This final rule, which reverses most of the 2016 rule's provisions, is expected to reverse the estimated royalty impacts of the 2016 rule. This formulation does not account for the potential countervailing impacts of the reduction in compliance burdens, which might spur additional production on Federal and Indian lands and prolong production from marginal wells, and therefore have a positive impact on royalties.

[43] Calculation based on total onshore U.S. crude oil production in 2015, as reported by the U.S. EIA. Production data available at *https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbl_a.htm.*

[44] Calculation based on total onshore U.S. natural gas and gross withdrawals in 2015, as reported by the U.S. EIA. Production data available at *https://www.eia.gov/dnav/ng/ng_prod_sum_a_EPG0_FGW_mmcf_a.htm.*

[45] Ibid.

We note that royalty impacts are presented separately from the costs, benefits, and net benefits. Royalty payments are recurring income to Federal or tribal governments and costs to the operator or lessee. As such, they are transfer payments that do not affect the total resources available to society. An important but sometimes difficult problem in cost estimation is to distinguish between real costs and transfer payments. While transfers should not be included in the economic analysis estimates of the benefits and costs of a regulation, they may be important for describing the distributional effects of a regulation.

The final rule will result in forgone royalty payments to the Federal Government, tribal governments, States, and private landowners. Over the 10-year evaluation period (2019–2028), we estimate total forgone royalty payments (from the baseline) of $28.3 million (NPV using a 7 percent discount rate) or $79.1 million (NPV using a 3 percent discount rate).

Consideration of Alternative Approaches

E.O. 13563 reaffirms the principles of E.O. 12866 and requires that agencies, among other things, ''identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.''

The 2016 rule established requirements and direct regulation on operators. Under this final rule, the BLM will remove the requirements of the 2016 rule that impose the most substantial direct regulatory burdens on operators. Also, with the final rule, the BLM will remove the duplicative operational and equipment requirements and paperwork and administrative burdens.

In developing this final rule, the BLM considered scenarios for retaining certain requirements previously contained in subpart 3179. For example, we examined the impacts of retaining subpart 3179 in its entirety (essentially taking no action). We also examined the impacts of retaining the gas-capture requirements of the 2016 rule (previous §§ 3179.7 and 3179.8) and the measurement/metering requirements (previous § 3179.9) while rescinding the operational and equipment requirements addressing venting from leaks, pneumatic equipment, and storage tanks. The results of these alternative scenarios are presented in the RIA at Section 4.

Employment Impacts

E.O. 13563 reaffirms the principles established in E.O. 12866, but calls for additional consideration of the regulatory impact on employment. E.O. 13563 states, ''Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' An analysis of employment impacts is a standalone analysis and the impacts should not be included in the estimation of benefits and costs.

This final rule removes or replaces requirements of the BLM's 2016 rule on waste prevention and is a deregulatory action. As such, we estimate that it will result in a reduction of compliance costs for operators of oil and gas leases on Federal and Indian lands. Therefore, it is likely that the impact, if any, on employment will be positive.

In the RIA for the 2016 rule, the BLM concluded that the requirements were not expected to impact the employment within the oil and gas extraction, drilling oil and gas wells, and support activities industries, in any material way. This determination was based on several reasons. First, the estimated incremental gas production represented only a small fraction of the U.S. natural gas production volumes. Second, the estimated compliance costs represented only a small fraction of the annual net incomes of companies likely to be impacted. Third, for those operations that would have been impacted, the 2016 rule had provisions that would exempt these operations from compliance to the extent that the compliance costs would force the operator to shut in production. Based on these factors, the BLM determined that the 2016 rule would not alter the investment or employment decisions of firms or significantly adversely impact employment. The RIA also noted that the requirements would necessitate the one-time installation or replacement of equipment and the ongoing implementation of an LDAR program, both of which would require labor.

By removing or revising the requirements of the 2016 rule, the BLM is alleviating the associated compliance burdens on operators. The investment and labor necessary to comply with the 2016 rule will not be needed. We do not believe that the cost savings in themselves will be substantial enough to substantially alter the investment or employment decisions of firms. However, we also recognize that there may be a small positive impact on investment and employment due to the reduction in compliance burdens if the output effects dominate. The magnitude of the reductions will be relatively small but could carry competitiveness impacts, specifically on marginal wells on Federal lands, encouraging investment. In sum, the effect on investment and employment of this rule remains unknown, but we do not believe that the final rule will substantially alter the investment or employment decisions of firms.

Small Business Impacts

The BLM reviewed the Small Business Administration (SBA) size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau. We conclude that small entities represent the majority of entities operating in the onshore crude oil and natural gas extraction industry and, therefore, the final rule will impact a substantial number of small entities. To examine the economic impact of the rule on small entities, the BLM performed a screening analysis on a sample of potentially affected small entities, comparing the reduction of compliance costs to entity profit margins. This screening analysis showed that the estimated per-entity reduction in compliance costs would result in an average increase in profit margin of 0.19 percentage points (based on the 2014 company data).[46]

The BLM performed the screening analysis pursuant to its obligations under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act. The BLM recognizes that there are many operators of Federal and Indian leases that are substantially smaller than the SBA size standards for small businesses in the affected industries.[47] For these smaller operators, the estimated reduction in compliance costs would result in a larger increase in profits than the average increase shown above.

The BLM also notes that most of the emissions-based requirements in the 2016 rule (including LDAR, pneumatic controllers, pneumatic pumps, and liquids unloading requirements) would have imposed a particular burden on marginal or low-producing wells.[48] There is concern that those wells would not have been able to be operated profitably with the additional compliance costs imposed by the 2016 rule. While the 2016 rule allows for exemptions when compliance would impose such costs that the operator would cease production and abandon significant recoverable reserves, due to the prevalence of marginal and low-producing wells, the BLM expects that many exemptions would have been warranted, making the burdens imposed by the exemption process, in itself, excessive. The prospect of either shutting-in a marginal well or assuming unwarranted administrative burdens to avoid compliance costs potentially represented a substantial loss of income for companies operating marginal wells. The BLM's final rule rescinds or revises these requirements in the 2016 rule, thus reducing compliance costs for all wells, including marginal wells, and reducing the potential economic harm to small businesses.

Impacts Associated With Oil and Gas Operations on Tribal Lands

The final rule applies to oil and gas operations on both Federal and Indian leases. In the RIA, the BLM estimates the impacts associated with operations on Indian leases, as well as royalty implications for tribal governments. We estimate these impacts by scaling down the total impacts by the share of oil wells on Indian lands and the share of gas wells on Indian Lands. Please reference the RIA at Section 4.4.5 for a full explanation of the estimated impacts.

IV. Procedural Matters

Regulatory Planning and Review (E.O. 12866, E.O. 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this final rule is economically significant because it will:

- Have an annual effect of $100 million or more on the economy; and
- Raise novel legal or policy issues.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote

[46] Average commodity price in 2014 was higher than subsequent years; therefore, the result in profit margin may not be representative of the increase in profit margin as a result of the updated rulemaking.

[47] This rule directly affects entities classified within the Crude Petroleum and Natural Gas Extraction (North American Industry Classification System (NAICS) code 211111), Natural Gas Liquid Extraction (NAICS code 211112), Drilling of Oil and Natural Gas Wells (NAICS code 213111), and Support Activities for Oil and Gas Operations (213112) industries. The SBA size standards for these industries are 1,250 employees, 1,000 employees, and annual receipts of less than $38.5 million, respectively.

[48] As explained previously, the IOGCC defines a marginal well as one that produces 10 barrels of oil or 60 Mcf of natural gas per day or less and reports that about 69.1 and 75.9 percent of the Nation's operating oil and gas wells, respectively, are marginal. EIA estimates that 73.3 percent of wells are marginal.

predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

This final rule rescinds or revises portions of the BLM's 2016 rule. We have developed this final rule in a manner consistent with the requirements in Executive Order 12866 and Executive Order 13563.

The BLM reviewed the requirements of the final rule and determined that it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. For more detailed information, see the RIA prepared for this final rule. The RIA has been posted in the docket for the proposed rule on the Federal eRulemaking Portal: *https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

This final rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's RIA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires that Federal agencies prepare a regulatory flexibility analysis for rules subject to the notice-and-comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 500 *et seq.*), if the rule would have a significant economic impact, whether detrimental or beneficial, on a substantial number of small entities. *See* 5 U.S.C. 601–612. Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the Economic Census. The BLM concludes that the vast majority of entities operating in the relevant sectors are small businesses as defined by the SBA. As such, the final rule will likely affect a substantial number of small entities.

The BLM reviewed the final rule and estimates that it will generate cost savings of about $72,000 per entity per year. These estimated cost savings will provide relief to small operators, which, the BLM notes, represent the overwhelming majority of operators of Federal and Indian leases.

For the purpose of carrying out its review pursuant to the RFA, the BLM believes that the final rule will not have a ''significant economic impact on a substantial number of small entities,'' as that phrase is used in 5 U.S.C. 605. An initial regulatory flexibility analysis is therefore not required. In making a significance determination under the RFA, BLM used an estimated per-entity cost savings to conduct a screening analysis. The analysis shows that the average reduction in compliance costs associated with this final rule are a small enough percentage of the profit margin for small entities, so as not be considered ''significant'' under the RFA.

Details on this determination can be found in the RIA for the final rule.

Small Business Regulatory Enforcement Fairness Act

This final rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final rule:

(a) Will have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA)

This final rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector of $100 million or more per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. The final rule contains no requirements that would apply to State, local, or tribal governments. It will rescind or revise requirements that would otherwise apply to the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531 *et seq.*) is not required for the final rule. This final rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments, nor does it impose obligations upon them.

Governmental Actions and Interference With Constitutionally Protected Property Right—Takings (Executive Order 12630)

This final rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required. The final rule rescinds or revises many of the requirements placed on operators by the 2016 rule. Operators will not have to undertake the associated compliance activities, either operational or administrative. Therefore, the final rule impacts some operational and administrative requirements on Federal and Indian lands. All such operations are subject to lease terms which expressly require that subsequent lease activities be conducted in compliance with subsequently adopted Federal laws and regulations. This final rule conforms to the terms of those leases and applicable statutes and, as such, the rule is not a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that the rule will not cause a taking of private property or require further discussion of takings implications under Executive Order 12630.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism impact statement is not required.

The final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. It would not apply to States or local governments or State or local governmental entities. The rule will affect the relationship between

operators, lessees, and the BLM, but it does not directly impact the States. Therefore, in accordance with Executive Order 13132, the BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Civil Justice Reform (Executive Order 12988)

This final rule complies with the requirements of Executive Order 12988. More specifically, this final rule meets the criteria of section 3(a), which requires agencies to review all regulations to eliminate errors and ambiguity and to write all regulations to minimize litigation. This final rule also meets the criteria of section 3(b)(2), which requires agencies to write all regulations in clear language with clear legal standards.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175 and Departmental Policy)

The Department strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this final rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have identified substantial direct effects on federally recognized Indian tribes that will result from this final rule. Under this final rule, oil and gas operations on tribal and allotted lands will no longer be subject to many of the requirements placed on operators by the 2016 rule.

The BLM believes that revising the requirements of subpart 3179 will prevent Indian lands from being viewed as less attractive to oil and gas operators than non-Indian lands due to unnecessary and burdensome compliance costs, thereby preventing economic harm to tribes and allottees. The BLM conducted tribal outreach which it believes is appropriate given that the final rule will remove many of the compliance burdens of the 2016 rule, defer to tribal laws, regulations, rules, and orders, with respect to oil-well gas flaring from Indian leases, and otherwise revise subpart 3179 in a manner that aligns it with NTL–4A.

The BLM is committed to engaging in meaningful Tribal Consultation. Through a letter dated November 21, 2017, the BLM notified 428 Tribal leaders and representatives of its intent to propose a rule to revise the 2016 final rule. In the letter, the BLM offered to participate in government-to-government consultations or to accept for consideration written comments, at the recipient's convenience. These letters were sent three months before the BLM published the proposed rule in the **Federal Register**.

The BLM received letters from several tribes seeking government-to-government consultation. The BLM also received comments from three allottees and members of tribes who did not request consultation. In response, the BLM conducted government-to-government consultations with the tribes who had requested consultation. During each of these government-to-government consultations, the BLM discussed the regulatory action with the tribes. The feedback the BLM received was overall positive, particularly about the opportunity for greater tribal sovereignty.

Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3521) provides that 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 control number. 44 U.S.C. 3512. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

OMB approved 24 information collection activities in the 2016 rule pertaining to waste prevention and assigned control number 1004–0211 to those activities. See ''Waste Prevention, Production Subject to Royalties, and Resource Conservation,'' Final Rule, 81 FR 83008 (Nov. 18, 2016). In the Notice of Action approving the 24 information collection activities in the 2016 rule, OMB announced that the control number will expire on January 31, 2018. The Notice of Action also included terms of clearance.

On October 5, 2017, the BLM proposed a rule that would suspend or delay several regulations in the 2016 rule. In that proposed rule, the BLM requested the extension of control number 1004–0211 until January 31, 2019, including the 24 information collection activities in the 2016 rule. The BLM invited public comment on the proposed extension of control no. 1004–0211. The BLM also submitted the information collection request for the proposed rule to OMB for review in accordance with the PRA.

The BLM finalized that rule on December 8, 2017. See 82 FR 58050. OMB approved the information collection activities in the rule with an expiration date of December 31, 2020, and with a Term of Clearance that maintains the effectiveness of the Terms of Clearance associated with the 2016 rule. That Term of Clearance requires the BLM to submit to the Office of Information and Regulatory Affairs draft guidance to implement the collection of information requirements of the 2016 rule no later than 3 months after January 17, 2019.

This final rule does not modify any regulations in 43 CFR part 3170, subpart 3178. Accordingly, the BLM requests continuation of the information collection activity at 43 CFR 3178.5, 3178.7, 3178.8, and 3178.9 (''Request for Approval for Royalty-Free Uses On-Lease or Off-Lease'').

The final rule removes the information collection activity at 43 CFR 3162.3–1(j) (''Plan to Minimize Waste of Natural Gas''). The final rule also removes or revises many regulations and information collection activities in 43 CFR part 3170, subpart 3179. As a result, the BLM now requests revision of control number 1004–0211 to include:

- The information collection activities in this final rule; and
- The information collection activity entitled, ''Request for Approval for Royalty-Free Uses On-Lease or Off-Lease.''

2. Summary of Information Collection Activities

Title: Waste Prevention, Production Subject to Royalties, and Resource Conservation (43 CFR parts 3160 and 3170).

OMB Control Number: 1004–0211.

Form: Form 3160–5, Sundry Notices and Reports on Wells.

Description of Respondents: Holders of Federal and Indian (except Osage Tribe) oil and gas leases, those who belong to Federally approved units or communitized areas, and those who are parties to oil and gas agreements under the Indian Mineral Development Act, 25 U.S.C. 2101–2108.

Respondents' Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Abstract: The BLM requests that control number 1004–0211 be revised to include the information collection activities in this final rule, as well as the information collection activity in 43 CFR part 3170, subpart 3178, that was in the 2016 rule. The BLM also requests the removal of the information collection activity in 43 CFR 3162.3–1(j)

that was in the 2016 rule, and the removal or revision of the information collection activities that were in 43 CFR part 3170, subpart 3179, of the 2016 rule.

Estimated Number of Responses: 1,075.

Estimated Total Annual Burden Hours: 4,010.

Estimated Total Non-Hour Cost: None.

2. Information Collection Request

A. The BLM requests that OMB control number 1004–0211 continue to include the following information collection activity that was included at 43 CFR part 3170, subpart 3178, of the 2016 rule: Request for Approval for Royalty-Free Uses On-Lease or Off-Lease (43 CFR 3178.5, 3178.7, 3178.8, and 3178.9).

Section 3178.5 requires submission of a Sundry Notice (Form 3160–5) to request prior written BLM approval for use of gas royalty free for the following operations and production purposes on the lease, unit or communitized area:

- Using oil or gas that an operator removes from the pipeline at a location downstream of the facility measurement point (FMP);
- Removal of gas initially from a lease, unit PA, or communitized area for treatment or processing because of particular physical characteristics of the gas, prior to use on the lease, unit PA or communitized area; and
- Any other type of use of produced oil or gas for operations and production purposes pursuant to § 3178.3 that is not identified in § 3178.4.

Section 3178.7 requires submission of a Sundry Notice (Form 3160–5) to request prior written BLM approval for off-lease royalty-free uses in the following circumstances:

- The equipment or facility in which the operation is conducted is located off the lease, unit, or communitized area for engineering, economic, resource-protection, or physical-accessibility reasons; and
- The operations are conducted upstream of the FMP.

Section 3178.8 requires that an operator measure or estimate the volume of royalty-free gas used in operations upstream of the FMP. In general, the operator is free to choose whether to measure or estimate, with the exception that the operator must in all cases measure the following volumes:

- Royalty-free gas removed downstream of the FMP and used pursuant to §§ 3178.4 through 3178.7; and
- Royalty-free oil used pursuant to §§ 3178.4 through 3178.7.

If oil is used on the lease, unit or communitized area, it is most likely to be removed from a storage tank on the lease, unit or communitized area. Thus, this regulation also requires the operator to document the removal of the oil from the tank or pipeline.

Section 3178.8(e) requires that operators use best available information to estimate gas volumes, where estimation is allowed. For both oil and gas, the operator must report the volumes measured or estimated, as applicable, under ONRR reporting requirements. As revisions to Onshore Oil and Gas Orders No. 4 and 5 have now been finalized as 43 CFR part 3170, subparts 3174 and 3175, respectively, the final rule text now references § 3173.12, as well as §§ 3178.4 through 3178.7 to clarify that royalty-free use must adhere to the provisions in those sections.

Section 3178.9 requires the following additional information in a request for prior approval of royalty-free use under § 3178.5, or for prior approval of off-lease royalty-free use under § 3178.7:

- A complete description of the operation to be conducted, including the location of all facilities and equipment involved in the operation and the location of the FMP;
- The volume of oil or gas that the operator expects will be used in the operation and the method of measuring or estimating that volume;
- If the volume expected to be used will be estimated, the basis for the estimate (*e.g.,* equipment manufacturer's published consumption or usage rates); and
- The proposed disposition of the oil or gas used (*e.g.,* whether gas used would be consumed as fuel, vented through use of a gas-activated pneumatic controller, returned to the reservoir, or disposed by some other method).

B. The BLM requests the revision of the following information collection activities in accordance with this final rule:

1. Request for Extension of Royalty-Free Flaring During Initial Production Testing (43 CFR 3179.101)

A regulation in the 2016 rule, 43 CFR 3179.103, allows gas to be flared royalty free during initial production testing. The regulation lists specific volume and time limits for such testing. An operator may seek an extension of those limits on royalty-free flaring by submitting a Sundry Notice (Form 3160–5) to the BLM.

A regulation in this final rule, 43 CFR 3179.101, is similar to the 2016 rule in addressing the royalty-free treatment of gas volumes flared during initial production testing. Title 43 CFR 3179.101 in this final rule would provide that gas flared during the initial production test of each completed interval in a well is royalty free until one of the following occurs:

- The operator determines that it has obtained adequate reservoir information;
- 30 days have passed since the beginning of the production test, unless the BLM approves a longer test period; or
- The operator has flared 50 MMcf of gas.

Section 3179.101 of this final rule also provides that an operator may request a longer test period by submitting a Sundry Notice.

2. Request for Extension of Royalty-Free Flaring During Subsequent Well Testing (43 CFR 3179.102)

A regulation in the 2016 rule, 43 CFR 3179.104, allows gas to be flared royalty free for no more than 24 hours during well tests subsequent to the initial production test. That regulation allows an operator to seek authorization to flare royalty free for a longer period by submitting a Sundry Notice (Form 3160–5) to the BLM.

A regulation in this final rule, 43 CFR 3179.102, is substantively identical to 43 CFR 3179.104 in the 2016 rule. Accordingly, the BLM requests that the information collection activity at 43 CFR 3179.102 of this final rule replace the activity at 43 CFR 3179.104 of the 2016 rule.

3. Emergencies (43 CFR 3179.103)

A regulation in the 2016 rule, 43 CFR 3179.105, allows an operator to flare gas royalty free during a temporary, short-term, infrequent, and unavoidable emergency. A regulation in this final rule, at 43 CFR 3179.103, is almost identical to 43 CFR 3179.105 of the 2016 rule. The BLM thus requests that the information collection activity entitled, ''Reporting of Venting or Flaring (43 CFR 3179.105)'' be re-named ''Emergencies (43 CFR 3179.103).''

As provided at 43 CFR 3179.103(a) of this final rule, gas flared or vented during an emergency would be royalty-free for a period not to exceed 24 hours, unless the BLM determines that emergency conditions exist necessitating venting or flaring for a longer period. Section 3179.103(d) of this final rule would require the operator to report to the BLM on a Sundry Notice, within 45 days of the

start of an emergency, the estimated volumes flared or vented beyond the timeframe specified in paragraph (a).

As defined at 43 CFR 3179.103(b) of this final rule, an ''emergency'' for purposes of 43 CFR part 3170, subpart 3179, is a temporary, infrequent and unavoidable situation in which the loss of gas or oil is uncontrollable or necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment, and is not due to operator negligence.

As provided at 43 CFR 3179.103(c) of this final rule, the following events would not constitute emergencies for the purposes of royalty assessment:

- The operator's failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;
- Failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or gas plant, or exceeds sales contract volumes of oil or gas;
- Scheduled maintenance;
- A situation caused by operator negligence, including recurring equipment failures; or
- A situation on a lease, unit, or communitized area that has already experienced 3 or more emergencies within the past 30 days, unless the BLM determines that the occurrence of more than 3 emergencies within the 30 day period could not have been anticipated and was beyond the operator's control.

D. The BLM requests the removal of the following information collection activities in accordance with this final rule:

1. ''Plan to Minimize Waste of Natural Gas'';
2. ''Notification of Choice to Comply on County- or State-wide Basis'';
3. ''Request for Approval of Alternative Capture Requirement'';
4. ''Request for Exemption from Well Completion Requirements'';
5. ''Notification of Functional Needs for a Pneumatic Controller'';
6. ''Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (Pneumatic Controller)'';
7. ''Showing in Support of Replacement of Pneumatic Controller within 3 Years'';
8. ''Showing that a Pneumatic Diaphragm Pump was Operated on Fewer than 90 Individual Days in the Prior Calendar Year'';
9. ''Notification of Functional Needs for a Pneumatic Diaphragm Pump'';
10. ''Showing that Cost of Compliance Would Cause Cessation of Production and Abandonment of Oil Reserves (Pneumatic Diaphragm Pump)'';
11. ''Showing in Support of Replacement of Pneumatic Diaphragm Pump within 3 Years'';
12. ''Storage Vessels'';
13. ''Downhole Well Maintenance and Liquids Unloading—Documentation and Reporting'';
14. ''Downhole Well Maintenance and Liquids Unloading—Notification of Excessive Duration or Volume'';
15. ''Leak Detection—Compliance with EPA Regulations'';
16. ''Leak Detection—Request to Use an Alternative Monitoring Device and Protocol'';
17. ''Leak Detection—Operator Request to Use an Alternative Leak Detection Program'';
18. ''Leak Detection—Operator Request for Exemption Allowing Use of an Alternative Leak-Detection Program that Does Not Meet Specified Criteria'';
19. ''Leak Detection—Notification of Delay in Repairing Leaks'';
20. ''Leak Detection—Inspection Recordkeeping and Reporting''; and
21. ''Leak Detection—Annual Reporting of Inspections.''

E. The BLM requests the addition of following information collection activity, in accordance with this final rule: Oil-Well Gas (43 CFR 3179.201).

A regulation in this final rule, 43 CFR 3179.201, would provide that, except as otherwise provided in 43 CFR part 3170, subpart 3179, oil-well gas may not be vented or flared royalty free unless BLM approves such action in writing. The BLM would be authorized to approve an application for royalty-free venting or flaring of oil-well gas upon determining that royalty-free venting or flaring is justified by the operator's submission of either:

(1) An evaluation report supported by engineering, geologic, and economic data that demonstrates to the BLM's satisfaction that the expenditures necessary to market or beneficially use such gas are not economically justified; or

(2) An action plan showing how the operator will minimize the venting or flaring of the gas within 1 year or within a greater amount of time if the operator justifies an extended deadline. If the operator fails to implement the action plan, the gas vented or flared during the time covered by the action plan would be subject to royalty.

The data in the evaluation report that is mentioned above would need to include:

- The applicant's estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved; and
- The volumes of the oil and gas that would be produced if the applicant were required to market or use the gas.

The BLM would be authorized to require the operator to provide an updated evaluation report as additional development occurs or economic conditions improve. In addition, the BLM would be authorized to determine that gas is avoidably lost and therefore subject to royalty if flaring exceeds 10 MMcf per well during any month.

The BLM notes that there are no additional reporting requirements associated with 43 CFR 3179.301 in the final rule. Section 3179.301, which is a revision of 43 CFR 3179.9, is already covered under an approved OMB control number 1012–0004. The provision provides that the operator must estimate or measure volumes of gas vented or flared, and report those volumes under ''applicable ONRR reporting requirements,'' which is authorized under control number 1012–0004. An ONRR regulation (30 CFR 1210.102) requires operators to submit a form that is included in that control number (Form ONRR–4054, Oil and Gas Operations Report) monthly for all oil and gas production. Volumes of vented gas and flared gas must be included in that report, using codes to identify those volumes. ONRR uses the information on Form ONRR–4054 to track all oil and gas from the point of production to the point of first sale or other disposition, to ensure proper royalties are paid. The BLM and other Federal Government agencies use the data to monitor and inspect lease operations. As revised, proposed 43 CFR 3179.301 does not change the burdens that ONRR estimates for Form ONRR–4054.

4. Burden Estimates

This final rule results in the following adjustments in hour or cost burdens:

1. The hours per response for Request for Approval for Royalty-Free Uses On-Lease or Off-Lease are increased from 4 to 8.
2. The number of responses for ''Request for Extension of Royalty-Free Flaring During Initial Well Testing'' are increased from 500 to 750.

Program changes in this final rule would result in 62,125 fewer responses than in the 2016 rule (1,075 responses minus 63,200 responses) and 78,160 fewer burden hours than in the 2016 rule (4,010 responses minus 82,170 responses). The program changes and their reasons are itemized in Tables 15–1 and 15–2 of the supporting statement.

The following table details the annual estimated hour burdens for the information activities described above:

Type of response A.	Number of responses B.	Hours per response C.	Total Hours (Column B × Column C) D.
Request for Approval for Royalty-Free Uses On-Lease or Off-Lease, 43 CFR 3178.5, 3178.7, 3178.8, and 3178.9, Form 3160–5	50	8	400
Request for Extension of Royalty-Free Flaring During Initial Production Testing, 43 CFR 3179.101, Form 3160–5	750	2	1,500
Request for Extension of Royalty-Free Flaring During Subsequent Well Testing, 43 CFR 3179.102, Form 3160–5	5	2	10
Emergencies, 43 CFR 3179.103, Form 3160–5	250	2	500
Oil-Well Gas, 43 CFR 3179.201	20	80	1,600
Totals	1,075		4,010

National Environmental Policy Act

The BLM has prepared an Environmental Assessment (EA) to determine whether this proposed rule would have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Based on this EA, the BLM has concluded that the final rule would not have a significant impact on the quality of the human environment. This conclusion is detailed in the BLM's Finding of No Significant Impact (FONSI). Both the EA and the FONSI for the final rule are available in the docket for the rule on the *Federal eRulemaking Portal: https://www.regulations.gov.* (In the Searchbox, enter ''RIN 1004–AE53'', click the ''Search'' button, open the Docket Folder, and look under Supporting Documents.)

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

This final rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Section 4(b) of Executive Order 13211 defines a ''significant energy action'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of rulemaking, and notices of rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) That is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.''

The rule rescinds or revises certain requirements in the 2016 rule and reduces compliance burdens. The BLM determined that the 2016 rule would not have impacted the supply, distribution, or use of energy. It stands to reason that a revision in a manner that conforms 43 CFR part 3170, subpart 3179, with the policies governing venting and flaring prior to the 2016 rule will likewise not have an impact on the supply, distribution, or use of energy. As such, we do not consider the final rule to be a ''significant energy action'' as defined in Executive Order 13211.

Authors

The principal authors of this final rule are: James Tichenor, Justin Abernathy, Michael Riches, and Nathan Packer of the BLM Washington Office; Adam Stern of the Department of the Interior's Office of Policy Analysis; Beth Poindexter of the BLM Montana and North Dakota State Office; David Mankiewicz of the BLM Farmington, New Mexico Field Office; and Jennifer Sanchez of the BLM Roswell, New Mexico Field Office; assisted by Faith Bremner of the BLM's Division of Regulatory Affairs and by the Department of the Interior's Office of the Solicitor.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3170

Administrative practice and procedure, Flaring, Government contracts, Incorporation by reference, Indians—lands, Immediate assessments, Mineral royalties, Oil and gas exploration, Oil and gas measurement, Public lands—mineral resources, Reporting and recordkeeping requirements, Royalty-free use, Venting.

Joseph R. Balash,

Assistant Secretary for Land and Minerals Management.

43 CFR Chapter II

For the reasons set out in the preamble, the Bureau of Land Management amends 43 CFR parts 3160 and 3170 as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

§ 3162.3–1 [Amended]

■ 2. Amend § 3162.3–1 by removing paragraph (j).

PART 3170—ONSHORE OIL AND GAS PRODUCTION

■ 3. The authority citation for part 3170 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

■ 4. Revise subpart 3179 to read as follows:

Subpart 3179—Waste Prevention and Resource Conservation

Secs.

3179.1 Purpose.
3179.2 Scope.
3179.3 Definitions and acronyms.
3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.
3179.5 When lost production is subject to royalty.
3179.6 Venting limitations.

Authorized Flaring and Venting of Gas

3179.101 Initial production testing.
3179.102 Subsequent well tests.
3179.103 Emergencies.

3179.104 Downhole well maintenance and liquids unloading.

Other Venting or Flaring

3179.201 Oil-well gas.

Measurement and Reporting Responsibilities

3179.301 Measuring and reporting volumes of gas vented and flared.

Additional Deference to Tribal Regulations

3179.401 Deference to tribal regulations.

Subpart § 3179—Waste Prevention and Resource Conservation

§ 3179.1 Purpose.

The purpose of this subpart is to implement and carry out the purposes of statutes relating to prevention of waste from Federal and Indian (other than Osage Tribe) leases, conservation of surface resources, and management of the public lands for multiple use and sustained yield. This subpart supersedes those portions of Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases, Royalty or Compensation for Oil and Gas Lost (NTL–4A), pertaining to, among other things, flaring and venting of produced gas, unavoidably and avoidably lost gas, and waste prevention.

§ 3179.2 Scope.

(a) This subpart applies to:

(1) All onshore Federal and Indian (other than Osage Tribe) oil and gas leases, units, and communitized areas, except as otherwise provided in this subpart;

(2) IMDA oil and gas agreements, unless specifically excluded in the agreement or unless the relevant provisions of this subpart are inconsistent with the agreement;

(3) Leases and other business agreements and contracts for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or Tribal Energy Resource Agreement;

(4) Committed State or private tracts in a federally approved unit or communitization agreement defined by or established under 43 CFR part 3100, subpart 3105, or 43 CFR part 3180; and

(5) All onshore well facilities located on a Federal or Indian lease or a federally approved unit or communitized area.

(b) For purposes of this subpart, the term ''lease'' also includes IMDA agreements.

§ 3179.3 Definitions and acronyms.

As used in this subpart, the term:

Automatic ignition system means an automatic ignitor and, where needed to ensure continuous combustion, a continuous pilot flame.

Capture means the physical containment of natural gas for transportation to market or productive use of natural gas, and includes injection and royalty-free on-site uses pursuant to subpart 3178 of this part.

Gas-to-oil ratio (GOR) means the ratio of gas to oil in the production stream expressed in standard cubic feet of gas per barrel of oil.

Gas well means a well for which the energy equivalent of the gas produced, including its entrained liquefiable hydrocarbons, exceeds the energy equivalent of the oil produced, as determined at the time of well completion.

Liquids unloading means the removal of an accumulation of liquid hydrocarbons or water from the wellbore of a completed gas well.

Lost oil or lost gas means produced oil or gas that escapes containment, either intentionally or unintentionally, or is flared before being removed from the lease, unit, or communitized area, and cannot be recovered.

Oil well means a well for which the energy equivalent of the oil produced exceeds the energy equivalent of the gas produced, as determined at the time of well completion.

Waste of oil or gas means any act or failure to act by the operator that is not sanctioned by the authorized officer as necessary for proper development and production, where compliance costs are not greater than the monetary value of the resources they are expected to conserve, and which results in:

(1) A reduction in the quantity or quality of oil and gas ultimately producible from a reservoir under prudent and proper operations; or

(2) Avoidable surface loss of oil or gas.

§ 3179.4 Determining when the loss of oil or gas is avoidable or unavoidable.

For purposes of this subpart:

(a) *Avoidably lost* production means:

(1) Gas that is vented or flared without the authorization or approval of the BLM; or

(2) Produced oil or gas that is lost when the BLM determines that such loss occurred as a result of:

(i) Negligence on the part of the operator;

(ii) The failure of the operator to take all reasonable measures to prevent or control the loss; or

(iii) The failure of the operator to comply fully with the applicable lease terms and regulations, appropriate provisions of the approved operating plan, or prior written orders of the BLM.

(b) *Unavoidably lost* production means:

(1) Oil or gas that is lost because of line failures, equipment malfunctions, blowouts, fires, or other similar circumstances, except where the BLM determines that the loss was avoidable pursuant to paragraph (a)(2) of this section;

(2) Oil or gas that is lost from the following operations or sources, except where the BLM determines that the loss was avoidable pursuant to paragraph (a)(2) of this section:

(i) Well drilling;

(ii) Well completion and related operations;

(iii) Initial production tests, subject to the limitations in § 3179.101;

(iv) Subsequent well tests, subject to the limitations in § 3179.102;

(v) Exploratory coalbed methane well dewatering;

(vi) Emergencies, subject to the limitations in § 3179.103;

(vii) Normal gas vapor losses from a storage tank or other low pressure production vessel, unless the BLM determines that recovery of the gas vapors is warranted;

(viii) Well venting in the course of downhole well maintenance and/or liquids unloading performed in compliance with § 3179.104; or

(ix) Facility and pipeline maintenance, such as when an operator must blow-down and depressurize equipment to perform maintenance or repairs; or

(3) Produced gas that is flared or vented with BLM authorization or approval.

§ 3179.5 When lost production is subject to royalty.

(a) Royalty is due on all avoidably lost oil or gas.

(b) Royalty is not due on any unavoidably lost oil or gas.

§ 3179.6 Venting limitations.

(a) Gas well gas may not be flared or vented, except where it is unavoidably lost pursuant to § 3179.4(b).

(b) The operator must flare, rather than vent, any gas that is not captured, except:

(1) When flaring the gas is technically infeasible, such as when the gas is not readily combustible or the volumes are too small to flare;

(2) Under emergency conditions, as defined in § 3179.105, when the loss of gas is uncontrollable or venting is necessary for safety;

(3) When the gas is vented through normal operation of a natural gas-activated pneumatic controller or pump;

(4) When gas vapor is vented from a storage tank or other low pressure

production vessel, unless the BLM determines that recovery of the gas vapors is warranted;

(5) When the gas is vented during downhole well maintenance or liquids unloading activities;

(6) When the gas venting is necessary to allow non-routine facility and pipeline maintenance to be performed, such as when an operator must, upon occasion, blow-down and depressurize equipment to perform maintenance or repairs; or

(7) When a release of gas is unavoidable under § 3179.4 and flaring is prohibited by Federal, State, local or tribal law, regulation, or enforceable permit term.

(c) For purposes of this subpart, all flares or combustion devices must be equipped with an automatic ignition system.

Authorized Flaring and Venting of Gas

§ 3179.101 Initial production testing.

(a) Gas flared during the initial production test of each completed interval in a well is royalty free until one of the following occurs:

(1) The operator determines that it has obtained adequate reservoir information;

(2) Thirty (30) days have passed since the beginning of the production test, unless the BLM approves a longer test period; or

(3) The operator has flared 50 million cubic feet (MMcf) of gas.

(b) The operator may request a longer test period and must submit its request using a Sundry Notice.

§ 3179.102 Subsequent well tests.

(a) Gas flared during well tests subsequent to the initial production test is royalty free for a period not to exceed 24 hours, unless the BLM approves or requires a longer test period.

(b) The operator may request a longer test period and must submit its request using a Sundry Notice.

§ 3179.103 Emergencies.

(a) Gas flared or vented during an emergency is royalty free for a period not to exceed 24 hours, unless the BLM determines that emergency conditions exist necessitating venting or flaring for a longer period.

(b) For purposes of this subpart, an ''emergency'' is a temporary, infrequent and unavoidable situation in which the loss of gas or oil is uncontrollable or necessary to avoid risk of an immediate and substantial adverse impact on safety, public health, or the environment, and is not due to operator negligence.

(c) The following do not constitute emergencies for the purpose of royalty assessment:

(1) The operator's failure to install appropriate equipment of a sufficient capacity to accommodate the production conditions;

(2) Failure to limit production when the production rate exceeds the capacity of the related equipment, pipeline, or gas plant, or exceeds sales contract volumes of oil or gas;

(3) Scheduled maintenance;

(4) A situation caused by operator negligence, including recurring equipment failures; or

(5) A situation on a lease, unit, or communitized area that has already experienced 3 or more emergencies within the past 30 days, unless the BLM determines that the occurrence of more than 3 emergencies within the 30 day period could not have been anticipated and was beyond the operator's control.

(d) Within 45 days of the start of the emergency, the operator must estimate and report to the BLM on a Sundry Notice the volumes flared or vented beyond the timeframe specified in paragraph (a) of this section.

§ 3179.104 Downhole well maintenance and liquids unloading.

(a) Gas vented or flared during downhole well maintenance and well purging is royalty free for a period not to exceed 24 hours per event, provided that the requirements of paragraphs (b) through (d) of this section are met. Gas vented or flared from a plunger lift system and/or an automated well control system is royalty free, provided the requirements of paragraphs (b) and (c) of this section are met.

(b) The operator must minimize the loss of gas associated with downhole well maintenance and liquids unloading, consistent with safe operations.

(c) For wells equipped with a plunger lift system and/or an automated well control system, minimizing gas loss under paragraph (b) of this section includes optimizing the operation of the system to minimize gas losses to the extent possible consistent with removing liquids that would inhibit proper function of the well.

(d) For any liquids unloading by manual well purging, the operator must ensure that the person conducting the well purging remains present on-site throughout the event to end the event as soon as practical, thereby minimizing to the maximum extent practicable any venting to the atmosphere.

(e) For purposes of this section, ''well purging'' means blowing accumulated liquids out of a wellbore by reservoir gas pressure, whether manually or by an automatic control system that relies on real-time pressure or flow, timers, or other well data, where the gas is vented to the atmosphere, and it does not apply to wells equipped with a plunger lift system.

Other Venting or Flaring

§ 3179.201 Oil-well gas.

(a) Except as provided in §§ 3179.101, 3179.102, 3179.103, and 3179.104, vented or flared oil-well gas is royalty free if it is vented or flared pursuant to applicable rules, regulations, or orders of the appropriate State regulatory agency or tribe. Applicable State or tribal rules, regulations, or orders are appropriate if they place limitations on the venting and flaring of oil-well gas, including through general or qualified prohibitions, volume or time limitations, capture percentage requirements, or trading mechanisms.

(b) With respect to production from Indian leases, vented or flared oil-well gas will be treated as royalty free pursuant to paragraph (a) of this section only to the extent it is consistent with the BLM's trust responsibility.

(c) Except as otherwise provided in this subpart, oil-well gas may not be vented or flared royalty free unless the BLM approves it in writing. The BLM may approve an application for royalty-free venting or flaring of oil-well gas if it determines that it is justified by the operator's submission of either:

(1) An evaluation report supported by engineering, geologic, and economic data that demonstrates to the BLM's satisfaction that the expenditures necessary to market or beneficially use such gas are not economically justified. If flaring exceeds 10 MMcf per well during any month, the BLM may determine that the gas is avoidably lost and therefore subject to royalty; or

(2) An action plan showing how the operator will minimize the venting or flaring of the oil-well gas within 1 year. An operator may apply for approval of an extension of the 1-year time limit, if justified. If the operator fails to implement the action plan, the gas vented or flared during the time covered by the action plan will be subject to royalty. If flaring exceeds 10 MMcf per well during any month, the BLM may determine that the gas is avoidably lost and therefore subject to royalty.

(d) The evaluation report in paragraph (c)(1) of this section:

(1) Must include all appropriate engineering, geologic, and economic data to support the applicant's determination that marketing or using the gas is not economically viable. The

information provided must include the applicant's estimates of the volumes of oil and gas that would be produced to the economic limit if the application to vent or flare were approved and the volumes of the oil and gas that would be produced if the applicant was required to market or use the gas. When evaluating the feasibility of marketing or using of the gas, the BLM will determine whether the operator can economically operate the lease if it is required to market or use the gas, considering the total leasehold production, including both oil and gas, as well as the economics of a field-wide plan; and

(2) The BLM may require the operator to provide an updated evaluation report as additional development occurs or economic conditions improve, but no more than once a year.

(e) An approval to flare royalty free, which is in effect as of November 27, 2018, will continue in effect unless:

(1) The approval is no longer necessary because the venting or flaring is authorized by the applicable rules, regulations, or orders of an appropriate State regulatory agency or tribe, as provided in paragraph (a) of this section; or

(2) The BLM requires an updated evaluation report under paragraph (d)(2) of this section and determines to amend or revoke its approval.

Measurement and Reporting Responsibilities

§ 3179.301 Measuring and reporting volumes of gas vented and flared.

(a) The operator must estimate or measure all volumes of lost oil and gas, whether avoidably or unavoidably lost, from wells, facilities and equipment on a lease, unit PA, or communitized area and report those volumes under applicable ONRR reporting requirements.

(b) The operator may:

(1) Estimate or measure vented or flared gas in accordance with applicable rules, regulations, or orders of the appropriate State or tribal regulatory agency;

(2) Estimate the volume of the vented or flared gas based on the results of a regularly performed GOR test and measured values for the volumes of oil production and gas sales, to allow BLM to independently verify the volume, rate, and heating value of the flared gas; or

(3) Measure the volume of the flared gas.

(c) The BLM may require the installation of additional measurement equipment whenever it is determined that the existing methods are inadequate to meet the purposes of this subpart.

(d) The operator may combine gas from multiple leases, unit PAs, or communitized areas for the purpose of flaring or venting at a common point, but must use a method approved by the BLM to allocate the quantities of the vented or flared gas to each lease, unit PA, or communitized area.

Additional Deference to Tribal Regulations

§ 3179.401 Deference to tribal regulations.

(a) A tribe that has rules, regulations, or orders that are applicable to any of the matters addressed in this subpart may seek approval from the BLM to have such rules, regulations, or orders apply in place of any or all of the provisions of this subpart with respect to lands and minerals over which that tribe has jurisdiction.

(b) The BLM will approve a tribe's request under paragraph (a) to the extent that it is consistent with the BLM's trust responsibility.

(c) The deference to tribal rules, regulations, or orders provided for in this section is supplemental to, and does not limit, the deference to tribal rules, regulations, or orders provided for in § 3179.201.

[FR Doc. 2018–20689 Filed 9–27–18; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL REGISTER

Vol. 83 Friday,

No. 189 September 28, 2018

Part IV

Department of the Interior

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2017–0008; 189E1700D2 ET1SF0000.PSB000 EEEE500000]

RIN 1014–AA37

Oil and Gas and Sulphur Operations on the Outer Continental Shelf—Oil and Gas Production Safety Systems

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Safety and Environmental Enforcement (BSEE) is amending the regulations regarding oil and natural gas production safety systems. After a thorough reexamination of the current regulations, and consideration of recent experiences from implementation of those regulations and of public comments on the proposed rule to amend those regulations, BSEE is revising or removing certain regulatory provisions that create unnecessary burdens on stakeholders, and clarifying other provisions, while ensuring safety and environmental protection.

DATES: This rule becomes effective on December 27, 2018.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 27, 2018.

ADDRESSES:

Rulemaking documents and public comments on the proposed rule: You may review the rulemaking documents, including National Environmental Policy Act (NEPA) documents and public comments submitted on the proposed rule, by accessing the Federal eRulemaking Portal: *http://www.regulations.gov*. In the entry entitled, ''Enter Keyword or ID,'' enter ''BSEE–2017–0008,'' then click search. Follow the instructions to search public comments and view supporting and related materials available for this rulemaking.

Documents incorporated by reference: BSEE provides members of the public with website addresses where they may access standards incorporated by reference in BSEE's regulations for viewing, sometimes for free and sometimes for a fee. In particular, the American Petroleum Institute (API) voluntarily makes available all API standards that are safety-related and that are incorporated into Federal regulations for free viewing by the public online in the Incorporation by Reference Reading Room on API's website at: *http://publications.api.org*.[1] In addition to the free online availability of these standards for viewing on API's website, hardcopies and printable versions are available for purchase from API. The API website address to purchase standards is: *http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents*.

BSEE can make copies of incorporated standards available for review at BSEE's office(s) upon advance request. One location where incorporated standards can be available for review is BSEE's headquarters at 45600 Woodland Road, Sterling, Virginia, 20166. Please email: *regs@bsee.gov* to make arrangements to review incorporated standards, so BSEE can ensure hard copies of the requested standards are available. BSEE may also make the standards available at its other offices located in: Washington, DC; New Orleans, Louisiana; Houston, Texas; Camarillo, California; and Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Amy White, Regulations and Standards Branch, 703–787–1665 or by email: *regs@bsee.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. BSEE Statutory and Regulatory Authority and Responsibilities
B. Summary of the Rulemaking
C. Recent Executive and Secretary's Orders
D. Incorporation by Reference of Industry Standards
E. Overview of Comments on the Proposed Rule
F. Discussion of General Issues Raised by Commenters
G. Section-by-Section Summaries, Responses to Comments, and Changes From the Proposed Rule
H. Additional Comments Solicited
Procedural Matters
Regulatory Planning and Review (E.O. 12866, E.O. 13563, E.O. 13771)
Small Business Regulatory Enforcement Fairness Act and Regulatory Flexibility Act
Regulatory Flexibility Act
Unfunded Mandates Reform Act of 1995
Takings (E.O. 12630)
Federalism (E.O. 13132)
Civil Justice Reform (E.O. 12988)
Consultation with Indian Tribes (E.O. 13175)
Paperwork Reduction Act (PRA) of 1995
National Environmental Policy Act of 1969
Data Quality Act
Effects on the Nation's Energy Supply (E.O. 13211)

A. BSEE Statutory and Regulatory Authority and Responsibilities

BSEE derives its authority primarily from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331–1356a. Congress enacted OCSLA in 1953, significantly amended it in 1978, and subsequently amended specific provisions. As amended, OCSLA authorizes the Secretary of the Interior (Secretary) to lease the Outer Continental Shelf (OCS) for resource development in a way that makes it available for expeditious and orderly development, consistent with national needs and subject to environmental safeguards. Among other things, Congress established a policy to provide for orderly and expeditious development of oil and natural gas resources of the OCS to meet national economic and energy policy and which may serve to assure national security and reduce dependence on foreign sources. OCSLA also states that, among other purposes, OCS oil and gas resources should be managed in a way that balances orderly development with protection of the environment. The Secretary has delegated authority to perform certain of these functions to BSEE.

To carry out its responsibilities, BSEE regulates offshore oil and gas operations to ensure that operations are safe and environmentally responsible. *See* 30 CFR 250.101(b)(2). BSEE's regulatory program covers a wide range of operations, including drilling, completion, workover, production, pipeline, and decommissioning operations; and associated facilities, such as mobile offshore drilling units (MODUs) and production platforms. *See* 30 CFR part 250. BSEE also conducts onsite inspections to assure compliance with regulations, lease terms, and approved plans and permits. Detailed information concerning BSEE's regulations and guidance to the offshore oil and gas industry is on BSEE's website at: *http://www.bsee.gov/Regulations-and-Guidance/index*.

B. Summary of the Rulemaking

This final rule amends and updates the regulations in 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems (subpart H). This rule supports the Administration's objective of facilitating energy dominance by encouraging increased domestic oil and gas production and reducing unnecessary burdens on stakeholders, while ensuring safety and environmental protection.

[1] To view these standards online, go to the API publications website at: *http://publications.api.org*. You must then log-in or create a new account, accept API's ''Terms and Conditions,'' click on the ''Browse Documents'' button, and then select the applicable category (*e.g.,* ''Exploration and Production'') for the standard(s) you wish to review.

Since 2010, the Department of the Interior (Department) has promulgated several rulemakings (*e.g.,* Safety and Environmental Management Systems (SEMS) I and II final rules (75 FR 63610, October 15, 2010; 78 FR 20423, April 5, 2013), the final Safety Measures rule (77 FR 50856, August 22, 2012), and the Blowout Preventer Systems and Well Control final rule (the ''2016 Well Control Rule'' or the ''2016 WCR'') [2] to improve worker safety and environmental protection. On September 7, 2016, the Department published a Production Safety Systems final rule substantially revising subpart H (81 FR 61834) (2016 PSSR). That final rule addressed issues such as production safety systems, subsurface safety devices, and safety device testing. These systems play a critical role in protecting workers and the environment. Most of the provisions of that rulemaking took effect on November 7, 2016. Since that time, BSEE has become aware that certain provisions in that rulemaking created potentially unduly burdensome requirements for oil and natural gas production operators on the OCS, without meaningfully increasing safety of the workers or protection of the environment. During implementation of the 2016 PSSR, BSEE reassessed a number of the provisions in subpart H and determined that it could revise some provisions to reduce or eliminate some of the concerns expressed by the operators, thereby reducing the regulatory burden, while ensuring safety and protection of the environment.

On December 29, 2017, BSEE published in the **Federal Register** a proposed rule to revise certain provisions in the subpart H regulations (82 FR 61703) (the ''proposed rule'') and to solicit comments on several additional issues. After consideration of the public comments on the proposed rule, BSEE is publishing this final rule, which revises or otherwise addresses the current requirements as follows:

- Updates the incorporation of certain standards referenced in subpart H;
- Adds gas lift shut down valves (GLSDVs) to the list of safety and pollution prevention equipment (SPPE);
- Revises requirements for SPPE by replacing the requirement for independent third parties to certify that each device will function in the most extreme conditions to which it will be exposed with requirements for device design testing, documentation of the process the operator used to ensure the device is designed to function as required, and independent third party review and certification of a device if the device is moved to a different location [3];
- Clarifies equipment failure reporting requirements;
- Clarifies and revises some of the production safety system design requirements, including revising the requirements for professional engineer (PE) stamping, revising the requirements for piping schematics, simplifying the requirements for electrical system information, revising the requirement for operators to provide certain documents to BSEE, and clarifying when operators must update existing documents;
- Clarifies requirements for atmospheric vessels containing Class I liquids;
- Clarifies requirements for inspection of the fire tube for tube-type heaters;
- Clarifies the requirement for notifying the BSEE District Manager before commencing production; and
- Makes other conforming changes to ensure consistency within the regulations and makes other minor edits.

C. Recent Executive and Secretary's Orders

Since the start of 2017, the President issued several Executive Orders (E.O.) that necessitated the review of BSEE's rules. On January 30, 2017, the President issued E.O. 13771, entitled, ''Reducing Regulation and Controlling Regulatory Costs'' (82 FR 9339), which requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations.

On March 28, 2017, the President issued E.O. 13783, entitled, ''Promoting Energy Independence and Economic Growth'' (82 FR 16093). This E.O. directed Federal agencies to review all existing regulations and other agency actions and, ultimately, to suspend, revise, or rescind any regulations or actions that unnecessarily burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

On April 28, 2017, the President issued E.O. 13795, entitled, ''Implementing an America-First Offshore Energy Strategy'' (82 FR 20815). This E.O. directed the Secretary of the Interior to reconsider the 2016 Well Control Rule adopted in April 2016 and to take appropriate action to ''revise any related rules'' for consistency with E.O. 13795's stated policy ''to encourage energy exploration and production, including on the Outer Continental Shelf, in order to maintain the Nation's position as a global energy leader and foster energy security and resilience for the benefit of the American people, while ensuring that any such activity is safe and environmentally responsible.''

To further implement E.O. 13783, the Secretary issued Secretary's Order (S.O.) 3349, entitled, ''American Energy Independence,'' on March 29, 2017. The S.O. directed DOI to review all existing regulations ''that potentially burden the development or utilization of domestically produced energy resources.'' Similarly, to implement E.O. 13795, the Secretary issued S.O. 3350, entitled, ''America-First Offshore Energy Strategy,'' on May 1, 2017, which directed BSEE to review the 2016 Well Control Rule and related rulemakings. BSEE interpreted each of these orders to apply to the 2016 PSSR.

As part of its response to E.O.s 13783 and 13795 and to S.O.s 3349 and 3350, BSEE reviewed the regulations in subpart H, as revised by the 2016 PSSR, with a view toward the policy of encouraging energy exploration and production on the OCS, and reducing unnecessary regulatory burdens, while ensuring that any such activity is safe and environmentally responsible. Like the 2016 PSSR, BSEE also focused on offshore oil and gas production technology and operations, including subsea production systems used for production in increasingly deeper waters. This focus is unrelated to well control during well operations. Nevertheless, BSEE carefully analyzed all the provisions in the proposed rule and this final rule and compared them to the 424 recommendations arising from 26 separate reports from 14 different organizations developed in the wake of and in response to the *Deepwater Horizon (DWH)* disaster, and determined that these changes to subpart H will not contradict any of those recommendations, nor will they alter any provision of the 2016 PSSR in a way that would make the result inconsistent with those recommendations. Further, nothing in this final rule will alter any elements of other rules promulgated since *DWH,* including the Drilling Safety Rule (Oct. 2010), SEMS I (Oct. 2010), SEMS II (April 2013), and 2016 WCR (April 2016). BSEE's review has been thorough and tailored to the task of reducing unnecessary regulatory burdens while ensuring that OCS activity is safe and environmentally responsible.

[2] *See* 81 FR 25887 (April 29, 2016).

[3] Incorporated standards address the design of SPPE, based on the specific type of device and the conditions where the device will be located.

D. Incorporation by Reference of Industry Standards

In accordance with the National Technology Transfer and Advancement Act, Public Law 104–113 (NTTAA), 15 U.S.C. 3701 *et seq.* (Pub. L. 104–113), and with Office of Management and Budget (OMB) Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' (rev. Jan. 2016) implementing the NTTAA, BSEE frequently uses standards (*e.g.,* codes, specifications, and recommended practices) that standards development organizations (SDOs) have developed through a consensus process, with input from the oil and gas industry, as a means of establishing requirements for activities on the OCS. The NTTAA charged, with few exceptions, that ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' BSEE may incorporate these standards into its regulations by reference without republishing the standards in their entirety in regulations. The legal effect of incorporation by reference is that the incorporated standards become regulatory requirements. This incorporated material, like any other regulation, has the force and effect of law. Operators, lessees, and other regulated parties must comply with the documents incorporated by reference in the regulations. BSEE currently incorporates by reference over 100 consensus standards in its regulations. (*See* 30 CFR 250.198.)

The Office of the Federal Register's (OFR) regulations, at 1 CFR part 51, govern how BSEE and other Federal agencies incorporate documents by reference. Agencies may incorporate a document by reference by publishing in the **Federal Register** the document title, edition, date, author, publisher, identification number, and other specified information. The preamble of the rule must contain a summary of each document incorporated by reference, as well as discuss the ways that the incorporated materials are reasonably available to interested parties and how interested parties can obtain those materials. The Director of the **Federal Register** will approve publication in a final rule of each incorporation by reference that meets the criteria of 1 CFR part 51. The documents are summarized in section G of this preamble.

When a copyrighted publication is incorporated by reference into BSEE regulations, BSEE is obligated to observe and protect that copyright. BSEE provides website addresses where members of the public may access these standards for viewing, sometimes for free and sometimes for a fee. SDOs decide whether to charge a fee. One such organization, API, provides free online public access to view read only copies of its key industry standards, including a broad range of technical standards. In particular, API voluntarily makes available all API standards that are safety-related and that are incorporated into Federal regulations for free viewing by the public online in the Incorporation by Reference Reading Room on API's website at: *http://publications.api.org.*[4] In addition to the free online availability of these standards for viewing on API's website, hardcopies and printable versions are available for purchase from API. The API website address to purchase standards is: *http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents.* BSEE also makes copies of incorporated standards available for review at BSEE's office(s) upon request. Individuals wishing to view standards at a BSEE office may make arrangements by sending an email to: *regs@bsee.gov*. BSEE may make standards available at their offices in Washington, DC; Sterling, Virginia; New Orleans, Louisiana; Houston, Texas; Camarillo, California; and Anchorage, Alaska.

BSEE recognizes that there may be additional opportunities to make standards more accessible and agrees to work with OMB and the OFR to explore potential approaches to improve public access to standards and to information about the standards.

In addition to the legal requirement under the NTTAA for Federal agencies to use standards, there are a number of benefits to incorporating these documents into the regulations. Standards increase consistency for employee training, equipment compatibility, processes, and testing during operations. Standards help ensure that operators and their contractors take proper precautions during operations; resulting in safety performance improvements through the reduction of lost time from injuries and incidents, work environment safety standards, proper training, product failure reporting, quality control and assurance requirements, addressing safety issues, and improved communications between user and supplier. Global adoption of standards is a compelling reason for the most updated editions to be part of regulatory frameworks since they drive consistency, promote competition, and reduce the burden of compliance.

E. Overview of Comments on the Proposed Rule

In response to the proposed rule, BSEE received 733 separate sets of comments, including some comments that had a total of over 60,000 signatures attached to the comments. BSEE received comments from a wide range of stakeholders, including industry trade groups and individual companies, State and local governments, Tribal authorities, members of the U.S. Congress, environmental groups, SDOs, and private citizens. All comments are posted at the Federal Rulemaking Portal: *http://www.regulations.gov.* To access the comments, enter ''BSEE–2017–0008'' in the search box. BSEE reviewed all comments submitted.

Commenters raised issues on a number of topics, including general issues, section-by- section comments, and comments on certain additional issues on which BSEE solicited comments, including:

- Potential Revisions to § 250.107(c) Best Available and Safest Technology (BAST);
- Potential Revisions to § 250.198 Documents incorporated by reference;
- Extension of Compliance Deadline for Pressure Safety Valve (PSV) Testing Under § 250.880 Production safety system testing;
- Potential Revisions Based on the Investigation of the Explosion and Fatality on West Delta Block 105 Platform E; and
- Implementation of This Rulemaking.

Some commenters opposed any changes to the existing production safety regulations, while other commenters supported most of the proposed revisions. Many commenters seemed to confuse the 2016 PSSR and BSEE's December 2017 proposed rule with the 2016 WCR. The comments indicate that those commenters apparently assumed that the proposed rule involved revisions to the 2016 WCR, which was not the case.

[4] To view these standards online, go to the API publications website at: *http://publications.api.org.* You must then log-in or create a new account, accept API's ''Terms and Conditions,'' click on the ''Browse Documents'' button, and then select the applicable category (*e.g.,* ''Exploration and Production'') for the standard(s) you wish to review.

F. Discussion of General Issues Raised by Commenters

Requests To Extend the Comment Period

Rulemaking ''Technically Complex''

Comment: Prior to the proposed rule's public comment deadline (January 29, 2018), BSEE received several written requests to extend that comment period, most of which requested a 60-day extension. One such request provided no explanation for the requested extension, except to state that the proposed rule was ''technically complex.'' Similarly, another request asserted that the proposed rule was so ''important in nature'' that a 90-day comment period would be more reasonable.

Response: After considering all the extension requests, BSEE determined that no extension was necessary. Although one requester stated that the proposed rule was ''technically complex,'' that entity provided no examples and identified no aspects of the proposed rule that it considered so complex that it could not submit meaningful comments by the close of the comment period. Similarly, the entity that suggested that a 90-day comment period would be more reasonable due to the importance of the proposed rule provided no examples of any specific proposed provisions that required more time to analyze, even though that request was submitted almost one month after publication of the proposed rule. Under the circumstances, BSEE does not believe that these entities' requests provided justification for extending the comment period.[5]

Volume of Standards To Review

Comment: Two entities—offshore oil and gas industry organizations—asserted that the comment period was not long enough for the commenters to analyze and prepare thorough comments on the proposed rule. In particular, those commenters asserted that the number and ''volume'' of the standards that BSEE proposed to update and incorporate was too large for the requesters to review and comment on in 30 days.

Response: BSEE does not agree with the industry organizations' suggestion that the updated standards and the one new standard that BSEE proposed to incorporate were ''too numerous and too voluminous'' to be thoroughly analyzed and understood within the time allowed by the comment period. In fact, one of those industry organizations is the SDO that developed and published 15 out of the 19 standards that BSEE proposed to incorporate. BSEE also notes that the other industry organization is a committee of virtually all of the offshore producing companies and service providers in the Gulf of Mexico, many of whom participated, or had the opportunity to participate, in the development of the relevant standards. In addition, both industry organizations represent companies that have had the opportunity to voluntarily implement those standards, in some cases over the course of many years. Under the circumstances, BSEE does not agree that those extension requests warranted an extension.[6]

Comment Period Inadequate

Comment: One commenter submitted comments on the proposed rule, including an assertion that the comment period was inadequate (although the commenter did not request an extension).

Response: BSEE disagrees. Although this commenter broadly asserted that the proposed rule proposed a ''significant number of changes to the regulations that incorporate . . . thousands of pages of technical documents,'' it failed to provide any specific examples or other support for its assertion that the comment period was inadequate. After considering this comment, as well as the prior requests for extension of the comment period, BSEE determined that the comment period set by the proposed rule was reasonably adequate for any interested party to submit meaningful comments. BSEE notes that the Administrative Procedure Act (APA), which governs the Federal rulemaking process, does not specify any minimum period for comments on proposed rules. In practice, comment periods of 30 to 60 days are commonplace and 30-day comment periods are not uncommon. Moreover, given that the number of substantive changes actually proposed was relatively small, that the provisions to be revised were previously subject to a lengthy rulemaking process that culminated in the 2016 PSSR, and that the need to remove unnecessary burdens on offshore energy production is a high-priority national goal, BSEE believes that the comment period for this proposed rule was reasonable and provided a meaningful opportunity for public participation. This determination is supported by the fact that commenters submitted well over 700 comments, raising a wide variety of issues, by the January 29, 2018, deadline.

Comments Related to Deepwater Horizon Recommendations

Comment: A number of commenters asserted that the proposed rule was inconsistent with recommendations in various reports, including ''The National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling'' (the Commission or the Commission Report), that were published in the aftermath of the *DWH* incident. Some commenters asserted that the 2016 PSSR was the agency's response to the *DWH* reports' recommendations and that any changes to this rule would reduce the protections intended by those recommendations. Several commenters also asserted that any changes to the regulations would be arbitrary and capricious.

Response: BSEE disagrees with these comments. The recommendations that the commenters cite come from various reports concerning the *DWH* incident. Those recommendations primarily addressed problems with well operations (including drilling, completion, workover, and decommissioning operations)—some of which led up to the *DWH* incident—and suggested ways to reduce risks of other incidents related to well operations. Those commenters apparently assumed, incorrectly, that BSEE developed the 2016 PSSR as a result of the *DWH* incident and that it was largely based on the Commission's report.

These commenters evidently confused the 2016 PSSR, which updated production safety systems regulations, with the 2016 WCR, which discussed the recommendations in the *DWH* reports and implemented, or responded to, many of those recommendations in order to reduce the risk of future well operation-related incidents. The well control requirements established by the 2016 WCR are primarily in 30 CFR part

[5] A different entity submitted a request for an extension on January 29, 2018—the deadline set by the proposed rule for public comment—but did not suggest a specific extension period. In addition, although that request asserted that the proposed rule was ''unclear, and in some places contradictory,'' it provided no examples to support that assertion. For the reasons previously explained, BSEE does not believe this last-minute request provided a sufficient basis for extending the comment period.

[6] Both of the industry organizations and one other entity also suggested that the publication of the proposed rule on December 29, 2017, during the ''holiday season,'' provided more justification for their requests for more time. BSEE believes that the important reductions in unnecessary burdens on energy production, and the other improvements intended by the proposed rule, warranted BSEE moving forward with the proposed and final rules as expeditiously as practicable, whether or not that entails BSEE or other entities devoting some effort during a holiday season.

250, subparts D and G, and include requirements for well operations. By contrast, the production safety systems requirements at issue here apply to production operations and are in subpart H. Well control requirements and production safety requirements apply to different operations and types of equipment and processes. Well control equipment, such as blowout preventers, is used on multiple wells and is often moved from site to site; therefore, it must function properly in any conditions that may be encountered. By contrast, production safety equipment must function properly in the specific conditions applicable within the production system on a particular facility, as informed by data that were gathered during the drilling and completion operations.

While the 2016 WCR was responsive to the Commission's and other *DWH* reports on well operations, BSEE did not intend the 2016 final PSSR and the 2017 proposed PSSR revisions to directly respond to the Commission's report or other *DWH* reports; nor did the 2016 PSSR and 2017 proposed rule refer to the *DWH* reports. In fact, the impetus for the 2016 PSSR was unrelated to well control during well operations; rather, that rule was focused on the need to address changes in offshore oil and gas production technology and operations, including subsea production systems used for production in increasingly deeper waters. Prior production safety systems regulations did not address subsea developments in deepwater production. *See* 81 FR 61834. Accordingly, the commenters' concerns that the proposed revisions to the 2016 PSSR would be inconsistent with, and significantly diminish the protections intended by, the *DWH* reports' recommendations are not justified. In any case, as previously discussed, BSEE has nevertheless carefully analyzed all the provisions in this rule, and determined that the changes made will not contradict any of the recommendations from the *DWH* reports, nor will they alter the regulations in a way that would make them inconsistent with those recommendations.

Further, the commenters' suggestions that *any* changes to the 2016 PSSR would be ''arbitrary and capricious'' are conclusory in nature, and the commenters have not provided support for that conclusion. The record of this rulemaking shows that the proposed and now final revisions to the PSSR are not arbitrary or capricious. First, as already explained, the commenters' underlying assumption that BSEE intended for the 2016 PSSR to implement the *DWH* recommendations is not accurate. Second, as discussed in the 2017 proposed rule, many of the proposed changes were based on experience from implementation of the 2016 PSSR. *See, e.g.,* 82 FR 61704, 61709. Also, operators raised questions about the 2016 PSSR that BSEE has addressed in Regulatory Interpretations on its website, and BSEE is using this rulemaking to address issues raised in some of those questions.[7] In addition, for all the reasons described elsewhere in this notice, BSEE has determined that the changes to the 2016 PSSR reflected in this final rule will reduce unnecessary burdens or provide needed clarifications, while still ensuring safety and environmental protection.

Similarly, BSEE disagrees with one commenter's suggestion that BSEE should not make changes to the 2016 PSSR simply because the ''SUMMARY'' statement in that final rule said that it was ''*necessary* to improve . . . safety, environmental protection, and regulatory oversight of critical equipment involving productions safety systems'' (emphasis added). While that statement was accurate as to the 2016 PSSR as a whole, it did not indicate that every specific provision in that extensive rule was essential in its existing form to ensuring safety and environmental protection, or would never be reviewed or revised in light of subsequent events or new information. Neither BSEE nor any other agency can predict, at the time it promulgates a rule, whether or not future circumstances will warrant any revisions. In fact, BSEE periodically reviews all of its regulations and makes revisions when necessary and appropriate. And, for the reasons explained elsewhere in this notice, BSEE has determined that some specific revisions to the 2016 PSSR are appropriate and that those revisions will achieve the goals of energy production and safety and environmental protection.

Timing of Revisions to Subpart H

Comment: One commenter suggested that BSEE cannot justify making any revisions to the 2016 PSSR ''barely a year'' after that rule took effect.

Response: BSEE does not agree that it is too soon to make any changes to the 2016 PSSR. The final 2016 PSSR was published in September 2016 and took effect on November 7, 2016, more than 17 months ago. As stated in the proposed rule (*see* 82 FR 61704–61705) and elsewhere in this final rule, soon after the 2016 PSSR was issued, BSEE began receiving requests from the regulated industry to clarify various provisions and which raised other concerns with the rule, and several of the proposed (and now final) revisions to the 2016 PSSR are intended to clarify those provisions or address those concerns. It is common practice, especially in complex rulemakings, for an agency to become aware of unforeseen confusion or other problems with a final rule after it has been published and to revise the final rule as soon as practicable to clarify the requirements or otherwise resolve unanticipated concerns. In this case, over 17 months have passed since the 2016 PSSR was promulgated, and BSEE's experiences during that time period demonstrate that it is not too soon to make appropriate corrections to that rule.

Similarly, as explained in the proposed rule, by E.O.s 13783 and 13795, as well as S.O.s 3349 and 3350, issued in early 2017, obligated BSEE to review existing regulations (which include the 2016 PSSR) to determine whether it unnecessarily burdened exploration, development, or production of energy resources, and whether it would be appropriate to revise the rules to reduce those burdens while still ensuring that such activities are safe and environmentally responsible. *See id.* The time that has already passed since the 2016 PSSR was published and took effect is more than adequate for BSEE to have completed that review.

Review and Certification by Independent Third-Parties and Professional Engineers (PEs)

Comment: A number of commenters expressed concern that the proposed (*i.e.,* proposed §§ 250.802 and 250.842) elimination of third-party certification of SPPE and reduction in the number of safety system design documents (*e.g.,* drawings and diagrams) required to be certified and stamped by a registered PE would significantly reduce safety and environmental protection.

Response: BSEE disagrees. Subpart H continues to impose numerous requirements, including provisions in the standards incorporated by reference, that effectively provide multiple layers of review to ensure safety and environmental protection in the design, installation, and testing of certain

[7] *See https://www.bsee.gov/guidance-and-regulations/regulations/regulatory-interpretations#ssr.* Examples of such issues include requirements in the 2016 PSSR for boarding shut-down valves (BSDVs), deferred compliance dates, production notification, effective date and annual inspection/testing requirements, and alternate compliance requests and/or departures (extensions) for PSV testing.

aspects of production safety systems, including the SPPE. As explained earlier in this notice, although this final rule reduces the number of provisions that require third-party or PE review and certification, BSEE expects those procedural changes will continue to ensure safety and environmental protection, especially because of the other, more substantive, regulatory requirements applicable to safety equipment design, function, maintenance, and testing that are being retained or enhanced. BSEE carefully considered which documents are most critical to these operations and which documents provide information to support those critical documents. In addition, the regulations currently contain extensive testing provisions for SPPE and other production system components (*see* § 250.880), to ensure the devices will function when needed. These provisions clearly state actions that the operator must take if a device fails a test, including repairing or replacing devices. These requirements remain unchanged in this final rule.

Specifically, several of the standards incorporated into subpart H (*e.g.,* ANSI/API Spec. 6A and ANSI/API Spec. 14A) set design criteria for SPPE, based on the type of SPPE, and require most types of SPPE to be design-tested by an independent third-party testing facility. In addition, the following provisions of the regulations effectively provide supplemental layers of review: (1) Existing § 250.801(a) through (c) requires use of SPPE that is manufactured and marked pursuant to a quality assurance program that satisfies ANSI/API Spec. Q1 or another equivalent quality assurance program approved by BSEE; (2) existing § 250.880 sets detailed production safety system testing criteria, and mandates that SPPE failing to meet the testing criteria must be repaired or replaced; and (3) § 250.842(a), as amended, will still require PE approval of modifications to production safety systems (required by § 250.842(c)(2)), while new § 250.842(b) will require additional design documents to be developed, maintained, and provided to BSEE upon request. For all of these reasons, BSEE determined that the final revisions to §§ 250.802 and 250.842, which reduce unnecessary burdens on operators, will ensure safety and environmental protection.

Comments on Risk-Based Approaches

Comment: Several commenters stated that BSEE should implement more ''risk-based'' approaches to regulation of industry.

Response: BSEE agrees that risk-based approaches are often an appropriate way to develop effective regulatory programs. However, no changes to the existing regulations are needed for BSEE to implement certain risk-based programs. For example, BSEE is currently developing ways to deploy inspection resources to focus on operations with higher rates of safety events, equipment failure, or incidents of non-compliance (INCs).

Risk-based inspections complement BSEE's existing National Safety Inspection Program under OCSLA, which requires BSEE to conduct annual scheduled inspections and periodic unannounced inspections on all OCS oil and gas facilities. Risk-based inspection approaches evaluate operational and performance information, such as data from prior inspections and failure reporting, to identify those facilities and operations that may pose a higher likelihood of an unsafe event or of more severe consequences from such an event. BSEE uses this data to manage its inspector force and to target their work to address production facilities with higher risks of safety incidents, equipment failure, or INCs. Accordingly, BSEE implemented a formal risk-based inspection program in 2018 following pilot testing.

The program is comprised of two categories of risk-based inspections—a ''facility-based'' category targeting specific production facilities identified as higher-risk, and a ''performance-based'' category targeting specific operations or equipment across multiple facilities. Facility-based risk inspections employ a quantitative model and additional qualitative evaluation of operational and performance information to identify higher-risk facilities, and inspection protocols are tailored to facility-specific hazards, barriers, and risks. Performance-based risk inspections employ trend analysis of performance indicators, such as incident and INC data, to identify safety issues (*e.g.,* potential gas releases, lifting incidents, and compressor fires) that may pose a risk at multiple facilities; thus, those inspection protocols narrowly focus on the identified safety issue. BSEE expects to continue to develop and refine the risk-based inspection program over time.

Comments on Failure Reporting

Comment: One commenter suggested that BSEE should modify § 250.803 to require any failed equipment to be immediately shut-in pending replacement with fully functioning, certified SPPE. Where the failed SPPE involves equipment that may be common to several production facilities, the commenter suggested that BSEE clarify its authority to order the immediate shut-down of all processes or equipment that rely on the failed SPPE until replaced by certified, functioning SPPE.

Response: BSEE disagrees with this comment. The proposed revisions to § 250.803 were not intended to relax requirements for reporting SPPE or safety component failures or the potential for improved safety under those requirements. To the contrary, the final revisions to that section simply clarify the existing provision for reporting of failures to a BSEE designee instead of to BSEE directly. As explained in the preamble of the proposed rule (*see* 82 FR 61710), on October 26, 2016, BSEE designated the Bureau of Transportation Statistics (BTS) to receive SPPE failure reports. As discussed later in this notice (*see* n.17, *infra*), the reporting of SPPE and equipment component failure information to BTS should increase the potential for improving safety by allowing BTS to examine this information in the aggregate and to prepare reports on the aggregate analysis to share with the public, including the regulated industry. In addition, the final rule retains the existing requirement that operators report equipment failures to original equipment manufacturers (OEMs), as well as to BSEE (or BSEE's designee). By requiring submissions of reports to the OEMs, § 250.803 ensures an opportunity for the industry best-suited to make changes to failed SPPE (*i.e.,* the OEM sources) to address equipment design and performance issues.

BSEE does not believe that the additional measures—for automatic shut-in of individual facilities with a failure or for wide-spread shut-in of production that uses similar SPPE—suggested by a commenter are appropriate or necessary at this time. The testing provisions in existing § 250.880 already require operators to repair and reinstall or replace many key components in production safety equipment (*e.g.,* surface safety valves) if those components fail to function as designed. The final rule retains those requirements. By the nature of the design and function of the production system and the regulatory requirements for that system, multiple barriers must be used throughout the production system. Multiple barriers are used in the production system to prevent the release of hydrocarbons; these include the SPPE that are required under § 250.801 (*e.g.,* the various valves that can be shut in, if needed, to discontinue production).

The existence of multiple barriers generally decreases the need for automatic shut-in every time a single piece of equipment fails. In addition, BSEE already requires that any non-certified valve that requires offsite repair, re-manufacturing, or any hot work (such as welding) must be replaced with a certified valve as required by § 250.801. In any event, BSEE has authority under existing § 250.107(d) to order equipment repairs or replacement in order to ensure compliance with the regulations, and to issue orders to shut-in operations of a component or facility when appropriate to prevent threats of serious or immediate harm. In light of these existing protections, BSEE does not believe that any additional requirements to automatically shut-in the failed equipment, or additional authority for BSEE to order more widespread shut-ins, are needed.

BOEM's Proposed 2019–2024 National OCS Leasing Program

Comment: A number of comments addressed provisions of the Bureau of Ocean Energy Management (BOEM) draft proposed 2019–2024 National OCS Leasing Program (Leasing Program). Some comments stated that the proposal in the Leasing Program to expand OCS leasing into additional geographic areas would magnify any reduction in safety and environmental protection resulting from the proposed revisions to the PSSR.

Response: The proposed Leasing Program is a separate action by BOEM, which is a separate agency from BSEE within the Department, and was not addressed in the 2017 proposed PSSR. The Leasing Program specifies the size, timing, and location of potential leasing activity that the Secretary determines will best meet national energy needs for the five-year period under consideration. The Draft Proposed Program, the first of three stages of developing the Leasing Program for 2019–2024, was released on January 4, 2018, with a 60-day comment period that ended on March 9, 2018. *See* BOEM's website, *www.boem.gov/National-Program*, for additional details. There will be additional opportunities for public review and comment on the Leasing Program at later stages of its development. Thus, any concern the commenters may have about the potential impact that an expansion of the Leasing Program might have on the level of safety and environmental protection provided by the revised PSSR is premature and speculative at this time.

Prioritizing Safety and Environmental Protection

Comments: Several commenters stated that OCSLA requires BSEE to prioritize ''environmental safeguards'' among other goals identified in the statute and that section 3 of OCSLA (43 U.S.C. 1332(3)) requires BSEE to ensure that regulated activities are ''safe and environmentally responsible.'' Some commenters also stated that BSEE is required by 43 U.S.C 1802(2)(B) to ''balance orderly energy resource development with [environmental] protection.'' The commenters suggested that some or all of the proposed changes (*e.g.,* revisions to independent third-party certification of SPPE; incorporation by reference of industry standards) to the existing rule would not comply with these congressional policy declarations.

Response: BSEE agrees that Congress intended that development and production of offshore energy resources should be carried out in a safe and environmentally protective manner. However, BSEE disagrees with the commenters' assertion that the proposed rule (or this final rule) is inconsistent with the policies embodied in OCSLA at 43 U.S.C. 1332(3) and 1802(2)(B). Although some of the commenters suggested that environmental or safety protection must be the overriding—or even the exclusive—goal of all agency actions under OCSLA, these commenters failed to acknowledge that section 1332 also states the principle that the OCS should be managed to ensure ''expeditious and orderly development [of OCS resources] . . . in a manner . . . consistent with competition and other national needs'' (*See* 43 U.S.C. 1332(3) Similarly, the commenters failed to acknowledge that 43 U.S.C. 1802 specifically states that the Department should manage OCS oil and gas resources ''expedite[] exploration and development of the . . . [OCS] in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments.'' (*See* 43 U.S.C. 1802(1).) [8] Moreover, despite the commenter's assertions, sections 1332 and 1802(2) primarily relate to the way that the Department manages oil and gas resources at the National Program and lease sale stages of OCS development and do not expressly mandate how BSEE exercises its authority to issue safety regulations. More directly relevant to this rulemaking, however, are the specific provisions of OCLSA that authorize the Secretary to regulate activities on the OCS, which contain broad grants of discretion to issue regulations and do not contain any specific limitation that would prevent BSEE from eliminating undue burdens while still ensuring the safety of operations overall.

Although the commenters may disagree with how BSEE has balanced those statutory principles and goals, the difficult and complex task of balancing those policies is committed to BSEE's discretion and expert judgment. And for all the reasons discussed in the proposed rule and in this notice, BSEE has determined that the proposed revisions to subpart H (including those singled out by these commenters), as finalized in this rule, will reduce unnecessary regulatory burdens while ensuring safe and environmentally responsible operations on the OCS.

In addition, BSEE notes that subpart H, as a whole, ensures safety and environmental protection safeguards at every stage of the production process, including with regard to: Design and approval of safety equipment and safety systems; installation of such equipment and systems at production facilities; personnel safety device training; continuous maintenance, field testing, and reporting of failures and problems to BSEE and manufacturers; equipment repair/removal/replacement, when needed, to ensure ongoing functionality; and shut-in, shutdown, and emergency procedures to deal with potential and impending risks. *See, e.g.,* §§ 250.837, 250.842, 250.855, 250.880(b) and (c), 250.891.

Moreover, many of the specific requirements that apply at these stages of production, especially during production operations, are intended to prevent harm to safety or the environment. For example, if the required SPPE fails, the default setting for the valves is to fail in ''safe mode''; in most cases, that is the ''closed'' position, thus preventing the release of hydrocarbons within the production system and limiting the impact of equipment failures. In addition, the SPPE in production safety systems are typically part of a closed system. Thus, when components fail, releasing hydrocarbons, another barrier confines the oil or gas within the system.

[8] Likewise, 43 U.S.C. 1802(2) makes it Federal policy that to ''(2) preserve, protect, and develop oil and natural gas resources in the . . . [OCS] in a manner . . . consistent with the need (A) to make such resources available to meet the Nation's energy needs as rapidly as possible, (B) to balance orderly energy resource development with protection of the human, marine, and coastal environments, (C) to insure the public a fair and equitable return on [OCS] resources . . . and (D) to preserve and maintain free enterprise competition.''

Accordingly, BSEE is confident that the final rule changes, which should reasonably reduce burdens (*e.g.,* by clarifying some provisions and revising or eliminating certain redundant, needlessly burdensome or marginally useful provisions), will continue to ensure safety and environmentally protective operations, especially when viewed in the context of the full suite of protective measures established by subpart H.

General Comments on Incorporation by Reference of Industry Standards

Enforcement of Compliance With Documents Incorporated by Reference

Comment: A number of commenters asserted that, by relying on incorporation by reference of industry standards, the proposed rule would allow the oil and gas industry to regulate itself without government oversight.

Response: BSEE disagrees. As discussed elsewhere in this final rule, BSEE incorporates industry standards by reference in accordance with the requirements of the NTTAA and implementing OMB guidance, OFR regulations (1 CFR part 51), and BSEE's own procedures for incorporation (§ 250.198). The effect of incorporation by reference of an industry standard into the regulations is that the incorporated document becomes a regulatory requirement, *see* § 250.198(a)(3), and, thus, becomes subject to BSEE oversight and enforcement in the same manner as other regulatory requirements. *See* 82 FR 61705. If an SDO later revises a standard that BSEE has previously incorporated in a final rule, the BSEE would need to evaluate the revised standard before incorporating it through rulemaking in the regulations; in other words, industry itself cannot change the regulatory requirements by revising a standard after it has been incorporated in the regulations.

Comment: One commenter asserted that the regulations should state that, where the regulatory requirements are more specific or stringent than incorporated industry standards, the regulations should take precedence.

Response: There is no need for further regulation in response to this comment. The 2016 PSSR already inserted a provision in subpart H—at § 250.800(d)—clarifying that if there is any conflict between the standards incorporated by reference and any other requirements in subpart H, the operator must follow the other subpart H requirements.

Comment: Another commenter suggested that the regulations should state that compliance with incorporated industry standards is mandatory.

Response: BSEE does not agree that such a broad statement needs to be added to the regulations. Existing § 250.198(a)(3) already provides that incorporation of an industry standard into the regulations makes that standard a regulatory requirement. BSEE has repeatedly referred to this principle in the PSSR and other rulemakings. In addition, BSEE concluded in an earlier rulemaking that a blanket statement, such as the one commenter suggested, is not needed, based on the wording of § 250.198(a)(3) and the bureau's reliance on the specific regulatory language of incorporation for each incorporated standard. *See* 77 FR 50855 (August 22, 2012).

Availability of Standards for Public Review

Comment: Some commenters expressed concern about the availability of the standards proposed to be incorporated by reference in the proposed rule. The commenters asserted that the industry standards were not easily accessible or generally available to the public as part of the rulemaking process. Several commenters advocated that BSEE make the full text of any existing or proposed technical standards that are, or will be, incorporated by reference into BSEE's regulations freely available for public download in a searchable format to facilitate public review.

Response: The OFR requires standards incorporated by reference in its regulations to be made ''reasonably available'' for review by the public. Moreover, BSEE is required by law to describe how those incorporated documents are reasonably available. However, BSEE is not required, and often is not even permitted, to make industry standards downloadable and searchable for the convenience of commenters. Nor does BSEE agree with the suggestion that the standards at issue in the proposed rule were not reasonably available for public review by commenters in preparing their comments.

As discussed in the proposed rule (82 FR 61705), all standards incorporated in BSEE's regulations are available to view for free at BSEE's headquarters office in Sterling, Virginia and at BSEE's other office locations, during normal working hours, upon request. BSEE received no requests to examine the standards proposed for incorporation in the proposed rule at BSEE's office.

In addition to making standards available at BSEE for in-office examination, API voluntarily allows the public to view documents cited in government regulations free of charge on its website. (*See, e,g., http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents*). Documents from API and other SDOs (such as the American Society of Mechanical Engineers (ASME)) may also be purchased directly from those organizations.

In this case, the updated or reaffirmed editions of the API standards referred to in the proposed rule (as well as one new replacement standard) were made available for free viewing on API's website beginning on January 19, 2018. BSEE recognizes that those editions of the API standards were not available for viewing on API's website during the entire comment period. Nonetheless, those editions could be accessed for public viewing during a significant portion of the comment period. Moreover, at all times during the comment period, commenters could have requested to view the relevant editions of API's standards at BSEE's office or purchased copies of those editions from API for a fee.[9] In any event, because API based the updated or reaffirmed editions of the API standards at issue in the proposed rule on prior editions already incorporated in BSEE's existing regulations, which were previously available for free viewing on API's website, stakeholders interested in those API standards should have already been familiar with the basic subject matter of the current editions even before the new editions were made available for viewing by API.[10]

[9] One commenter stated that it emailed BSEE during the comment period to request that BSEE provide the commenter with copies of all of the API standards currently incorporated and proposed for incorporation in BSEE's regulations, which BSEE did not provide. As explained in the proposed rule and elsewhere in this notice, BSEE must respect API's and other SDO's copyright protections and cannot provide free copies of a copyrighted document without the copyright-holder's consent. That is why BSEE makes copies of all incorporated standards (proposed or final) available for viewing at BSEE's office(s) and why BSEE provides instructions for how interested parties can either view such standards on the SDO's website or purchase the standards from the SDO.

[10] The new, updated editions of API standards that the proposed rule proposed for incorporation are API 510, API STD 2RD, API RP 2SM, ANSI/API RP 14B, API RP 14C, API RP 14FZ, API RP 14G, API RP 500, ANSI/API Spec. Q1, ANSI/API Spec. 6A, API Spec. 6AV1, ANSI/API Spec. 14A, ANSI/API Spec. 17J, and API 570. The reaffirmed standard is API RP 2SK (Third ed.). The only standard that BSEE proposed to incorporate that was not an updated edition or a reaffirmation of a currently-incorporated standard was API STD

Continued

In addition, although some commenters suggested or implied that BSEE should make incorporated industry standards freely downloadable and searchable, apparently without regard to whether the standards are protected by copyright under U.S. and international law. Federal law—including the NTTAA, which authorizes and requires BSEE to incorporate industry-developed consensus standards by reference under appropriate circumstances, and the OFR regulations (1 CFR part 51) that govern all incorporations by reference in Federal regulations—does not eliminate copyright protection for incorporated standards. In fact, OFR, which has authority to approve all incorporations by reference, has considered and expressly rejected the idea that either the NTTAA or OFR's own regulations remove copyright protections. *See* 79 FR 66267, 66273 (Nov. 7, 2014).[11] Accordingly, as explained in the proposed rule (82 FR 61705), BSEE must respect the publisher's copyright, which means that BSEE could not make and provide copies of the copyrighted standards to other parties without the copyright-holder's consent.

Further, OFR's rules for incorporation by reference require only that an agency discuss in the final rule the ways that the incorporated document(s) are ''reasonably available'' to interested parties and how interested parties can obtain the documents. *See* 1 CFR 51.5(b)(2).[12] Elsewhere in the final rule, as well as in the proposed rule (82 FR 61705), BSEE discusses how the editions of the standards to be incorporated here are reasonably available by free viewing at BSEE's office, or viewing on the SDO's website(s), or by purchase from the SDO.[13] Those procedures are consistent with BSEE's longstanding practice in many other rulemakings and OFR has reviewed and approved the incorporations by reference in this final rule in accordance with OFR's own regulations.

Other Concerns About Using Incorporation by Reference

Comment: One commenter stated that incorporation by reference can be cumbersome and that, in many cases, it reduces clarity of the regulatory requirements. This commenter suggested that BSEE use caution in this process and recommended that BSEE develop a way to provide a short summary of the incorporated document that will aid the reviewer in determining the document's applicability and whether the reviewer needs to review that document in order to clarify the Federal regulatory requirements.

Response: BSEE understands that the incorporation by reference of standards may sometimes appear cumbersome and may result in some questions that need further clarification. When BSEE decides to incorporate a standard by reference, it uses its best efforts to anticipate potential problems and to make the incorporation as simple, clear, and straightforward as possible. And if some confusion nonetheless arises after a standard is incorporated, BSEE can and does use several means to provide more clarity (*e.g.,* Regulatory Interpretations, guidance through Notices to Lessees and Operators (NTLs)).

BSEE disagrees, however, with the commenter's suggestion that the incorporation of documents by reference in general is overly cumbersome and often reduces clarity, and with the implication that BSEE therefore should not use incorporated standards. Standards typically address complex technical issues, often at great length and in great detail, and it would be difficult and impracticable to duplicate that effort by drafting and inserting such detailed standards in the regulations. In fact, the NTTAA requires Federal agencies to use technical standards developed by voluntary consensus organizations to carry out the agencies' objectives, when consistent with Federal law, in lieu of creating new Federal standards. And it is frequently more practical and efficient for agencies to incorporate such standards—with which the regulated industry is typically already familiar through their development by industry experts—by reference in the regulatory text rather than for the agencies to develop separate Federal standards. Moreover, OMB Circular A–119, which instructs agencies on compliance with the NTTAA, expressly recognizes incorporation by reference of such standards as an acceptable means of using such standards in regulations.

Consistent with the NTTAA, BSEE frequently participates in the standards development process by attending relevant standards development committee meetings and commenting on the documents as they are developed. Furthermore, requiring operators to follow specific standards documents that are incorporated by reference in the regulations often helps operators by providing detailed instructions for meeting the standards that would be impracticable to include in regulatory text. These instructions can help ensure consistency in operators' approaches to carrying out regulatory requirements. This consistency, in turn, helps BSEE in reviewing and approving plans, permits, and other applications and simplifies the inspection process.

With regard to the commenter's suggestion that BSEE provide summaries of the relevant standards, BSEE notes that it is already required, by OFR's regulations governing incorporations by reference, to summarize the incorporated materials in preambles to proposed and final rules (*see* 1 CFR 51.5(a)(2), 51.5(b)(3)), which are provided to OFR for review before the proposed and final rules are published. In this case, BSEE provided such summaries in the proposed rule (82 FR 61706–61709) and elsewhere in this final rule that have been reviewed and approved by OFR. BSEE has also provided summaries of the standards incorporated with this final rule in a document titled, ''AA37—Oil and Gas Production Safety Systems—Revisions (Subpart H), Summary of standards incorporated by reference that are being updated to newer editions in this final rule.'' That document may be viewed by accessing the online docket for this rulemaking action located at the Federal eRulemaking Portal: *https://www.regulations.gov*.

Comment: A commenter noted that BSEE proposed to adopt certain industry standards although it had not yet completed its own technical and regulatory evaluations (at the time of the proposal) of each standard to ensure that it provides superior safety and environmental protection. The commenter also stated that ''The Report to the President by the National Commission on the BP *Deepwater Horizon* Oil Spill and Offshore Drilling . . . sounded a strong warning'' about DOI relying too heavily on API standards and on incorporating those

6AV2, which API had substituted for the former API RP 14H (which was previously incorporated in § 250.198). See 82 FR 61706.

[11] In OFR's most recent revision of its regulations governing incorporation by reference, OFR stated that ''t''[he NTTAA [has] not eliminated the availability of copyright protection for privately developed codes and standards that are referenced in or incorporated into federal regulations. Therefore, we [OFR] cannot issue regulations that could be interpreted as removing copyright protection from [incorporated by reference] IBR'd standards.'' 79 FR 66273.

[12] Similarly, OFR's regulations require that proposed rules discuss the ways that materials proposed for incorporation are ''reasonably available'' or how the agency worked to make those materials reasonably available. *S*ee 1 CFR 51.5(a)(1).

[13] 1 CFR 51.7 of OFR's regulations indicates that, to be eligible for incorporation by reference, a document needs only to be reasonably available to (and usable by) ''the class of persons affected.'' BSEE is confident that members of the regulated industry that are affected by the incorporated standards are able to purchase copies of the standards from API or other SDOs for their use.

standards into agency regulations. The commenter asserted that the Report raised concerns that API's role in developing standards could compromise BSEE's regulatory framework, since API also serves as the industry's principal lobbyist and advocate. The commenter also asserted that the report noted that API standards increasingly fail to reflect ''best industry practices'' and that, because the Department had relied on API in developing its own regulatory safety standards, any shortfalls in API's objectivity could also undermine the Department's regulatory system.

Response: BSEE acknowledges some of the commenter's concerns regarding the use of industry standards in its regulations, but disagrees with much of this comment and with the commenter's conclusions. First, BSEE notes that the Report's concerns with incorporation of industry standards were based on agency practices and other circumstances pre-dating the 2010 *DWH* incident. Since that event, many of those practices and circumstances have changed significantly.

With regard to the commenter's concern that BSEE had not completed its own evaluation of the new editions of certain standards that BSEE proposed to update, BSEE agrees that was the case at the time the proposed rule was published. However, BSEE did not intend to incorporate into a final rule any standards for which it had not completed its evaluation and is not doing so. Rather, BSEE sought to use the proposed rulemaking to solicit public feedback on those documents for BSEE to take into consideration while BSEE continued its internal review of these documents. *See* 82 FR 61705. In fact, BSEE has benefited from consideration of the public comments on the proposed incorporations, and those comments have helped inform BSEE's determinations as to whether the new (or reaffirmed) editions proposed for incorporation are appropriate for inclusion in this final rule. In addition, soliciting comments on the proposed incorporations during BSEE's continued evaluation of those newer versions of the standards has enabled BSEE to proceed more expeditiously to the incorporation in this final rule of those standards that BSEE has now determined will provide the same or higher levels of safety and environmental protection. As discussed in part G of this notice, BSEE has completed its review of most of the updated editions or new standards proposed for incorporation in the proposed rule and has included those editions and the one new standard in this final rule. However, BSEE is still evaluating several remaining editions proposed for incorporation and is not including those remaining editions in this final rule. BSEE needs more time to complete its evaluation of those standards and will make final decisions on whether to incorporate some or all of those editions in a final rule at a later date.

Concerning the comments on BSEE's use of API standards, and the assertion that API standards increasingly do not represent best industry practices, BSEE does not agree that incorporation and use of the standards referenced in this final rule is either inappropriate or detrimental to safety and environmental protection. BSEE has evaluated the API standards incorporated in this final rule, and determined that they are at least as protective as the previously incorporated versions of those standards and serve as a valuable complement to BSEE's regulations in helping to achieve the statutory objectives. These standards provide a baseline. BSEE adds supplemental requirements where appropriate. Moreover, as previously discussed, the NTTAA mandates that Federal agencies use technical standards developed by voluntary consensus standards organizations, instead of government-developed standards, where practicable and consistent with applicable law. There are only a few SDOs, including API, that address issues related to offshore oil and gas operations. Also, API provides standards on technical topics that are not addressed by other SDOs. And, consistent with the NTTAA's preference for agency use of consensus standards (*see* 15 U.S.C. 272(e)(1)(A)(v)), API develops its standards through a ''general consensus'' process, which provides for input from those who are potentially ''materially impacted'' by the standard.

In addition, based on recommendations in other post-*DWH* reports (*see, e.g.,* Final Report on the Investigation of the Macondo Well Blowout, *Deepwater Horizon* Study Group (March 1, 2011) at pp. 94–98), BSEE has expanded its standards program and increased its involvement in the standards development process, including development of many API standards, and is continuously improving and formalizing BSEE's internal process for reviewing standards relevant to the regulatory program. These developments will help BSEE to identify issues that may not be adequately addressed in incorporated standards and to supplement those standards, as necessary, in its regulations.

Comment: A commenter asserted that BSEE should provide a technical analysis of any new or updated industry standards proposed for incorporation. The commenter suggested that this analysis should be publicly available at the same time as the proposed rule and should verify that the new standard represents BAST. This commenter noted that BSEE had not completed its own technical review before proposing these changes. The commenter requested that BSEE complete this work, and then reissue proposed regulations with an appropriate technical justification that is made available to the public before the public is asked to submit comments on the proposed changes. The commenter also suggested that the Department should establish a process with the National Academy of Engineering to assess proposed changes in standards and to determine if the new editions of incorporated standards ''enhance safety and environmental protection and represent the highest level of international regulatory practice.''

Response: BSEE does not agree with the commenters' suggestions. First, the incorporation of industry standards in BSEE's regulations does not reflect a specific BAST determination by BSEE; those actions derive from separate authorities and are governed by different criteria. Thus, there is no support for the commenter's suggestion that ''technical analysis'' of a standard should include verification that it represents BAST.

In addition, the issue of whether BSEE should modify its procedures for incorporating industry standards in the future is beyond the scope of this rulemaking. As previously discussed, in this rulemaking BSEE made all of the documents incorporated by reference available for public review in connection with the comment period provided for the proposed rule and continues to make publicly available at its office all of the standards incorporated by reference in the final rule.

Similarly, BSEE does not agree that a ''technical analysis'' of the kind suggested by the commenter prior to a proposed incorporation by reference is necessary in order for commenters to be able to comment on such a proposal. As discussed previously, BSEE complies with the NTTAA requirement that an agency use standards developed or adopted by ''voluntary consensus standards bodies'' rather than government-unique standards, except where inconsistent with applicable law or otherwise impractical. (*See* OMB Circular A–119). BSEE also complies

with the OFR regulations governing incorporation by reference. Those regulations (*see* §§ 51.5(a)(2) and (b)(3) and 51.11(a)) specify the process for updating an incorporated standard, including the types of descriptions required in connection with proposed and final rule documents, and a requirement that the descriptions must be provided to OFR for its review. BSEE complied with those requirements by providing for public notice and comment through the proposed rule and by seeking OFR's approval for changes to the standards incorporated by reference in the final rule.[14] This process does not require an agency to complete its review of a document it proposes to incorporate by reference prior to the proposed rule stage, and BSEE does not here in the final rule incorporate any standard for which it has not completed its review.

G. Section-by-Section Summaries, Responses to Comments, and Changes From the Proposed Rule

Documents Incorporated by Reference. (Section 250.198)

Section summary: Section 250.198 of the existing regulations contains provisions regarding how BSEE incorporates documents by reference in BSEE's regulations, lists all of the documents BSEE has incorporated by reference in 30 CFR part 250, and states BSEE's general expectations for compliance with those documents. The requirements for complying with a specific incorporated document can be found where the document is referenced in the regulations, as specified in § 250.198.

BSEE proposed to revise § 250.198 by replacing older editions of certain standards incorporated in the regulations with new or recently reaffirmed editions of those standards.[15] In addition, BSEE proposed to replace API RP 14H (Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, Fifth Edition 2007), currently incorporated in the regulations but subsequently withdrawn by API, with a new standard, API STD 6AV2 (Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore, First Edition 2014). Finally, BSEE proposed to revise § 250.198(h)(58) and (62) in order to change cross-references (from to ''§ 250.842(b)'' to ''§ 250.842(c)'') to the regulations which mention the two standards incorporated at those locations.[16]

BSEE received numerous comments that raised several issues (*e.g.,* public availability of standards) related to the proposed revisions to § 250.198. BSEE responded to those general comments elsewhere in this final rule. Several commenters also stated that they either supported or did not oppose the proposed incorporations, but provided no details regarding the merits of those documents. Several commenters, however, raised significant concerns with the merits of incorporating API RP 14C (Eighth Edition 2017) and API RP 500 (Third Edition 2012) at this time. For the reasons explained earlier in this notice, this final rule updates the incorporation by reference of 12 standards (including API RP 500, Third Edition) as proposed, but does not update the remaining five standards at this time.

BSEE received no comments on the proposed revisions to the cross-references in § 250.198(h)(58) and (62) and the final rule makes those revisions.

Comment: One industry commenter asserted that, although it did not oppose the proposed incorporation of the Third Edition of API RP 500, it needed more time to fully evaluate the impacts of the Third Edition (including the potential costs of implementation, especially for facilities that are under construction at the time the final rule takes effect) before compliance with that edition of the standard becomes mandatory. Therefore, the commenter recommended delaying the incorporation of the Third Edition of API RP 500 until a later date.

Response: BSEE does not agree that such a delay is warranted. API RP 500 (Second Edition) was adopted in 1997 and has long been incorporated in BSEE's regulations. The regulated industry has longstanding experience with how to implement that standard. Although the Third Edition made some significant revisions to the Second Edition, the commenter did not explain or offer any examples as to why those differences would require more time to evaluate potential implementation concerns or costs. Moreover, although API was one of the joint commenters requesting a delay, API itself adopted the Third Edition (with the consensus of the industry) in 2012, and it has already had over five years to consider what the impacts of its own revised standard would be on the industry it represents. Thus, no delay in finalizing the proposed incorporation of the Third Edition of API RP 500 is necessary.

Comment: One commenter, although not opposed to the proposed incorporation of API RP 14C (Eighth Edition), raised strong concerns about the inclusion of that edition in the final rule at this time. The commenter asserted that, in light of the many substantive changes to the Eighth Edition, which was recently adopted (February 2017), more time is needed to assess the potential impacts and costs from implementation of those changes, especially with respect to facilities still under construction. Two commenters also pointed out that there are a number of significant organizational and other clerical errors, as well as several apparent inconsistencies, in the Eighth Edition that need correction and that would cause substantial confusion and implementation problems if incorporated at this time.

Response: The standards being incorporated into the regulations are updated editions to what is already incorporated by reference, not adoptions of novel standards. At the time BSEE or its predecessor originally incorporated the standards in the regulations, BSEE determined that they would improve safety and environmental protection for their respective applications. Subsequently, BSEE reviewed updated editions of each standard and concluded in this final rule that the new editions increase the overall safety baseline from the previously incorporated editions. Since the nature of operations evolves and equipment changes over time, standards also change to keep up-to-date. Updating the incorporation of standards to newer editions helps maintain and improve the safety and environmental integrity of operations. BSEE does not anticipate the change in burden to be significant, since updating to the new editions will not require retrofit of equipment. The revised maintenance and testing procedures contained in these standards are generally modifications of existing procedures, which are already required. BSEE is aware that there are a number of organizational problems and clerical and other non-substantive errors in the

[14] Under certain circumstances, existing § 250.198(a)(2) authorizes BSEE to incorporate a newer edition of an industry standard through a direct final rule (*i.e.,* without a prior proposal); however, that authority was not exercised in this rulemaking.

[15] As described in more detail later, the provisions proposed to be updated in this way included: ASME Boiler and Pressure Codes, Sections I, IV and VIII; API 510; API RP 2SK; ANSI/API RP 14B; API RP 14FZ; API RP 14G; API RP 500; ANSI/API Spec. Q1; ANSI/API Spec. 6A; API Spec. 6AV1; API STD 6AV2; and API 570.

[16] The references in § 250.198 to be modified in this way are related to: API RP 14F, Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1 and Division 2 Locations, Upstream Segment, Fifth Edition (2008, reaff. 2013): and API RP 14J, Design and Hazards Analysis for Offshore Production Facilities, Second Edition (2001; reaff. 2013).

Eighth Edition that could significantly affect other standards that refer to and rely on API RP 14C, and that could interfere with the industry's and BSEE's ability to implement the regulations. BSEE is also aware that API is currently considering how to resolve these concerns. BSEE has therefore decided not to update the reference to API RP 14C in § 250.198 in the final rule at this time.

In addition, although BSEE has completed its evaluation of most of the standards proposed for incorporation (including the Third Edition of API RP 500), BSEE needs more time to complete its evaluation of the other five standards (including the Eighth Edition of API RP 14C). Accordingly, BSEE will not finalize the proposed incorporation of the following standards at this time and will make final decisions as to whether to incorporate some or all of these standards in a final rule at a later date:

- API RP 14C, Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Eighth Edition (February 2017). BSEE proposed to substitute the Eighth Edition for the currently incorporated Seventh Edition (2001, reaffirmed 2007). The Eighth Edition contains extensive substantive changes compared to the last substantive revision (the Sixth Edition) in 1998 and makes numerous organizational changes as compared to the Seventh Edition.
- API STD 2RD, Dynamic Risers for Floating Production Systems, Second Edition, September 2013. BSEE proposed to substitute this standard for the currently incorporated First Edition of API RP 2RD (1998, Errata 2009) of the same standard.
- ANSI/API Spec. 14A, Subsurface Safety Valve Equipment, Twelfth Edition (January 2015; Errata, July 2015; Addendum, June 2017). BSEE proposed to substitute the Twelfth Edition for the currently incorporated Eleventh Edition (2005) of the same standard.
- ANSI/API Spec. 17J, Unbonded Flexible Pipe, Fourth Edition May 2014; Errata 1, September 2016; Errata 2, May 2017; Addendum 1, October 2017. BSEE proposed to substitute this edition for the currently incorporated Third Edition (2008) of the same standard.
- API RP 2SM, Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, Second Edition (2014). BSEE proposed to substitute this edition for the currently incorporated First Edition (2001; 2007 Addendum) of the same standard.

BSEE is carrying forward with certain proposed revisions to § 250.198 in the final rule. First, as previously mentioned, and as proposed, the final rule revises § 250.198(h)(58) (which incorporates API RP 14F, Recommended Practice for Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1 and Division 2 Locations, Upstream Segment) and § 250.198(h)(62) (which incorporates API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities) to update the cross-references to § 250.842(b), which this final rule has redesignated as § 250.842(c). Second, BSEE has completed its evaluations of the following standards, as well as any comments received on their proposed incorporation, and determined that these standards are at least as protective of safety and the environment as the standards previously incorporated in the regulations. Accordingly, this final rule revises existing § 250.198 to incorporate the following updated standards:

- ASME Boiler and Pressure Vessel Code (BPVC)
  - Section I, Rules for Construction of Power Boilers including Appendices (2017 Edition). This edition replaces the previously incorporated 2004 edition of that standard, including the July 2005 Addenda and all Section I Interpretations Volume 55. ASME BPVC Section 1 provides methods and requirements for: construction of power, electric, and miniature boilers; high temperature water boilers, heat recovery steam generators, and certain fired pressure vessels to be used in stationary service; and power boilers used in locomotive, portable, and traction service. Major changes in the 2017 edition include: (a) New guidance on visual examination in the fabrication process; (b) a non-mandatory option for ultrasonic examination acceptance criteria; (c) requirements for retaining radiographs as digital images; (d) clarification of material identification requirements for a ''pressure part material;'' (e) updated mandatory training requirements for qualified personnel for various non-destructive examination (NDE) techniques; (f) updated provisions on the types of auxiliary lift devices that operators can use for alternative testing of valves to align with current state of the art; (g) clarification that welded pressure parts must be hydrostatic-tested with the completed boiler; and (h) references to other updated standards.
  - Section IV, Rules for Construction of Heating Boilers; including Appendices 1, 2, 3, 5, 6, and Non-mandatory Appendices B, C, D, E, F, H, I, K, L, and M, and the Guide to Manufacturers Data Report Forms (2017 Edition). This edition replaces the previously incorporated 2004 Edition and 2005 Addenda of that standard. The updated standard provides requirements for design, fabrication, installation, and inspection of steam heating, hot water heating, hot water supply boilers, and potable water heaters intended for low pressure service that are directly fired by oil, gas, electricity, coal, or other solid or liquid fuels. The new edition also (a) provides equipment scope clarifications, (b) includes a new mandatory appendix for feedwater economizers, (c) deletes conformity assessments requirements and moves them to normative reference ASME CA–1, (d) provides new corrosion resistant alloy requirements for internal tank surfaces of heat exchangers installed in storage tanks, and (e) clarifies requirements for modular boilers.
  - Section VIII, Rules for Construction of Pressure Vessels; Divisions 1, 2, and 3 (2017 Edition) and all Section VIII Interpretations Volumes 54 and 55. This edition replaces the previously incorporated 2004 Edition and 2005 Addenda, Divisions 1, 2, and 3 and all Section VIII Interpretations Volumes 54 and 55. Since the 2004 edition was issued, ASME has rewritten the BPVC code to incorporate the latest technologies and engineering knowledge. The 2017 Edition gives detailed requirements for the design, fabrication, testing, inspection, and certification of both fired and unfired pressure vessels. This updated edition specifically refers to those pressure vessels that operate at pressures, either internal or external, that exceed 15 pounds per square inch gauge (psig). Section VIII contains three divisions, each of which covers different vessel specifications.
- API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Downstream Segment, Tenth Edition (May 2014), including Addendum 1 (May 2017). This edition replaces the previously incorporated Ninth Edition of the same standard. API 510 covers the in-service inspection, repair, alteration, and re-rating activities for pressure vessels and the pressure-relieving devices protecting these vessels. API 510 is intended to specify the in-service inspection and condition-monitoring program that is needed to determine the integrity of pressure vessels and pressure-relieving devices. The Tenth Edition includes updated normative references, updated definitions, and new requirements for inspection programs, corrective actions,

management of change, integrity operating windows, pressure testing, corrosion considerations, and marking requirements.

• API RP 2SK, Design and Analysis of Stationkeeping Systems for Floating Structures, Third Edition (October 2005), Addendum (May 2008), reaffirmed edition of June 2015. The reaffirmed document makes no changes to the previously incorporated 2008 Third Edition. It provides a method for analyzing, designing, or evaluating station-keeping systems (mooring, dynamic positioning, or thruster-assisted mooring) that operators use for floating units. The reaffirmed standard also addresses some operational aspects of such systems and provides different design requirements for mobile and permanent moorings.

• ANSI/API RP 14B, Design, Installation, Operation, Test and Redress of Subsurface Safety Valve Systems, Sixth Edition (September 2015). This edition replaces the previously incorporated Fifth Edition (2005) of the same standard. This standard creates requirements and provides guidelines for subsurface safety valve (SSSV) system equipment. Manufacturers and operators design and install SSSVs to prevent an uncontrolled well flow, when actuated. The Sixth Edition addresses system design, installation, operation, testing, redress, support activities, documentation, and failure reporting. The Sixth Edition covers specific equipment including control systems, control lines, SSSVs, and secondary tools and provides criteria for proper redress for replacement or disassembly of an SSSV. In contrast to the Fifth Edition, the Sixth Edition also emphasizes supplier and manufacturer operating manuals, systems integration manuals, handling, system quality, documentation, and data control.

• API RP 14FZ, Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, Second Edition (May 2013). This edition replaces the previously incorporated First Edition (2001, reaffirmed 2007) of the same standard. The Second Edition contains substantial changes from the First Edition. The Second Edition establishes minimum requirements and guidelines for design and installation of electrical systems on fixed and floating petroleum facilities located offshore in hazardous locations classified as Zone 0, Zone 1, or Zone 2. As revised, the Second Edition of API RP 14FZ applies to both permanent and temporary electrical installations and describes basic desirable electrical practices for offshore electrical systems.

• API RP 14G, Fire Prevention and Control on Fixed Open-type Offshore Production Platforms, Fourth Edition (April 2007), reaffirmed January 2013. The reaffirmed document makes no changes to the previously-incorporated standard. This reaffirmed standard includes provisions for minimizing the likelihood of an accidental fire, and for designing, inspecting, and maintaining fire control systems. The reaffirmed standard emphasizes the need to train personnel in firefighting, to conduct routine drills, and to establish methods and procedures for safe evacuation. API's intent in this standard is for fire control systems to provide an early response to prevent incipient fires from spreading; however, the intent is not to preclude the application of more extensive practices to meet special situations or the substitution of other systems that will provide an equivalent or greater level of protection. This reaffirmed standard is applicable to fixed open-type offshore production platforms, which are generally installed in moderate climates and which have sufficient natural ventilation to minimize the accumulation of vapors; enclosed areas, such as quarters buildings and equipment enclosures, normally installed on this type platform are addressed. Totally enclosed platforms installed for extreme weather conditions or other reasons, however, are beyond the scope of this standard.

• API STD 6AV2, Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore (First Edition March 2014) and Errata 1, August 2014. This standard replaces the previously incorporated API RP 14H, Installation, Maintenance and Repair of Surface Safety Valves and Underwater Safety Valves Offshore (Fifth Edition 2007), which API withdrew when it adopted API STD 6AV2. The new standard provides practices for installing and maintaining Surface Safety Valves (SSVs) and Underwater Safety Valves (USVs) used or intended to be used as part of a safety system (as defined by documents such as API RP 14C) and includes provisions for conducting inspections, installations, and maintenance, field and off-site repair as well as provisions addressing testing procedures, acceptance criteria, failure reporting, and documentation. API STD 6AV2 also includes updated definitions, new provisions for qualified personnel, new documentation and test procedures, acceptance criteria for post-installation and post-field repair, and provisions for offsite repair and remanufacture alignment to ANSI/API Spec. 6A.

• API RP 500, Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Third Edition (December 2012; Errata January 2014). This edition replaces the previously incorporated Second Edition (1997, reaffirmed 2002) of the same standard. The purpose of this standard is to provide guidelines for classifying locations (Class I, Division 1 and Class I, Division 2) at petroleum facilities for the selection and installation of electrical equipment. This standard followed the basic definitions given in the 2011 edition of National Fire Protection Association (NFPA) 70, National Electrical Code (NEC).

• ANSI/API Spec. Q1, Specification for Quality Management System Requirements for Manufacturing Organizations for the Petroleum and Natural Gas Industry, Ninth Edition (June 2013; Errata, February 2014; Errata 2, March 2014) and Addendum 1 (June 2016). This edition replaces the previously incorporated Eighth Edition (2007) of the same standard. This updated standard features over 85 new clauses and five new sections, creating a major shift in quality management as it applies to the oil and gas industry. A thematic change is the approach to quality through risk assessment and risk management. The five new sections include risk assessment and management, contingency planning, product quality planning, preventative maintenance, and management of change. The Ninth Edition is also intended to align with API Spec. Q2, Quality Management System Requirements for Service Supply Organizations for the Petroleum and Natural Gas Industries, First Edition (2011). Overall, the goal of ANSI/API Spec. Q1 Ninth Edition is to further enhance the minimum baseline requirements of quality management systems of oil and gas equipment manufacturers.

• ANSI/API Spec. 6A, Wellhead and Christmas Tree Equipment, Twentieth Edition (October 2010; Addendum 1, November 2011; Errata 2, November 2011; Addendum 2, November 2012; Addendum 3, March 2013; Errata 3, June 2013; Errata 4, August 2013; Errata 5, November 2013; Errata 6, March 2014; Errata 7, December 2014; Errata 8, February 2016; Addendum 4, June 2016; Errata 9, June 2016; Errata 10, August 2016). This edition replaces the previously incorporated Nineteenth Edition (2004) of the same standard. The Twentieth Edition includes significant changes from the previous edition, such

as: (a) Updated definitions and terms; (b) updated normative references to other standards; (c) temperature ratings; (d) more stringent material performance requirements; (e) a revised repair and remanufacture annex; (f) updated requirements for equipment in hydrogen sulfide (H2S) service; and (g) SSV and USV performance requirements. The Twentieth Edition also aligns with other standards, such as NACE MR0175 (for use in H_2S-containing environments), and contains options to use various American Society for Testing and Materials (ASTM) International documents for material testing. The authors removed references to obsolete standards and requirements for obsolete equipment from the Twentieth Edition.

• API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Second Edition (February 2013). This edition replaces the previously incorporated First Edition (1996, reaffirmed 2008) of the same standard. The Second Edition establishes design validation requirements for ANSI/API Spec. 6A, Specification for Wellhead and Christmas Tree Equipment, for SSVs and USVs as well as associated valve bore sealing mechanisms for Class II and Class III SSVs and USVs. Major changes from the First Edition include: replacing ''Performance Requirement'' with the term ''Class;'' phasing out the use of Class 1/PR1 valves; establishment of API licensing of test agencies; updated facility requirements; more specificity on the validation testing procedures of Class II valves; and new validation tests for Class III SSVs and USVs.

• API 570, Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Fourth Edition (February 2016; Addendum 1, May 2017). This edition replaces the previously incorporated Third Edition (2009). API 570 covers inspection, rating, repair, and alteration procedures for metallic and fiberglass-reinforced plastic piping systems and their associated pressure relieving devices that have been placed in service. This inspection code applies to all hydrocarbon and chemical process piping covered in section 1.2.1 that have been placed in service (unless specifically designated as optional per section 1.2.2). This publication does not cover inspection of specialty equipment, including instrumentation, exchanger tubes and control valves. The ''in service inspection'' Code in this standard no longer covers process piping systems that have been retired from service and abandoned in place. However, piping that is abandoned in place may still need some amount of inspection and/or risk mitigation to ensure that it does not become a process safety hazard because of continuing deterioration. Process piping systems that are temporarily out of service, but have been preserved for potential future use, are still covered by the new edition of this Code.

Timing of Compliance With New Editions of Standards

Comment: Several commenters suggested that, if BSEE updated certain standards in the final rule, it should clarify that some of the updated standards would apply only to new equipment or to new offshore facilities; *i.e.,* that those updated standards would not require replacement of existing facilities or equipment that do not meet the updated standards' requirements.

Response: BSEE does not believe that it is necessary to revise the regulatory text for the updated standards that are included in this final rule to specify which standards, or which provisions in those standards, apply prospectively. BSEE does not intend to require, and the standards themselves do not envision, replacement of existing facilities or equipment (that meet the applicable requirements that were in effect when the facilities or equipment were installed) simply because updated standards have been incorporated in this final rule. The updated standards will apply to all BSEE approvals of facilities and equipment prospectively (as of the effective date of the final rule). By the nature of the standards and the way in which they are incorporated in BSEE's regulations, some of the updated standards' provisions can apply only to new facilities or equipment (*e.g.,* provisions for design, analysis, and/or installation of certain new systems or new equipment). The language of the regulations and the referenced standards will result in their application to new and existing facilities or equipment, and require certain future actions (*e.g.,* equipment inspection, testing, removal/repair/replacement). Operators must ensure that those future actions are taken and that all existing facilities/equipment comply with those applicable requirements. Although BSEE believes that the nature, purpose, and scope of the updated standards—and of the regulations which reference those standards—in this final rule are clear as to which requirements apply only to new equipment/facilities and which requirements apply to both new and existing equipment/facilities, BSEE notes that:

• API STD 6AV2 (First Edition), API 510 (Tenth Edition), and API 570 (Fourth Edition) apply to both new and existing facilities and equipment;

• API RP 2SK (Third Edition, reaffirmed 2015), API RP 14FZ (Second Edition), and API RP 500 (Third Edition) apply only to new facilities installed after the final rule effective date; and

• ANSI/API RP 14B (Sixth Edition), ANSI/API Spec. Q1 (Ninth Edition), and API Spec. 6AV1 (Second Edition) apply only to new equipment installed after the effective date.

What must the DWOP contain? (Section 250.292)

BSEE did not receive any comments on this section of the proposed rule. Since BSEE decided not to incorporate by reference the second edition of API STD 2RD, as proposed, the final rule implements no changes to this section of the regulations.

General (Section 250.800)

BSEE proposed updating API RP 2RD to API STD 2RD in this rule. BSEE did not receive any comments on this section of the proposed rule. BSEE decided not to incorporate by reference the second edition of API STD 2RD, as proposed.

However, BSEE is revising paragraph (a) of this section to clarify expectations for preproduction inspections of new facilities, adding two new subordinate paragraphs to paragraph (a). In the current regulations, paragraph (a) of this section already requires operators to receive BSEE approval of their production safety system application and request a preproduction inspection from BSEE before commencing production. BSEE added a new paragraph (a)(1) to clarify the requirement to obtain approval of the production safety system application by referencing § 250.842, which contains the requirements for that application. BSEE also added new paragraph (a)(2) to highlight and clarify the requirement to request a preproduction inspection, including language noting that the operator must notify the District Manager 72 hours before it plans to commence initial production and adding a cross reference to that existing requirement in § 250.880(a)(1). These revisions are purely organizational and clarifying and do not impose any new substantive requirements.

Safety and Pollution Prevention Equipment (SPPE) Certification (Section 250.801)

Section summary: This section of the existing regulations contains requirements for the installation of certified SPPE on OCS wells or as part

of the system associated with the wells. It also clarified that (as of September 2017) SPPE includes SSVs and actuators, such as those installed on injection wells capable of natural flow, as well as BSDVs. This section of the existing regulations also specifies that BSEE will not allow subsurface-controlled SSSVs on subsea wells and provides that SPPE manufactured and marked pursuant to ANSI/API Spec. Q1 will be considered certified SPPE under part 250. Section 250.801(c) of the existing regulations also provides that BSEE may exercise its discretion, under certain conditions, to accept SPPE manufactured under quality assurance programs other than ANSI/API Spec. Q1.

In the proposed rule, BSEE proposed to clarify that GSLDVs are a type of SPPE, since, for reasons explained in the 2017 proposed rule (82 FR 61709), GLSDVs already must follow § 250.801. BSEE also proposed to revise the introductory sentence in paragraph (a) of this section to remove the phrase ''[i]n wells located on the OCS,'' since all of the equipment that is considered SPPE is either located in a well or a riser. After consideration of comments submitted on the proposed revisions to this section, as discussed below, the final rule revises § 250.801(a) to expressly include GLSDVs in the list of equipment that BSEE considers to be SPPE. In addition, as proposed, the final rule revises paragraph (a) to remove the phrase, ''[i]n wells located on the OCS.''

Addition of GLSDVs to SPPE List

Comment: Commenters generally questioned the proposed addition of GLSDVs to the list of equipment that is considered SPPE. One comment asserted that GLSDVs are installed in a departing capacity (direction of flow into the well). The commenter stated that there is a check valve to prevent backflow and that there are no testing frequency or leakage rate requirements for GLSDVs and there is no mention of GLSDVs in the Eighth Edition of API RP 14C. Comments also stated that BSEE did not provide statistics or failure data to justify the proposed addition of GLSDVs as SPPE.

Response: BSEE does not believe that the assertions made in these comments warrant a change to the proposed revision. As explained in the proposed rule, the addition of GLSDVs to the list of SPPE is merely a clarification of what is already required by the current regulations. Section 250.835 currently requires that BSDVs meet the requirements in § 250.801, and § 250.873 states that GLSDVs must meet the requirements for BSDVs in § 250.835, so it follows that GLSDVs are already required to meet the requirements of § 250.801. The GLSDV acts as a robust, tested barrier to prevent backflow to the platform. The configuration of many subsea fields is such that it is important to prevent the continuous feeding of gas lift gas to the facility in the event of an emergency. Regarding the comment that GLSDVs are not addressed in API RP 14C, BSEE does not believe that the lack of direct mention of GLSDVs in that document is dispositive of whether the requirements for SPPE in subpart H should apply to those valves, which in fact they already did under the pre-existing regulations. BSEE notes that GLSDVs are mentioned in API RP 17V, Recommended Practice for Analysis, Design, Installation, and Testing of Safety Systems for Subsea Applications, First Edition, which was adopted by API in 2015 and includes the subsea requirements that were found in the Seventh Edition of API RP 14C. Although BSEE does not incorporate API RP 17V by reference in its regulations, that standard is considered a companion document for API RP 14C, and BSEE believes that the regulated industry is well aware of the connection between those standards. Regarding the assertion that there are no testing frequency or leakage rate requirements for GLSDVs, the current regulations include specific testing requirements for GLSDVs under § 250.873(d).

Comment: A commenter asserted that GLSDV requirements should apply only to subsea systems.

Response: BSEE agrees. In fact, GLSDVs are listed only under the subsea systems sections in the regulations. However, to clarify this point, BSEE added ''associated with subsea systems'' to § 250.801(a)(5) in the final rule.

Requirements for SPPE (Section 250.802)

Section summary: This section provides the requirements for SPPE. SPPE are key safety barriers that prevent catastrophic events from occurring on offshore platforms. This section requires compliance with a variety of industry standards and includes repair and documentation requirements. BSEE requested comments on the proposed elimination within § 250.802(c)(1) of a requirement that an independent third party certify that each device will function under the most extreme conditions to which it may be exposed. Based on the comments received, BSEE is revising existing paragraph (c)(1) and renumbering the remaining paragraphs of this section. In paragraph (c)(1) of the final rule, BSEE is removing the requirement for an independent third party certification of the design of the SPPE. In the final rule BSEE is maintaining the requirement in the existing regulations that each device must be designed to function in the conditions to which it may be exposed, while deleting the phrase ''most extreme.'' BSEE is adding a provision in the final rule in paragraph (c)(1)(i) that was not in the proposed rule requiring the operator to have each device design tested by an independent test agency, according to the testing criteria in the appropriate standard as incorporated into the regulations. This change does not reflect any new substantive requirements or burdens, but rather merely reinforces existing requirements from documents that are already incorporated by reference in § 250.802. In addition, the final rule requires operators to maintain a description of the process used to ensure the device is designed to function as required in paragraph (a) and final paragraph (c)(1) of this section. The operator must provide this documentation to BSEE upon request. BSEE also included a provision in final paragraph (c)(1)(iii) that preserves the requirement for a qualified third party certification of a device, if that device is removed from service and installed at a different location. This ensures that the device will function as designed under the conditions to which it may be exposed in the new location.

Consistent with the proposed revision to § 250.801, BSEE is revising this section to include GLSDVs in the equipment addressed in paragraphs (a) and (c) of this section, as well. BSEE also is revising paragraph (d)(2) of § 250.802 to remove the phrase ''on that well,'' as proposed. BSEE does not need to specify the location of the SPPE since all of the equipment that is considered SPPE is either located in a well or a riser.

Third Party Certifications

Comment: BSEE received many comments on the proposed deletion of the requirements for third party certifications. Industry groups supported elimination of this requirement and concurred with the rationale in the proposed rule that suggested that this requirement duplicated validation and functional tests required in other sections of the regulations. Other commenters highlighted the importance of this equipment in preventing major incidents, noted recommendations arising out of the *DWH* incident related to the need for the use of third party certification programs, described the

value of independent third party verification, and asserted that BSEE had not provided any evidence to support a revision of the 2016 requirement. Many commenters believe that deletion of this requirement will increase the risks arising out of offshore oil and gas development. Commenters asked how BSEE would ensure the operators followed the standards as required, and met the design requirements for the SPPE, if the independent third party certification requirement was removed.

Response: BSEE agrees that the current industry standards and quality assurance certification programs related to SPPE have played an important role in improving the reliability of equipment that is manufactured for use on the OCS. Industry certification practices, such as the API Monogram Program, provide a level of assurance that these critical barriers are designed and manufactured according to good engineering practices. However, there are limits to the scope of these certification and verification programs. For example, these programs apply only to new equipment at the time of manufacture and the certifications are made by the OEMs rather than the operator (see industry comments: ''it is the manufacturer's responsibility to meet the design requirements of API standards, not the operator'' and ''it is the responsibility of the manufacturer to meet certification requirement of ANSI/API Spec Q1'').

However, the responsibility for verifying that the SPPE is fit-for-service on a specific facility ultimately rests with the operator and BSEE, not the OEM. The existing requirement for independent third party certification helps to supplement BSEE's review process. Based on the public comments, BSEE reviewed this process and the existing third party certification programs and is revising the current requirements regarding the independent third party certifications as previously described.

BSEE determined that it is appropriate to retain the existing language requiring the device to be designed to function under the conditions to which it may be exposed, while deleting the phrase ''most extreme.'' The recommendations arising from the *DHW* incident included the use of the phrase ''most extreme conditions'' in the criteria for the blowout preventer (BOP), and BSEE then applied it to SPPE. However, unlike BOPs, operators do not generally move SPPE to other locations after it is installed. Manufacturers and operators design SPPE to be used in a specific well/location for the life of the equipment. The potential for unanticipated extremes during production is less than during drilling or completion operations. Manufacturers and operators know the operating environment when they design the SPPE, and the basic design criteria includes temperature, pressure and flow rate for the well where the SPPE will be installed. The valves used are normally commercial, off the shelf products that are designed to function in a range of operating conditions. The most extreme production conditions generally occur at the beginning of production operations, since operating pressures decrease over time as the reservoir is produced. In addition, BSEE is retaining long standing requirements for design testing, as provided in the incorporated standards, as well as associated requirements for documentation of the design process. The final rule still provides that any SPPE that is removed from service, then installed in another location, must have independent third party certification. To the extent the final rule will no longer require independent third party certification in other contexts, the final rule will require the operator to maintain documentation of the process used to ensure the device is designed to function in the conditions to which it may be exposed and to provide that documentation to BSEE upon request. These elements of the final rule help address concerns raised by commenters regarding BSEE's ability to verify compliance with the standards for design. As a result, we revised the language of the proposed rule in the final rule to state that the operator must have the device design tested by an independent test agency and must maintain documentation of the design process used to ensure that the device is designed to function under the conditions to which it may be exposed.

The independent third party certification required by existing regulations is a one-time certification of each device. A one-time certification will not guarantee that a device will function as designed for the life of the device. Accordingly, an independent third party's certification that the device will function is inherently of limited value. The existing regulations already include additional requirements to ensure that SPPE will function when needed. For example, § 250.880 establishes detailed testing requirements for SPPE, based on the specific type of device, ensuring that all SPPE are tested on a regular basis and repaired or replaced, as appropriate. This regular testing is designed to ensure the SPPE will function when needed, preventing failures during operations.

Existing BSDV Inventory

BSEE requested comments concerning a method of using BSDVs which were already in the operator's inventory, but had not been certified pursuant to the SPPE requirements. BSEE also requested information on the size of this non-certified BSDV inventory. The comments from industry associations included a recommendation that would allow the use of non-certified equipment if a purchase order had been signed by the effective date of the 2016 rule. BSEE notes that operators were aware of the likely SPPE requirements long before the effective date of the 2016 rule. In addition, operators have options under the existing regulations for obtaining approval to use non-certified SPPE. We believe that this case-by case approval process is a better approach than attempting to address the issue through a modification of the SPPE requirements. Consequently, BSEE made no change to the regulations regarding existing BSDV inventory.

Requirements for Non-Certified Equipment

Comment: According to the commenter, the proposed regulations (presumably, the specific proposal to remove the phrase ''on that well'' from § 250.802(d)(2)) would allow pulling non-certified safety equipment from one well and moving it to another well. The commenter noted that current regulations allow non-certified equipment to remain in service on a specific well, until it is time to replace that equipment. The commenter went on to assert that the regulations allow this because there is a cost of pulling and replacing it, and BSEE provided operators the opportunity to use non-certified equipment for their useful remaining life in a specific well. The commenter noted that, therefore, the regulations would ''grandfather'' non-certified equipment for use in that specific well. The commenter concluded that, if the industry is allowed to pull non-certified equipment and move it to another well, new certified equipment will not be purchased and installed as planned. The commenter stated that continuing to use non-certified safety equipment is not in the public interest and could increase the risk of a spill. For those reasons, the commenter opposed this revision.

Response: BSEE disagrees. Whenever SPPE is installed on a well, it must be certified according to §§ 250.801 and 250.802(d)(1), neither of which is being modified to allow the behavior the

commenter describes. The existing provisions that allow operators to continue to use non-certified SPPE that is currently installed on a well applies only to equipment that was installed before the certification requirement was in the regulations. Any new SPPE or SPPE that requires offsite repair, re-manufacturing, or any hot work, must be replaced with certified SPPE. Operators are not allowed to remove non-certified SPPE from one well and install it on another well. The reason that BSEE is removing the phrase ''on that well'' is not to allow for the conduct described by the commenter, but to recognize that SPPE may also be installed on risers or locations in production systems other than a well itself.

What SPPE failure reporting procedures must I follow? (Section 250.803)

Section summary: Section 250.803(a) of the existing regulations: Requires operators to follow failure reporting requirements in ANSI/API Spec. 6A (Nineteenth Edition) for SSVs, BSDVs, and USVs, and to follow the requirements in ANSI/API Spec. 14A (Eleventh Edition) and Annex F of ANSI/API RP 14B (Fifth Edition) for SSSVs; defines a failure as ''any condition that prevents the equipment from meeting the functional specification;'' and requires operators to provide written notice of equipment failure to BSEE and the equipment manufacturer within 30 days after the discovery of the failure.

Existing § 250.803(b) requires operators to ensure that an investigation and a failure analysis to determine the cause of the failure are performed within 120 days of the failure and that the conclusions and any corrective action are documented. If an entity other than the manufacturer performs the investigation and analysis, the regulation requires operators to ensure that the manufacturer and BSEE receive copies of the analysis report. Existing § 250.803(c) specifies that if an equipment manufacturer notifies an operator that it changed the design of the equipment that failed, or if the operator changes operating or repair procedures as a result of a failure, then the operator must, within 30 days of such changes, report the design change or modified procedures in writing to the Chief of BSEE's Office of Offshore Regulatory Programs (OORP) (at the address specified in existing paragraph (d)) or to the Chief's designee.

BSEE proposed to revise § 250.803(a) to expressly include GLSDVs in the list of equipment that are subject to the failure reporting requirements and to clarify that operators must submit their SPPE failure information to BSEE through the Chief, OORP, unless BSEE has designated a third-party under proposed paragraph (d), to whom operators would then be required to submit their failure information.[17] Similarly, BSEE proposed to revise existing § 250.803(b) of this section to clarify that, when anyone other than the equipment manufacture performs an investigation and analysis, operators must submit the investigation and analysis results to the Chief of OORP in accordance with proposed paragraph (d). BSEE also proposed to revise existing paragraph (d) to further clarify the requirement to submit failure information to a BSEE-designated third party. The final rule implements these revisions as proposed. Finally, although BSEE proposed no changes to the existing definition of ''failure'' in this section, the proposed rule invited input on whether or how to revise the definition to ensure consistency. The final rule makes no change to that definition.

Definition of ''Failure''

Comment: Industry commenters requested that BSEE clarify the definition of ''failure'' of SPPE, which was added in the 2016 PSSR, and recommended that BSEE provide a definition to align with industry standards. Commenters further recommended that, until they and BSEE could reach a ''mutually agreeable'' resolution, industry should document and maintain failure reports in accordance with applicable API standards, and provide failure reports to BSEE upon request. These commenters recommended that BSEE and industry hold workshops to determine the best repository or clearinghouse for collecting failure data.

Commenters asserted that the ''failure'' definition proposed in § 250.803(a) could be interpreted so broadly as to include maintenance issues and routine repair items that would create an administrative burden with no safety or environmental protection improvement, while noting that some operators disagree with this position. Those operators recognize that parts wear over time, and due to the wear, the SPPE device would ''fail to meet the functional specification.''

Response: BSEE disagrees. Although BSEE sought input in the proposed rule about how to revise the current language specifying how ''failure'' is defined in this regulation, BSEE did not receive any specific proposals for modifying the existing definition of ''failure.'' Currently, according to BTS, the designated third party to receive SPPE failure information, submitters for each of the specific SPPE types appear to be following the definitions within the applicable API standard for individual equipment types. BSEE finds this to be a logical and reasonable approach that is consistent with the regulatory requirement; thus, no change to the ''failure'' definition has been made.

With regard to the commenters' suggestion that BSEE hold workshops with industry to determine the best repository or clearinghouse for collecting failure data, BSEE does not agree that this approach is necessary, at this time. BSEE already has identified BTS as an appropriate clearinghouse for this data. The commenters did not raise specific objections or concerns related to BSEE's designation of BTS to collect the failure data. BSEE's collaboration with BTS allows the collection and analysis of failure data under strict standards of confidentiality, which supports robust reporting.

With regard to commenters' assertion that the existing definition could be interpreted so broadly as to include maintenance issues and routine repair items, BSEE observes that the types of devices included as SPPE in the final rule represent primary and secondary barriers to prevent the loss of well control and subsequent potentially catastrophic events. In a study recently completed for BSEE by ExproSoft

[17] Currently, the designee of the Chief of OORP is the U.S. Department of Transportation's Bureau of Transportation Statistics (BTS). Operators submit this information through *www.SafeOCS.gov*, where it is received and processed by BTS. BSEE identified BTS as the designee and recommended that SPPE failure information should be sent to BTS via *www.SafeOCS.gov* through a press release issued on October 26, 2016 (*https://www.bsee.gov/newsroom/latest-news/statements-and-releases/press-releases/bsee-expands-safeocs-program*). BSEE and BTS have a Memorandum of Understanding (MOU) that provides for BTS collection of BOP and SPPE failure reports. The MOU may be viewed on BSEE's website at: *https://www.bsee.gov/sites/bsee.gov/files/bsee-bts-mou-08-18-2016_0.pdf.* Reporting instructions are on the SafeOCS website at: *https://www.SafeOCS.gov.* Reports submitted through *www.SafeOCS.gov* are collected and analyzed by BTS and protected from release under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) (44 U.S.C. 101). CIPSEA requires that BTS treat and store such reports confidentially, under strict criminal and civil penalties for noncompliance. Information submitted under CIPSEA also is protected from release to other government agencies (including BSEE), from Freedom of Information Act (FOIA) requests and subpoena. If the information were to be submitted to BSEE, BSEE could only protect its confidentiality to the extent allowed by Federal law other than CIPSEA. The SafeOCS program was designed to protect the confidentiality of information submitted and promote failure reporting without fear of reprisals. The ''Oil and Gas Production Safety System Events 2017 Annual Report'' is available at *https://www.safeocs.gov/sppe_home.htm.*

(*https://www.bsee.gov/sites/bsee.gov/files/tap-technical-assessment-program/765aa.pdf*), approximately 30 percent of well control events worldwide were found to be related to such barriers for production platforms, especially after large storms such as hurricanes. Thus, commenters and others should not view failure reporting as inconsequential or unimportant to concerns such as safety and environmental protection.

Reporting Requirements

Comment: A commenter recommended that BSEE consider using the API Standard 689/ISO 14224 *Collection and Exchange of Reliability and Maintenance Data for Equipment* to clarify reporting requirements and standardize data collection processes.

Response: As the SPPE failure reporting program is relatively new, it is premature to require adherence to the referenced standard. BTS has prepared the first public report of aggregated statistics covering SPPE reports submitted by industry from the effective date of the requirement, November 7, 2016 through December 2017. BSEE still needs to assess results from the first year and identify any issues with regard to reporting or collection processes. In conducting this evaluation, BSEE plans to consider the potential usefulness of industry standards such as API Standard 689/ISO 14224 to improve the failure reporting program. At this time, however, the focus for the requested data is described within each of the cited standards and is intended to increase both the volume and quality of the aggregated equipment component failure data for SPPE shared among the regulated community and the OEMs that serve that community. BSEE is not adopting a change at this time.

Root Cause Analysis

Comment: A commenter recommended that BSEE incorporate internationally recognized good practice standards, coupled with verification; employ incident reporting with root cause analysis (RCA); and seek prevention of major incidents through research and development on emerging threats and use of various risk tools. Regarding failure reporting, the commenter asserted that the issue of what is considered a failure is tied to its root cause, and that operators should use RCA to analyze what systemic causes allowed the failure to occur, in addition to the immediate cause.

Response: BSEE agrees in general with the comment. In § 250.803, as revised by this final rule, BSEE establishes a system that is consistent with globally recognized good-practice standards, complemented by verification. The equipment component failure notification, analysis, and reporting process implemented through this final rule applies the identified good practices to equipment component failures, use of RCA to aid in the prevention of catastrophic events, and proper consideration of emerging threats. The final rule also applies the concept of barrier management by requiring reporting on all failures of SPPE that represent sequential barriers to catastrophic events.

BSEE agrees that a failure is ultimately a result of its root cause, and BSEE is implementing the failure reporting requirements to promote confidence that there will be no adverse impact on entities that report failures by designating BTS as the third party to receive and analyze information submitted under this section (*see* n.17). As discussed above, BTS is able to analyze and store reports confidentially. BSEE also has included consideration of root cause at two levels within the current collection methods. The fields within the form include initial root cause information. For failures that require equipment to be returned to a shore facility for repair, BSEE requires a formal RCA report. Such an analysis looks beyond the immediate cause and investigates systemic factors. The use of probabilistic risk methods for catastrophic risk assessment is outside the scope of this rule, but BSEE might consider them in the future.

Strengthen Requirements

Comment: One commenter recommended that any revisions to § 250.803 failure reporting requirements should only strengthen them and not weaken them in any way. The commenter asserted that the current regulation does not require the processes or equipment that rely on the failed SPPE to be immediately shut-in until the equipment can be replaced with a certified, functioning SPPE and the commenter recommended that § 250.803 be revised to require immediate reporting of failed SPPE to BSEE and immediate shut-down of all processes or equipment that rely on the failed SPPE until replaced with a certified functioning SPPE. The commenter also recommended that, after investigation and collaboration with the equipment manufacturer is complete, the regulations should require the operator to notify BSEE of the long-term, permanent solution developed to either change the equipment design or modify operating, testing, maintenance, or repair procedures.

Response: BSEE did not propose to, and does not here, relax the standards of safety in relation to equipment component safety reporting. To the contrary, the final rule continues to recognize the importance of improving safety and reducing burdens on operators while continuing to ensure safety and environmental protection. The collection of equipment component failure information promotes continuous safety improvement by enabling examination of this information in the aggregate, and by requiring submissions of reports to the OEMs where the opportunity to address design issues is greatest. Accordingly, BSEE disagrees that the additional measures suggested by the commenter are needed at this time. BSEE regulations already require multiple barriers within each well under § 250.801. Those requirements minimize the possibility that a single SPPE failure would result in the release of hydrocarbons to the environment.

Communication on Failure Reporting

Comment: A commenter stated that since SPPE components are required to be certified in compliance with incorporated standards, all parties involved should play a significant role in failure reporting and recommended that BSEE develop a process to increase communication and information exchange among end users, manufacturers, certifying bodies, and agencies.

Response: BSEE agrees that all parties involved in SPPE design, maintenance, and repair should be involved in collection and assessment of the data. BSEE's system for implementing the current requirement accomplishes that objective. This communication is expected to increase as the program matures.

Design, Installation, and Operation of SSSVs—Dry Trees (Section 250.814)

Section summary: This section of the existing regulations establishes requirements for the design, installation, and operation of an SSSV in order to ensure its reliable operation. Among other things, existing § 250.814(d) requires operators to design, install, maintain, inspect, repair, and test all SSSVs in accordance with ANSI/API RP 14B (Fifth Edition 2005). BSEE proposed to revise paragraph (d) to replace the reference to ANSI/API RP 14B (Fifth Edition) with ANSI/API RP 14B (Sixth Edition 2015), which BSEE also proposed to incorporate by reference in § 250.198 in place of ANSI/API RP 14B (Fifth Edition). BSEE received no comments opposing this

specific revision and the final rule changes the reference to this standard as proposed.

Duplicative Requirements

Comment: A group of commenters recommended deleting paragraph (b) of existing § 250.814 because it is duplicative of § 250.802(b).

Response: BSEE disagrees. Section 250.814 is similar to, but not duplicative of, paragraph (b) of § 250.802. Section 250.802(b) requires that all SSSVs and actuators on dry and subsea trees comply with ANSI/API Spec. 14A, Subsurface Safety Valve Equipment (Eleventh Edition, 2005, reaffirmed 2012), as incorporated by reference in § 250.198(h)(73). Section 250.814, however, applies only to dry trees and specifies that operators must comply with ANSI/API RP 14B (now incorporated by reference in § 250.198(h)(55) of this final rule as the Sixth Edition, 2015) for designing, installing, maintaining, inspecting, repairing, and testing.

Third Party Testing

Comment: A commenter stated that the proposed modification to the SSSV system equipment requirements that discontinues third party testing is without merit, as the third party testing is essential to the nuclear and fossil fuel industry. The commenter stated that the SSSV system equipment malfunctioned during the *DWH* incident.

Response: This comment apparently concerns BOPs, since SSSVs were not involved in the *DWH* incident, but the BOP system was. BOPs are not addressed in this rulemaking, but were addressed in the 2016 WCR. In these final regulations, BSEE does not discontinue third party design testing of SSSVs. SSSVs, which are addressed in this final rule, have proven to be extremely reliable over the course of many decades. Manufacturers design SSSVs to fail in a safe mode: for example, most valves are designed so that if they fail (*i.e.,* lose pressure) they automatically close, thus preventing a release of hydrocarbons. In any event, if any leakage occurs, it does so within a closed, multiple barrier system.

Use of SSVs (Section 250.820)

Section summary: This section of the existing regulations requires operators to comply with API RP 14H (Fifth Edition 2007) for the installation, maintenance, inspection, repair, and testing of all SSVs, including requirements applicable if the SSV does not operate properly or if any gas and/or liquid fluid flow occurs during the leakage test. BSEE proposed to revise this section to incorporate by reference API STD 6AV2 in place of API RP 14H (which was withdrawn by API). BSEE did not receive any comments on this section of the proposed rule and the final rule revises § 250.820 as proposed.

Emergency Action and Safety System Shutdown—Dry Trees (Section 250.821)

Section summary: This section of the existing regulations specifies actions that operators must take with respect to wells in the event of an emergency (*e.g.,* an impending hurricane), including installation as soon as possible of a subsurface safety device on any well capable of natural flow that does not already have such a device. The existing regulation also requires shut-in of all oil wells and all gas wells that require compression.

BSEE proposed to revise paragraph (a) of this section to clarify that operators must shut in the production on any facility that ''is impacted or that will potentially be impacted by an emergency situation.'' This proposed clarification was intended to ensure that operators understand their obligation to properly secure wells before the platform is evacuated in the event of an emergency. The proposed rule also included some examples of emergencies (such as named storms, ice events, or earthquakes), but did not specify all emergency events that could trigger this provision; rather, the operator must determine when its facility is impacted or will potentially be impacted due to an emergency situation. (*See* 82 FR 61710.) The final rule revises this section as proposed, except that, in response to one comment (discussed below), BSEE removed the reference to ''in the Arctic'' from the example of ice events as a possible emergency.

Installation of Subsurface Safety Devices

Comment: A commenter expressed concern about installation of a subsurface safety device post-earthquake in a Planning Boundary Area that has a high potential for significant seismic activity. The commenter asked BSEE to clarify the times when installation of such a device would not be appropriate in a production well in such an area.

Response: Subpart H establishes that production wells must have an SSSV installed. Sections 250.810 through 250.817 address circumstances when an SSSV could potentially be removed from a production well with tubing installations open to hydrocarbon-bearing zones. These circumstances generally include:

1. When approved by the BSEE District Manager (or, in Alaska, the OCS Regional Supervisor of Field Operations) for a well incapable of natural flow (§ 250.810);
2. When in the process of changing-out an SSSV or the production tubing housing an SSSV (§ 250.812);
3. When an SSSV becomes inoperable and measures are taken to address the issue (§ 250.813);
4. When an SSSV is in the process of being repaired, replaced, or installed (§ 250.814); or
5. When a wireline or pumpdown-retrievable SSSV is removed for routine operations (not exceeding 15 days and with prescribed safety mitigations in-place) (§ 250.817).

By including ''post-earthquake'' in this section, BSEE intends to clarify that earthquakes are among the kind of emergency situations in which an operator must follow the requirements of this section, including the requirement to install an SSSV as soon as possible, if for some reason the operator had not already installed it.

Consistency With § 250.837(a)

Comment: One commenter proposed that BSEE adopt only the proposed language changes in § 250.837(a) and replace § 250.821(a) with § 250.837(a) language or expressly cross-reference that section.

Response: BSEE disagrees. The language in final paragraph (a) of § 250.821 and paragraph (a) of § 250.837 is consistent and establishes the safest approach for the types of ''dry'' and ''subsea'' systems potentially impacted by those paragraphs, respectively. Section 250.821 specifically addresses Emergency Action and Safety System Shutdowns related to dry trees that do not have BSDVs, USVs, or GLSDVs and related systems found in subsea wells, whereas § 250.837 pertains to subsea trees and their associated systems.

Definition of Arctic OCS

Comment: A commenter suggested clarification of the additions in §§ 250.821 and 250.837 relating to earthquakes and ice events. Specifically, the commenter suggested that BSEE remove the definition of Arctic OCS in § 250.105 and instead use the definition of Arctic OCS Conditions for defining the Arctic OCS without regard to Planning Boundary Area location.

Response: BSEE disagrees with the suggested revisions to the definitions for Arctic OCS and Arctic OCS Conditions in § 250.105, which BSEE did not propose to revise and are not within the scope of this rulemaking. Those definitions were adopted as part of the Arctic Exploratory Drilling Rulemaking, 81 FR 46478 (2016) (the Arctic Rule) to

align the scope of that rule with the areas of the Arctic OCS utilized in the DOI OCS Oil and Gas Leasing Program for 2012–2017 (June 2012, available at *http://www.boem.gov/Five-Year-Program-2012-2017*). Those definitions reflect the conditions and challenges the Arctic Rule was designed to address. Altering these definitions in this rulemaking would increase confusion over the scope and applicability of the regulations specifically associated with the Arctic OCS. To address the commenter's concern, however, BSEE removed the phrase ''in the Arctic'' from §§ 250.821 and 250.837 in the final rule. It is not necessary to specify ''ice events in the Arctic,'' as ''ice events'' anywhere on the OCS have the potential to impact operations. Further, these provisions do not include a similar geographic specification for the other events—earthquakes or hurricanes—that it uses as examples.

Timing of Activities Associated With Emergency Events

Comment: A commenter suggested that, if it is BSEE's intent to require operators to complete the outlined activities prior to the evacuation of the facility, then the regulation should state that specific purpose. The commenter suggested revising § 250.821 to read: ''If your facility is impacted or will potentially be impacted by an emergency situation (*e.g.,* an impending National Weather Service-named tropical storm or hurricane, ice events in the Arctic, or post-earthquake), you must complete the following activities prior to evacuation of the facility:''

Response: BSEE disagrees with the suggested change. BSEE expects that operators will complete these activities before evacuation. However, as the current regulations acknowledge, that may not always be possible due to concerns for worker safety. Accordingly, operators must complete the installation of the subsurface safety device in event of an emergency ''as soon as possible, with due consideration being given to personnel safety.'' BSEE does not believe that it would be prudent to replace this with an absolute requirement that does not take such considerations into account.

Design, Installation, and Operation of SSSVs—Subsea Trees (Section 250.828)

Section summary: This section addresses requirements for the design, installation, and operations of SSSVs installed on subsea trees. These provisions ensure reliable operation and establish that a well with a subsea tree must not be open to flow while an SSSV is inoperable. BSEE proposed to revise § 250.828(c) to update the title of API RP 14B with ANSI/API RP 14B. That proposal is adopted in this final rule.

Duplicative Requirements

Comment: Although BSEE did not propose any changes to § 250.828(c), one commenter recommended deleting that provision, asserting that it duplicates the requirements of § 250.802(b).

Response: BSEE disagrees that § 250.828(c) duplicates the requirements in § 250.802(b). This section applies only to SSSVs installed on subsea trees, while § 250.802(b) addresses general requirements for all SSSVs. Section 250.828(c) specifically addresses provisions related to SSSVs in the regulations, incorporated standards, and the approved deepwater operators plan (DWOP).

Specification for Underwater Safety Valves (USVs) (Section 250.833)

BSEE proposed revising the introductory paragraph in this section to replace API Spec. 6A with ANSI/API Spec. 6A. BSEE did not receive any comments on this section of the proposed rule. BSEE is finalizing this provision as proposed.

Use of USVs (Section 250.834)

The final rule revises this section by incorporating API STD 6AV2 in place of API RP 14H, which was withdrawn by API. BSEE did not receive any comments on this section of the proposed rule. BSEE is finalizing this provision as proposed.

Specification for All Boarding Shutdown Valves (BSDVs) Associated With Subsea Systems (Section 250.835)

Section summary: This section's requirements in the existing regulations for use of a BSDV are intended to provide the maximum level of safety for the production facility and the people aboard the facility. The BSDV is the most critical component of the subsea system. BSEE did not propose any changes to this section and is not making any changes to the regulatory text of this section in the final rule, however there was a comment submitted on this section. We include it in the preamble only to address the comments received.

Location of BSDV

Comment: Although BSEE did not propose any changes to this section, one commenter recommended revision of the existing requirement in paragraph (c) that the BSDV be located within 10 feet from the edge of the platform. The commenter stated that this requirement is not feasible for large diameter lines on deepwater facilities and proposed a distance greater than 10 feet or according to the distance specified in the approved DWOP.

Response: BSEE does not agree that a change in paragraph (c) is justified. Operators may obtain approval for alternative designs under § 250.141 by demonstrating an equivalent or greater level of safety and environmental protection. This provides the operator with the flexibility to address unique situations involving deepwater facilities.

Use of BSDVs (Section 250.836)

BSEE proposed revising this section by incorporating API STD 6AV2 in place of API RP 14H, which was withdrawn by API. BSEE did not receive any comments on this section of the proposed rule. The final rule revises this section to update the new incorporation by reference, as proposed. In the final rule, BSEE is also making minor changes in the wording to emphasize that all BSDVs that are removed from service and reinstalled must meet the requirement of this section. This was the case under the existing regulation, but the revision will make the requirement more explicit.

Emergency Action and Safety System Shutdown—Subsea Trees (Section 250.837)

This section addresses actions operators must take in the event of an emergency situation. These situations include weather events, such as storms. This section includes details on valve closures related to specific conditions on the facility, such as process upsets and emergency shutdown (ESD) events, and it includes requirements pertaining to dropped objects in the vicinity of producing subsea wells.

BSEE is revising paragraph (a) of this section to clarify that operators must shut in the production on any facility that ''is impacted or will potentially be impacted by an emergency situation.'' This revision is consistent with the revision to § 250.821(a) for facilities with dry trees. Paragraph (a) of the final rule includes examples of emergencies, such as named storms, ice events, or earthquakes. It is not BSEE's intent to specify all emergency events that could trigger actions required by this regulation. The operator must determine when there may be impacts due to an emergency or if an emergency event impacted their facility.

BSEE also adds GLSDVs to the list of equipment that must be closed during a shut-in. This is consistent with

identifying GLSDVs as SPPE in § 250.801 and elsewhere in this subpart.

In addition, BSEE is revising paragraph (b) of this section to clarify the requirements for dropped objects in an area with subsea operations and for consistency with the provisions of the dropped objects plan required by § 250.714. Section 250.714 does not require operators to submit this plan as part of the application for permit to drill (APD) or application for permit to modify (APM); rather, the operator must make their dropped object plans available to BSEE upon request. A dropped object plan is not a static plan and § 250.714 requires operators to update their dropped objects plans as the subsea infrastructure changes.

BSEE proposed revising several paragraphs in this section that address dropped objects to use the phrase ''vessel (*e.g.,* mobile offshore drilling unit (MODU) or other type of workover or intervention vessel)'' in place of the current regulatory text, which uses ''mobile offshore drilling unit (MODU) or other type of workover vessel.'' Based on comments, BSEE revised this in the final rule to use ''a mobile offshore drilling unit (MODU) or other type of workover or intervention vessel.'' As proposed, BSEE is also replacing ''producing subsea wells'' with ''subsea infrastructure'' in the final paragraph (b). The current regulatory text limits these requirements to only those areas that have producing subsea wells. This change is more inclusive, requiring operators to address dropped objects in any area with infrastructure on the seafloor. Finally, as proposed, the final rule clarifies and updates the terminology in the second sentence of the existing paragraph (b)(2), while essentially preserving the requirement of the existing sentence.

Timing of Shut-Ins

Comment: Industry commenters recommended adding a ''boundary condition'' in § 250.837 as found in § 250.821. A commenter suggested the following examples of ''modified conditions,'' such as shut-in just prior to evacuation, or if full remote real-time monitoring and control capabilities exist, shut-in prior to exceeding safe environmental operating conditions as stipulated by regulatory approvals.

Response: BSEE disagrees with the suggested changes. Section 250.837(a) requires the operator to shut-in the facility in the event of an emergency and already provides an option for the operator to receive approval from the District Manager to address, on a case-by-case basis, situations such as the commenter described.

Use of the Word ''Vessel''

Comment: Industry commenters opposed adoption of the proposed rule language in § 250.837(b) and (c)(5), stating that adding the generic term ''vessel'' followed by ''mobile offshore drilling unit (MODU) or other type of workover or intervention vessel'' as examples would make the requirement more ambiguous. Specifically, the proposed language could be interpreted to mean that the presence of any ''vessel''—such as an offshore support vessel or standby vessel—would trigger this requirement, even if the vessel is not engaged in well operations. The comments stated that it would be overly burdensome to apply these requirements to vessels that do not latch onto the well for wellbore intervention activities (*e.g.,* remotely operated vehicles (ROVs)) because intervention vessels that do not latch onto the well mitigate dropped object concerns through use of safe overboarding zones. Commenters suggested changing the wording in paragraph (b) to refer to ''a mobile offshore drilling unit (MODU) or other type of workover or intervention vessel.''

Response: BSEE agrees that using ''vessel'' with parenthetical examples of MODU or other type of workover vessel, in this context, is too broad. As previously discussed, BSEE revised the final rule text to use ''a mobile offshore drilling unit (MODU) or other type of workover or intervention vessel'' instead. This captures appropriate types of vessels that would be involved in drilling or workover operations.

Period of Lost Communications

Comment: Industry commenters suggested revising § 250.837(b)(2) to replace ''minutes or more'' with ''or more continuous minutes.''

Response: BSEE disagrees with this suggested change. The suggested changes reduce clarity and do not adequately address the interpretation of ''intermittent communications'' and ''brief losses of communication.'' They would, therefore, add to the confusion regarding when the requirement to shut-in wells under this provision applies.

Pressure Safety High Low (PSHL) Sensor Activation

Comment: Industry commenters suggest replacing the final sentence of paragraph (c)(2) with ''If the PSHL sensor activation was not accompanied by an increase in pressure above the [maximum anticipated operating pressure], or the loss of integrity of the pipeline, you may return the wells to production without contacting the appropriate District Manager.''

Response: BSEE disagrees. The language the commenter recommends is an overly prescriptive description of a false alarm, which limits the situations that could be considered false alarms. It is the operator's responsibility to identify a false alarm. If the sensor activation is identified as a false alarm, the operator may return the wells to production without notifying the District Manager. Further, the suggested text would represent a substantive change that would require a separate notice and opportunity for comment.

Platforms (Section 250.841)

Section summary: This section addresses protecting platform production facilities by requiring basic and ancillary surface safety systems to be designed, analyzed, installed, tested, and maintained in operating condition according to the provisions of API RP 14C. In addition, this section has basic requirements for platform production process piping.

BSEE adds a new paragraph (c) to this section to address major modifications to a facility, by directing operators to follow the requirements in § 250.900(b)(2). This is not a new requirement, as operators are already required to follow the provisions of § 250.900(b)(2) for major modifications. This simply provides direction to the operator and emphasizes the need to follow § 250.900(b)(2). The final paragraph (c) is substantively the same as the proposed, but with minor clarifying changes in response to comments.

In the proposed rule, BSEE also requested comments on paragraph (b) of this section, and whether BSEE needed to make other changes to address corrosion prevented. Existing paragraph (b) of this section requires operators to maintain all piping for platform production processes as specified in API RP 14E, Recommended Practice for Design and Installation of Offshore Production Platform Piping Systems (API RP 14E). Section 6.5(a)(1) of API RP 14E addresses painting of steel piping to prevent corrosion. BSEE solicited comments on this requirement in the proposed rule's preamble. Corrosion prevention is important for safety and pollution prevention and BSEE is not removing the reference to API RP 14E from this section.

Major Modification

Comment: A commenter stated that the proposed language in § 250.841(c) could lead an operator to think ''major facility modification'' is a defined term in the regulation. The term ''major modification'' in current BSEE

regulations only applies to a platform structure. The commenter suggested specific revisions to the regulatory text to clarify this concern.

Response: BSEE agrees with the commenter and revises the final regulation to state that, if the operator plans to modify the production safety system in a manner that includes a major modification to the platform structure, then the operator must follow the requirements in § 250.900(b)(2). This adds clarity to the proposed text and merely cross-references existing requirements, rather than creating new ones.

Removal of § 250.841(c)

Comment: BSEE received multiple comments urging BSEE not to remove § 250.841(c).

Response: BSEE is not certain what provision the commenters were referring to, as there is no § 250.841(c) in the current regulations. BSEE proposed adding a new § 250.841(c) to address production safety system modifications. This provision is being retained in the final rule, with modifications to clarify intent with respect to major modifications to platform structures.

Approval of Safety Systems Design and Installation Features (Section 250.842)

Section summary: This section establishes requirements for safety system design and installation. It describes the information that the operators must include in their production safety system application for new and modified systems. This information is needed to verify that the operator followed the prescribed standards and addressed the critical aspects of the system design. In addition, this section requires the operator to submit as-built diagrams to BSEE, so BSEE has accurate information on file for inspections. Under this section, operators must maintain these and other supporting documents and provide them to BSEE upon request.

Existing Regulations and Proposed Changes

Paragraph (a)

The existing § 250.842(a) regulations require the operator to submit a production safety system application to the District Manager before installing or modifying a production safety system. While this section requires the application to be approved, it does not specify the timing of that approval. To address this, BSEE proposed to revise the introductory provisions in paragraph (a) to state that the District Manager must approve the production safety system application before the operator may commence production through or utilize the new or modified system. BSEE is revising this provision in the final rule for clarity, to state that the District Manager must approve the production safety system application before the operator may commence production ''through or otherwise use the new or modified system.''

Paragraph (a) of existing § 250.842 also includes a table that details the information that the operator needs to include in the production safety system application. Paragraph (b)(2) of the existing regulations requires the operator to certify that the ''designs for the mechanical and electrical systems under paragraph (a) of this section were reviewed, approved, and stamped by an appropriate registered professional engineer(s).'' This includes all of the information, diagrams, drawings, and designs that are submitted pursuant to existing paragraph (a). BSEE proposed to revise some requirements in the table in paragraph (a) related to the information, diagrams, drawings, and designs (design documents) operators must submit to BSEE for approval. BSEE proposed to revise this provision to require operators to submit the most critical documents to BSEE, and to have only those documents stamped by a PE.

In addition to requiring the operators to submit the most critical designs documents to BSEE and to have only those items sealed by a PE, BSEE proposed in a new paragraph (b) to require operators to develop and maintain other supporting documents. The supporting documents identified in proposed paragraph (b) provide additional details and information related to the design documents required in proposed paragraph (a). While these paragraph (b) documents provide supporting information, they are not critical for BSEE to review during the approval process. However, the operator still must develop these documents and make them available for review and inspection by BSEE upon request. The final rule generally reflects those changes as proposed, with some clarifications based on public comments.

BSEE proposed revising the table in paragraph (a) to require operators to submit the safety analysis flow diagram, safety analysis function evaluation (SAFE) chart, electrical one line diagram, and area classification diagram for new facilities and for modifications to existing facilities. BSEE proposed additional revisions and reorganization of the existing table in paragraph (a).

Existing provisions in paragraph (a)(1) require the operator to submit a piping and instrumentation diagram; existing paragraphs (a)(1)(i) through (vii) identify the specific information that the piping and instrumentation diagram must include. BSEE proposed changing the requirement in existing paragraph (a)(1) for the piping and instrumentation diagram to instead require a safety analysis flow diagram and a SAFE chart, and also proposed to incorporate references to the relevant sections of API RP 14C that describe the contents of these two items. In addition, BSEE proposed to retain the information requirements for piping and instrumentation diagrams that were already in existing paragraphs (a)(1)(i) through (vii). However, under the proposed rule, the information required by the existing paragraphs (a)(1)(i) through (vii) would be submitted with the safety analysis flow diagram and SAFE chart, instead of the piping and instrumentation diagram. These proposed changes would better align the requirements with the information identified in industry standards, including API RP 14C. In the proposed rule, this information would be required for new facilities and modifications of existing facilities.

BSEE proposed additional reorganization of the table in paragraph (a) in conjunction with the proposed changes to paragraph (a)(1). Since the safety analysis flow diagram and SAFE chart are required under paragraph (a)(2) in the existing regulations, BSEE proposed to remove that paragraph in the table. BSEE also proposed to move the requirement for electrical system information from under existing paragraph (a)(3) to new paragraph (a)(2) and proposed to call that information the ''electrical one-line diagram.'' BSEE proposed revising the requirements for the electrical one-line diagram, to include ''generators, circuit breakers, transformers, bus bars, conductors, battery banks, automatic transfer switches, uninterruptable power supply (UPS), dynamic (motor) loads, and static (*e.g.,* electrostatic treater grid, lighting panels, etc.) loads.'' This would also include a functional legend.

BSEE proposed to move the additional detailed electrical information that is required in existing paragraph (a)(3) to new paragraph (b)(1), as this is supporting information for the electrical systems. Proposed paragraph (b)(1) would require additional supporting electrical system information including: (i) Cable tray/conduit routing plan which identifies the primary wiring method (*e.g.,* type cable, conduit, wire) and (ii) Cable schedule; and (iii) Panel board/junction box location plan.

BSEE proposed to remove from the table the information required in existing paragraph (a)(4) for schematics of the fire and gas-detection systems. Proposed paragraph (a)(4) would instead require a schematic piping and instrumentation diagram and apply to new facilities only.

Existing paragraph (a)(5) addresses the service fee for the production safety system application. BSEE did not propose any revisions to that paragraph.

Paragraph (b)

To accommodate the new paragraph (b), BSEE proposed removing existing paragraph (c) and redesignating existing paragraph (b) as new paragraph (c). New paragraph (b) would require the operator to develop and maintain documents that provide supporting documents to the design documents required in the table in proposed paragraph (a). These documents would contain information that is related to the design documents that would be required in proposed paragraph (a), but this information is not critical for BSEE to review during the approval process. However, the operator would still be required to develop these documents and make them available for review and inspection by BSEE upon request. The final rule generally reflects those changes as proposed, with some clarifications based on public comments.

Paragraph (c)

Under the proposed rule, new paragraph (c) (which is existing paragraph (b)) would continue to require operators to certify: (1) That all electrical installations were designed according to API RP 14F or API RP 14FZ, as applicable; (2) that an appropriate registered professional engineer(s) reviewed, approved, and stamped the designs for the mechanical and electrical systems that operators are required to submit under paragraph (a) of this section. For modified systems, only appropriate registered professional engineer(s) are required to approve and stamp the modifications. The registered professional engineer must be registered in a State or Territory of the United States and have sufficient expertise and experience to perform the duties; and (3) that a hazards analysis was performed in accordance with § 250.1911 and API RP 14J (incorporated by reference as specified in § 250.198), and that operators have a hazards analysis program in place to assess potential hazards during the operation of the facility. As proposed, BSEE is revising redesignated paragraph (c)(2) of § 250.842 (existing (b)(2)) to require the designs for the mechanical and electrical systems that the operator is required to submit under paragraph (a) of this section be reviewed, approved, and stamped by an appropriate registered professional engineer(s).

Existing paragraph (c) requires operators to certify, in a letter to the District Manager, that the mechanical and electrical systems were installed in accordance with the approved designs, before beginning production. The intent of this step was to ensure the operator properly documented the installation of the mechanical and electrical systems. However, this submittal was a burdensome step to assure document management and confirm that operator performed the modification as proposed and approved. Because the operators must submit the as-built drawings, which BSEE uses for field verification, the required certification letter is redundant and not needed. So BSEE proposed to remove this requirement entirely.

Paragraph (d)

BSEE proposed to revise existing paragraph (d) to clarify requirements regarding PE stamping of required drawings. The rule proposed to require the diagrams that operators submit to BSEE under § 250.842(a)(1), (2), and (3) be reviewed, approved, and stamped by an appropriate registered PE(s). In addition, BSEE proposed moving the requirement from existing paragraph (e)—that the operators submit the as-built diagrams within 60 days of commencing production—to new paragraph (d).

Paragraphs (e) and (f)

Since under the proposed rule, the regulations no longer need existing paragraph (e) and BSEE proposed to delete it, BSEE proposed to redesignate existing paragraph (f) as new paragraph (e). Proposed, redesignated paragraph (e) would continue to address the requirements for maintaining the requisite documents. BSEE did not propose any revisions to the requirements in redesignated paragraph (e).

Final Rule

Paragraph (a)

In the final regulatory text, BSEE changed the language in introductory paragraph (a) to generally refer to the information submitted under § 250.842 as ''design documentation.'' BSEE made this change throughout § 250.842. This is a clarification and provides consistency in the way the regulations refer to the various diagrams required in this section.

BSEE is maintaining the requirements in the existing table in § 250.842(a)(1) through (5), mostly as proposed. However, BSEE made some revisions to these sections in response to comments. In the final rule, BSEE combined the requirement in proposed paragraph (a)(1)(ii), ''piping and specification breaks'' with proposed paragraph (a)(1)(vii) and revised that requirement to specify ''piping sizes'' and to include ''the location of piping and specification breaks'' with the information required in paragraph (a)(1). Since paragraph (a)(1)(ii) was removed, the rest of the provisions in that paragraph were renumbered.

BSEE also revised paragraph (a)(2) in the final rule. BSEE removed ''battery banks'' as a specific item to be included on the required electrical one-line diagram, and added ''associated battery banks'' as part of what must be included with the uninterruptable power supply. In addition, paragraph (a)(3)(ii) in the final rule removed the location of ''control rooms, motor control center (MCC) buildings, and any other buildings'' as specific items included as part of the plan for the area classification diagram. The final regulatory text requires ''any buildings'' to be identified, with control rooms and MCC buildings provided as examples of types of buildings.

As was proposed, paragraph (a)(3) will no longer require operators to identify all areas where potential ignition sources are located in the design documents submitted to BSEE. This requirement is addressed under final paragraph (c)(3), which requires operators to perform a hazards analysis in accordance with § 250.1911 and API RP 14J. API RP 14J specifically addresses ignition sources and minimizing the chances of ignition. API RP 14J directs the operator to consider all ignition sources when designing their facility and provides detailed guidance on designing the facility and equipment to prevent the ignition of hydrocarbons. It is not necessary to specify that operators must develop and maintain a separate document identifying ignition sources because this is part of compliance with API RP 14J. In addition, existing paragraph (b)(3) (proposed paragraph (c)(3)) requires operators to have a hazards analysis program in place to assess potential hazards during the operation of the facility. The final rule, as proposed, still requires the operator's classification diagram to show safety-critical information, such as the locations of significant hydrocarbons and Class I flammable sources, but, in light of the requirement in § 250.842(c) and API RP

14J, it is not necessary for the operator's classification diagram to show this level of detail.

The final rule revises the regulatory text for paragraph (a)(4) to state that the production safety system application must include a ''piping and instrumentation diagram, for new facilities,'' removing the word ''schematic.'' Also, BSEE added the word ''flow'' to the description of the detailed information the piping and instrumentation diagram must include; to read, ''a detailed flow diagram.'' These changes are described in more detail in the comment and response discussion that follows this Section Summary.

Paragraph (b)

BSEE finalized new proposed paragraph (b), with some revisions. The drawings required under final paragraph (b) include additional electrical system information, schematics of the fire and gas-detection systems, and revised piping and instrumentation diagrams for existing facilities. BSEE revised final paragraph (b) to make clarifications, based on comments; these changes are similar to the changes made to the table in final paragraph (a). As previously discussed, BSEE revised introductory paragraph (b) to refer to ''design documents'' instead of ''diagrams.'' BSEE is revising some of the details in the table in final paragraph (b) from the proposed paragraph (b). BSEE is combining the cable schedule that was referenced in proposed paragraph (b)(1)(ii) into final paragraph (b)(1)(i); as an example of the information that needs to be provided with the cable tray/conduit routing plan. Proposed paragraph (b)(1)(iii) will become paragraph (b)(1)(ii) in the final rule and has been revised to state that the panel board/junction box location plan needs to be included with the additional electrical system information only if it ''is not shown on the area classification diagram required in § 250.842(a)(3).'' BSEE is also removing the requirement in paragraph (b)(2) for the diagram to include ''the method and frequency of calibration'' for the fire and gas detection systems. As previously discussed, the operator will still be required to develop and maintain all of the supporting diagrams in final paragraph (b) and provide them to BSEE upon request. BSEE is revising final paragraph (b)(3) was revised to be consistent with the final language in paragraph (a)(4), addressing ''revised piping and instrumentation diagrams,'' including ''a detailed flow diagram.'' However, as was proposed, these diagrams will no longer require review, approval, and stamping by an appropriate registered PE. This change will reduce the burden on operators by no longer requiring a PE to certify as many diagrams and drawings. Operators are still required to develop these diagrams and drawings and provide them to BSEE upon request. The operators are also still required to maintain them and to ensure they accurately reflect the current production system.

Paragraph (c)

BSEE is revising final paragraph (c) from proposed paragraph (c). In final paragraph (c)(1), BSEE changed ''electrical installations'' to ''electrical systems.'' Final paragraph (c)(2) includes a number of revisions pertaining to the requirements regarding the involvement of the professional engineer. BSEE changed ''reviewed, approved, and stamped by an appropriate registered professional engineer'' to ''sealed by a licensed professional engineer.'' Paragraph (c)(2) of the final rule clarifies that only the modifications are required to be sealed by a licensed professional engineer. BSEE made this change in response to comments and recognizes that PEs can only stamp or seal those documents that were developed under their direct supervision; therefore, a PE would not be able to stamp or seal diagrams that were previously developed by someone else. Paragraph (c)(3) is finalized as proposed.

Final paragraph (c) continues to require operators to certify that: (1) All electrical systems were designed according to API RP 14F or API RP 14FZ, as applicable; (2) that a licensed professional engineer seal the design documents for the mechanical and electrical systems that operators are required to submit under paragraph (a) of this section. For modified systems, a licensed professional engineer(s) is required to seal only the modifications. The professional engineer must be licensed in a State or Territory of the United States and have sufficient expertise and experience to perform the duties; and (3) a hazards analysis was performed in accordance with § 250.1911 and API RP 14J (incorporated by reference in § 250.198); and that the operator has a hazards analysis program in place to assess potential hazards during the operation of the facility. The final rule adopts the proposal to revise redesignated paragraph (c)(2) of § 250.842 to state that a licensed professional engineer must seal the design documents for the mechanical and electrical systems that the operator is required to submit under paragraph (a) of this section.

Paragraph (d)

BSEE revised final paragraph (d) from the proposed rule. The final rule will provide operators ''90 days after placing new or modified production safety systems in service'' to submit the as-built diagrams required in this section to the District Manager. The existing regulations and the proposed regulatory text provide 60 days for submitting these diagrams. BSEE also clarified that this time period applies ''after placing new or modified production safety systems in service'' instead of 60 days after ''production commences,'' as in the current regulations and proposed rule.

Under the existing paragraphs (d) and (e), operators are required to certify that the as-built diagrams are on file and stamped by a PE and to submit the as-built diagrams for the new or modified production safety systems to BSEE. The proposed rule would have modified paragraph (d) to continue to require that operators submit PE-stamped as-built diagrams, while removing the requirement of a separate certification. Based on comments, BSEE is revising the final rule from the proposed in several respects. First, paragraph (d) in the final rule changes the timing of the submittal of the as-built diagrams from 60 to 90 days. Second, BSEE is revising the final paragraph (d) from the proposed to require that the operator must submit a letter to the District Manager certifying that the as-built diagrams were reviewed for compliance with applicable regulations and accurately represent the new or modified system as installed. BSEE intends that this requirement for a certification from the operator will serve the same function as the existing and proposed rule's requirement to have the as-built diagrams PE-stamped. Moreover, it will preserve the intent of the current rule to make the operator responsible for submitting reliable, accurate as-built diagrams. Third, and related, the final rule removes the requirement to have as-built diagrams PE-stamped. This is one of a number of provisions in this final rule that recognize the limitations of a PE's ability to stamp or seal documents. The existing regulations required stamping of the ''as-built'' diagrams. As-built diagrams show the final system that actually was constructed. Per PE licensing requirements, the PE would need to be present during the entire building/construction process to stamp those documents. Since the PE is not present for all the work that goes into building and installing production

systems, requiring a PE stamp on an as-built diagram is not a realistic way to meet the goals of this paragraph. However, the critical design documents, those required under § 250.842(a), continue to require a PE stamp (§ 250.842(c)(2)) under this final rule.

Paragraphs (e) and (f)

As proposed, BSEE is redesignating the existing paragraph (f) as paragraph (e), since the requirements from existing paragraph (e) were moved to new paragraph (d). Although BSEE did not propose any changes to the substance of existing paragraph (f), BSEE revised the text in final paragraph (e), based on comments, to clarify requirements related to maintaining the documents required under § 250.842(a) and (b) and how to make those documents available to BSEE. In the final rule, BSEE revised final paragraph (e) to specifically reference the ''approved and supporting design documents'' required under'' § 250.842(a) and (b), instead of referencing ''information concerning the approved designs and installation features.'' This is a clarification and ensures the operator maintains the appropriate required documents, including copies of the documents submitted to BSEE under paragraph (a) and the additional documents the operator is required to develop and make available to BSEE upon request in paragraph (b). The requirement for the operator to maintain these documents at the ''offshore field office nearest the OCS facility or at other locations conveniently available to the District Manager'' did not change. This allows the operator to determine the appropriate location to store these documents. In the final rule, BSEE is removing the provision specifically requiring operators to maintain the as-built piping and instrumentation diagrams at a secure onshore location and the requirement to have those documents readily available offshore. Piping and instrumentation diagrams are now included within the storage requirements of the revised first sentence of the paragraph, as they are required in paragraphs (a) and (b) of this section. The provisions requiring that these documents must be made available to BSEE upon request and must be retained for the life of the facility did not change. The provision that all ''approvals'' are subject to field verifications (*i.e.,* during inspections) was clarified to refer to ''approved designs.''

Additional details on these changes are discussed in the following comments and responses.

Design Documents

Comment: A commenter recommended that BSEE clarify the provisions in paragraph (a) of this section by changing the first sentence to read, ''You must submit a production safety system application to the District Manager to install or modify a production safety system.'' The suggested revision removes the word ''before'' from the proposed provision that would require operators to submit their production safety system applications before installing or modifying a production safety system. This commenter also suggested that BSEE was not using the terms ''information,'' ''diagrams,'' and ''designs'' consistently when describing the required diagrams, charts, schematics, plans, and schedules. The commenter expressed concern that imprecise and/or inconsistent language is undesirable in a regulation and recommended that BSEE consistently use the term ''design documentation'' or ''design documents'' when referring to the collective documents that are addressed in this section.

Response: BSEE disagrees with the commenter's suggestion on revising the first sentence of paragraph (a) of this section. The suggested revision would remove the word ''before'' from the provision, so that it would only state that the operators must submit a production safety system application to BSEE, without addressing the timing of that submission. The proposed revisions to the current language regarding the submittal of the production safety system application would ensure that BSEE receives the production safety system application prior to an operator installing or modifying the production equipment. The current regulations state, ''[b]efore you install or modify a production safety system, you must submit a production safety system application to the District Manager for approval.'' The current provision did not explicitly state when the system or modifications to the systems must be approved, even though the intent of this existing language was that the operator would receive approval before installing or modifying the system. While the regulatory language will continue to state that the operator must submit the application before installing or modifying the system, the final rule states that the District Manager must approve the production safety system application before the operator commences production through or utilizes the new or modified system. This not only clarifies the timing of the required approval, but also facilitates timely approval of the application by allowing BSEE to begin review as soon as possible and to review while the operator is installing or modifying the system. The commenter did not include a reason for suggesting this change, but BSEE does not see this timing as an issue as all of the design drawings must be submitted before the operator begins to install or modify the system, under the current and revised regulations. If the application is submitted later, the operator may be ready to start production before BSEE has reviewed and approved the applications.

BSEE agrees with the commenter's other suggested revision to consistently use a single term to refer to the documents that are required under this section. BSEE replaced the words ''information'' and ''diagram'' with ''design documents'' in paragraphs (a) and (b) of the final rule. This consistent use of the more inclusive term adds clarity and reduces potential confusion.

Piping Specification Breaks

Comment: A commenter recommended that the information identified in proposed paragraph (a)(1)(ii), ''piping specification breaks, piping sizes'' should be included in paragraph (a)(1)(vii), because the content included with piping specification breaks, piping sizes overlaps with the information on ''size and maximum allowable working pressures'' that is currently required in paragraph (a)(1)(vii).

Response: BSEE agrees with the recommended change and revised the language in the final rule as suggested.

Metering Devices

Comment: A commenter recommended that BSEE remove ''metering devices'' from paragraph (a)(1)(iv). The commenter asserted that metering devices are considered instrumentation, and size, capacity, and working pressures of metering devices are typically not included on SAFE charts.

Response: BSEE disagrees with this commenter's recommendation to remove ''metering devices'' from proposed paragraph (a)(1)(iv), now final paragraph (a)(1)(iii). The paragraph addresses requirements for both SAFE charts and the safety flow analysis diagram. Operators would include the metering devices on the safety flow analysis diagram, not the SAFE chart. We agree that metering devices should not be included on the SAFE chart.

Chemical Injection Systems

Comment: A commenter recommended that BSEE exempt

chemical injection systems that have less than 770 gallon storage capacity from proposed § 250.842(a)(1)(vi) (which is paragraph (a)(1)(v) in the final rule). The paragraph, as proposed, would require the operator to include the size, capacity, and design working pressures of all hydrocarbon-handling vessels and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid on the safety flow analysis diagram. This commenter asserted that, for the majority of the Gulf of Mexico shelf facilities, the storage capacity of the injection system is often less than 260 gallons. The commenter stated that, for the majority of the chemicals used, the flammability of the products is lessened extensively due to dilution with water and blending of the chemical, reducing the actual flammability of the total product. In addition, the commenter stated that these low volume chemical systems do not present the same hazards as atmospheric hydrocarbon process vessels, and that process vessels have the potential for constant in and out flow of hydrocarbons under pressure. The commenter asserted that, under API RP14C, low volume chemical systems are already analyzed and protected on the facility, and that adding these systems to the facility drawings will not enhance safety or reduce risk.

Response: BSEE disagrees. Tanks and pumps that are tied into the production system should be analyzed on the safety analysis flow diagram (SFD). Atmospheric vessels are used for processing and temporary storage of liquid hydrocarbons, including flammable chemicals. Even a 260 gallon tank containing flammable liquid is a potential hazard when tied to the production system. Although API RP 14C requires analysis of these risks, BSEE still needs to be able to review tanks of all sizes that are connected to the production system.

Battery Banks

Comment: BSEE received a comment recommending that BSEE remove the term ''battery banks'' from the list of items included on electrical one line drawings. The commenter stated that battery banks would exist on a direct current system, while everything else is 120 volt alternating current and higher. The commenter asserted that BSEE's decision to remove ''including the safety shutdown system'' from the definition that was previously found in § 250.842(a)(3)(iii) supports this change.

Response: BSEE partially agrees with this comment. BSEE needs drawings depicting the location of the battery banks associated with the UPS, however it is not necessary to include other battery banks. Consequently, BSEE revised the language in final § 250.842(a)(2) to clarify that the design drawings need to show the UPS and the associated battery banks.

Updating Electrical One-Line Drawings for Existing Facilities

Comment: A commenter recommended that BSEE add language in § 250.842(a)(2) to exempt existing OCS facilities from the requirement to provide the electrical one-line diagram until a major modification is made to the electrical system. The commenter noted that many existing facilities have changed ownership several times over the years and that the original documents such as electrical one-line drawings are unavailable or have not been updated to reflect modifications after the initial installation and submittal. According to the commenter, BSEE has not requested these documents when facility modifications were submitted for approval; therefore, they have not been generated or produced. The commenter asserted that updating or creating new drawings to this level of detail along with engineering certifications is very expensive and, in some cases, will result in facilities becoming uneconomical. The commenter also asserted that, for existing facilities, the electrical one-line drawings should only be required when major modifications are made to the facility's electrical system.

Response: BSEE disagrees. Since 1988, the regulations (formerly § 250.122(e)(4)(ii) and (e)(5), 63 FR 10596) have required operators to certify that the electrical system design was approved by a registered PE.

OCS Order number 8, Platforms, Structures, and Associated Equipment (effective October 1, 1976), included requirements for electrical system information, including certification by the operator ''that the mechanical and electrical systems of the facility will be designed and installed under the supervision of appropriate registered professional engineers.'' (OCS Order number 8, section 3. paragraph B(2)).

Out of date electrical drawings pose a major safety risk. The primary substantive change made in the 2016 rulemaking was the addition of the requirement for submission of a PE stamped diagram. Since 2016, BSEE has granted some departures to allow operators additional time to comply. BSEE did not propose to change the current requirements with respect to whether or not existing facilities need to submit or maintain electrical design documents, and therefore BSEE believes the commenter's recommendation is beyond the scope of this rulemaking. Moreover, operators have had enough time to come into compliance with this requirement.

Identification of Control Rooms and MCC Buildings

Comment: A commenter stated that the identification of control rooms and MCC buildings is not included in API RP 500 or API RP 505 and recommended that BSEE remove those items from § 250.842(a)(3)(ii).

Response: BSEE disagrees. While control rooms and MCC buildings are not specifically identified in API RP 500 and API RP 505, buildings generally are identified. However, we revised the final regulatory text in § 250.842(a)(3)(ii) to identify these as examples of buildings that need to be included.

Clarification of Terminology in (a)(4)

Comment: A commenter recommended revising § 250.842(a)(4) to replace the phrase ''schematic piping and instrumentation diagram'' with ''detailed flow diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices'' to provide better clarity.

Response: BSEE partially agrees with the commenter and revised the final regulatory text in paragraph (a)(4), under the ''details/additional requirements'' section, to read ''detailed flow diagrams.'' However, BSEE is leaving the reference to ''piping and instrumentation diagram'' as the general title for the type of document operators must submit under (a)(4), and removing the modifier ''schematic,'' since it is unnecessary.

Requirements for Maintaining Documents Are Burdensome

Comment: A commenter stated that paragraph (b)(1)(i) is unduly burdensome to operators of older facilities, in cases where these drawings were either never created or were used only for the initial fabrication. The commenter also questioned the need for the cable schedule required by paragraph (b)(1)(ii), because the cable tray/conduit routing plan should provide the relevant information. The commenter recommended that BSEE add the items in paragraph (b)(1)(iii) to the requirements for an area classification drawing in § 250.842(a)(3) to prevent the need for multiple drawing sets.

Response: BSEE disagrees. Because the design documents in this paragraph

were already required to be submitted to BSEE (since the 2016 rulemaking), the requirement to prepare and maintain them was implicitly also required.

Cable Schedule

Comment: A commenter recommended that BSEE remove the requirement for the ''cable schedule'' associated with additional electrical system information under § 250.842(b)(1)(ii).

Response: BSEE agrees and moved the requirement for the cable schedule to be included with the cable tray/conduit routing plan under (b)(1)(i) of that paragraph.

Panel Board and Junction Box

Comment: A comment recommended that BSEE add a statement to paragraph (b)(1)(iii) that the panel board and junction box location plan does not have to be included with additional electrical system information, if that information is not shown on the area classification drawing required in § 250.843(a)(3).

Response: BSEE agrees, the panel board and junction box location plan does not need to be included with both sets of information, and revised the text in final paragraph (b)(1)(ii) as suggested.

Method and Frequency of Calibration

Comment: A commenter recommended revising § 250.842(b)(2) to remove the phrase ''and the method and frequency of calibration'' as it is redundant with testing requirements in § 250.880. The commenter also stated that the methods and frequency of calibration for these devices are specified in API RP 14C and § 250.880(c)(3).

Response: BSEE agrees with the comment. Other requirements, including § 250.880(c)(3)(ii), prescribe the method and frequency of calibration. Accordingly, BSEE revised the final regulatory text to remove that phrase.

Detailed Flow Diagram

Comment: A commenter recommended that BSEE revise paragraph (b)(3), using more precise language for the revised piping and instrumentation diagrams for existing facilities, suggesting ''detailed flow diagram.''

Response: BSEE agrees the use of the phrase ''detailed flow diagram'' better defines the information that the operator needs to include on the revised piping and instrumentation diagram and made the suggested revision in the final rule.

Electrical Installations

Comment: A commenter recommended that BSEE revise paragraph (c)(1) to refer to ''electrical systems'' instead of ''electrical installations,'' stating that this language is more precise.

Response: BSEE agrees that electrical systems is more appropriate terminology for the information that the operator needs to certify in the production safety system application, and made the suggested revision in the final rule.

Professional Engineer Terminology

Comment: A commenter recommended revisions to BSEE's language regarding professional engineers in § 250.842(c)(2), suggesting that statements regarding documents being ''reviewed, approved, and stamped by an appropriate registered professional engineer'' should be replaced with language stating the documents ''are sealed by a licensed professional engineer(s).'' The same commenter recommended that BSEE only refer to ''permanent'' modifications in this section.

Response: BSEE agrees that the term ''sealed'' implies that the document was reviewed and approved and that including those terms is redundant. We also agree that the word ''licensed'' is more appropriate to use. BSEE made these suggested revisions in the final rule. However, BSEE does not agree with the addition of the word ''permanent'' to the language on modifications, as the term ''permanent'' is subjective.

As-Built Diagrams

Comment: Multiple commenters stated that the requirement for sealing of as-built design documents in § 250.842(d) places a significant undue burden on industry by requiring the PE to be present at all times during all phases of construction over extended periods of time, and multiple locations. Commenters stated that the intent of as-built design documents is to ensure that the final design documents accurately reflect what was installed on the location. The commenters recognized the importance of having accurate drawings and BSEE's desire to ensure that facility drawings are the most recent version.

Another commenter also requested that BSEE revise the required time period in which an operator must submit ''as-built'' diagrams from 60 days to 90 days to allow operators time to perform a thorough verification of the diagrams.

Response: BSEE agrees with the commenter's suggestion that 30 extra days will allow the operator to better verify the designs, which will ensure that BSEE receives accurate as-built drawings and made the suggested revisions in the final rule. BSEE also agrees with the assertion that the proposed rule's requirement for PE sealing of as-built diagrams is unduly burdensome for the reasons suggested by the commenters. A PE may not stamp a document unless the work reflected therein was performed under his or her direct oversight, which for as-built diagrams would require the PE's physical presence, at potentially multiple locations, over potentially extended periods of construction and installation. This is not a realistic method for achieving the ultimate goal of ensuring that BSEE has access to reliable and accurate as-built diagrams. As the commenters recognize, it is nonetheless important to retain a requirement in the regulation to reach this goal. In light of these comments, BSEE believes that a revised version of the requirement in the current regulation for operators to certify these drawings is appropriate. Accordingly, the final rule is removing the language in the current rule that requires the operator to certify that the drawings were stamped by a PE and replacing it with language stating that the operator must certify that the drawings have been reviewed for compliance with applicable regulations and accurately represent the new or modified system as installed. BSEE also retained the requirement for the as-built diagrams to be submitted to BSEE and added language requiring the drawings to be clearly stamped or marked as ''as-built.''

Documentation Requirements

Comment: Multiple commenters recommended revisions to proposed paragraph (e) of § 250.842 to improve clarity, proposing to add language to refer specifically to the design documents and the piping and instrumentation diagrams. A commenter also recommended removing the requirement that the operator make these documents available to BSEE upon request and that the documents should be retained for the life of the facility.

Response: BSEE partially agrees with the recommended revisions. BSEE revised paragraph (e), as recommended in referring to the supporting design documents. However, BSEE does not agree with removing the requirement that the operator make the documents available to BSEE upon request and that

the documents should be retained for the life of the facility.

Requirements for Safety System Design Documents

Comment: A commenter was concerned that the proposed changes in § 250.842(a) would relax requirements related to safety system design documents that must be submitted and the requirements for certain documents to be stamped by a registered PE. The commenter asserted that BSEE proposed eliminating the requirement for a PE to review and stamp drawings on existing facilities and that the proposed revisions would only require the PE review and stamp on new facilities or substantial changes to existing facilities. The commenter further stated that the proposed regulation did not specify any training or qualifications to do this work that would no longer be performed by a PE. The commenter noted that the PE requirement in the current regulations was a result of lessons learned from the Atlantis investigation report on ''BP's Atlantis Oil and Gas Production Platform: An Investigation of Allegations that Operations Personnel Did Not Have Access to Engineer-Approved Drawings.'' This report recommended that engineering documents should be stamped by a registered Professional Engineer, that operators certify that all listed diagrams including piping and instrumentation diagrams (P&IDs) are correct and accessible to BSEE upon request, and that all as built diagrams should be submitted to the District Managers.

Response: BSEE proposed and is now finalizing revisions to the regulation to require that the information required as part of the P&IDs in the current regulations must be submitted as part of the safety flow analysis, which requires a PE stamp.

BSEE understands the importance of the *Atlantis* report and recognizes that, although the *Atlantis* report did not make specific recommendations for revisions to subpart H, several of the important issues identified in the report are relevant to the subpart H regulations. Based upon BSEE experience with the implementation of the original 2016 PSSR and review of the requirements of the existing paragraph (a) (and the proposed requirements in paragraphs (a) and (b)), BSEE determined that the documents required under paragraph (a) of this final rule are appropriate to be sealed by a licensed PE. According to paragraph (c)(2) of § 250.842, BSEE requires the PE to be licensed in a State or Territory of the United States and have sufficient expertise and experience to perform the duties.

All items required by paragraph (a) of this section must be submitted to BSEE. The diagrams required in paragraph (b) of this section are not required to be submitted to BSEE, however, they must be available to BSEE upon request. The operator will still be required to develop and maintain these diagrams to accurately document any changes made to the production systems.

Regarding the commenter's concern that BSEE is eliminating the requirement for a PE to review and stamp drawings on existing facilities; per PE licensing requirements, a licensed PE cannot stamp design drawings that were not developed under their direct supervision. If the documents for an existing facility were not sealed by a licensed PE or are no longer available, BSEE cannot require a PE to certify that the existing facility was built according to the applicable requirements without the PE violating the terms of the PE license. A PE can seal documents related to modifications of an existing facility, but only for those modifications that were developed under that PE's direct supervision.

As for the commenter's assertion that the proposal lacked any specification for training or qualification requirements for those who would prepare the documents listed in paragraph (b), BSEE does not think that such specification is necessary. As previously explained, a PE is still required to direct and certify the design of all the production safety systems. The documents in paragraph (b) include specific details related to the same systems that are described in documents required under paragraph (a). This rulemaking is not changing the basic fact that all of these systems must be designed under the oversight of a PE. Rather, this rulemaking is reducing the number of documents that the PE must stamp and that the operator must submit to BSEE with a PE's stamp.

P&IDs

Comment: A commenter was concerned that the proposed regulations would eliminate the requirement for operators to submit a P&ID to BSEE for existing facilities. The commenter noted that in the case of a serious incident or disaster, it is important for BSEE to have an up-to-date drawing of the facility. The commenter recommended that BSEE not wait for a disaster and then request a drawing from the operator, as this could cause delays in making decisions regarding safety and spill prevention and response. The commenter stressed that BSEE did not provide any explanation why existing facilities should be removed from the requirements for meeting the PE approval or the submission of a piping and instrumentation diagram, asserting that older, existing facilities are likely a higher risk. The commenter stated that it is critical for BSEE to have access to these drawings during inspections, and incidents, and to ensure older, existing facility drawings are being updated to incorporate facility changes. The comment stated that BSEE did not provide adequate justification to eliminate these requirements and doing so would pose serious environmental and safety risks.

Response: BSEE did not propose to eliminate the requirement to submit the information that is required in the P&IDs under existing § 250.842(a)(1). Under the proposed rule and this final rule, the documentation requirements are reorganized and the information required in the P&ID under the existing regulations is still required as part of the SFD (per API RP 14C, Annex B) and the SAFE chart (per API 14C, section 6.3.3). These diagrams still require a PE seal for new facilities and modifications on existing facilities. Operator certification that the electrical system design was approved by a registered PE has been required in regulations since 1988 (63 FR 10596, see § 250.122(e)(4)(ii) and (e)(5)). In addition, OCS Order number 8, effective October 1, 1976, included requirements for electrical system information, including certification by the operator ''that the mechanical and electrical systems of the facility will be designed and installed under the supervision of appropriate registered professional engineers.'' (OCS Order 8, section 3. B. (2)). The 2016 rule added the requirement that the operator submit the PE stamped designs for specific mechanical and electrical systems. BSEE granted some departures to allow operators additional time to comply.

However, requiring operators to submit documents that are stamped by a licensed PE for existing facilities is often not possible. Per PE licensing requirements, a licensed PE cannot stamp design drawings that were not developed under his or her direct supervision. If a licensed PE did not seal the documents for an existing facility or if they are no longer available, BSEE cannot require a PE to certify that the existing facility was built according to the applicable requirements without the PE violating the terms of the PE license. A PE can seal documents related to modifications of an existing facility, but only for those modifications that were designed under that PE's direct supervision.

Requirement for Professional Engineers

Comment: A commenter asked how BSEE would ensure safety without the requirements in § 250.842 for a Professional Engineer to conduct these technical reviews. The commenter was concerned that this work would now be completed by less qualified, in-house company personnel, lacking a PE license. The commenter inquired about who within the companies would have sufficient expertise and experience to perform the review and who within each company will assure BSEE that the equipment is designed and maintained during its entire service life with an acceptable degree of risk. The commenter cited the BP Oil Spill Commission recommendation that ''government agencies that regulate offshore activity should reorient their regulatory approaches to integrate more sophisticated risk assessment and risk management practices into their oversight of energy developers operating offshore.'' The commenter noted that third party certification provides this type of approach, and the Commission specifically recommended regular third-party audits and certification. (BP Oil Spill Report at p. 253). The commenter asserted that this change is a serious rollback of safety and environmental protections.

Response: BSEE disagrees that the proposed changes to the production safety system applications will result in a serious rollback of safety and environmental protections. As with any technical project, it is the responsibility of the operator to assign appropriate staff to the project. However, the documents for which BSEE will no longer require PE stamping are not the primary design documents; these documents provide additional details and information and are developed in conjunction with the documents that require a PE stamp. Further, the PE used for the documents required under this section does not need to be a third party under either the existing regulation or this final rule, and this section was never intended to be a third party certification requirement. Therefore, the commenter's concerns that the documents required under this final rule section would be developed by less qualified, in-house personnel are misplaced.

The commenter cited a BP Oil Spill Commission report recommendation that agencies adopt ''risk assessment and risk management practices.'' This commenter further offered third-party audits and certifications as examples of those practices. Those recommendations are part of that report, however, the third-party audit and certification recommendation was made specifically in reference to SEMS. SEMS programs are required by BSEE regulations under 30 CFR part 250, subpart S, and represent performance based approach for all offshore oil and natural gas operations. The use of a PE is not a risk-based approach. The engineer is verifying compliance with various regulations, codes, and standards; this does not necessarily involve a risk assessment or analysis. As discussed previously, BSEE is implementing other risk-based approaches in its oversight of offshore oil and gas operations.

Requirements for Profession Engineers

Comment: A commenter asserted that some of the proposed revisions to § 250.842 seek to remove the very provisions that were added to specifically rectify the causes of the *DWH* explosion. The commenter cited the summary in the proposed rule that stated that ''this proposed rule would fortify the Administration's objective of facilitating energy dominance through encouraging increased domestic oil and gas production, by reducing unnecessary burdens on stakeholders while maintaining or advancing the level of safety and environmental protection.'' This commenter stated that the recommended revisions in the proposed rule would endanger rather than advance the level of safety and environmental protection. The comment discussed the proposed revisions to some of the requirements related to the diagrams and drawings the operators must submit to BSEE for approval.

The commenter noted that PEs have specific experience, qualifications, and education that enables them to provide the critical engineering expertise to identify potential safety and environmental risks. The existing rules were implemented to ensure that PEs utilize their engineering skills to achieve compliance and incorporate the necessary safety measures that will mitigate the likelihood of future disasters like the *DWH* explosion. The commenter stated that the need for these standards and the highest level of expertise is particularly great at this time given that, according to energy research firm Wood Mackenzie, oil and gas production could reach an all-time high in the Gulf of Mexico.

This commenter strongly urged BSEE to retain all of the requirements for PEs in its revised rulemaking.

Response: BSEE disagrees with the main assertions made by this commenter. This commenter conflated the 2017 proposed rule with a planned proposed rule related to well control issues that rulemaking was still under development when BSEE publish the NPRM for this rulemaking. Operators use the production safety systems covered under this rulemaking in production operations, not in well operations (drilling, completions, workovers, and decommissioning). The *DWH* incident was related to a well operation, not a production operation, and the reports and recommendations related to *DWH* focused on well control during well operations, not production operations. BSEE does not recommend applying the recommendations from the *DWH*-related reports to production operations without careful consideration to ensure that those recommendations are appropriate to apply to production.

The commenter raised concerns regarding the proposed changes to requirements for PE stamping of design documents. As noted in a previous response, BSEE is moving the information that is required by the current regulations for P&IDs to the SFD under this rulemaking, and the SFD will still require the PE seal. BSEE did remove requirements for a PE to stamp or seal certain design documents when modifying existing facilities. Some of those requirements would require a PE to seal work that was not performed under that engineer's direct supervision, which would violate the terms of the professional engineer's license.

BSEE will no longer require that certain documents for new facilities or modifications must be stamped or sealed by a professional engineer. The drawings that will no longer require the PE seal are not critical to personnel safety or the environment, but are supporting documents, providing additional information related to the safety critical design documents that will continue to be required to carry a PE seal.

Maintaining Required Documents

Comment: A commenter recommended specific changes to the provisions in § 250.842(e) for clarity. The commenter recommended moving the provisions regarding P&IDs to the first sentence in this section, instead of including them as a specific separate requirement. The commenter also recommended deleting the statement requiring that the operator make these documents available to BSEE upon request. The commenter did not explain the reasoning behind the specific changes, but stated the changes would improve clarity.

Response: BSEE partially agrees. BSEE recognized that it could revise proposed paragraph (e) to improve

clarity and did so, as previously discussed, although BSEE did not use the language the commenter suggested. Further, BSEE will not delete the sentence requiring documents to be made available to it upon request, as it needs ready access to these materials to fulfill its regulatory functions.

Pressure Vessels (Including Heat Exchangers) and Fired Vessels (Section 250.851)

Section summary: This section of the existing regulations includes requirements for the pressure vessels and fired vessels that are used in the production of oil and gas on offshore facilities. Requirements in the existing regulations include design requirements for equipment and relief valves, limits on equipment operating pressures, and specifications for pressure sensors.

As proposed, the final rule removes from this section references to compliance dates that have now passed—*i.e.,* the 2016 PSSR required existing uncoded pressure and fired vessels that were in use on November 7, 2016 (the effective date of the previous subpart H rulemaking), to be code stamped before March 1, 2018. These dates no longer need to be included, as they both have already passed as of the time of this final rulemaking. In addition, prior to the 2016 PSSR, the regulations already required most pressure vessels and fired vessels to be code stamped. The previous rulemaking only added vessels with an operating pressure greater than 15 psig to that requirement.

Small Hydraulic Accumulators and Pulsation Dampeners

Comment: A commenter suggested language to change § 250.851(a)(1) to make clear that small hydraulic accumulators and pulsation dampeners are not intended to be included in this section.

Response: BSEE disagrees; this clarification is unnecessary. The incorporated ASME BPVC states what equipment it covers. Therefore, BSEE is not changing the language in this paragraph.

Alternative Codes/Standards for Small Hydraulic Accumulators and Pulsation Dampeners

Comment: A commenter recommended the following language for § 250.851(a)(2): ''Existing uncoded pressure and fired vessels, except small hydraulic accumulator and pulsation dampeners designed to alternative codes/standards; (i) with an operating pressure greater than 15 psig; and (ii) that are not code stamped in accordance with the ASME Boiler and Pressure Vessel Code.''

Response: BSEE disagrees and will not approve the blanket use of alternative codes or standards without knowing which alternative code or standards will be used. If an operator believes an alternative standard provides an equal or greater level of safety and environmental protection as the criteria in the regulation, they can apply to use alternate procedures under the existing § 250.141.

Compliance Date for Code Stamping Pressure and Fired Vessels

Comment: A commenter suggested that January 1, 2019, should be set as the new compliance date for § 250.851(a)(2), rather than merely deleting the March 1, 2018 deadline. The commenter noted that the proposed deletion would imply that this requirement would take effect immediately upon publication of the final rule.

Response: Since this final rule is being published after March 1, 2018, the requirement is already in effect. This rulemaking is deleting the date because, after March 1, 2018, the reference in the regulation to that date is unnecessary. Removing this vestigial reference to a date that has already passed has no substantive effect; it merely removes now-superfluous regulatory text. BSEE does not believe a change to the timing of the effectiveness of the requirement from what had been established in 2016 is warranted. Operators have had since 2016 to plan to replace uncoded pressure vessels or to justify their continued use.

Size and Pressures Related to ASME Coded Relief Valves

Comment: A commenter suggested language for § 250.851(a)(3) to address concerns regarding the size and pressures related to ASME Coded relief valves.

Response: BSEE did not propose changes to § 250.851(a)(3). The suggested changes are outside the scope of this rulemaking and would require further review by BSEE. Therefore, this final rule is not changing this language.

Flowlines/Headers (Section 250.852)

As initially proposed, BSEE is changing the references in § 250.852(e)(1) and (4) from ''API Spec. 17J'' to ''ANSI/API Spec. 17J,'' which is the proper title of the standard as incorporated in the existing regulation. BSEE did not receive any comments on this section of the proposed rule.

Safety Sensors (Section 250.853)

Section summary: This section establishes requirements safety sensors, including shutdown devices, sensors with integral automatic reset, and pressure sensors. As was proposed, this section of the final rule includes requirements for shutdown devices, valves, and pressure sensors, including testing requirements. As was proposed, final § 250.853(d) requires that operators equip all level sensors to permit testing through an external bridle on all new vessel installations, where possible, depending on the type of vessel for which the level sensor is used.

As proposed, this section will be revised in the final rule to add a new paragraph (d) that requires that operators equip all level sensors to permit testing through an external bridle on all new vessel installations, where possible, depending on the type of vessel for which the level sensor is used. This change was originally proposed in the 2013 Notice of Proposed Rulemaking that led to the 2016 PSSR. However, it was not included in the final rule, based on concerns raised in public comments. The preamble of the 2016 final rule stated that BSEE removed proposed paragraph (d) from the final rule because BSEE can address level sensors adequately using existing regulatory processes, such as DWOPs and we do not need to specify uses and conditions of such sensors in the regulations.

Since the 2016 PSSR, BSEE has reconsidered this provision and determined that including this requirement in the regulations is important, because it clearly states the expectation to have an external bridle to permit testing. This ensures that, where possible, operators make the sensor accessible for testing, which is the accepted approach at this time. A comment on the proposed 2016 PSSR rulemaking asserted that certain sensor testing technologies (*e.g.,* ultrasonic and capacitance) were not suitable for use in external bridles and that some proposed or new projects evaluated using ultrasonic, optical, microwave, conductive, or capacitance sensors, which do not use bridles. BSEE recognizes that there are sensors that do not use bridles and that other equipment options exist. However, the use of a level sensor with an external bridle that allows testing through the bridle remains BSEE's preferred approach. Sensor testing equipment built according to API standards, which BSEE's regulations incorporate by reference, should be able to meet this provision. We therefore proposed

adding language to recognize other approaches, stating that operators must ensure that all level sensors are equipped to permit testing through an external bridle ''where possible, depending on the type of vessel for which the level sensor is used.'' Keeping this language in this final rule allows BSEE more flexibility in approving a different design, without requiring the operator to apply for an alternate procedure or equipment to test the level sensor under § 250.141.

Use of Phrase ''Where Possible''

Comment: One commenter stated that the term ''where possible'' is ambiguous and open to a wide range of interpretations. The commenter suggested that the language in the proposed § 250.853(d) should be revised to state that this requirement does not apply if other level sensors are approved in the production safety systems applications.

Response: BSEE disagrees that the proposed change is necessary. BSEE determined that including this requirement in the regulations is important because it states the expectation to have an external bridle to permit testing. BSEE recognizes that there are sensors that do not use bridles and that other equipment options exist. However, the use of a level sensor with an external bridle that allows testing through the bridle remains BSEE's preferred approach. The final language recognizes that other approaches are available and the modifier ''where possible'' allows BSEE more flexibility in approving a different design, without requiring the operator to apply for an alternate procedure or equipment to test the level sensor under § 250.141. BSEE does not believe that being more prescriptive in defining the circumstances that may qualify for this condition is the optimal approach for addressing the relevant circumstances.

Surface Pumps (Section 250.865)

Section summary: This section provides requirements of surface pumps related to protective equipment, pressure recording devices, and shut-in sensors.

Revision for Update of API RP 14C

Comment: Although BSEE did not propose any changes to this section, one commenter recommended the revision of the existing requirement in paragraph (a), if BSEE incorporated by reference the Eighth Edition of API RP 14C.

Response: No change is necessary at this time since BSEE is not incorporating the Eighth Edition of API RP 14C.

Consistency With § 250.870

Comment: Although BSEE did not propose any changes to § 250.865(d), one commenter recommended that, if the proposed changes in § 250.870 were adopted in the final rule, the text in § 250.865(d) should be changed to reference § 250.870 for consistency of implementation.

Response: No change is necessary at this time. Section 250.865(d) addresses when the pressure safety low (PSL) must be placed into service, while § 250.870 addresses time delays on those sensors. Although these are related, BSEE does not agree it is necessary to cross-reference all of the specific requirements that the PSLs or other sensors must follow throughout these regulations.

Temporary Quarters and Temporary Equipment (Section 250.867)

Section summary: This section of the existing regulations includes requirements for temporary quarters that are located in production processing areas or other classified areas. BSEE intends for these requirements to protect personnel located in these areas and to include the installation safety devices required by API RP 14C and approval by the District Manager.

As proposed, the final rule is revising paragraph (a) of this section to require District Manager approval of safety systems and safety devices associated with temporary quarters prior to installation. This applies to all temporary quarters to be installed on OCS production facilities. Existing regulations specify that the operator must receive approval for temporary quarters ''. . . installed in production processing areas or other classified areas on OCS facilities.'' The revisions will require approval of the safety systems and safety devices, instead of approval of the actual temporary quarters, regardless of where the temporary quarters are located. This change recognizes that risk of a hazard occurring related to production is not restricted to the production areas or classified areas. This change ensures that temporary quarters have the proper safety systems and devices installed to protect individuals in the temporary quarters, regardless of where they are located on the facility.

BSEE recognizes the authority of the United States Coast Guard (USCG) as the lead agency for living quarters on the OCS in two Memoranda of Agreement (MOA) between BSEE and USCG related to oil and gas production facilities: MOA OCS–09, Fixed OCS Facilities, dated September 19, 2014 and MOA OCS–04, Floating OCS Facilities, dated January 28, 2016. MOA OCS–09 establishes BSEE as the lead for safety systems, specifically for emergency shutdown systems and gas detection on fixed OCS facilities. MOA OCS–04 establishes BSEE as the lead for emergency shutdown systems and components on floating OCS facilities. The existing requirement that operators equip temporary quarters with all safety devices required by API RP 14C (Appendix C) will not change. This paragraph ensures that operators will install the proper safety devices on or in temporary quarters, including fire and gas detection equipment and emergency shut down stations addressed in API RP 14C.

As proposed, BSEE is also adding a new paragraph (d) to § 250.867 of the final rule that states that operators must receive District Manager approval before installing temporary generators that would require a change to the electrical one-line diagram required under § 250.842(a).

Approval of Temporary Quarters

Comment: A commenter asserted that requiring District Manager approval before installation of temporary quarters is inconsistent with other similar requirements contained in subpart H. The commenter noted that § 250.842 requires submission for approval of drawings for installation or modification of production safety systems followed by submission of as-built drawings 60 days after production commences. The commenter states that District Manager approval is not needed to begin installation of these critical safety systems; however, production cannot commence until District Manager approval is received. The commenter recommended that BSEE should adopt a similar approach for temporary quarters. The commenter suggested language to revise the proposed text to require that the operator submit plans for the safety systems/safety devices to the District Manager before installing temporary quarters and that BSEE should approve the temporary quarters before they are occupied.

Response: BSEE disagrees. Temporary quarters are directly related to personnel safety, since they are used for living and sleeping. The nature of the use of temporary quarters necessitates the approval of the safety systems and safety devices before they are installed. Operators often install temporary quarters for a specific short term use, where timing is an important factor in planning. If operators install the quarters before the safety systems and safety devices are approved by the

District Manager, there is a risk that the use of the quarters could be delayed if BSEE delays its approval. Approval prior to installation provides for more certainty. BSEE also disagrees with the commenter's assertion that the approval of safety systems and safety devices on temporary quarters is similar to the approval and installation of production safety systems, because production safety systems need more lead time for installation.

Small Temporary Equipment

Comment: A commenter stated that it is not feasible to submit certain small temporary equipment meant for testing and maintenance to the District Manager for approval prior to installation and recommended that BSEE revise the final rule to limit this requirement to ''major'' temporary equipment.

Response: BSEE disagrees. BSEE needs to see all temporary equipment that is associated with the production process system, regardless of size, to ensure safety of the system. Therefore, BSEE has not adopted this recommendation in the final rule.

Approval of Temporary Generators

Comment: A commenter recommended that BSEE not finalize the proposed § 250.867(d). The commenter asserted that generators are a vital piece of equipment that provides power for living conditions and supervisory control and data acquisition (SCADA) systems, gas detection systems, fire detection systems, process systems, and safety/pollution control devices. The commenter stated that requiring BSEE approval prior to installing such a vital piece of equipment creates not only less than desirable living conditions but also loss of control of operations. The commenter noted further that an operator's SEMS program provides guidance and procedures for the installation of temporary or permanent equipment. The commenter noted that temporary generators result in a minimal impact to the overall safety system. The commenter stated that these generators are put in pre-designated electrical switchgear systems for auxiliary power while the primary generator is inoperable and sent in for repair, and that this spare switchgear breaker should already be identified on one-line electrical drawings.

Response: BSEE agrees with the comment, in part, but not with the commenter's conclusion. Not all temporary generators fall under the situation described in the comment. The final rule requires operators to seek approval only for temporary generators that are not already shown on the one-line drawings. So the regulation does not apply to many of the situations raised in the comment. BSEE did not make any revisions to the regulatory text based on this comment.

Time Delays on Pressure Safety Low (PSL) Sensors (Section 250.870)

Section summary: This section of the existing regulations provides requirements related to time delays for pressure safety devices. The existing regulations provide a reasonable period for pressure to fluctuate before it becomes necessary to alert the operator to an abnormal condition that must be addressed.

The final rule is revising the requirement in paragraph (a) of this section regarding the use of Class B, Class C, or Class B/C logic. This section currently states that the operator ''may apply any or all of the industry standard Class B, Class C, or Class B/C logic to all applicable PSL sensors installed on process equipment, as long as the time delay does not exceed 45 seconds.'' As proposed, BSEE is deleting the phrase ''any or all of the'' from that sentence in the final rule, as it is not needed. We will no longer require the operator to seek approval from BSEE for alternate procedures under § 250.141 to use a PSL sensor with a time delay that is greater than 45 seconds. Instead, the revised section states that if the device may be bypassed for greater than 45 seconds, the operator must monitor the bypassed devices in accordance with § 250.869(a). The alternate procedure approval is not needed, since monitoring bypassed devices is authorized in the current § 250.869(a).

Impact on Approved Departure Requests

Comment: Industry commenters requested clarification as to how the proposed revision to § 250.870 will impact departure requests that were issued under the current (2016) requirements for PSL time delays that are greater than 45 seconds.

Response: The changes in the final rule are consistent with departures approved by BSEE.

Suggested Revisions to § 250.870(a)(1)

Comment: Industry commenters stated that the examples given in § 250.870(a)(1) are non-API RP 14C devices, and on reciprocating compressors the timer typically is set for 90 seconds. Commenters suggested deleting the words ''but not more than 45 seconds'' since that is covered in § 250.870(a) or changing the example to ''a hydrocarbon pump PSL sensor which typically clears in 15 seconds but before 45 seconds.''

Response: BSEE disagrees with the suggested change, which is substantive and would require a new proposal and opportunity for comment. The language in the proposed rule and the final rule is consistent with long standing BSEE policy.

Monitoring Class C Safety Devices

Comment: Industry commenters recommended adding the following sentence at the end of § 250.870(a)(2) for clarification: ''Class C safety devices while bypassed should be monitored until they are in full service.''

Response: Although this was not part of the proposed rule, BSEE agrees with the comment. Class C devices, by their nature, allow the devices to be bypassed for more than 45 seconds. Therefore, we are including an express statement that, if a Class C safety device is bypassed, the operator must monitor the device until it is in full service. This is consistent with the language of revised § 250.870(a).

Suggested Revisions to § 250.870(a)(3)

Comment: Industry commenters recommended inserting the sentence, ''They are often used for compressor discharge PSL(s) for the loading process'' after the first sentence in § 250.870(a)(3) for clarification, and inserting ''also'' into the following sentence so that the paragraph reads ''Class B/C safety devices have logic that allows for the PSL sensors to incorporate a combination of Class B and Class C circuitry. They are often used for compressor discharge PSL(s) for the loading process. These devices are also used to ensure that the PSL sensors are not unnecessarily bypassed during startup and idle operations (*e.g.,* Class B/C bypass circuitry activates when a pump is shut down during normal operations). The PSL sensor remains bypassed until the pump's start circuitry is activated and either:''

Response: BSEE disagrees. The suggested revision does not add value and thus no change was made in the final rule. There is no need to identify every possible application of these sensors and the use that is identified in the regulatory text is not exclusive. The purpose of this regulation is to direct how these sensors are to be used, not the circumstances under which they are to be used.

Suggested Revisions to § 250.870(a)(3)(i)

Comment: Industry commenters stated that, with regard to § 250.870(a)(3)(i), Class B/C timers are used on Compressor discharge PSL(s), turbine compressors typically take up to 3 minutes to clear the discharge PSL(s)

after loading the compressor, and reciprocating compressors can take more than 45 seconds. Commenters further stated that there are situations (Pigging Pumps, Equalization Pumps, Pipeline Pumps, etc.) where it takes longer than 45 seconds to build up line pressure and clear the PSL to normal operating pressure. Commenters recommended removal of the phrase ''no later than 45 seconds from start activation,'' as this is covered under § 250.870(a), which allows going beyond 45 seconds provided the Class B timer is monitored and documented.

Response: BSEE disagrees with the suggested change. The language in § 250.870(a)(3)(i) defines what a Class B/C timer is, while the introductory language in § 250.870(a) states what actions the operator must take if the delay could exceed 45 seconds.

Recommendation To Delete § 250.870(b)

Comment: Industry commenters recommended that BSEE should delete existing § 250.870(b) because it is a duplicative requirement, stating that there are manual bypassing rules in § 250.869 that allow the bypass of a safety device for unlimited time periods provided that the operator is monitoring the sensing device and able to shut it in.

Response: BSEE disagrees because these sections are not duplicative. Section 250.869 establishes the general requirements related to monitoring bypassed devices, while § 250.870 addresses specific requirements for bypassing sensors in the absence of time delay circuitry.

Atmospheric Vessels (Section 250.872)

Section Summary: Paragraph (a) of the existing regulations requires operators to equip atmospheric vessels (except certain Department of Transportation (DOT)-approved transport tanks) that process or store liquid hydrocarbons (or other Class I liquids) with protective equipment identified in section A.5 of API RP 14C (Seventh Edition). Paragraph (b) of the existing section requires operators to ensure that all atmospheric vessels are designed and maintained to ensure the proper working conditions for Level Safety High (LSH) sensors and that LSH sensors on vessels with oil buckets are installed to sense oil levels in the buckets. Paragraph (c) of the existing section requires operators to ensure that flame arrestors are maintained to ensure proper functioning.

BSEE proposed to revise paragraph (a) to require that atmospheric vessels connected to the process system and that contain a Class I liquid must be reflected on the corresponding drawings, along with the associated pumps. In addition, BSEE proposed to revise § 250.198 by updating the reference to API RP 14C, as used in § 250.872 and elsewhere, from the Seventh Edition to the Eighth Edition. BSEE proposed to revise paragraph (b) in order to (i) emphasize that operators or manufacturers must design LSH sensors on atmospheric vessels to prevent pollution (per § 250.300(b)(3) and (4)); and (ii) limit the existing requirement applicable to LSH sensors on vessels with oil buckets to newly-installed vessels only. BSEE also proposed to eliminate paragraph (c) as unnecessary and redundant with § 250.800. Based on consideration of public comments on this section of the proposed rule, BSEE made some revisions to the proposed text in this final rule to clarify the requirements for LSH sensors on vessels with oil buckets and to provide consistency with other parts of the regulations.

As was proposed, BSEE is revising paragraph (a) of this section to state that the operator must include on the design documents atmospheric vessels connected to the process system that contains a Class I liquid and the associated pumps, as required in § 250.842(a)(1) through (4) and (b)(3).

In the final rule, BSEE is also revising the existing provisions for oil LSH sensors in paragraph (b). The proposed provision stated that operators must design and install LSH sensors to prevent pollution. In the final rule, BSEE removed this provision from paragraph (b) and moved it to final paragraph (c), with revisions. In addition, the final rule, unlike the proposed rule, removes the provision from existing paragraph (b) that specifies that, for newly installed atmospheric vessels with oil buckets, operators must install the LSH sensor to sense the level in the oil bucket. This requirement regarding LSH sensors on oil buckets was overly prescriptive and too narrow, however new paragraph (c) preserves the intent of the existing requirement.

As proposed, BSEE is deleting existing paragraph (c) in the final rule. The existing paragraph added maintenance of flame arrestors and duplicates § 250.880(c)(3)(viii). BSEE is adding a new paragraph (c) to specifically address the design requirements for atmospheric vessels. The new provision in final paragraph (c) requires operators to design, install, and maintain all atmospheric vessels to prevent pollution, as required under § 250.300(b)(3) and (4). BSEE added this language, which was not in the proposed rule, to clarify that the pollution prevention requirements of those paragraphs apply to all atmospheric vessels, including atmospheric vessels that have oil buckets. It reflects existing requirements and does not constitute a substantive change.

API RP 14C and Corresponding Drawings

Comment: Some commenters made suggestions for changes to this section to address changes in the numbering in the Eighth Edition of API RP 14C from the Seventh Edition. In addition, some commenters recommended that paragraph (a) should be more specific when referencing ''corresponding drawings'' and recommended that BSEE replace that term with ''design documents listed in § 250.842(a)(1) through (4) and § 250.842(b)(3).''

Response: The commenters' suggestion regarding revising the reference to section A of RP 14C is moot because, as explained elsewhere in this final rule, BSEE has decided not to finalize the incorporation of the Eighth Edition of API RP 14C at this time. BSEE agrees with the comment that the proposed revision regarding ''corresponding drawings'' needed clarification, and has replaced that term in the final rule with the phrase recommended by the commenters; this is also consistent with changes made in § 250.842.

Location of LSH Sensor

Comment: Some commenters asserted that the location of the LSH sensor in proposed paragraph (b) is not the most relevant criterion [for preventing spills], and that installing an LSH sensor in the oil bucket would not necessarily ensure that oil will not carry over and spill. Those commenters stated that the most important factor is that the vessel should be designed to prevent pollution, and they noted that many atmospheric vessels are designed with the LSH sensor in the tank itself and are capable of preventing spillage. Thus, the commenters recommended that BSEE change the proposed revisions to paragraph (b) to include performance-based language to read: ''You must ensure that all atmospheric vessels installed are designed and maintained to ensure the proper working conditions for LSH sensors. The LSH must be designed and installed in such a way to prevent pollution. The LSH sensor bridle must be designed to prevent different density fluids from impacting sensor functionality.''

Response: BSEE agrees with most of the commenters' concerns and with most of commenters' suggested changes

to proposed paragraph (b), except that BSEE has determined that more clarity is appropriate in order to prevent confusion and uncertainty regarding what ''prevent pollution'' entails. Accordingly, BSEE revised the language in the final rule to address the design of all atmospheric vessels to prevent pollution, including, but not limited to, the displacement of oil out of an overboard water outlet, as previously described. As with the proposed rule, this change to the regulation would not substantively change the existing requirements.

Elimination of Existing Paragraph § 250.872(c)

Comment: Two commenters agreed with the proposed elimination of existing paragraph (c) from § 250.872. One of those commenters pointed out that paragraph (c) is unnecessary in light of the broader testing provision in § 250.880(c)(3)(viii).

Response: BSEE agrees that the proposed elimination of the existing paragraph (c) is appropriate and the final rule eliminates that paragraph. BSEE has reorganized and simplified the remaining requirements of that section in the final rule by adding a new paragraph (c) that addresses requirements for atmospheric vessels.

Exempting Small Atmospheric Vessels

Comment: One industry commenter recommended that paragraph (a) of the rule exempt small atmospheric vessels (*i.e.,* with design capacity of 770 gallons or less) from the safety equipment requirements of this provision, asserting that those requirements are not practical for such small vessels and the risk posed by small vessels do not warrant the expense. The commenter added that such a volume threshold would exempt most offshore tote tanks, which have historically been considered to be temporary equipment. The same commenter also requested that BSEE limit the applicability of the requirement in paragraph (b) regarding design and maintenance of atmospheric vessels to ensure proper working conditions for LSH sensors to vessels ''installed more than one year after the effective date'' of the final rule, asserting that requiring that operators retrofit existing vessels with LSH sensors would not be justified by the risk.

Response: BSEE disagrees with both of these comments. With respect to an exemption in paragraph (a) for small vessels, these vessels contain liquid hydrocarbons or other Class I liquids, which are flammable. It is important to ensure these tanks are properly protected, regardless of size.

With respect to limiting paragraph (b) to new vessels installed at least one year after the effective date, BSEE notes that the basic requirement of paragraph (b) regarding proper working conditions for LSH sensors was added to § 250.872 by the 2016 PSSR; thus, operators have had ample time to comply or to address compliance issues. BSEE also notes that operators with vessels that were designed, but not installed, prior to the effective date of the 2016 PSSR may submit a departure request under § 250.142.

LSH Sensors Requirements for Newly Installed Equipment

Comment: A commenter stated that paragraph (b) should not mandate LSH sensors to address oil buckets on newly installed equipment. The commenter asserted that the language in existing paragraph (b) regarding oil buckets is too prescriptive and that compliance with the general design requirements in the remainder of paragraph (b) would be sufficient.

Response: BSEE agrees in general with the commenter's belief that compliance with the other design requirements in proposed paragraph (b)—modified in the final rule, as previously described in response to a comment—would be sufficient to prevent pollution without the existing language regarding oil buckets. Accordingly, the final rule deletes the existing prescriptive language from the last sentence of paragraph (b), which would have been retained for new oil buckets under the proposed rule. The final rule includes more general design requirements in new paragraph (c), as previously described.

Subsea Gas Lift Requirements (Section 250.873)

Section summary: This section of the existing regulations addresses requirements for gas lift equipment used in subsea wells, pipelines, and risers. These requirements include: Designing gas lift supply pipelines according to API RP 14C, installation of safety valves, including a GLSDV, valve closure times, and periodic testing of gas lift valve systems.

As proposed, the final rule revises the table in paragraph (b) of this section to replace multiple references to API Spec. 6A with ANSI/API Spec. 6A.

Recommendation To Delete GLSDVs From SPPE

Comment: One commenter recommended revising the table in this section to delete GLSDVs from the list of SPPE.

Response: No change is necessary. BSEE did not revise § 250.801 or § 250.802 to delete GLSDVs as SPPE, for the reasons stated in those sections of this preamble. Therefore, a similar reference should be retained here for consistency.

Subsea Water Injection Systems (Section 250.874)

Section summary: This section of the existing regulations addresses requirements related to water flood injection via subsea wellheads. This includes adherence to API RP 14C for equipment that is located on platforms, the use of safety valves including a water injection valve and water injection shutdown valve, valve closure times, and testing of the water injection valve.

BSEE proposed to revise paragraph (g)(2) of this section to replace the references to API Spec. 6A with ANSI/API Spec. 6A. BSEE received no comments on this proposed revision, and the final rule implements the revision as proposed.

Fired and Exhaust Heated Components (Section 250.876)

Section summary: This section of the existing regulations contains inspection requirements for certain tube-type heaters to minimize the risks of potential safety issues for offshore personnel. As proposed, the final rule revises this section to delete the requirement to remove the fire tube during inspection. BSEE recognizes that there are other ways to inspect the fire tube, without removing it. For example, operators could use a combination of cameras with thickness sensors to inspect fire tubes that cannot be easily accessed, instead of removing the fire tube completely. This change allows the operator to determine an appropriate method to inspect the fire tube and is a more flexible, performance-based approach. BSEE recognizes the need for fire tube inspections; however, the process to remove the fire tube for inspection can pose its own safety concerns. In some cases, use of an alternative method for inspections would increase safety, since removing the fire tube may present a hazard if the fire tube is located in a place where it is not easy to remove.

The existing regulations require that an operator use a qualified third party to remove and inspect the fire tubes of tube-type heaters every five years. Although BSEE did not propose to change this requirement, based on comments BSEE received, BSEE revised the final rule to allow the use of ''qualified third-party.''

Qualified Personnel Inspections

Comment: A commenter suggested that BSEE revise the phrase a ''qualified third party'' to ''qualified personnel'' because the term ''qualified'' is subject to interpretation and the requirement for a third party to perform the inspection is not consistent with existing regulation. The commenter also stated that BSEE's requirement for the fire tube inspection to be done by a third party would not be consistent with § 250.851(a)(1)(ii). The commenter stated that revising the term ''a qualified third party'' to ''qualified personnel'' should satisfy BSEE's desire for an inspection to be performed by someone with appropriate knowledge, experience, and training. The commenter asserted that its suggested change would be consistent with § 250.851(a)(1)(ii) by not requiring the inspector to be a third party and that its suggested change would take advantage of a standard already incorporated by reference without conflicting with it.

Response: BSEE believes that the commenter's recommendation has merit; however, because the recommendation is substantive and BSEE did not include it in the proposed rule, we are not implementing it in this final rule. We will take it under advisement for potential future rulemaking.

Production Safety System Testing (Section 250.880)

Section summary: This section establishes requirements for testing of the various components of the production safety system. In addition, this section requires notifications to BSEE at various stages before and during production.

As proposed, BSEE is clarifying language in paragraph (a)(1) of the final rule to state that the operator must notify BSEE at least 72 hours before commencing ''initial'' production on a facility. The existing language states that the operator must notify BSEE ''at least 72 hours before commencing production.'' It did not specify that this notification was for initial production, leading to possible confusion as to whether the operator must notify BSEE anytime production on a facility has been shut in and the operator is ready to resume production. This was not BSEE's intent. BSEE is also rewording the paragraph and adding a cross-reference to § 250.800(a)(2) for clarity.

As proposed, BSEE is also revising paragraphs (c)(2)(iv) and (c)(4)(iii) of the final rule to replace the incorporation by reference of API RP 14H, which was withdrawn by API, with API STD 6AV2. Similarly, BSEE is revising § 250.880(c) of the final rule to replace the incorporation by reference of API RP 14B with ANSI/API RP 14B.

Commencement of Production

Comment: Industry commenters recommended inserting ''initial'' into § 250.880(a)(2) to be consistent with the proposed language in § 250.880(a)(1), so that the paragraph reads ''Notify the District Manager upon commencement of initial production so that BSEE may conduct a complete inspection.''

Response: BSEE disagrees. The intent of § 250.880(a)(2) is that it applies any time an operator shuts down and restarts a facility, so that the operator notifies BSEE when a facility is on production. This is different from the intent of the notification required in § 250.880(a)(1), which is to notify BSEE in advance of initial production, so that BSEE may conduct a preproduction inspection.

Updating API RP 14C

Comment: Industry commenters stated that, if the Eighth Edition of API RP 14C is incorporated by reference as proposed in § 250.198, then BSEE should update § 250.880(b)(2) by deleting ''D'' in the sentence ''Perform testing and inspection in accordance with API RP 14C, Appendix D I (incorporated by reference as specified in § 250.198), and the additional requirements found in the tables of this section or as approved in the DWOP for your subsea system.''

Response: As discussed elsewhere in the preamble, BSEE has decided not to incorporate by reference the Eighth Edition of API RP 14C in the final rule. Accordingly, the proposed revision would be inconsistent with that decision.

Alternative Method Verifying the Functionality of PSVs

Comment: Industry commenters recommended that alternatives for compliance, such as the use of API RP 510, should be incorporated into this section. Specifically, commenters recommended that the final rule explicitly include an alternative method of verifying the functionality of PSVs in § 250.880(c)(1)(i) that allows for an inspection program based on API RP 510 and API RP 576 as an alternative to lifting the main valve piston during the PSV test. Commenters also recommended the inclusion of weighted disc vent valves on atmospheric tanks in an inspection program based on API RP 510 and API RP 576 in lieu of annual disassembly and inspection.

Response: BSEE disagrees with the recommendation to include the additional method to verify functionality in the regulations. Testing of the piston movement is a critical test to verify functionality of the PSV.

Recommendation To Extend Inspection Intervals for Flame, Spark, and Detonation Arrestors

Comment: Industry commenters recommended that § 250.880(c)(3)(viii) should be changed to extend visual inspection intervals from annually, not to exceed 12 calendar months between tests, to not to exceed 3 years, with an exception for stack/spark arrestors on forced draft and natural draft fired components of not to exceed every 5 years. Commenters also recommended further extending inspection intervals where a risk assessment indicates that longer intervals are appropriate, noting that the arrestor performance can be monitored, and issues can be detected by observing the operating conditions of the component on which it is installed.

Response: BSEE disagrees. There is insufficient evidence to support extending the current inspection intervals beyond 1 year. Further, API RP 14C, Seventh Edition, section D.2.2., states that all safety devices should be inspected at least once per year.

Technology Advances for Fire—(Flame, Heat, or Smoke) and Gas Detection Systems

Comment: Commenter suggested that BSEE update § 250.880(c)(3)(ii) to acknowledge technology advances in flame and gas detection devices, noting as an example that infrared gas detectors do not require the same frequency of calibration as electrochemical based detectors to function reliably. The commenter further suggested that the frequency requirement should be as recommended by the manufacturer, but not more than 12 months.

Response: BSEE disagrees. The referenced technology is still relatively new. BSEE may consider revising timeframes once industry has proven the efficacy of the technology.

PSV Maintenance Programs

Comment: An industry commenter stated that its experience with a PSV maintenance program indicated that a risk based overhaul program aligned with API Standard 510 resulted in safe and reliable PSV and vent performance. The commenter recommended adding an alternative option to the testing requirements in § 250.880(c)(2)(i) under which annual testing would not be required if an operator has a risk-based overhaul program in place. Further, if

that alternative is not accepted, the commenter recommended that the regulation should allow additional time to perform the first test on those PSVs (and weighted disc vent valves used as PSVs) where it currently is not feasible to lift the piston during the test. The commenter also supported an additional 6 years beyond the effective date of the final rule to complete the first test. The commenter expressed concern that the proposed revision might result in industry and BSEE spending a significant amount of time on filing and responding to departure requests, and that such time could be better spent preparing to implement the rule.

Response: BSEE disagrees. The need to verify the piston movement is a safety-critical issue. Allowing an additional 6 years for this requirement to take effect would result in an unreasonable timeframe to come into compliance with a requirement that has been in place since November, 2016. BSEE's position remains that in order to validate the proper functioning of the PSV, the test must involve the movement of the piston.

Inspections Frequency for Flame, Spark, and Detonation Arrestors (Flame Arrestors)

Comment: An industry commenter recommended that BSEE add a compliance option to § 250.880(c)(2)(viii) to allow annual visual inspections of flame, spark, and detonation arrestors (flame arrestors). Commenter suggested an alternate approach that would allow setting an alternate inspection frequency of up to 6 years based on failure modes and consequence analysis, or replacement of flame arrestors every 6 years, with a 3 to 6 year interval. The commenter also suggested that undertaking inspections too frequently may expose technicians to unnecessary personal safety risk from working at height over water.

Response: BSEE disagrees. There is insufficient evidence to support extending the current inspection intervals beyond 1 year. Moreover, BSEE believes that this change would require an additional proposed rule since it is a substantive change to existing requirements that was not in the 2017 proposed rule.

What industry standards must your platform meet? (Section 250.901)

Section summary: This section addresses structural requirements for production facilities. BSEE proposed revising paragraph (a) of § 250.901 and the table in paragraph (d) to update the incorporation by reference of API STD 2RD. However, BSEE is not updating the incorporated edition of API STD 2RD at this time, so no change to this section is included in the final rule.

Title of API STD 2RD

Comment: One commenter noted that the existing regulations did not cite the correct title for API STD 2RD.

Response: BSEE is not incorporating by reference the latest the edition of this document, which is API STD 2RD. The existing regulations refer accurately to API RP 2RD, which is currently incorporated by reference, so there is no need to revise this paragraph.

Design Requirements for DOI Pipelines (Section 250.1002)

Section summary: This section addresses design requirements for pipelines. The final rule revises paragraph (b) of § 250.1002 to update the references to ANSI/API Spec. 6A and to change the reference from ''API Spec. 17J'' to ''ANSI/API Spec. 17J,'' which is the proper title of the standard as incorporated in the existing regulation.

Title of API STD 2RD

Comment: One commenter noted that the existing regulations did not cite the correct title for API STD 2RD.

Response: BSEE is not incorporating by reference the latest the edition of this document, which is API STD 2RD. The existing regulations refer accurately to API RP 2RD, which is currently incorporated by reference, so there is no need to revise this paragraph.

What To Include in Applications (Section 250.1007)

Section summary: This section specifies what operators must include in their pipeline applications. As proposed, BSEE is revising paragraph (a) of § 250.1007 to change the reference from ''API Spec. 17J'' to ''ANSI/API Spec. 17J,'' which is the proper title of the standard as incorporated in the existing regulation. BSEE did not receive any comments on this section of the proposed rule.

H. Additional Comments Solicited

In the proposed rule, BSEE solicited comments on a number of issues related to 30 CFR part 250 for which BSEE did not propose any specific revisions to the existing regulations but which BSEE might have addressed in this final rule or might address in possible future rulemakings. *See* 82 FR 61714–61715. Those issues included: Whether the definition of Best Available and Safest Technology (BAST) in § 250.107(c) properly reflects the statutory intent; how to best organize § 250.198 (''Documents incorporated by reference''), to make it clearer and even more consistent with OFR's recommendations for incorporations by reference; whether to modify conditions for SPPE failure analysis under § 250.803; and whether to extend the timeframe for initial pressure testing of PSVs under § 250.880. BSEE also solicited comments on whether BSEE should revise part 250 to address recommendations (such as requiring a safety device to de-energize electrostatic heater treaters) resulting from BSEE's investigation of the November 2014 explosion and fatality on West Delta Block 105 Platform E (*see https://www.bsee.gov/wd-105-e-panel-report*). Finally, BSEE solicited comments on potential obstacles for implementing the proposed requirements in the proposed rule, including comments on the feasibility of implementation and any hardships operators could encounter during implementation of a final rule.

With respect to whether the definition of BAST in § 250.107(c), as revised in the 2016 PSSR, properly reflects BSEE's statutory mandate concerning the use of BAST, BSEE received one comment from industry that suggested language for revising § 250.107(c) in a way that would prevent the Director from making a new BAST determination without going through a prior notice and comment rulemaking process. That same concept was addressed and rejected by BSEE in the 2016 final PSS rulemaking, and BSEE does not believe that the current industry comment on that issue provides any basis for revising § 250.107(c) at this time. Another commenter suggested that BSEE should consider modifying the language of § 250.107(c)(2) to encourage the submission of applications to BSEE to make BAST determinations. BSEE will take that suggestion under advisement.

With respect to comments submitted regarding potential problems with implementation of the specific proposed requirements, BSEE has either addressed those concerns in response to the comments on those specific requirements elsewhere in this final rule or has otherwise considered those comments in developing its plans for implementing the final rule.

With respect to potential non-substantive changes to § 250.198, for the purposes of reorganizing and revising that section, one commenter stated that meaningful comments on possible non-substantive changes would not be practical until after BSEE proposes

specific revisions to that section.[18] BSEE will continue to consult with the OFR regarding its suggestions for specific, non-substantive organizational and language changes to § 250.198 and expects to address such revisions in a separate rulemaking.

With respect to the other issues on which BSEE solicited comments (failure analysis conditions under § 250.802; timeframe for initial PSV testing under § 250.880; and recommendations from the 2014 West Delta Block investigation), BSEE received a number of specific comments and is not implementing any changes based on those comments in this final rule. However, BSEE will consider those comments and decide at a later date whether to propose any additional revisions to the regulations.

Procedural Matters

Regulatory Planning and Review (E.O. 12866, E.O. 13563, E.O. 13771)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) will review all significant rules. OIRA has reviewed this final rule and determined that it is significant because it raises novel legal or policy issues. After reviewing the requirements of this rule, BSEE has determined that it will not have an annual effect on the economy of $100 million or more nor adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, public health or safety, the environment, or state, local, or tribal governments or communities.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

E.O. 13771 requires Federal agencies to take proactive measures to reduce the costs associated with complying with Federal regulations. BSEE has evaluated this rulemaking based on the requirements of E.O. 13771. Details on the estimated cost savings of this proposed rule are found in the final rule's economic analyses, available in the public docket for this rulemaking. Important aspects of this rule (*e.g.,* regulatory clarifications, reduction in paperwork burdens, adoption of industry standards, and migration to performance-based standards for select provisions) make it an E.O. 13771 deregulatory action. While this final rule reduces regulated entity compliance burdens, the rule continues to ensure safety and environmental protection for offshore production operations.

This rule primarily revises sections of 30 CFR part 250, subpart H, and updates standards referenced therein. BSEE has reassessed a number of the provisions in the existing regulations and determined that some provisions should be written as performance-based standards rather than prescriptive requirements. Other proposed revisions reduce or eliminate parts of the paperwork burden of the existing regulations, while ensuring continued safety and environmental protection. BSEE has reexamined the economic analysis for the 2016 PSSR and now believes that it may have underestimated some compliance costs. BSEE is therefore revising some of the compliance cost assumptions in the economic analysis for this rulemaking. The underestimation of compliance costs in the 2016 analysis was primarily related to (1) the burden for obtaining PE review and stamping of all drawings on a facility if any production equipment modifications are proposed and (2) duplicative independent third party equipment certifications that will no longer be required under this rule (but are incorporated in the baseline). BSEE underestimated both the cost and number of PE reviews required under proposed § 250.842. The cost of independent third party testing and certifications required under proposed § 250.802(c)(1) was also underestimated by BSEE in 2016.

BSEE expects this final rule to reduce the regulatory burden on industry. Regulatory compliance cost savings are a result of changes in the rule that will reduce burden hours, PE stamping for production safety system components, and independent third party equipment certifications. BSEE estimates this final rule will reduce industry compliance burdens by $13 million annually. Over 10 years, BSEE estimates the reduced compliance burdens and cost savings will be $112 million discounted at 3 percent or $92 million discounted at 7 percent.

The cost savings for revised provisions on PE stamping of production safety system modification documents (§ 250.842) are the single largest cost savings resulting from this rule. The additional PE certifications and stamping will no longer be required for all production safety system documents in an application, but will be required only for the documents for those components being modified. BSEE estimates the net regulatory cost savings for the § 250.842 changes will be $5.7 million in the first year and $40 million over 10 years discounted at 7 percent. The other provision providing substantial regulatory relief is the elimination of the third party reviews and certifications for select SPPE. Compliance with the various required standards (including ANSI/API Spec. Q1, ANSI/API Spec. 14A, ANSI/API RP 14B, ANSI/API Spec. 6A, and API Spec. 6AV1) ensures that each device will function in the conditions for which it was designed. The table below summarizes BSEE's estimate of the 10-year final rule compliance cost savings. Additional information on the compliance costs, savings, and benefits can be found in the final Regulatory Impact Analysis (RIA) posted in the public docket for this final rule.

[18] Some commenters made comments that addressed the proposed substantive changes to the specific documents referenced in § 250.198 or raised more general concerns with the merits of, and processes for, incorporation by reference generally. BSEE has responded to those comments elsewhere in this final rule.

Total Estimated Cost Savings Associated with Amendments to Subpart H (2016$)

10-Year	Undiscounted	Discounted at 3%	Discounted at 7%
Total	**$131,132,822**	**$111,858,957**	**$92,102,206**
Annualized	**$13,113,282**	**$13,113,282**	**$13,113,282**

BSEE has developed this final rule consistently with the requirements of E.O. 12866, E.O. 13563, and E.O. 13771. This rule revises various provisions in the current regulations with performance-based requirements based upon the best reasonably obtainable safety, technical, economic, and other information. BSEE has provided industry with more flexibility to meet the safety or equipment standards rather than specifying the compliance method when practical. Based on a consideration of the qualitative and quantitative safety and environmental factors related to the rule, BSEE's assessment is that its promulgation is consistent with the requirements of the applicable E.O.s and of OCSLA and that this rulemaking will reduce unnecessary burdens on stakeholders while ensuring safety and environmental protection for OCS production operations.

Small Business Regulatory Enforcement Fairness Act and Regulatory Flexibility Act

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This rule:

- Will not have an annual effect on the economy of $100 million or more. This rule will revise the requirements for oil and gas production safety systems. The changes will not have any negative impact on the economy or any economic sector, productivity, jobs, the environment, or other units of government. The requirements primarily relate to the incorporated industry standards, to SPPE certification, and to PE stamping and will not add time to development and production processes.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements will apply to all entities operating on the OCS.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires agencies to analyze the economic impact of regulations when a significant economic impact on a substantial number of small entities is likely and to consider regulatory alternatives that will achieve the agency's goals while minimizing the burden on small entities. The Regulatory Flexibility Analysis (RFA), which assesses the impact of this rule on small entities, is found in the RIA within the public docket for this rule.

As defined by the Small Business Administration (SBA), a small entity is one that is ''independently owned and operated and which is not dominant in its field of operation.'' What characterizes a small business varies from industry to industry in order to properly reflect industry size differences. This rule would affect lease operators that are conducting OCS production operations. BSEE's analysis shows this will include about 69 companies with active operations. Of the 69 companies, 21 (30 percent) are large and 48 (70 percent) are small. Entities that will operate under this rule primarily fall under the SBA's North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction). For NAICS classifications 211120 and 211130, SBA defines a small business as one with fewer than 1,251 employees.

BSEE considers that a rule will have an impact on a ''substantial number of small entities'' when the total number of small entities impacted by the rule is equal to or exceeds 10 percent of the relevant universe of small entities in a given industry. BSEE's analysis shows that there are 48 small companies with active operations on the OCS. All of the operating businesses meeting the SBA classification are potentially impacted; therefore, BSEE expects that the final rule will affect a substantial number of small entities.

This rule is a deregulatory action, and BSEE has estimated the overall associated cost savings. BSEE has estimated the annualized cost savings and allocated those savings to small or large entities based on the number of active or idle OCS production facilities. Using the share of small and large companies' production facilities, we estimate that small companies will realize 87 percent (~$11.4 million) of the annualized cost savings from this rule and large companies 13 percent (~$1.7 million). Additional information can be found in the RFA in the docket for this final rule.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

This final rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A Takings Implications Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A federalism summary impact statement is not required.

The BSEE has the authority to regulate offshore oil and gas production. State governments do not have authority over offshore production on the OCS. None of the changes in this rule will affect areas that are under the

jurisdiction of the States. It will not change the way that the States and the Federal government interact, or the way that States interact with private companies.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors, ambiguity, and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Paperwork Reduction Act (PRA) of 1995

This final rule contains a collection of information that has been submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) The title of the collection of information for this rule is 30 CFR part 250, subpart H, Oil and Gas Production Safety Systems—Revisions. The OMB approved the collection under Control Number 1014–0003, expiration August 31, 2019, containing 95,997 hours and $5,582,481 non-hour cost burdens. Due to this rulemaking, the revisions to the collection will result in a total of 93,385 hours and $10,912,696 non-hour cost burdens. Potential respondents comprise Federal OCS oil, gas, and sulfur operators and lessees. Responses to this collection of information are mandatory or are required to obtain or retain a benefit. The frequency of responses submitted varies depending upon the requirement; but are usually on occasion, annually, and as a result of situations encountered. The ICR does not include questions of a sensitive nature. BSEE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR part 2), 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR part 252, *OCS Oil and Gas Information Program.*

Changes to the information collection due to this rulemaking are as follows:

BSEE proposed removing the independent third party certification requirements in § 250.802(c)(1) altogether, however a number commenters were concerned that there would be no way to ensure that operators are using SPPE that is designed for the conditions in which it will operate. To address these concerns, BSEE preserved certain independent third party certifications, and otherwise created a requirement to maintain documentation of how operators ensured the device being used is designed to function in the environment to which it will be exposed.

- Section 250.802(c)(1) is being rewritten and will add 250 burden hours for developing and maintaining the description of process; as well as make available to BSEE upon request. The revisions to this section will also cause a reduction in third party certification non-hour costs burdens by -$460,000.
- § 250.842(c) is being eliminated, which will cause a reduction in hour burden by −192 hours.

Between the proposed rule and this final rule, BSEE ran a query to get a more accurate number of modifications submitted under § 250.842 due to decommissioning activities and found we have been receiving fewer modifications than currently approved.

- Section 250.842 will reduce the hour burden by −2,670.
- During the 2016 rulemaking (the 2016 PSSR), BSEE inadvertently omitted costs for Professional Engineers required to stamp documents in § 250.842. This revision to the collection requests approval of an additional $5,790,215 non-hour costs (PE Costs). We are adding this category of costs in this rulemaking but note that this rulemaking reduces the amount of information a PE must stamp from the 2016 rule.

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to DOI/BSEE; ATTN: Regulations and Standards Branch; VAE–ORP; 45600 Woodland Road, Sterling, VA 20166; email *kye.mason@bsee.gov*, or fax (703) 787–1093.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact. This finding and the accompanying environmental assessment was placed in the file for BSEE's Administrative Record for the rule at the address specified in the **ADDRESSES** section. A copy may also be viewed at the Federal eRulemaking Portal: *https://www.regulations.gov* (use the keyword/ID ''BSEE–2017–0008'').

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C sec. 515, 114 Stat. 2763, 2763A–153–154). BSEE received one comment on the Data Quality Act, also known as the Information Quality Act (IQA). The commenter asserted that the draft EA under NEPA seems to be subject to the IQA and, therefore, should have been made available to the public to aid comment. Contrary to the commenter's assertion, however, BSEE did make the draft EA publicly available for review and public input during the proposed rulemaking by placing that document in the public docket along with the proposed rule.

Effects on the Nation's Energy Supply (E.O. 13211)

This final rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required. The final rule is an E.O. 13771 deregulatory action and does not add any new regulatory compliance requirements that would lead to adverse effects on the nation's energy supply, distribution, or use. Rather, the regulatory changes will help to reduce compliance burdens on the oil and gas industry that may hinder the development or use of domestically produced energy resources, while still ensuring safety and environmental protection.

Severability

If a court holds any provisions of this rule or their applicability to any person or circumstances invalid, the remainder of the provisions and their applicability to other people or circumstances will not be affected.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Continental Shelf—mineral resources, Continental Shelf—rights-of-way, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Reporting and recordkeeping requirements, Sulfur.

Joseph R. Balash,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Safety and Environmental Enforcement (BSEE) amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

Subpart A—General

■ 2. Amend § 250.198 by:
■ a. Revising paragraphs (g) introductory text and (g)(1) through (3);
■ b. Removing paragraph (g)(6) and redesignating paragraphs (g)(4) and (5) as (g)(6) and (7);
■ c. In newly redesignated paragraphs (g)(6) and (7), removing the semicolon and adding a period in its place;
■ d. Adding new paragraphs (g)(4) and (5);
■ e. Revising paragraphs (h)(1), (52), (55);
■ f. In paragraphs (h)(58) and (62), removing ''250.842(b)'' and adding in its place ''250.842(c)'';
■ g. Revising paragraphs (h)(59) through (61), (65), (68), (70), (71) and (96);
■ h. In paragraph (h)(73), removing ''250.802(b)'' and adding in its place ''250.802(c)''; and
■ i. Adding paragraph (o).

The revisions and additions read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(g) American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007–2900; *http://www.asme.org;* phone: 1–800–843–2763:

(1) 2017 ASME Boiler and Pressure Vessel Code (BPVC), Section I, Rules for Construction of Power Boilers, 2017 Edition, July 1, 2017 incorporated by reference at §§ 250.851(a) and 250.1629(b).

(2) 2017 ASME Boiler and Pressure Vessel Code, Section IV, Rules for Construction of Heating Boilers, 2017 Edition, July 1, 2017 incorporated by reference at §§ 250.851(a) and 250.1629(b).

(3) 2017 ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels; Division 1, 2017 Edition; July 1, 2017 incorporated by reference at §§ 250.851(a) and 250.1629(b).

(4) 2017 ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction of Pressure Vessels; Division 2: Alternative Rules, 2017 Edition, July 1, 2017 incorporated by reference at §§ 250.851(a) and 250.1629(b).

(5) 2017 ASME Boiler and Pressure Vessel Code, Section VIII, Rules for Construction Pressure Vessels; Division 3: Alternative Rules for Construction of High Pressure Vessels, 2017 Edition, July 1, 2017 incorporated by reference at §§ 250.851(a) and 250.1629(b).

* * * * *

(h) * * *

(1) API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Tenth Edition, May 2014; Addendum 1, May 2017; incorporated by reference at §§ 250.851(a) and 250.1629(b);

* * * * *

(52) API RP 2SK, Design and Analysis of Stationkeeping Systems for Floating Structures, Third Edition, October 2005, Addendum, May 2008, Reaffirmed June 2015; incorporated by reference at §§ 250.800(c) and 250.901(a) and (d);

* * * * *

(55) ANSI/API RP 14B, Design, Installation, Operation, Test, and Redress of Subsurface Safety Valve Systems, Sixth Edition, September 2015; incorporated by reference at §§ 250.802(b), 250.803(a), 250.814(d), 250.828(c), and 250.880(c);

* * * * *

(59) API RP 14FZ, Recommended Practice for Design, Installation, and Maintenance of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, Second Edition, May 2013; incorporated by reference at §§ 250.114(c), 250.842(c), 250.862(e), and 250.1629(b);

(60) API RP 14G, Recommended Practice for Fire Prevention and Control on Fixed Open-type Offshore Production Platforms, Fourth Edition, April 2007: Reaffirmed, January 2013; incorporated by reference at §§ 250.859(a), 250.862(e), 250.880(c), and 250.1629(b);

(61) API STD 6AV2, Installation, Maintenance, and Repair of Surface Safety Valves and Underwater Safety Valves Offshore; First Edition, March 2014; Errata 1, August 2014; incorporated by reference at §§ 250.820, 250.834, 250.836, and 250.880(c);

* * * * *

(65) API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2, Third Edition, December 2012; Errata January 2014; incorporated by reference at §§ 250.114(a), 250.459, 250.842(a), 250.862(a) and (e), 250.872(a), 250.1628(b) and (d), and 250.1629(b);

* * * * *

(68) ANSI/API Spec. Q1, Specification for Quality Management System Requirements for Manufacturing Organizations for the Petroleum and Natural Gas Industry, Ninth Edition, June 2013; Errata, February 2014; Errata 2, March 2014; Addendum 1, June 2016; incorporated by reference at §§ 250.730 and 250.801(b) and (c);

* * * * *

(70) ANSI/API Spec. 6A, Specification for Wellhead and Christmas Tree Equipment, Twentieth Edition, October 2010; Addendum 1, November 2011; Errata 2, November 2011; Addendum 2, November 2012; Addendum 3, March 2013; Errata 3, June 2013; Errata 4, August 2013; Errata 5, November 2013; Errata 6, March 2014; Errata 7, December 2014; Errata 8, February 2016; Addendum 4, June 2016; Errata 9, June 2016; Errata 10, August 2016; incorporated by reference at §§ 250.730, 250.802(a), 250.803(a), 250.833, 250.873(b), 250.874(g), and 250.1002(b);

(71) API Spec. 6AV1, Specification for Verification Test of Wellhead Surface Safety Valves and Underwater Safety Valves for Offshore Service, Second Edition, February 2013; incorporated by reference at §§ 250.802(a), 250.833, 250.873(b), and 250.874(g);

* * * * *

(96) API 570, Piping Inspection Code: In-service Inspection, Rating, Repair, and Alteration of Piping Systems, Fourth Edition, February 2016; Addendum, May 2017; incorporated by reference at § 250.841(b).

* * * * *

(o) American National Standards Institute (ANSI), *http://www.webstore.ansi.org*; phone: 212–642–4900.

(1) ANSI Z88.2–1992, American National Standard for Respiratory Protection, incorporated by reference at § 250.490.

(2) [Reserved]

Subpart H—Oil and Gas Production Safety Systems

■ 3. Amend § 250.800 by revising paragraph (a) to read as follows:

§ 250.800 General.

(a) You must design, install, use, maintain, and test production safety equipment in a manner to ensure the safety and protection of the human, marine, and coastal environments. For production safety systems operated in subfreezing climates, you must use equipment and procedures that account for floating ice, icing, and other extreme environmental conditions that may occur in the area. Before you commence production on a new production facility:

(1) BSEE must approve your production safety system application, as required in § 250.842.

(2) You must request a preproduction inspection by notifying the District Manager at least 72 hours before you plan to commence initial production, as required under § 250.880(a)(1).

* * * * *

■ 4. Amend § 250.801 by revising paragraph (a) to read as follows:

§ 250.801 Safety and pollution prevention equipment (SPPE) certification.

(a) *SPPE equipment.* You must install only safety and pollution prevention equipment (SPPE) considered certified under paragraph (b) of this section or accepted under paragraph (c) of this section. BSEE considers the following equipment to be types of SPPE:

(1) Surface safety valves (SSV) and actuators, including those installed on injection wells capable of natural flow;

(2) Boarding shutdown valves (BSDV) and their actuators. For subsea wells, the BSDV is the surface equivalent of an SSV on a surface well;

(3) Underwater safety valves (USV) and actuators;

(4) Subsurface safety valves (SSSV) and associated safety valve locks and landing nipples; and

(5) Gas lift shutdown valves (GLSDV) and their actuators associated with subsea systems.

* * * * *

■ 5. Amend § 250.802 by revising paragraphs (a), (c) and (d) to read as follows:

§ 250.802 Requirements for SPPE.

(a) All SSVs, BSDVs, USVs, and GLSDVs and their actuators must meet all of the specifications contained in ANSI/API Spec. 6A and API Spec. 6AV1 (both incorporated by reference in § 250.198).

* * * * *

(c) Requirements derived from the documents incorporated in this section for SSVs, BSDVs, SSSVs, USVs, GLSDVs, and their actuators, include, but are not limited to, the following:

(1) You must ensure that each device is designed to function in the conditions to which it may be exposed; including temperature, pressure, flow rates, and environmental conditions.

(i) The device design must be tested by an independent test agency according to the test requirements in the appropriate standard for that device (API Spec. 6AV1 or ANSI/API Spec. 14A), as identified in paragraphs (a) and (b) of this section.

(ii) You must maintain a description of the process you used to ensure the device is designed to function as required in paragraphs (a) and (c)(1) of this section and provide that description to BSEE upon request.

(iii) If you remove any SPPE from service and install the device at a different location, you must have a qualified third party review and certify that each device will function as designed under the conditions to which it may be exposed.

(2) All materials and parts must meet the original equipment manufacturer specifications and acceptance criteria.

(3) The device must pass applicable validation tests and functional tests performed by an API-licensed test agency.

(4) You must have requalification testing performed following manufacture design changes.

(5) You must comply with and document all manufacturing, traceability, quality control, and inspection requirements.

(6) You must follow specified installation, testing, and repair protocols.

(7) You must use only qualified parts, procedures, and personnel to repair or redress equipment.

(d) You must install and use SPPE according to the following table.

If . . .	Then . . .
(1) You need to install any SPPE	You must install SPPE that conforms to § 250.801.
(2) A non-certified SPPE is already in service	It may remain in service.
(3) A non-certified SPPE requires offsite repair, re-manufacturing, or any hot work such as welding.	You must replace it with SPPE that conforms to § 250.801.

* * * * *

■ 6. Revise § 250.803 to read as follows:

§ 250.803 What SPPE failure reporting procedures must I follow?

(a) You must follow the failure reporting requirements contained in section 10.20.7.4 of ANSI/API Spec. 6A for SSVs, BSDVs, GLSDVs and USVs. You must follow the failure reporting requirements contained in section 7.10 of ANSI/API Spec. 14A and Annex F of ANSI/API RP 14B for SSSVs (all incorporated by reference in § 250.198). Within 30 days after the discovery and identification of the failure, you must provide a written notice of equipment failure to the manufacturer of such equipment and to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third party as provided in paragraph (d) of this section. A failure is any condition that prevents the equipment from meeting the functional specification or purpose.

(b) You must ensure that an investigation and a failure analysis are performed within 120 days of the failure to determine the cause of the failure. If the investigation and analyses are performed by an entity other than the manufacturer, you must ensure that the analysis report is submitted to the manufacturer and to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third party as provided in paragraph (d) of this section. You must also ensure that the results of the investigation and any corrective action are documented in the analysis report.

(c) If the equipment manufacturer notifies you that it has changed the design of the equipment that failed or if you have changed operating or repair procedures as a result of a failure, then you must, within 30 days of such changes, report the design change or modified procedures in writing to BSEE through the Chief, Office of Offshore Regulatory Programs, unless BSEE has designated a third party as provided in paragraph (d) of this section.

(d) BSEE may designate a third party to receive the data required by paragraphs (a) through (c) of this section

on behalf of BSEE. If BSEE designates a third party, you must submit the information required in this section to the designated third party, as directed by BSEE.

■ 7. Amend § 250.814 by revising paragraph (d) to read as follows:

§ 250.814 Design, installation, and operation of SSSVs—dry trees.

* * * * *

(d) You must design, install, maintain, inspect, repair, and test all SSSVs in accordance with ANSI/API RP 14B (incorporated by reference in § 250.198). For additional SSSV testing requirements, refer to § 250.880.

■ 8. Revise § 250.820 to read as follows:

§ 250.820 Use of SSVs.

You must install, maintain, inspect, repair, and test all SSVs in accordance with API STD 6AV2 (incorporated by reference in § 250.198). If any SSV does not operate properly, or if any gas and/or liquid fluid flow is observed during the leakage test as described in § 250.880, then you must shut-in all sources to the SSV and repair or replace the valve before resuming production.

■ 9. Amend § 250.821 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 250.821 Emergency action and safety system shutdown—dry trees.

(a) If your facility is impacted or will potentially be impacted by an emergency situation (*e.g.,* an impending National Weather Service-named tropical storm or hurricane, ice events, or post-earthquake), you must:

(1) Properly install a subsurface safety device on any well that is not yet equipped with a subsurface safety device and that is capable of natural flow, as soon as possible, with due consideration being given to personnel safety.

* * * * *

■ 10. Amend § 250.828 by revising paragraph (c) to read as follows:

§ 250.828 Design, installation, and operation of SSSVs—subsea trees.

* * * * *

(c) You must design, install, maintain, inspect, repair, and test all SSSVs in accordance with your Deepwater Operations Plan (DWOP) and ANSI/API RP 14B (incorporated by reference in § 250.198). For additional SSSV testing requirements, refer to § 250.880.

■ 11. Amend § 250.833 by revising the introductory text to read as follows:

§ 250.833 Specification for underwater safety valves (USVs).

All USVs, including those designated as primary or secondary, and any alternate isolation valve (AIV) that acts as a USV, if applicable, and their actuators, must conform to the requirements specified in §§ 250.801 through 250.803. A production master or wing valve may qualify as a USV under ANSI/API Spec. 6A and API Spec. 6AV1 (both incorporated by reference in § 250.198).

* * * * *

■ 12. Revise § 250.834 to read as follows:

§ 250.834 Use of USVs.

You must install, maintain, inspect, repair, and test any valve designated as the primary USV in accordance with this subpart, your DWOP (as specified in §§ 250.286 through 250.295), and API STD 6AV2 (incorporated by reference in § 250.198). For additional USV testing requirements, refer to § 250.880.

■ 13. Revise § 250.836 to read as follows:

§ 250.836 Use of BSDVs.

You must install, inspect, maintain, repair, and test all new BSDVs, as well as all BSDVs that you remove from service for remanufacturing or repair, in accordance with API STD 6AV2 (incorporated by reference in § 250.198) for SSVs. If any BSDV does not operate properly or if any gas fluid and/or liquid fluid flow is observed during the leakage test, as described in § 250.880, you must shut-in all sources to the BSDV and immediately repair or replace the valve.

■ 14. Amend § 250.837 by revising paragraphs (a), (b), and (c)(5) to read as follows:

§ 250.837 Emergency action and safety system shutdown—subsea trees.

(a) If your facility is impacted or will potentially be impacted by an emergency situation (*e.g.,* an impending National Weather Service-named tropical storm or hurricane, ice events, or post-earthquake), you must shut-in all subsea wells unless otherwise approved by the District Manager. A shut-in is defined as a closed BSDV, USV, GLSDV, and surface-controlled SSSV.

(b) When operating a mobile offshore drilling unit (MODU) or other type of workover or intervention vessel in an area with subsea infrastructure, you must:

(1) Suspend production from all wells that could be affected by a dropped object, including upstream wells that flow through the same pipeline; or

(2) Establish direct, real-time communications between the MODU or other type of workover or intervention vessel and the production facility control room and develop a dropped objects plan, as required in § 250.714. If an object is dropped, you must immediately secure the well directly under the MODU or other type of workover or intervention vessel while simultaneously communicating with the platform to shut-in all affected wells. You must also maintain without disruption, and continuously verify, communication between the production facility and the MODU or other type of workover or intervention vessel. If communication is lost between the MODU or other type of workover or intervention vessel and the platform for 20 or more minutes, you must shut-in all wells that could be affected by a dropped object.

(c) * * *

(5) *Subsea ESD (MODU).* In the event of an ESD activation that is initiated by a dropped object from a MODU or other type of workover or intervention vessel, you must secure all wells in the proximity of the MODU or other type of workover or intervention vessel by closing the USVs and surface-controlled SSSVs in accordance with the applicable tables in §§ 250.838 and 250.839. You must notify the appropriate District Manager before resuming production.

* * * * *

■ 15. Amend § 250.841 by adding a paragraph (c) to read as follows:

§ 250.841 Platforms.

* * * * *

(c) If you plan to make a modification to any production safety system that also involves a major modification to the platform structure, you must follow the requirements in § 250.900(b)(2). A major modification to a platform structure is defined in § 250.900(b)(2).

■ 16. Revise § 250.842 to read as follows:

§ 250.842 Approval of safety systems design and installation features.

(a) Before you install or modify a production safety system, you must submit a production safety system application to the District Manager. The District Manager must approve your production safety system application before you commence production through or otherwise use the new or modified system. The application must include the design documentation prescribed as follows:

You must submit:	Details and/or additional requirements:
(1) Safety analysis flow diagram (API RP 14C, Annex B) and Safety Analysis Function Evaluation (SAFE) chart (API RP 14C, section 6.3.3) (incorporated by reference in § 250.198)	Your safety analysis flow diagram must show the following: (i) Well shut-in tubing pressure; (ii) Pressure relieving device set points; (iii) Size, capacity, and design working pressures of separators, flare scrubbers, heat exchangers, treaters, storage tanks, compressors, and metering devices; (iv) Size, capacity, design working pressures, and maximum discharge pressure of hydrocarbon-handling pumps; (v) Size, capacity, and design working pressures of hydrocarbon-handling vessels, and chemical injection systems handling a material having a flash point below 100 degrees Fahrenheit for a Class I flammable liquid as described in API RP 500 and API RP 505 (both incorporated by reference in § 250.198); and (vi) Piping sizes and maximum allowable working pressures as determined in accordance with API RP 14E (incorporated by reference in § 250.198), including the locations of piping specification breaks.
(2) Electrical one-line diagram;	Showing elements including generators, circuit breakers, transformers, bus bars, conductors, automatic transfer switches, uninterruptable power supply (UPS) and associated battery banks, dynamic (motor) loads, and static loads (*e.g.*, electrostatic treater grid, lighting panels). You must also include a functional legend.
(3) Area classification diagram;	A plan for each platform deck and outlining all classified areas. You must classify areas according to API RP 500 or API RP 505 (both incorporated by reference in § 250.198). The plan must contain: (i) All major production equipment, wells, and other significant hydrocarbon and class 1 flammable sources, and a description of the type of decking, ceiling, walls (*e.g.*, grating or solid), and firewalls; and (ii) The location of generators and any buildings (*e.g.*, control rooms and motor control center (MCC) buildings) or major structures on the platform.
(4) A piping and instrumentation diagram, for new facilities;	A detailed flow diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices.
(5) The service fee listed in § 250.125;	The fee you must pay will be determined by the number of components involved in the review and approval process.

(b) You must develop and maintain the following design documents and make them available to BSEE upon request:

Diagram:	Details and/or additional requirements:
(1) Additional electrical system information;	(i) Cable tray/conduit routing plan that identifies the primary wiring method (*e.g.*, type cable, cable schedule, conduit, wire); and (ii) Panel board/junction box location plan, if this information is not shown on the area classification diagram required in paragraph (a)(3) of this section.
(2) Schematics of the fire and gas-detection systems;	Showing a functional block diagram of the detection system, including the electrical power supply and also including the type, location, and number of detection sensors; the type and kind of alarms, including emergency equipment to be activated; and the method used for detection.
(3) Revised piping and instrumentation diagram for existing facilities;	A detailed flow diagram which shows the piping and vessels in the process flow, together with the instrumentation and control devices.

(c) In the production safety system application, you must also certify the following:

(1) That all electrical systems were designed according to API RP 14F or API RP 14FZ, as applicable (incorporated by reference in § 250.198);

(2) That the design documents for the mechanical and electrical systems that you are required to submit under paragraph (a) of this section are sealed by a licensed professional engineer. For modified systems, only the modifications are required to be sealed by a licensed professional engineer(s). The professional engineer must be licensed in a State or Territory of the United States and have sufficient expertise and experience to perform the duties; and

(3) That a hazards analysis was performed in accordance with § 250.1911 and API RP 14J (incorporated by reference in § 250.198), and that you have a hazards analysis program in place to assess potential hazards during the operation of the facility.

(d) Within 90 days after placing new or modified production safety systems in service, you must submit to the District Manager the as-built diagrams for the new or modified production safety systems outlined in paragraphs (a)(1), (2), and (3) of this section. You must certify in an accompanying letter that the as-built design documents have been reviewed for compliance with applicable regulations and accurately represent the new or modified system as installed. The drawings must be clearly marked ''as-built.''

(e) You must maintain approved and supporting design documents required under paragraphs (a) and (b) of this section at your offshore field office nearest the OCS facility or at other locations conveniently available to the District Manager. These documents must be made available to BSEE upon request and must be retained for the life of the facility. All approved designs are subject to field verifications.

■ 17. Amend § 250.851 by revising paragraph (a)(2) to read as follows:

§ 250.851 Pressure vessels (including heat exchangers) and fired vessels.

(a) * * *

Item name	Applicable codes and requirements
* * * * * * *	
(2) Existing uncoded pressure and fired vessels: (i) With an operating pressure greater than 15 psig; and (ii) That are not code stamped in accordance with the ASME Boiler and Pressure Vessel Code	Must be justified and approval obtained from the District Manager for their continued use.
* * * * * * *	

* * * * *

■ 18. Amend § 250.852 by revising paragraphs (e)(1) and (4) to read as follows:

§ 250.852 Flowlines/Headers.

* * * * *

(e) * * *

(1) Review the manufacturer's Design Methodology Verification Report and the independent verification agent's (IVA) certificate for the design methodology contained in that report to ensure that the manufacturer has complied with the requirements of ANSI/API Spec. 17J (incorporated by reference in § 250.198);

* * * * *

(4) Submit to the District Manager a statement certifying that the pipe is suitable for its intended use and that the manufacturer has complied with the IVA requirements of ANSI/API Spec. 17J (incorporated by reference in § 250.198).

* * * * *

■ 19. Amend § 250.853 by:

■ a. In paragraph (b), removing the word ''and'';

■ b. In paragraph (c), removing the period and adding ''; and'' in its place; and

■ c. Adding a paragraph (d).

The addition reads as follows:

§ 250.853 Safety sensors.

* * * * *

(d) All level sensors are equipped to permit testing through an external bridle on all new vessel installations where possible, depending on the type of vessel for which the level sensor is used.

■ 20. Amend § 250.867 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 250.867 Temporary quarters and temporary equipment.

(a) You must equip temporary quarters with all safety devices required by API RP 14C, Appendix C (incorporated by reference as specified in § 250.198). The District Manager must approve the safety system/safety devices associated with the temporary quarters prior to installation.

* * * * *

(d) The District Manager must approve temporary generators that would require a change to the electrical one-line diagram in § 250.842(a).

■ 21. Amend § 250.870 by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 250.870 Time delays on pressure safety low (PSL) sensors.

(a) You may apply industry standard Class B, Class C, or Class B/C logic to applicable PSL sensors installed on process equipment. If the device may be bypassed for greater than 45 seconds, you must monitor the bypassed devices in accordance with § 250.869(a). You must document on your field test records any use of a PSL sensor with a time delay greater than 45 seconds. For purposes of this section, PSL sensors are categorized as follows:

* * * * *

(2) Class C safety devices have logic that allows for the PSL sensors to be bypassed until the component comes into full service (*i.e.,* the time at which the startup pressure equals or exceeds the set pressure of the PSL sensor, the system reaches a stabilized pressure, and the PSL sensor clears). If a Class C safety device is bypassed, you must monitor the device until it is in full service.

* * * * *

■ 22. Revise § 250.872 to read as follows:

§ 250.872 Atmospheric vessels.

(a) You must equip atmospheric vessels used to process and/or store

liquid hydrocarbons or other Class I liquids as described in API RP 500 or 505 (both incorporated by reference in § 250.198) with protective equipment identified in API RP 14C, section A.5 (incorporated by reference in § 250.198). Transport tanks approved by the U.S. Department of Transportation, that are sealed and not connected via interconnected piping to the production process train and that are used only for storage of refined liquid hydrocarbons or Class I liquids, are not required to be equipped with the protective equipment identified in API RP 14C, section A.5. The atmospheric vessels connected to the process system that contains a Class I liquid and the associated pumps must be reflected on the design documents listed in § 250.842(a)(1) through (4) and (b)(3).

(b) You must ensure that all atmospheric vessels are designed and maintained to ensure the proper working conditions for LSH sensors. The LSH sensor bridle must be designed to prevent different density fluids from impacting sensor functionality.

(c) You must ensure that all atmospheric vessels are designed, installed, and maintained to prevent pollution, including the displacement of oil out of an overboard water outlet, as required by § 250.300(b)(3) and (4).

■ 23. Amend § 250.873 by revising paragraph (b)(3) to read as follows:

§ 250.873 Subsea gas lift requirements.

* * * * *

If your subsea gas lift system introduces the lift gas to the . . .	Then you must install a				In addition, you must
	ANSI/API Spec 6A and API Spec 6AV1 (both incorporated by reference as specified in § 250.198) gas-lift shutdown valve (GLSDV), and . . .	FSV on the gas-lift supply pipeline . . .	PSHL on the gas-lift supply . . .	ANSI/API Spec 6A and API Spec 6AV1 manual isolation valve . . .	
* * * * * * *					
(3) Pipeline risers via a gas-lift line contained within the pipeline riser	Meet all of the requirements for the GLSDV described in §§ 250.835(a), (b), and (d) and 250.836 on the gas-lift supply pipeline. Attach the GLSDV by flanged connection directly to the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser. To facilitate the repair or replacement of the GLSDV or production riser BSDV, you may install a manual isolation valve between the GLSDV and the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser, or outboard of the production riser BSDV and inboard of the ANSI/API Spec. 6A component used to suspend and seal the gas-lift line contained within the production riser	upstream (in-board) of the GLSDV	flowline upstream (in-board) of the FSV	downstream (out board) of the GLSDV	(i) Ensure that the gas-lift supply flowline from the gas-lift compressor to the GLSDV is pressure-rated for the MAOP of the pipeline riser. (ii) Ensure that any surface equipment associated with the gas-lift system is rated for the MAOP of the pipeline riser. (iii) Ensure that the gas-lift compressor discharge pressure never exceeds the MAOP of the pipeline riser. (iv) Suspend and seal the gas-lift flowline contained within the production riser in a flanged ANSI/API Spec. 6A component such as an ANSI/API Spec. 6A tubing head and tubing hanger or a component designed, constructed, tested, and installed to the requirements of ANSI/API Spec. 6A. (v) Ensure that all potential leak paths upstream or near the production riser BSDV

					on the platform provide the same level of safety and environmental protection as the production riser BSDV. (vi) Ensure that this complete assembly is fire-rated for 30 minutes.

* * * * *

■ 24. Amend § 250.874 by revising paragraph (g)(2) to read as follows:

§ 250.874 Subsea water injection systems.

* * * * *

(g) * * *

(2) If a designated USV on a water injection well fails the applicable test under § 250.880(c)(4)(ii), you must notify the appropriate District Manager and request approval to designate another ANSI/API Spec 6A and API Spec. 6AV1 (both incorporated by reference in § 250.198) certified subsea valve as your USV.

* * * * *

■ 25. Revise § 250.876 to read as follows:

§ 250.876 Fired and exhaust heated components.

No later than September 7, 2018, and at least once every 5 years thereafter, you must have qualified third-party inspect, and then you must repair or replace, as needed, the fire tube for tube-type heaters that are equipped with either automatically controlled natural or forced draft burners installed in either atmospheric or pressure vessels that heat hydrocarbons and/or glycol. If inspection indicates tube-type heater deficiencies, you must complete and document repairs or replacements. You must document the inspection results, retain such documentation for at least 5 years, and make the documentation available to BSEE upon request.

■ 26. Amend § 250.880 by revising paragraphs (a) introductory text, (a)(1), (c)(1)(i), (c)(2)(iv), and (c)(4)(i) and (iii) to read as follows:

§ 250.880 Production safety system testing.

(a) *Notification.* You must:

(1) Notify the District Manager at least 72 hours before you commence initial production on a facility as required in § 250.800(a)(2), in order for BSEE to conduct the preproduction inspection of the integrated safety system.

* * * * *

(c) * * *

(1) * * *

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Semi-annually, not to exceed 6 calendar months between tests. Also test in place when first installed or reinstalled. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to ANSI/API RP 14B (incorporated by reference in § 250.198) to ensure proper operation.
* *	* * * * * *

(2) * * *

Item name	Testing frequency and requirements
* *	* * * * * *
(iv) SSVs	Once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API STD 6AV2 (incorporated by reference in § 250.198). If an SSV does not operate properly or if any gas and/or liquid fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
* *	* * * * * *

* * * * *

(4) * * *

Item name	Testing frequency, allowable leakage rates, and other requirements
(i) Surface-controlled SSSVs (including devices installed in shut-in and injection wells).	Tested semiannually, not to exceed 6 months between tests. If the device does not operate properly, or if a liquid leakage rate > 400 cubic centimeters per minute or a gas leakage rate > 15 standard cubic feet per minute is observed, the device must be removed, repaired, and reinstalled or replaced. Testing must be according to ANSI/API RP 14B (incorporated by reference in § 250.198) to ensure proper operation, or as approved in your DWOP.

Item name	Testing frequency, allowable leakage rates, and other requirements
* *	* * * * *
(iii) BSDVs	Tested at least once each calendar month, not to exceed 6 weeks between tests. Valves must be tested for both operation and leakage. You must test according to API STD 6AV2 for SSVs (incorporated by reference in § 250.198). If a BSDV does not operate properly or if any fluid flow is observed during the leakage test, the valve must be immediately repaired or replaced.
* *	* * * * *

* * * * *

■ 27. Amend § 250.1002 by revising paragraphs (b)(1), (2), and (4) to read as follows:

§ 250.1002 Design requirements for DOI pipelines.

* * * * *

(b)(1) Pipeline valves shall meet the minimum design requirements of ANSI/API Spec 6A (as incorporated by reference in § 250.198), ANSI/API Spec 6D (as incorporated by reference in § 250.198), or the equivalent. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those standards.

(2) Pipeline flanges and flange accessories shall meet the minimum design requirements of ANSI/ASME B16.5, ANSI/API Spec 6A, or the equivalent (as incorporated by reference in § 250.198). Each flange assembly must be able to withstand the maximum pressure at which the pipeline is to be operated and to maintain its physical and chemical properties at any temperature to which it is anticipated that it might be subjected in service.

* * * * *

(4) If you are installing pipelines constructed of unbonded flexible pipe, you must design them according to the standards and procedures of ANSI/API Spec. 17J, as incorporated by reference in § 250.198.

* * * * *

■ 28. Amend § 250.1007 by revising paragraph (a)(4)(i)(D) to read as follows:

§ 250.1007 What to include in applications.

(a) * * *

(4) * * *

(i) * * *

(D) A review by a third-party independent verification agent (IVA) according to ANSI/API Spec. 17J (as incorporated by reference in § 250.198), if applicable.

* * * * *

[FR Doc. 2018–21197 Filed 9–27–18; 8:45 am]

BILLING CODE 4310–VH–P

Reader Aids

Federal Register

Vol. 83, No. 189

Friday, September 28, 2018

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and Code of Federal Regulations are located at: **www.ofr.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

44815–45030 4
45031–45192 5
45193–45324 6
45325–45534 7
45535–45810 10
45811–46066 11
46067–46348 12
46349–46626 13
46627–46848 14
46849–47026 17
47027–47282 18
47283–47546 19
47547–47800 20
47801–48200 21
48201–48360 24
48361–48520 25
48521–48702 26
48703–48904 27
48905–49264 28

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9704 45019
9705 45025
9710 45019
9711 45025
9739 45019
9740 45025
9776 45019
9777 45025
9778 45313
9779 45315
9780 45317
9781 46345
9782 46625
9783 47279
9784 47281
9785 47539
9786 47541
9787 47543
9788 47545
9789 48517
9790 48903

Executive Orders:
13847 45321
13848 46843
13849 48195

Adminstrative Orders:
Memorandums:
Memorandum of August 23, 2018 47791
Memorandum of August 31, 2018 47795
Presidential Determination No. 2018–11 of September 10, 2018 46347
Notices:
Notice of August 31, 2018 45191
Notice of September 10, 2018 46067
Notice of September 19, 2018 47799

5 CFR

Ch. XIV 46349
1653 47547

7 CFR

318 46627
319 46627
331 48201
457 45535
929 46069
930 47801
1709 45031
1739 45031
1776 45031
1783 45031

Proposed Rules:
301 47310
927 46119
929 46661
3201 46780

8 CFR

Proposed Rules:
212 45486
236 45486

9 CFR

121 48201

Proposed Rules:
557 .....47524, 47528, 47532

10 CFR

140 48202
150 48905
430 47806

Proposed Rules:
Ch. I 45359
430 46886
431 .....45052, 45851, 46886

11 CFR

Proposed Rules:
113 46888

12 CFR

229 46849
1003 45325
1022 47027
1070 46075

Proposed Rules:
3 48990
25 45053
30 47313
44 45860
101 47101
195 45053
208 48402
211 48402
217 48990
248 45860
324 48990
327 48562
337 48562
351 45860
Ch. X 45574
1248 46889
1271 48569

13 CFR

125 48908

Proposed Rules:
103 49001
120 49001
121 49001

14 CFR

25 .....45034, 45037, 46098, 46101, 47548
39 .....44815, 45037, 45041,

45044, 45333, 45335, 45539, 45545, 45548, 45550, 45811, 46369, 46372, 46374, 46377, 46380, 46384, 46853, 46857, 46859, 46862, 47042, 47044, 47047, 47054, 47056, 47813, 47815, 47817, 48203, 48207, 48361, 48363, 48366, 48521, 48524, 48527, 48703, 48706, 48708, 48915, 48918, 48920, 48924, 48927, 48930, 48932, 48935, 48938
71 .....45337, 45554, 45813, 45814, 45815, 45816, 45818, 45819, 45820, 46386, 46387, 46389, 46390, 46391, 46639, 46864, 48530
91.....47059, 48368
93 .....46865, 47065, 48209
97 .....44816, 44819, 45822, 45824, 48368, 48370
295.....46867
298.....46867
Proposed Rules:
21.....48574
39 .....44844, 45359, 45362, 45364, 45578, 45580, 46424, 46426, 46428, 46664, 46666, 46670, 46677, 46679, 46895, 46898, 46900, 46902, 46905, 47113, 47116, 47315, 47318, 47321, 47848, 47850, 48575, 49017, 49020
71 .....45861, 45863, 46434, 46435, 47577, 47578, 47580, 47581, 47583, 47585, 48730

15 CFR

705.....46026
744 .....44821, 46103, 46391, 48532
902.....47819

16 CFR

305.....47067
310.....46639
311.....48213
801.....45555
802.....45555
803.....45555
1233.....48216
Proposed Rules:
18.....45582

17 CFR

227.....47834
230.....47834
Proposed Rules:
75.....45860
240.....48733
255.....45860

18 CFR

1301.....48372

19 CFR

12.....47283

21 CFR

74.....47069, 48373
110.....46104
117.....46878
172.....47557
507.....46878
510.....48940
520.....48940, 48950
522.....48940, 48950
524.....48940, 48950
529.....48940
556.....48940
558.....48940, 48950
884.....48711
1308.....48950
1312.....48950
Proposed Rules:
Ch. I.....49023
1.....49022
20.....46437
172.....47118
310.....46121
720.....46437
807.....46444
812.....46444
814.....46444
886.....48403

26 CFR

1.....45826
Proposed Rules:
1.....48265

29 CFR

10.....48537
34.....48542
4022.....46641
4044.....46641
4231.....46642
Proposed Rules:
Ch. I.....46681
34.....48576
570.....48737
2200.....45366, 48578

30 CFR

250.....49216

32 CFR

300.....47069
571.....47284
Proposed Rules:
310.....46542

33 CFR

100 .....44828, 45047, 45339, 47069, 47836, 48953
117 .....45827, 46392, 46659, 46879, 47560, 47837, 48714, 48715
151.....47284, 48544
165 .....44828, 44830, 45047, 45049, 45342, 45344, 45346, 45567, 45569, 45571, 46392, 47293, 47562, 48219, 48375, 48954
Proposed Rules:
100.....49024
140.....47324
141.....47324
142.....47324
143.....47324
144.....47324
145.....47324
146.....47324
147.....47324
165 .....45059, 45584, 45864, 46449, 47324, 47852, 48748, 49026, 49028

34 CFR

222.....47070
412.....47837
415.....47837
421.....47837
425.....47837
427.....47837
428.....47837
429.....47837
Proposed Rules:
Ch. II.....49031

36 CFR

2.....47071
7.....48378
Proposed Rules:
7.....47587
13.....45203
228.....46451, 46458
1236.....45587

37 CFR

Proposed Rules:
387.....45203

38 CFR

3.....47246
17.....48380
74.....48221

39 CFR

111.....47839
265.....48233
266.....48233
Proposed Rules:
3035.....47119

40 CFR

6.....48544
9.....47004, 48546
52 .....45193, 45194, 45348, 45351, 45356, 45827, 45830, 45836, 46880, 46882, 47073, 47564, 47566, 47568, 47569, 47572, 48237, 48240, 48242, 48245, 48249, 48383, 48384, 48385, 48387, 48547, 48715, 48716
60.....46107
61.....46107, 48253
63.....46107, 48253
81 .....45830, 45836, 47572
180 .....45838, 45841, 45844, 46115, 46394, 46401, 46403, 46405, 47074, 48549, 48552, 48555
300 .....46117, 46408, 46660, 47076, 47295, 47842, 48256, 48391, 48392
721.....47004, 48546
Proposed Rules:
51.....45588, 48751
52 .....45588, 47855, 47856, 48751, 48765
60.....45588
62.....45589, 48777
63.....46262
85.....48578
86.....48578
261.....46126
271 .....45061, 45068, 47858
300.....46460
721.....47026
Ch. IX.....44846

41 CFR

301.....46413

42 CFR

Proposed Rules
403.....47686
416.....47686
418.....47686
441.....47686
460.....47686
482.....47686
483.....47686
484.....47686
485.....47686
486.....47686
488.....47686
491.....47686
494.....47686

43 CFR

3000.....48957
3160.....49184
3170.....49184
8365.....45196

44 CFR

64 .....45199, 47077, 48719

45 CFR

1302.....48558
Proposed Rules:
410.....45486

46 CFR

Proposed Rules:
530.....47123
545.....45367

47 CFR

0.....48962
1 .....44831, 46812, 47079, 48962
4.....48962
5.....48962
6.....44831
7.....44831
12.....48962
13.....48962
14.....44831
17.....48962
20.....44831
42.....48962
43.....48962
52.....48962
53.....48962
61.....48962
63.....48962
64 .....44831, 47296, 48962
68.....44831
73.....48962
78.....48962
80.....48962
90.....48962
97.....48962
Proposed Rules:
22.....48779
54.....49040
63.....47325

48 CFR

Ch. 1.....48690, 48702
1.....48691
2.....48691
4.....48691
7.....48691
8.....48691
9.....48691
12.....48691

13 48691
16 48691
17 48691
18 48691
19 48691
22 48691
23 48691
25 48691
26 48691
28 48691
32 48691
37 48700
44 48691
52 ....48691, 48700
216 49180
247 ....49178, 49179, 49181
252 ....49178, 49179, 49180, 49181
829 48257
831 46413
833 46413
844 47097
845 47097
846 48257
847 48257
852 ....46413, 48257
870 48257
871 46413
1506 46418
1552 46418

Proposed Rules:

7 45072
13 48271
15 48271
16 48271
232 ....45592, 47867
242 ....45592, 47867
252 ....45592, 47867
801 ....45374, 45384
815 45374
816 45374
825 45384
836 45384
837 45374
842 45384
846 45384
849 45374
852 ....45374, 45384
853 45384
871 45374
1503 48581
1552 48581

49 CFR

174 48393
179 48393
228 46884
360 48721
380 48721
382 48721
383 48964
384 48964
385 48721
390 48721
391 48721
395 48721
396 48721
397 48721
639 47574

Proposed Rules:

387 48779
390 47764
395 ....45204, 47589, 47591, 48787
523 48578
531 48578
533 48578
536 48578
537 48578

50 CFR

32 45758
223 48976
300 ....45849, 47819
635 47843
648 ....47845, 48985
660 48727
679 ....45201, 45202, 46118, 47099, 47819, 47846, 48263, 48559, 48560, 48561

Proposed Rules:

17 45073
20 47868
223 47592
224 47592
229 49046
622 48788
635 ....45866, 47598
648 47326
660 ....45396, 47416
665 46466

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List September 27, 2018

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.