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Presidential Documents

Title 3—

The President

Executive Order 13854 of December 18, 2018

Providing for the Closing of Executive Departments and Agencies of the Federal Government on December 24, 2018

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments and agencies of the Federal Government shall be closed and their employees excused from duty on Monday, December 24, 2018, the day before Christmas Day.

Sec. 2. The heads of executive departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must report for duty on December 24, 2018, for reasons of national security, defense, or other public need.

Sec. 3. December 24, 2018, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. The Director of the Office of Personnel Management shall take such actions as may be necessary to implement this order.

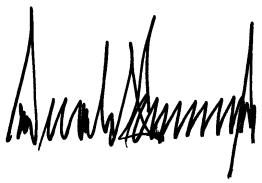
Sec. 5. *General Provisions*. (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
December 18, 2018.

[FR Doc. 2018–27945
Filed 12–20–18; 8:45 am]
Billing code 3295–F9–P

Presidential Documents

Memorandum of December 18, 2018

Establishment of United States Space Command as a Unified Combatant Command

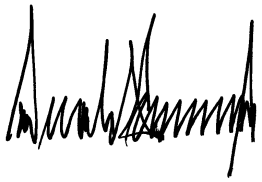
Memorandum for the Secretary of Defense

Pursuant to my authority as the Commander in Chief and under section 161 of title 10, United States Code, and in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, I direct the establishment, consistent with United States law, of United States Space Command as a functional Unified Combatant Command. I also direct the Secretary of Defense to recommend officers for my nomination and Senate confirmation as Commander and Deputy Commander of the new United States Space Command.

I assign to United States Space Command: (1) all the general responsibilities of a Unified Combatant Command; (2) the space-related responsibilities previously assigned to the Commander, United States Strategic Command; and (3) the responsibilities of Joint Force Provider and Joint Force Trainer for Space Operations Forces. The comprehensive list of authorities and responsibilities for United States Space Command will be included in the next update to the Unified Command Plan.

Consistent with section 161(b)(2) of title 10, United States Code, and section 301 of title 3, United States Code, you are directed to notify the Congress on my behalf.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, December 18, 2018

[FR Doc. 2018–27953
Filed 12–20–18; 8:45 am]
Billing code 5001–06–P

Rules and Regulations

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

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

DEPARTMENT of JUSTICE

Executive Office for Immigration Review

8 CFR Part 1240

Proceedings To Determine Removability of Aliens in the United States

CFR Correction

■ In Title 8 of the Code of Federal Regulations, revised as of January 1, 2018, on pages 1017–1018, in § 1240.26, paragraphs (b)(1)(iii) and (iv) are redesignated as paragraphs (b)(3)(iii) and (iv).

[FR Doc. 2018–27859 Filed 12–20–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Docket No. FAA–2018–0860]

Primary Category Airworthiness Design Standards; Vertical Aviation Technologies (VAT) Model S–52L Rotorcraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Issuance of final airworthiness design standards.

SUMMARY: These airworthiness design standards are issued to Vertical Aviation Technologies (VAT) for certification of the Model S–52L rotorcraft under the regulations for primary category aircraft.

DATES: These airworthiness design standards are effective January 22, 2019.

FOR FURTHER INFORMATION CONTACT: Michael Hughlett, Aviation Safety Engineer, Rotorcraft Standards Branch, Policy and Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222–5110; email *Michael.Hughlett@faa.gov*.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this information by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Background

The primary category for aircraft was created specifically for the simple, low performance personal aircraft. Section 21.17(f) provides a means for applicants to propose airworthiness standards for their particular primary category aircraft. The FAA procedure establishing appropriate airworthiness standards includes reviewing and possibly revising the applicants' proposal, publication of the submittal in the **Federal Register** for public review and comment, and addressing the comments. After all necessary revisions, the standards are published as approved FAA airworthiness standards.

Comments

Proposed Primary Category Airworthiness Design Standards; Vertical Aviation Technologies (VAT) Model S–52L rotorcraft was published in the **Federal Register** on September 26, 2018 (83 FR 48574). No comments were received, and the airworthiness design standards are adopted as proposed.

Applicability

These airworthiness design standards under the primary category rule are applicable to the VAT Model S–52L rotorcraft. Should VAT wish to apply these airworthiness design standards to other rotorcraft models, VAT must submit a new airworthiness design standard application under the primary rule category.

Conclusion

This action affects only certain airworthiness design standards on the VAT Model S–52L rotorcraft. It is not a standard of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the rotorcraft.

Citation

The authority citation for these airworthiness standards is as follows:

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

Final Airworthiness Standards for Acceptance Under the Primary Category

CAR 13 effective 03/5/1952 as follows:

13.0, 13.10, 13.11, 13.12, 13.13, 13.14, 13.16(a), 13.16(b), 13.16(d), 13.17, 13.18, 13.19, 13.20, 13.21, 13.100, 13.101, 13.102, 13.103, 13.104, 13.110, 13.111, 13.112, 13.113, 13.114, 13.115, 13.150, 13.151, 13.153, 13.155, 13.156, 13.157.

CAR 13 effective 05/16/1953 as follows:

13.1, 13.15, 13.152, 13.154.

14 CFR 33 through amendment 33–9 as follows:

33.4, Appendix A33.

14 CFR 33 through amendment 33–30 as follows:

33.7(b).

14 CFR 27 through amendment 27–0, except as noted below:

- 27.853 at amendment 27–37,
- 27.1351 at amendment 27–13,
- 27.1357 at amendment 27–13,
- 27.1529 at amendment 27–18,
- 27.561 is replaced with VAT.561,
- 27.785 is replaced with VAT.785.

14 CFR 27 through amendment 27–30 as follows:

27.952(a), 27.952(c), 27.952(f), 27.952(g).

14 CFR 27 through amendment 27–35 as follows:

27.975(b).

VAT.561 General:

(a) The rotorcraft, although it may be damaged in emergency landing conditions on land or water, must be designed as prescribed in this section to protect the occupants under those conditions.

(b) The structure must be designed to give each occupant every reasonable chance of escaping serious injury in a minor crash landing when—

(1) Proper use is made of seats, belts, and other safety design provisions;

(2) The wheels are retracted (where applicable); and

(3) The occupant experiences the following ultimate inertia forces relative to the surrounding structure:

(i) Upward—4.0g.

(ii) Forward—8.0g.

(iii) Sideward—8.0g.

(iv) Downward—12.0g.

(v) Rearward—4.0g.

(c) The supporting structure must be designed to restrain, under any ultimate inertial load up to those specified in this paragraph, any item of mass above and/or behind the crew and passenger

compartment that could injure an occupant if it came loose in an emergency landing. Items of mass to be considered include, but are not limited to, rotors, transmissions, and engines. The items of mass must be restrained for the following ultimate inertial load factors:

(1) Upward—1.5g.

(2) Forward—4.0g.

(3) Sideward—2.0g.

(4) Downward—4.0g

VAT.785 Seats and berths:

(a) The seats and berths, and their supporting structures, must be designed for loads resulting from the specified flight and landing conditions, including the emergency landing conditions of VAT.561.

(b) The reactions from safety belts and harnesses must be considered.

(c) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in Sec. 27.397.

(d) The structural analysis and testing of the structures specified in paragraphs (a) through (c) may be simplified—

(1) By assuming that the critical load in each direction, as determined from the prescribed flight, ground, and emergency landing conditions, acts separately; or

(2) By using selected combinations of loads, if the required strength in the specified directions is proven.

(e) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. Each pilot's combined safety belt and shoulder harness must allow each pilot, when seated with safety belt and shoulder harness fastened, to perform all functions necessary for flight operations. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

(f) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object.

(g) The safety belt and shoulder harness must meet the static strength requirements specified by this rotorcraft type certification basis.

VAT.963 Fuel tanks: general:

Each flexible fuel tank bladder or liner must be approved or shown to be suitable for the particular application and must be puncture-resistant. Puncture resistance must be shown by meeting TSO–C80 paragraph 16.0 requirements using a minimum puncture force of 250 pounds.

14 CFR 36 through amendment 36–30 as follows:

- Subpart H

Issued in Ft. Worth, Texas, on December 12, 2018.

Jorge Castillo,

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

[FR Doc. 2018–27566 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT of TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

Airworthiness Standards: Transportation Category Airplanes

CFR Correction

■ In Title 14 of the Code of Federal Regulations, Parts 1 to 59, revised as of January 1, 2018, on page 218, in § 25.143, paragraph (c)(1) is reinstated to read as follows:

§ 25.143 General.

* * * * *

(c) * * *

(1) At the minimum V_2 for takeoff;

* * * * *

[FR Doc. 2018–27860 Filed 12–20–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0671; Airspace Docket No. 18–ACE–3]

RIN 2120–AA66

Establishment of Class E Airspace; Maurice, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Sioux County Regional Airport, Maurice, IA. Controlled airspace is necessary to accommodate new standard instrument approach procedures developed at Sioux County Regional Airport, for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, February 28, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Sioux County Regional Airport, Maurice, IA, to support IFR operations at the airport.

History

On August 24, 2018, the FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 42815) for Docket No. FAA–2018–0671, to establish Class E airspace extending upward from 700 feet above the surface at Sioux County Regional Airport, Maurice, IA. Interested parties were invited to participate in this rulemaking effort by submitting written

comments on the proposal to the FAA. No comments were received.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sioux County Regional Airport, Maurice, IA, to accommodate new standard instrument approach procedures developed for the airport, for the safety and management of instrument flight rules (IFR) operations.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Maurice, IA [New]

Sioux County Regional Airport, IA
(Lat. 42°59′09″ N, long. 096°09′41″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Sioux County Regional Airport.

Issued in Fort Worth, Texas, on December 13, 2018.

John Witucki,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–27562 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2017–0782; Amdt. No. 91–354]

RIN 2120–AK87

Use of Automatic Dependent Surveillance—Broadcast (ADS–B) Out in Support of Reduced Vertical Separation Minimum (RVSM) Operations

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

ACTION: Final rule.

SUMMARY: This action revises the FAA's requirements for application to operate in RVSM airspace. The amendment eliminates the requirement for operators to apply for an RVSM authorization when their aircraft are equipped with qualified ADS–B Out systems and meet specific altitude keeping equipment requirements for operations in RVSM airspace. This action recognizes the enhancements in aircraft monitoring resulting from the use of ADS–B Out systems and responds to requests from operators to eliminate the burden and expense of the current RVSM application process for aircraft equipped with qualified ADS–B Out systems.

DATES: Effective January 22, 2019.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Madison Walton, Aviation Safety Inspector, Flight Technologies and Procedures Division, Flight Standards Services, AFS–400, Federal Aviation Administration, 470 L'Enfant Plaza, Suite 4102, Washington, DC 20024; telephone (202) 267–8850; email *Madison.Walton@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules with respect to aviation safety is found in Title 49, United States Code (49 U.S.C.). Sections 106(f), 40113(a), and 44701(a) authorize the FAA Administrator to prescribe regulations necessary for aviation safety. Under Section 40103(b), the FAA is charged with prescribing regulations to enhance the efficiency of the national airspace. This rulemaking is within the scope of these authorities as it removes regulatory requirements that the FAA no longer finds necessary for safe operations in RVSM airspace and establishes requirements for the use of qualified ADS–B Out systems to facilitate operations in that airspace.

I. Overview of Final Rule

This action amends Appendix G of part 91 of Title 14 of the Code of Federal Regulations (14 CFR) to permit an operator of an aircraft equipped with a qualified ADS–B Out system meeting altitude keeping equipment performance requirements for operations in RVSM airspace to operate in that airspace without requiring a specific authorization. Under this action, the FAA considers a qualified ADS–B Out system to be one that meets

the requirements of 14 CFR 91.227. The FAA is taking this action based on the technological advances provided by ADS–B Out systems. As a result of these advances, detailed applications and specific authorizations for operators of these aircraft to conduct operations in RVSM airspace are no longer necessary. The amendment also removes the detailed designations of airspace where revised RVSM may be applied that were previously found in Appendix G of part 91.

II. Background

Vertical separation standards establish the minimum vertical distance between aircraft routes in the National Airspace System. In the early 1970's, increasing air-traffic volume and fuel costs sparked an interest in reducing vertical separation standards for aircraft operating above Flight Level (FL) 290. At the time, the FAA required aircraft operating above FL 290 to maintain a minimum of 2,000 feet of vertical separation between routes. Use of these high-altitude routes was desirable because the diminished atmospheric drag at high altitudes results in a corresponding increase in aircraft fuel efficiency. Operators sought, and continue to seek, not only the most direct routes, but also the most efficient altitudes for their aircraft. Increased demand for these high-altitude routes, however, has resulted in greater aircraft congestion in this airspace.

In 1973, the Air Transport Association of America petitioned the FAA to reduce the vertical separation of high altitude routes from 2,000 feet to 1,000 feet. The FAA denied the petition in 1977, in part because the technology to meet these more rigorous separation standards was neither generally available nor proven. Deficiencies included insufficient aircraft altitude-keeping standards, lack of maintenance and operational standards, and limited altitude correction technology.

In mid-1981, the FAA initiated the Vertical Studies Program. This program, in conjunction with RTCA (formerly the Radio Technical Commission for Aeronautics) Special Committee (SC)–150 and the International Civil Aviation Organization (ICAO) Review of General Concept of Separation Panel, determined:

- RVSM is ''technically feasible without imposing unreasonably demanding technical requirements on the equipment.''
- RVSM could provide ''significant benefits in terms of economy and en-route airspace capacity.''
- Implementation of RVSM would require ''sound operational judgment supported by an assessment of system performance based on: aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment.''

Following these determinations, the FAA began a two-phase implementation process for RVSM operations for aircraft registered in the United States. During the first phase in 1997, the FAA added § 91.706 (Operations within airspace designed as RVSM Airspace) and Appendix G (Operations in RVSM Airspace) of part 91 (62 FR 17487; Apr. 9, 1997). Section 91.706 permits operators of U.S.-registered aircraft to operate in RVSM airspace outside of the United States (U.S.) in accordance with the provisions of Appendix G. Appendix G contains a set of operational, design, maintenance, and other standards applicable to operators seeking to operate in RVSM airspace. It specifies a detailed application process that requires an operator to provide evidence that the operator's aircraft design satisfies RVSM performance requirements and the operator has policies and procedures for the safe conduct of RVSM operations. Until recently, it also required that the operator have a specific program for the maintenance of RVSM systems and equipment. The FAA reviews the applications and grants authorizations to operate in RVSM airspace after finding that the applicable requirements are met.

The second phase of RVSM implementation occurred in October 2003, with a second RVSM-related rulemaking action (68 FR 61304; Oct. 27, 2003). This rule introduced RVSM airspace in the U.S. and used the same authorization process previously established under Appendix G of part 91. As established in 2003, the FAA's RVSM program allows for 1,000 feet of vertical separation for aircraft between FL 290 and FL 410. Before the 2003 final rule, air traffic controllers could only assign aircraft operating under Instrument Flight Rules (IFR) flying at FL 290 and above to FL 290, 310, 330, 350, 370, 390, and 410 since the existing vertical separation standard was 2,000 feet. After the rule changes went into effect, IFR aircraft could also fly at FL 300, 320, 340, 360, 380, and 400—nearly doubling capacity within this particular segment of airspace.

The FAA also implemented a performance-monitoring program to support implementation of RVSM. This program included Global Positioning System based height-keeping monitoring units capable of being deployed onboard aircraft during individual RVSM flights. Later, in 2005, the FAA deployed the first of five passive ground-based aircraft geometric height measurement element sites in the continental U.S. to conduct height-keeping performance monitoring of aircraft passing over each site. Other civil aviation authorities throughout the world have also developed similar height monitoring sites.

In 2008, the FAA reviewed its RVSM program and operator authorization policies. At that time, there were more than 7,000 active RVSM authorizations, covering in excess of 15,000 U.S.-registered aircraft. The FAA's evaluation found the existing processes ensured compliance with the RVSM operating requirements. At the same time however, FAA representatives began meeting with the National Business Aviation Association (NBAA) to develop ways to streamline the RVSM application process to lower the burden on operators to obtain RVSM authorizations and reduce the FAA's workload associated with processing and granting these authorizations. The parties formed the RVSM Process Enhancement Team (PET) within the Performance Based Aviation Rulemaking Committee. The PET submitted its final recommendations to the FAA in 2013. As a result, the FAA revised existing policies and guidance to facilitate more efficient processing of requests to change existing authorizations and created a job aid to assist inspectors in standardizing reviews of operator applications.

The FAA also completed rulemaking in 2016 to further reduce the burden on applicants by eliminating the requirement that RVSM applicants include an approved RVSM maintenance program as part of an application for an RVSM authorization (81 FR 47009, July 20, 2016). RVSM technology has matured and most aircraft manufactured today that are capable of operating in RVSM airspace are delivered from the manufacturer as RVSM compliant. RVSM airspace has been implemented worldwide, familiarity with operational policy and procedures has significantly increased, and the vast majority of the RVSM capable fleet demonstrates excellent altimetry system performance. Additionally, the increasing equipage of aircraft with ADS–B Out systems makes the current process of obtaining RVSM authorizations for operation of these aircraft in RVSM airspace unnecessary, as ADS–B Out enables continual monitoring of aircraft height-keeping performance and rapid notification of altimetry system error (ASE).

Currently operators are required to be issued a specific RVSM authorization by

the FAA's Flight Standards Service prior to operating in RVSM airspace. Until an operator's application is processed and the authorization issued, the operator cannot operate in RVSM designated airspace, Flight Levels (FL) 290–410 inclusive. During the application processing period, the aircraft may only be operated at FL 280 and below. Aircraft operations at lower altitudes are less efficient due to their higher fuel burn rates and lower true airspeeds.

A. Summary of the Notice of Proposed Rulemaking (NPRM)

In August 2017, the FAA issued an NPRM (82 FR 36697; August 7, 2017) that proposed to amend the FAA's application requirements to operate in RVSM airspace. In that NPRM, the FAA proposed to amend Appendix G of 14 CFR part 91 to:

- Add a new Section 9 (*Aircraft Equipped with Automatic Dependent Surveillance-Broadcast Out*) to authorize operators of aircraft, equipped with qualified ADS–B Out systems (*i.e.,* systems that meet the requirements of § 91.227) that can be monitored by the FAA to conduct RVSM operations without submitting an application for an authorization to operate in RVSM airspace.
- Revise Section 8 (*Airspace Designation*) acknowledging RVSM is now applied worldwide and remove the detailed RVSM airspace designations from that section.

The FAA also proposed additional conforming amendments to Appendix G of part 91 facilitating the addition of the approval requirements specified in new Section 9 for ADS–B Out equipped aircraft. These proposed conforming amendments would:

- Revise Section 1 (*Definitions*) recognizing that RVSM is no longer a new concept and that RVSM operations have become standard between FL 290 and FL 410.
- Revise Section 2 (*Aircraft Approval*) and Section 3 (*Operator Authorization*) to recognize aircraft operators may either use the current aircraft approval process specified in Section 2 and the operator authorization process specified in Section 3, or the authorization process in new Section 9 for aircraft equipped with qualified ADS–B Out systems to obtain authorization to conduct RVSM operations.
- Revise Section 3 (*Operator Authorization*) to permit an operator to be authorized to conduct flight in airspace where RVSM is applied under the provisions of this section, as is currently permitted, or under the provisions of new Section 9. The section would also be revised to better express the intent of the rule by stating that ''each pilot has knowledge of RVSM requirements, policies, and procedures sufficient to conduct operations in RVSM airspace.''
- Revise Section 4 (*RVSM Operations*) to require that pilots of aircraft of operators who have been authorized to conduct RVSM operations in accordance with proposed Section 9 have knowledge of the requirements, policies, and procedures sufficient for the conduct operations in RVSM airspace.
- Revise Section 5 (*Deviation Authority Approval*) to eliminate the specific references to Section 3 since the Administrator may authorize deviations from the requirements in §§ 91.180 and 91.706 for a specific flight in RVSM airspace for operators who may not meet the provisions of current Section 3 or proposed Section 9.
- Revise Section 7 (*Removal or Amendment of Authority*) to eliminate specific references to the revocation or restriction of RVSM authorizations and letters of authorization and replace those provisions with a more general provision stating that the Administrator may prohibit or restrict operation in RVSM airspace if an operator fails to comply with certain specified provisions.

B. General Overview of Comments

The comment period for the NPRM closed on September 6, 2017. The FAA received 16 comments, mostly from individual aircraft operators. Other commenters included the National Business Aviation Association (NBAA), the Aircraft Owners and Pilots Association (AOPA), and the General Aviation Manufacturers Association (GAMA). All 16 comments supported the rule change with 10 of the individual commenters supporting the rule's benefits of reducing the burden to operators. Based on the comments received, the FAA adopts the amendments as proposed with only minor non-substantive editorial changes to facilitate publication in the Code of Federal Regulations.

III. Discussion of Public Comments and Final Rule

Comments Regarding the Proposal

All the commenters supported the proposal. The majority of the commenters, including NBAA, AOPA, and GAMA, stated that the reduction in regulatory requirements for operator authorization would be cost beneficial for operators by:

- Reducing the burden and expense of having to make application for authorization to operate in RVSM airspace; and
- Allowing operations at RVSM fuel-efficient altitudes sooner without degrading safety.

NBAA commented the new rule is a logical extension of the work the FAA has been doing to further streamline the [RVSM authorization] process while maintaining the highest levels of safety. The FAA notes that this final rule eliminates the requirement to make application for RVSM authorization if an operator chooses to leverage the technology gains obtained in ADS–B Out equipage, in accordance with §§ 91.180 and 91.706, while continuing to require that operators meet the equipment and performance standards specified in Appendix G of part 91. The rule provides operators with an additional means to obtain authorization to operate in RVSM airspace but does not change the height keeping requirements for operations in that airspace. The use of ADS–B Out allows the FAA to continually and more accurately monitor an aircraft's height keeping performance in RVSM airspace thereby providing the agency with the ability to more rapidly mitigate the risks posed by poor performing aircraft. The FAA believes that these changes not only reduce operator and FAA workload and expense, but also accomplish these objectives with no additional risk or impact on the level of safety provided by the FAA's current RVSM authorization process.

AOPA commented that the proposed modifications to part 91 will result in significant cost and time savings for general aviation and the FAA, while ensuring no degradation to safety. The FAA has determined the current fleet of RVSM approved aircraft consistently meets FAA established safety standards for operations in RVSM airspace. The FAA notes that aircraft equipped with qualified ADS–B Out systems may conduct operations in airspace where the FAA has ADS–B coverage sufficient to confirm RVSM height-keeping performance, under the provisions of new Section 9 of Appendix G, immediately upon the effective date of this rule. However, an operator may still operate with an authorization issued under the provisions of Section 3 of Appendix G if its aircraft is not equipped with a qualified ADS–B Out system. The FAA also notes that if a foreign country requires a specific authorization to operate in RVSM airspace, as specified in ICAO Annex 6, an operator may need to seek authorization under the provisions of Section 3, even if it meets the provisions of Section 9.

GAMA supported the proposed changes and commented that the rule further builds on prior discussions between the FAA and industry to streamline and reduce the burden of the operational authorization process for general aviation operators. GAMA stated that it helps provide additional NextGen-driven benefits to the industry.

NBAA commented that operating in RVSM airspace has become very common and an integral part of operating aircraft in their most efficient state. The FAA agrees that adopting the proposed rule changes will increase safety in RVSM airspace where ADS–B monitoring is available and reduce delays in receiving approval for operations in RVSM airspace.

There were 10 additional individual commenters who expressed strong support for this action with similar statements recognizing the ''cumbersome and costly'' RVSM authorization process and that the core benefits of compressing high-level airspace have been offset by long delays in the FAA review and authorization process.

The FAA agrees with the commenters that the general aviation community will obtain significant benefits from this action, including that the rule takes an important step in removing an approval process that is no longer justifiable as pilots equip with advanced NextGen technology.

Other Comments

One commenter stated that the proposal was ''a good start'' but did not go far enough and there should be no RVSM authorization at all. In the NPRM, the FAA only proposed to remove the requirement to submit an application for RVSM authorization if an aircraft is equipped with a qualified ADS–B Out system. The FAA did not propose to eliminate the authorization requirement in §§ 91.180 or 91.706 and considers the commenter's recommendation outside the scope of this rulemaking. The FAA notes that ICAO Annex 6 continues to require that an airplane used to conduct operations in RVSM airspace be specifically authorized to conduct those operations by the State of the operator or State of registry, as applicable. The annex further specifies that prior to issuing the authorization, the issuing State must be satisfied that the vertical performance of the airplane meets applicable height-keeping requirements and that the operator has instituted appropriate flightcrew operating procedures and procedures for continued airworthiness of the airplane.

One commenter was concerned about eliminating the authorization due to the potential for transponder failure and felt that the FAA should conduct further review of ADS–B and transponder failure issues. The FAA notes that the ADS–B Out equipment requirement in Section 9(a)(5) is necessary for aircraft height-keeping performance monitoring and that failure of an aircraft's transponder does not hinder the ability of the aircraft to maintain the requisite aircraft height-keeping capability in RVSM airspace. Transponder failure procedures in RVSM airspace are addressed in FAA and ICAO guidance material.

One commenter stated the use of ADS–B technology will deconflict aircraft within RVSM airspace without the need for expensive altimetry instruments. The FAA notes that for an aircraft to be eligible for operations in RVSM airspace it must meet strict height-keeping performance standards. ADS–B Out provides information used to determine an aircraft's ASE. ADS–B alone does not provide operators with the requisite height-keeping capability to conduct operations in RVSM airspace safely. Accordingly, the installation of a qualified ADS–B Out system in an aircraft that does not have the altitude-keeping capability necessary to meet RVSM performance requirements would not permit that aircraft to operate in RVSM airspace.

Recent Regulatory Actions

As discussed in the ''Background'' section of this document, RVSM was implemented regionally in a phased approach. Section 8 (*Airspace Designation*) of Appendix G was initially designed to be updated whenever regions added RVSM airspace. The inability to update these designations rapidly caused discrepancies between the airspace listed in Section 8 of Appendix G and the airspace in which RVSM had been applied. Today, however, RVSM has been established between FL 290 and FL 410 in all flight information regions and requirements have been harmonized throughout ICAO member States.

The FAA recently amended the airspace designations in Section 8 of Appendix G by only revising the name of the North Atlantic airspace (82 FR 39660; Aug. 22, 2017). Since the action in this rule was pending at the time, it would have been inconsistent for the FAA to make all the other changes in that rule while leaving out the change to Section 8 of Appendix G in anticipation of the changes made by this rule. Accordingly, there is no longer a need to update the airspace designations listed in Section 8. The amendment to this section acknowledges RVSM is now applied worldwide and removes the detailed RVSM airspace designations from that section, as proposed.

C. Changes From the NPRM

The FAA has made no changes to the proposal as set forth in the NPRM other than minor non-substantive editorial changes to facilitate publication in the Code of Federal Regulations.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, Local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995; current value is $155 million). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866, (3) is ''nonsignificant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded

mandate on State, Local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

i. Who is potentially affected by this rule?

All operators intending to conduct operations between FL 290 and FL 410 (RVSM designated Airspace) and have 1,000 feet vertical separation applied. This applies to operations conducted under parts 91, 121, 125, and 135.

ii. Assumptions

- Present value estimates based on OMB guidance using a 7 percent discount rate.
- The benefits begin to accrue in 2019.
- The analysis period is 5 years from 2019 to 2023.

iii. Benefits and Cost Savings of This Rule

The final rule will permit an operator of an aircraft meeting equipment requirements for operations in RVSM airspace and equipped with a qualified ADS–B Out system to operate in RVSM airspace without requiring application for a specific authorization. This rulemaking will eliminate this application requirement, thereby reducing both operators' costs and FAA workload, while maintaining the existing level of safety. The biggest savings comes not from the paperwork savings but from fuel savings. Currently, operators without RVSM approval must operate their airplanes at lower altitudes.

Total savings during the first 5 years of the rule's implementation will be approximately $34.0 million or $27.5 million present value at 7 percent, with annualized savings of $6.7 million.

B. Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule has a significant economic impact on a substantial number of small entities. If the agency determines that it does, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. The FAA estimates that this rulemaking saves each affected small entity operating aircraft equipped with qualified ADS–B Out systems under part 91 and part 135 $1,630 from not having to apply for an RVSM authorization and from reduced fuel cost associated with not being restricted from RVSM operations while the authorization is processed. The total relief of $1,630 for each part 91 and part 135 operator seeking authorization for aircraft equipped with ADS–B Out is the sum of the estimated $214 per application preparation relief, plus the per aircraft fuel savings estimate of $1,416. The FAA then compared this cost saving with a weighted average aircraft value of representative aircraft potentially be affected by this rule (See following table).

Weighted Average Aircraft Value

Class	Most Common Type	Count in US MASPS*	Retail Value**	Weighted Values
Very Light Jet	Cessna Citation Mustang	266	$3,459,900	$920,333,400
Light Jet	Cessna Citation CJ3	328	$6,900,000	$2,263,200,000
Mid-Size Jet	Cessna Citation Excel/XLS	588	$5,800,000	$3,410,400,000
Super Mid-Size Jet	Cessna Citation Sovereign	290	$18,093,350	$5,247,071,500
Large Jet	Gulfstream IV	620	$7,200,000	$4,464,000,000
		2,092		$16,305,004,900
		Weighted Average:	$7,793,979	
*Source for aircraft counts: US Minimum Aircraft System Performance Specification - 18 Aug 2016				
**Source for average retail value: Aircraft Bluebook, Spring 2016 Vol. 16-1				

Owners of new turbojet or turboprop airplanes receive a benefit of $1,630 per new airplane. For new turbojet or turboprop airplanes whose value exceeds $3 million, the cost savings of less than $2,000 is not economically significant.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under Section 605(b) of the RFA. Therefore, as provided in Section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards, and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rule and determined that it has the same impact on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)

requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any 1 year by State, Local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

As described in the regulatory evaluation, this rule will relieve the existing RVSM information collection burden for certain operators. Under currently approved information requirements (OMB 2120–0679), operators seeking approval to conduct RVSM operations must submit application to the FAA for authorization. This rule change will eliminate the application requirement for operators choosing to equip their aircraft with qualified ADS–B Out systems. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA will submit information collection amendments to OMB for its review after publication of this final rule. Notice of OMB approval of this revised information collection will be published in the **Federal Register**.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

V. Executive Order Determinations

A. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is an Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' deregulatory action. Details on the estimated costs savings of this rule can be found in the rule's economic analysis.

B. Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it will not be a ''significant energy action'' under the executive order and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

1. Visit the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/* or

2. Access the Government Printing Office's web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 91

Aircraft, Air traffic control, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Public Law 114–190, 135 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Amend Appendix G to part 91:
■ a. In Section 1 by revising the definition of Reduced Vertical Separation Minimum (RVSM) Airspace;
■ b. In Section 2 by revising paragraph (a);
■ c. In Section 3 by revising paragraphs (a), (b) introductory text, (c) introductory text, and (c)(2);
■ d. In Section 4 by revising paragraphs (b)(1) and (2) and adding paragraph (b)(3);
■ e. In Section 5 by revising the introductory text and paragraph (b);
■ f. In Section 7 by revising the introductory text;
■ g. By revising Section 8; and
■ h. By adding Section 9.

The revisions and additions read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

Section 1. Definitions

Reduced Vertical Separation Minimum (RVSM) Airspace. Within RVSM airspace, air traffic control (ATC) separates aircraft by a minimum of 1,000 feet vertically between FL 290 and FL 410 inclusive. Air-traffic control notifies operators of RVSM airspace by providing route planning information.

* * * * *

Section 2. Aircraft Approval

(a) Except as specified in Section 9 of this appendix, an operator may be authorized to conduct RVSM operations if the Administrator finds that its aircraft comply with this section.

* * * * *

Section 3. Operator Authorization

(a) Except as specified in Section 9 of this appendix, authority for an operator to conduct flight in airspace where RVSM is applied is issued in operations specifications, a Letter of Authorization, or management specifications issued under subpart K of this part, as appropriate. To issue an RVSM authorization under this section, the Administrator must find that the operator's aircraft have been approved in accordance with Section 2 of this appendix and the operator complies with this section.

(b) Except as specified in Section 9 of this appendix, an applicant seeking authorization to operate within RVSM airspace must apply in a form and manner prescribed by the Administrator. The application must include the following:

* * * * *

(c) In a manner prescribed by the Administrator, an operator seeking authorization under this section must provide evidence that:

* * * * *

(2) Each pilot has knowledge of RVSM requirements, policies, and procedures sufficient for the conduct of operations in RVSM airspace.

Section 4. RVSM Operations

* * * * *

(b) * * *

(1) The operator is authorized by the Administrator to perform such operations in accordance with Section 3 or Section 9 of this appendix, as applicable.

(2) The aircraft—

(i) Has been approved and complies with Section 2 this appendix; or

(ii) Complies with Section 9 of this appendix.

(3) Each pilot has knowledge of RVSM requirements, policies, and procedures sufficient for the conduct of operations in RVSM airspace.

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of §§ 91.180 or 91.706 for a specific flight in RVSM airspace if—

* * * * *

(b) At the time of filing the flight plan for that flight, ATC determines that the aircraft may be provided appropriate separation and that the flight will not interfere with, or impose a burden on, RVSM operations.

* * * * *

Section 7. Removal or Amendment of Authority

The Administrator may prohibit or restrict an operator from conducting operations in RVSM airspace, if the Administrator determines that the operator is not complying, or is unable to comply, with this appendix or subpart H of this part. Examples of reasons for amendment, revocation, or restriction include, but are not limited to, an operator's:

* * * * *

Section 8. Airspace Designation

RVSM may be applied in all ICAO Flight Information Regions (FIRs).

Section 9. Aircraft Equipped With Automatic Dependent Surveillance—Broadcast Out

An operator is authorized to conduct flight in airspace in which RVSM is applied provided:

(a) The aircraft is equipped with the following:

(1) Two operational independent altitude measurement systems.

(2) At least one automatic altitude control system that controls the aircraft altitude—

(i) Within a tolerance band of ±65 feet about an acquired altitude when the aircraft is operated in straight and level flight under nonturbulent, nongust conditions; or

(ii) Within a tolerance band of ±130 feet under nonturbulent, nongust conditions for aircraft for which application for type certification occurred on or before April 9, 1997, that are equipped with an automatic altitude control system with flight management/performance system inputs.

(3) An altitude alert system that signals an alert when the altitude displayed to the flightcrew deviates from the selected altitude by more than—

(i) ±300 feet for aircraft for which application for type certification was made on or before April 9, 1997; or

(ii) ±200 feet for aircraft for which application for type certification is made after April 9, 1997.

(4) A TCAS II that meets TSO C–119b (Version 7.0), or a later version, if equipped with TCAS II, unless otherwise authorized by the Administrator.

(5) Unless authorized by ATC or the foreign country where the aircraft is operated, an ADS–B Out system that meets the equipment performance requirements of § 91.227 of this part. The aircraft must have its height-keeping performance monitored in a form and manner acceptable to the Administrator.

(b) The altimetry system error (ASE) of the aircraft does not exceed 200 feet when operating in RVSM airspace.

Issued under authority provided by 49 U.S.C. 106(f), 40103(b), 40113(a), and 44701(a) in Washington, DC, on December 10, 2018.

Daniel K. Elwell,

Acting Administrator.

[FR Doc. 2018–27401 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2012–N–1210]

Food Labeling; Revision of the Nutrition and Supplement Facts Labels; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the regulations pertaining to the Nutrition Facts and Supplement Facts labels. The amendments correct errors that were made in labeling examples, restore incorrect deletions, correct the edition of a reference cited in the rule, and correct cross-references to other regulations. This action is ministerial or editorial in nature.

DATES: This rule is effective December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Kantor, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2082.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 2016 (81 FR 33742 and 81 FR 34000), we published two final rules entitled ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' (the Nutrition Facts Label Final Rule) and ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments'' (the Serving Size Final Rule). The Nutrition Facts Label Final Rule revises the Nutrition Facts label by:

- Removing the declaration of ''Calories from fat'' because current science supports a view that the type of fat is more relevant than overall total fat intake in increased risk of chronic diseases;

• requiring the declaration of the gram amount of ''added sugars'' in a serving of a product, establishing a Daily Reference Value (DRV), and requiring the percent Daily Value (DV) declaration for added sugars;

• changing ''Sugars'' to ''Total Sugars'' and requiring that ''Includes 'X' g Added Sugars'' be indented and declared directly below ''Total Sugars'' on the label;

• updating the list of vitamins and minerals of public health significance. For example, the Nutrition Facts Label Final Rule requires the declaration of vitamin D and potassium and permits, rather than requires, the declaration of vitamins A and C;

• updating certain reference values used in the declaration of percent DVs of nutrients on the Nutrition Facts and Supplement Facts labels;

• revising the format of the Nutrition Facts label to increase the prominence of the term ''Calories;''

• removing the requirement for the footnote table listing the reference values for certain nutrients for 2,000 and 2,500 calorie diets;

• requiring the maintenance of records to support the declarations of certain nutrients under specified circumstances. For example, because there are no analytical methods that can distinguish between dietary fiber (soluble and insoluble fiber) and nondigestible carbohydrates that do not meet the definition of dietary fiber; added and naturally occurring sugars or the various forms of vitamin E; or folate and folic acid, the Nutrition Facts Label Final Rule requires manufacturers to make and keep certain written records to verify the declarations of dietary fiber, added sugars, vitamin E, and folate and folic acid in the labeling of the food associated with such records. The Nutrition Facts Label Final Rule requires these records to be kept for at least 2 years after introduction or delivery for introduction of the food into interstate commerce. A similar requirement exists with respect to added sugars in foods subject to nonenzymatic browning and fermentation because there are no analytical methods that can determine the amount of added sugar in specific foods containing added sugars alone or in combination with naturally occurring sugars, where the added sugars are subject to nonenzymatic browning and fermentation. However, for manufacturers of such foods who are unable to reasonably approximate the amount of added sugars in a serving of food to which the records requirements apply, the Nutrition Facts Label Final Rule allows manufacturers to submit a petition to request an alternative means of compliance; and

• establishing a compliance date of 2 years after the Nutrition Facts Label Final Rule's effective date, except that manufacturers with less than $10 million in annual food sales have a compliance date of 3 years after the Nutrition Facts Label Final Rule's effective date. (In the **Federal Register** of May 4, 2018 (83 FR 19619), however, we extended the compliance date for manufacturers with $10 million or more in annual food sales from July 26, 2018, to January 1, 2020, and the compliance date for manufacturers with less than $10 million in annual food sales from July 26, 2019, to January 1, 2021.)

The Serving Size Final Rule requires all containers, including containers of products with ''large'' reference amounts customarily consumed (RACCs) (*i.e.,* products with RACCs of at least 100 grams (g) or 100 milliliters (mL)), containing less than 200 percent of the RACC to be labeled as a single-serving container. Except for when certain exceptions apply, the Serving Size Final Rule further requires that containers and units that contain at least 200 percent and up to and including 300 percent of the RACC be labeled with a column of nutrition information within the Nutrition Facts label that lists the quantitative amounts and percent DVs for the entire container, in addition to the required column listing the quantitative amounts and percent DVs for a serving that is less than the entire container (*i.e.,* the serving size derived from the RACC). The Serving Size Final Rule also updates, modifies, and establishes RACCs for certain foods and product categories.

II. Description of the Technical Amendments

Since we published the two final rules in the **Federal Register**, we have noted or have been made aware of errors that appeared in the final rules. Most errors are non-substantive; for example, § 101.9(e)(5) and (6) (21 CFR 101.9(e)(5) and (6)) show sample Nutrition Facts labels. The sample labels, however, differed from the other sample labels in the Nutrition Facts Label Final Rule in that the line underneath ''Saturated Fat'' did not extend completely to the left edge of the label. Through this technical amendment, we are revising the sample labels so that the line extends completely to the left edge of the label.

Other errors reflected inconsistencies between the Nutrition Facts Label Final Rule's requirements and sample labels. For example, one sample label omitted information regarding the number of servings per container and serving size; both information elements are required. Through this technical amendment, we are revising the sample label to include the missing information.

Three errors resulted in the removal of preexisting provisions even though the Nutrition Facts Label Final Rule did not intend to remove those provisions. To the contrary, the preamble to the Nutrition Facts Label Final Rule discussed the provisions as still existing. Consequently, the technical amendment restores those provisions.

Other errors pertained to cross-references; in some instances, the Nutrition Facts Label Final Rule and the Serving Size Final Rule mistakenly referred to a different provision. In another instance, the Nutrition Facts Label Final Rule omitted a cross-reference to another provision. The technical amendment corrects the cross-references.

We describe the amendments in more detail below.

A. Section 101.9(b) and a Cross-Reference

Section 101.9(b)(2)(i) provides, in part, the requirements for serving sizes for products in discrete units (*e.g.,* muffins, sliced products, such as sliced bread, or individually packaged products within a multiserving package). The Serving Size Final Rule revised § 101.9(b)(2)(i) by removing paragraph (b)(2)(i)(E) (which had pertained to the serving size declaration of individual units in certain multiserving packages where the product has a reference amount of 100 grams (or milliliters) or larger) and redesignated paragraphs (b)(2)(i)(F) through (I) accordingly (see 81 FR 34000 at 34040). For example, § 101.9(b)(2)(i)(G) was redesignated as § 101.9(b)(2)(i)(F).

However, the Serving Size Final Rule neglected to revise a reference to previous § 101.9(b)(2)(i)(G) that appears in § 101.9(b)(5)(vi) (which pertains to ounces as a common household measure, with an appropriate visual unit of measure, for products that naturally vary in size). Consequently, we are revising § 101.9(b)(5)(vi) to refer to § 101.9(b)(2)(i)(F).

B. Section 101.9(c)(2) and Statements Regarding Saturated Fat, Trans Fat, Polyunsaturated Fat, and Monounsaturated Fat

Section 101.9(c)(2) discusses how a statement of the number of grams of total fat in a serving must be expressed. Before we issued the Nutrition Facts Label Final Rule, § 101.9(c)(2) contained four subordinate paragraphs that discussed how the number of grams of saturated fat, trans fat, polyunsaturated fat, and monounsaturated fat must be expressed; these subordinate paragraphs were numbered as § 101.9(c)(2)(i) through (iv). The Nutrition Facts Label Final Rule did not amend or revise these subordinate paragraphs; to the contrary, in the preamble to the Nutrition Facts Label Final Rule, we either referred to them to describe an existing requirement or expressly stated that we did not intend to change them (see 81 FR 33742 at 33785, 33860).

Nevertheless, after we published the Nutrition Facts Label Final Rule, we learned that § 101.9(c)(2)(i) through (iv) had been removed from the *Code of Federal Regulations*. Because we did not intend such a result, the technical amendment restores § 101.9(c)(2)(i) through (iv).

C. Section 101.9(c)(6)(i), Fiber, and a Cross-Reference

Section 101.9(c)(6)(i) discusses, among other things, specific isolated or synthetic non-digestible carbohydrates that we have determined to have physiological effects that are beneficial to human health and that must be included in the calculation of the amount of dietary fiber. One such carbohydrate is psyllium husk, and the Nutrition Facts Label Final Rule contained a cross-reference to § 101.81(c)(2)(ii)(A)(*6*) (21 CFR 101.81(c)(2)(ii)(A)(*6*)).

The cross-reference was in error. The correct cross-reference is § 101.81(c)(2)(ii)(B)(*1*), and so we have revised § 101.9(c)(6)(i) accordingly.

D. Section 101.9(c)(6)(iii), Added Sugars, and Simplified Format

Section 101.9(c)(6)(iii) discusses how the ''added sugars'' statement must appear. The provision states, among other things, that if a statement of the added sugars content is not required and, as a result, is not declared on the Nutrition Facts label, then the statement ''Not a significant source of added sugars'' must be placed at the bottom of the table of nutrient values.

However, § 101.9(f) discusses when the declaration of nutrition information may be presented in a simplified format. In general, a simplified format may be used when a food product contains insignificant amounts of eight or more of specific nutrients; these nutrients include ''added sugars.'' Therefore, the technical amendment revises § 101.9(c)(6)(iii) by adding ''Except as provided for in paragraph (f) of this section,'' at the start of the sentence describing where the statement, ''Not a significant source of added sugars,'' must be placed.

E. Section 101.9(c)(8)(ii) and Quantitative Weight and § 101.9(c)(8)(iv) and Retinol Activity Equivalents (RAE) and the Order of Nutrients on the Nutrition Facts Label

Section 101.9(c)(8) establishes requirements related to the disclosure of vitamins and minerals on the Nutrition Facts label. The rule, at § 101.9(c)(8)(ii), discusses the declaration of vitamins and minerals as a quantitative amount by weight and percent of the Reference Daily Intake (RDI). In the preamble to the proposed rule to revise the Nutrition Facts and Supplement Facts labels, we described the proposed rule as requiring the declaration of the absolute amounts for all mandatory and voluntary vitamins and minerals, in addition to the requirement for percent DV declaration; we also said that an exception to the proposed requirement would be Nutrition Facts labels for foods in small packages that have a total surface area available to bear labeling of 40 or less square inches (79 FR 11880 at 11952, March 3, 2014). The preamble to the Nutrition Facts Label Final Rule noted the same exception for smaller packages (81 FR 33742 at 33946).

However, the codified text inadvertently omitted the language creating the exception. Consequently, we are restoring the exception to § 101.9(c)(8)(ii) so that the declaration of quantitative weights for these vitamins and minerals are not required for labels described in § 101.9(j)(13).

Additionally, § 101.9(c)(8)(ii) contains a sentence mentioning the statement of the amount per serving of the vitamins and minerals ''as described in this paragraph.'' To clarify the reference of ''this paragraph,'' the technical amendment revises ''this paragraph'' to read as ''this paragraph (c)(8)(ii)''.

Our regulations, at § 101.9(c)(8)(iv), describe, among other things, the units of measure for certain vitamins and minerals. The rule lists the nutrients, their units of measure, and their RDIs in a table; for vitamin A, the unit of measure is in micrograms RAE. Footnote 2 to the table explains that RAE means retinol activity equivalents and that 1 microgram RAE equals 1 microgram retinol, 2 microgram supplemental β-carotene, 12 micrograms β-carotene, or 24 micrograms α-carotene, or 24 micrograms β-cryptoxanthin.

In the preamble to the Nutrition Facts Label Final Rule, in response to a comment regarding the unit of measure for vitamin A, we explained that the conversions for microgram RAE were 1 retinol activity equivalent (mcg RAE) = 1 mcg retinol, 2 mcg supplemental β-carotene, 12 mcg of *dietary* β-carotene, or 24 mcg of other *dietary* provitamin A carotenoids (α-carotene or β-cryptoxanthin) (81 FR 33742 at 33913) (emphasis added). However, we neglected to insert the word ''dietary'' before β-carotene, α-carotene, and β-cryptoxanthin in footnote 2.

The technical amendment inserts ''dietary'' before β-carotene, α-carotene, and β-cryptoxanthin in the footnote and also renumbers the footnote as footnote 3. The renumbering of the footnote is necessary because the technical amendment also revises the order of the nutrients in the table at 21 CFR 101.8(c)(8)(iv); the nutrients were supposed to be placed in order so that nutrients that must be disclosed on the label appear first. However, the Nutrition Facts Label Final Rule inadvertently neglected to reorder the nutrients in the table to reflect the status of vitamin D, calcium, iron, and potassium as nutrients that must be disclosed. As a result of reordering the nutrients in the table, footnote 2 is now footnote 3.

F. Section 101.9(d)(1)(iii) and Type Size

Section 101.9(d)(1)(iii) establishes the type sizes for information on the Nutrition Facts label. Among other things, the regulation requires information required under § 101.9(d)(9) (regarding the footnote to the Nutrition Facts label) to be in a type size no smaller than 6 point.

In the preamble to the Nutrition Facts Label Final Rule, we discussed how other information pertaining to ''Amount per serving'' and ''% Daily Value'' also would be required to be in a type size no smaller than 6 point (see 81 FR 33742 at 33944 (discussing the type size for ''Amount per serving'') and 81 FR 33742 at 33952 (discussing the type size for ''% Daily Value'')). However, the codified text at § 101.9(d)(1)(iii) omitted the paragraph designations for ''Amount per serving'' and ''% Daily Value,'' which are § 101.9(d)(4) and (6), respectively. Consequently, the technical amendment adds paragraphs (d)(4) and (6) to the information that must be in a type size no smaller than 6 point.

G. Section 101.9(e)(5) and (6) and Corrections to Sample Labels

Section 101.9(e)(5) and (6) show sample Nutrition Facts labels. The sample labels illustrate how dual column labels might appear. Some sample labels, however, differed from the other sample labels in the Nutrition Facts Label Final Rule in that the line underneath ''Saturated Fat'' did not extend completely to the left edge of the label.

The technical amendment revises the sample labels so that the line extends completely to the left edge of the label.

In § 101.9(e)(5), the revised sample label also changes the value for potassium from 45 mg to 40 mg because the declaration of potassium is to be expressed to the nearest 10 mg. increment.

Additionally, in § 101.9(e)(6)(i), we have revised the title for one sample label from ''Dual Column Display'' to ''Dual Column Display, Per Serving and Per Container.'' This revised title should help distinguish this sample label from the other sample label in § 101.9(e)(6)(i). As for the other sample label titled ''Dual Columns, Per Serving and Per Unit''), the sample label inadvertently omitted information regarding the

servings per container and serving size. The technical amendment revises the sample label for ''Dual Columns, Per Serving and Per Unit'' to include information on servings per container and serving size.

In § 101.9(e)(6)(ii), the sample label appeared blurred or difficult to read when printed in the **Federal Register**.

The technical amendment substitutes a better quality image for the sample label. There are no changes to the contents of the sample label itself.

H. Section 101.9(j)(13) and Addresses or Phone Numbers for Obtaining Required Nutrition Information and the Exception for Certain Individual Serving Size Packages

Section 101.9(j)(13)(i) discusses requirements for foods in small packages. The Nutrition Facts Label Final Rule revised § 101.9(j)(13)(i) so that the Nutrition Facts label on small packages would not be required to bear a footnote explaining what the ''% Daily Value'' means and manufacturers could voluntarily include an abbreviated footnote of ''% DV = % Daily Value'' in a type size no smaller than 6 point.

In revising § 101.9(j)(13)(i), we did not intend to affect the preexisting paragraphs at § 101.9(j)(13)(i)(A), which pertains to the use of an address or telephone number where consumers can obtain required information, and § 101.9(j)(13)(i)(B), which pertains to an exception for certain individual serving size packages of food. After we issued the Nutrition Facts Label Final Rule, we were informed that both paragraphs (j)(13)(i)(A) and (B) had, nevertheless, been deleted. Because we did not intend such a result, we are restoring paragraphs (j)(13)(i)(A) and (B) to § 101.9(j)(13)(i) and also correcting an error in § 101.9(j)(13)(i)(B) by replacing the reference to ''§ 101.2(c)(5)'' with ''§ 101.2(c)(2).'' The correction is necessary because § 101.2(c)(5) does not exist, and the correct reference is to § 101.2(c)(2).

I. Section 101.36 and Corrections to the Spelling of Phosphorus, the Listing of Potassium, the Size of Calories, and a Cross-Reference

Section 101.36(b)(2)(i)(B) (21 CFR 101.36(b)(2)(i)(B)) names dietary ingredients that are to be declared on the Supplement Facts label. The Nutrition Facts Label Final Rule incorrectly spelled phosphorus as ''phosphorous,'' so the technical amendment uses the correct spelling. Additionally, we have replaced ''Vitamin A'' with ''vitamin A'' for purposes of punctuation.

Section 101.36(b)(2)(ii)(B) discusses how the amounts of vitamins and minerals must be declared on the Supplement Facts label. In brief, the regulation states that the amounts of vitamins and minerals, excluding sodium and potassium, must be the amount of vitamin or mineral included in one serving of the product, using the units of measurement and levels of significance given in § 101.9(c)(8)(iv). The exclusion regarding potassium was based originally on the fact that there was no RDI value for potassium. The technical amendment deletes ''and potassium'' from the exclusion in § 101.36(b)(2)(ii)(B) because § 101.9(c)(8)(iv), among other things, does set forth the RDI, nomenclature, and unit of measure for potassium. Thus, because § 101.9(c)(8)(iv) sets forth an RDI and units of measure for potassium, the exclusion for potassium in § 101.36(b)(2)(ii)(B) is no longer appropriate.

Section 101.36(e) discusses type sizes for certain information on the Supplement Facts label. The rule specifies a minimum type size for footnotes (among other things) and gives an example of a footnote statement. However, the example, ''Percent Daily Values are based on a 2,000 calorie diet,'' was missing a quotation mark. The technical amendment restores the missing quotation mark for the phrase ''Percent Daily Values are based on a 2,000 calorie diet.''

Additionally, § 101.36(e) contains a sentence specifying the font size for ''Calories'' and the heading ''Calories'' and the actual number of calories per serving. This sentence, however, should have been removed from the codified text because, as we stated in our response to comment 483 in the Nutrition Facts Label Final Rule, many dietary supplement products may contribute a negligible amount of calories (81 FR 33742 at 33939). We stated that the Nutrition Facts Label Final Rule does not require information about calories to be displayed in a larger type size or highlighted on any Supplement Facts labels (id.). Therefore, we are removing the sentence regarding the font size and highlighting for ''Calories'' and the actual number of calories from § 101.36(e).

J. Section 101.36 and Sample Labels

Section 101.36(e)(11) shows two samples of Supplement Facts labels. The sample label in paragraph (e)(11)(ii) has an ingredient list that has ''Sucrose'' as the first ingredient.

The correct term, however, is ''sugar'' instead of ''sucrose,'' so the technical amendment replaces ''Sucrose'' with ''Sugar'' in the sample label.

The sample label in paragraph (e)(11)(iv) has an entry of 0 grams of trans fat.

The technical amendment removes the trans fat line from the sample label because certain dietary ingredients or subcomponents, including trans fat, that are not present or are present in amounts that can be declared as zero, must not be declared on the Supplement Facts label (see § 101.36(b)(2)).

The sample label in paragraph (e)(12) contained two errors. The sample label incorrectly placed choline after potassium when, under § 101.36(b)(2)(i)(B), choline should appear after pantothenic acid. Additionally, the sample label incorrectly gave a value for potassium. Under § 101.36(b)(2), vitamins and minerals cannot be declared on the Supplement Facts label that are not present, or that are present in amounts that can be declared as zero in § 101.9(c) (such as amounts corresponding to less than 2 percent of the RDI for the nutrient). In the sample label that appeared in the Nutrition Facts Label Final Rule, the level for potassium was less than 2 percent of the RDI. Consequently, the technical amendment revises the sample label to provide a level of potassium that would cause potassium to be listed on the Supplement Facts label.

K. Appendix B and Examples of Graphic Enhancements Used by FDA

The regulations at part 101 (21 CFR part 101) contain several appendices. One appendix, identified as Appendix B and entitled ''Examples of Graphic Enhancements used by the FDA,'' illustrates various features of the Nutrition Facts label and identifies type sizes, fonts, and other specifications that we use in our illustrations of the Nutrition Facts label.

When we issued the Nutrition Facts Label Final Rule, we did not update Appendix B to correspond to the Nutrition Facts Label Final Rule's new and revised requirements. The technical amendment, therefore, updates Appendix B so that the illustration corresponds to the Nutrition Facts Label Final Rule. The updated image also changes the value for potassium from 235 mg to 240 mg; the change to 240 mg is consistent with the rounding increments used for potassium when a serving contains greater than 140 mg of potassium. In such cases, the declared value is rounded to the nearest 10 mg increment.

III. The Administrative Procedure Act

Publication of this document constitutes final action of these changes under the Administrative Procedure Act (APA) (5 U.S.C. 553). Under 5 U.S.C. 553(b)(3)(B) of the APA, an Agency may, for good cause, find (and incorporate the finding and a brief statement of reasons in the rules issued) that notice and public comment procedure on a rule is impracticable, unnecessary, or contrary to the public interest. We have determined that notice and public comment are unnecessary because these amendments only make technical or non-substantive changes, such as correcting sample labels, correcting cross-references, and restoring provisions that were never intended to be removed. For these reasons, we have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment is unnecessary.

In addition, FDA finds good cause for these amendments to become effective on the date of publication of this action. The APA allows an effective date less than 30 days after publication as provided by an Agency for good cause found and published with the rule (5 U.S.C. 553(d)(3)). A delayed effective date is unnecessary in this case because the amendments do not impose any new regulatory requirements on affected parties. As a result, affected parties do not need time to prepare before the rule takes effect. Therefore, we find good cause for this correction to become effective on the date of publication of this action.

IV. Paperwork Reduction Act of 1995

This final rule refers to previously approved collections of information found in FDA regulations. 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 part 101 have been approved under OMB control number 0910–0381.

V. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

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

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. In § 101.9:
■ a. Revise paragraph (b)(5)(vi);
■ b. Add paragraphs (c)(2)(i) through (iv);
■ c. Revise paragraphs (c)(6)(i) introductory text, (c)(6)(iii), (c)(8)(ii) introductory text, (c)(8)(iv), (d)(1)(iii), (e)(5), and (e)(6)(i) and (ii); and
■ d. Add paragraphs (j)(13)(i)(A) and (B).

The revisions and additions read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(b) * * *

(5) * * *

(vi) Ounces with an appropriate visual unit of measure, as described in paragraph (b)(5)(iii) of this section, may be used for products that naturally vary in size as provided for in paragraph (b)(2)(i)(F) of this section.

* * * * *

(c) * * *

(2) * * *

(i) ''Saturated fat,'' or ''Saturated'': A statement of the number of grams of saturated fat in a serving defined as the sum of all fatty acids containing no double bonds, except that label declaration of saturated fat content information is not required for products that contain less than 0.5 gram of total fat in a serving if no claims are made about fat, fatty acid, or cholesterol content, and if ''calories from saturated fat'' is not declared. Except as provided for in paragraph (f) of this section, if a statement of the saturated fat content is not required and, as a result, not declared, the statement ''Not a significant source of saturated fat'' shall be placed at the bottom of the table of nutrient values. Saturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 gram (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(ii) ''Trans fat'' or ''Trans'': A statement of the number of grams of trans fat in a serving, defined as the sum of all unsaturated fatty acids that contain one or more isolated (*i.e.,* nonconjugated) double bonds in a trans configuration, except that label declaration of trans fat content information is not required for products that contain less than 0.5 gram of total fat in a serving if no claims are made about fat, fatty acid or cholesterol content. The word ''trans'' may be italicized to indicate its Latin origin. Trans fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½)-gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content, when declared, shall be expressed as zero. Except as provided for in paragraph (f) of this section, if a statement of the trans fat content is not required and, as a result, not declared, the statement ''Not a significant source of trans fat'' shall be placed at the bottom of the table of nutrient values.

(iii) ''Polyunsaturated fat'' or ''Poly-unsaturated'' (VOLUNTARY): A statement of the number of grams of polyunsaturated fat in a serving defined as cis,cis-methylene-interrupted

polyunsaturated fatty acids may be declared voluntarily, except that when monounsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a food other than one that meets the criteria in § 101.62(b)(1) for a claim for ''fat free,'' label declaration of polyunsaturated fat is required. Polyunsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

(iv) ''Monounsaturated fat'' or ''Monounsaturated'' (VOLUNTARY): A statement of the number of grams of monounsaturated fat in a serving defined as cis-monounsaturated fatty acids may be declared voluntarily except that when polyunsaturated fat is declared, or when a claim about fatty acids or cholesterol is made on the label or in labeling of a food other than one that meets the criteria in § 101.62(b)(1) for a claim for ''fat free,'' label declaration of monounsaturated fat is required. Monounsaturated fat content shall be indented and expressed as grams per serving to the nearest 0.5 (½) gram increment below 5 grams and to the nearest gram increment above 5 grams. If the serving contains less than 0.5 gram, the content shall be expressed as zero.

* * * * *

(6) * * *

(i) ''Dietary fiber'': A statement of the number of grams of total dietary fiber in a serving, indented and expressed to the nearest gram, except that if a serving contains less than 1 gram, declaration of dietary fiber is not required or, alternatively, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used, and if the serving contains less than 0.5 gram, the content may be expressed as zero. Dietary fiber is defined as non-digestible soluble and insoluble carbohydrates (with 3 or more monomeric units), and lignin that are intrinsic and intact in plants; isolated or synthetic non-digestible carbohydrates (with 3 or more monomeric units) determined by FDA to have physiological effects that are beneficial to human health. Except as provided for in paragraph (f) of this section, if dietary fiber content is not required, and as a result not declared, the statement ''Not a significant source of dietary fiber'' shall be placed at the bottom of the table of nutrient values in the same type size. The following isolated or synthetic nondigestible carbohydrate(s) have been determined by FDA to have physiological effects that are beneficial to human health and, therefore, shall be included in the calculation of the amount of dietary fiber: [beta]-glucan soluble fiber (as described in § 101.81(c)(2)(ii)(A)), psyllium husk (as described in § 101.81(c)(2)(ii)(B)(*1*)), cellulose, guar gum, pectin, locust bean gum, and hydroxypropylmethylcellulose. The manufacturer must make and keep records in accordance with paragraphs (g)(10) and (11) of this section to verify the declared amount of dietary fiber in the label and labeling of food when a mixture of dietary fiber, and added nondigestible carbohydrate(s) that does not meet the definition of dietary fiber, is present in the food.

* * * * *

(iii) ''Added Sugars'': A statement of the number of grams of added sugars in a serving, except that label declaration of added sugars content is not required for products that contain less than 1 gram of added sugars in a serving if no claims are made about sweeteners, sugars, added sugars, or sugar alcohol content. Except as provided for in paragraph (f) of this section, if a statement of the added sugars content is not required and, as a result, not declared, the statement ''Not a significant source of added sugars'' shall be placed at the bottom of the table of nutrient values in the same type size. Added sugars are either added during the processing of foods, or are packaged as such, and include sugars (free, mono and disaccharides), sugars from syrups and honey, and sugars from concentrated fruit or vegetable juices that are in excess of what would be expected from the same volume of 100 percent fruit or vegetable juice of the same type, except that fruit or vegetable juice concentrated from 100 percent juices sold to consumers, fruit or vegetable juice concentrates used towards the total juice percentage label declaration under § 101.30 or for Brix standardization under § 102.33(g)(2) of this chapter, fruit juice concentrates which are used to formulate the fruit component of jellies, jams, or preserves in accordance with the standard of identities set forth in §§ 150.140 and 150.160 of this chapter, or the fruit component of fruit spreads shall not be labeled as added sugars. Added sugars content shall be indented under Total Sugars and shall be prefaced with the word ''Includes'' followed by the amount (in grams) ''Added Sugars'' (''Includes 'X' g Added Sugars''). It shall be expressed to the nearest gram, except that if a serving contains less than 1 gram, the statement ''Contains less than 1 gram'' or ''less than 1 gram'' may be used as an alternative, and if the serving contains less than 0.5 gram, the content may be expressed as zero. When a mixture of naturally occurring and added sugars is present in the food, and for specific foods containing added sugars, alone or in combination with naturally occurring sugars, where the added sugars are subject to fermentation and/or non-enzymatic browning, the manufacturer must make and keep records in accordance with paragraphs (g)(10) and (11) of this section to verify the declared amount of added sugars in the label and labeling of food.

* * * * *

(8) * * *

(ii) The declaration of vitamins and minerals as a quantitative amount by weight and percent of the RDI shall include vitamin D, calcium, iron, and potassium in that order, for infants through 12 months, children 1 through 3 years of age, pregnant women, lactating women, and adults and children 4 or more years of age, except quantitative weights for these vitamins and minerals are not required for labels described in paragraph (j)(13) of this section. The declaration of folic acid shall be included as a quantitative amount by weight when added as a nutrient supplement or a claim is made about the nutrient. The declaration of vitamins and minerals in a food, as a quantitative amount by weight and percent of the RDI, may include any of the other vitamins and minerals listed in paragraph (c)(8)(iv) of this section. The declaration of vitamins and minerals shall include any of the other vitamins and minerals listed in paragraph (c)(8)(iv) of this section as a statement of the amount per serving of the vitamins and minerals as described in this paragraph (c)(8)(ii), calculated as a percent of the RDI and expressed as a percent of the Daily Value, when they are added as a nutrient supplement, or when a claim is made about them, unless otherwise stated as quantitative amount by weight and percent of the Daily Value. Other vitamins and minerals need not be declared if neither the nutrient nor the component is otherwise referred to on the label or the labeling or advertising and the vitamins and minerals are:

* * * * *

(iv) The following RDIs, nomenclature, and units of measure are established for the following vitamins and minerals which are essential in human nutrition:

Nutrient	Unit of measure	RDI			
		Adults and children ≥ 4 years	Infants [1] through 12 months	Children 1 through 3 years	Pregnant women and lactating women
Vitamin D	Micrograms (mcg) [2]	20	10	15	15
Calcium	Milligrams (mg)	1,300	260	700	1,300
Iron	Milligrams (mg)	18	11	7	27
Potassium	Milligrams (mg)	4,700	700	3,000	5,100
Vitamin A	Micrograms RAE [3] (mcg)	900	500	300	1,300
Vitamin C	Milligrams (mg)	90	50	15	120
Vitamin E	Milligrams (mg) [4]	15	5	6	19
Vitamin K	Micrograms (mcg)	120	2.5	30	90
Thiamin	Milligrams (mg)	1.2	0.3	0.5	1.4
Riboflavin	Milligrams (mg)	1.3	0.4	0.5	1.6
Niacin	Milligrams NE [5] (mg)	16	4	6	18
Vitamin B_6	Milligrams (mg)	1.7	0.3	0.5	2.0
Folate [6]	Micrograms DFE [7] (mcg)	400	80	150	600
Vitamin B_{12}	Micrograms (mcg)	2.4	0.5	0.9	2.8
Biotin	Micrograms (mcg)	30	6	8	35
Pantothenic acid	Milligrams (mg)	5	1.8	2	7
Phosphorus	Milligrams (mg)	1,250	275	460	1,250
Iodine	Micrograms (mcg)	150	130	90	290
Magnesium	Milligrams (mg)	420	75	80	400
Zinc	Milligrams (mg)	11	3	3	13
Selenium	Micrograms (mcg)	55	20	20	70
Copper	Milligrams (mg)	0.9	0.2	0.3	1.3
Manganese	Milligrams (mg)	2.3	0.6	1.2	2.6
Chromium	Micrograms (mcg)	35	5.5	11	45
Molybdenum	Micrograms (mcg)	45	3	17	50
Chloride	Milligrams (mg)	2,300	570	1,500	2,300
Choline	Milligrams (mg)	550	150	200	550
Protein	Grams (g)	N/A	11	N/A	[8] 71

[1] RDIs are based on dietary reference intake recommendations for infants through 12 months of age.

[2] The amount of vitamin D may, but is not required to, be expressed in international units (IU), in addition to the mandatory declaration in mcg. Any declaration of the amount of vitamin D in IU must appear in parentheses after the declaration of the amount of vitamin D in mcg.

[3] RAE = Retinol activity equivalents; 1 microgram RAE = 1 microgram retinol, 2 microgram supplemental β-carotene, 12 micrograms dietary β-carotene, or 24 micrograms dietary α-carotene, or dietary 24 micrograms dietary β-cryptoxanthin.

[4] 1 mg α-tocopherol (label claim) = 1 mg α-tocopherol = 1 mg RRR- α-tocopherol = 2 mg *all rac*-α-tocopherol.

[5] NE = Niacin equivalents, 1 mg NE = 1 mg niacin = 60 milligrams tryptophan.

[6] "Folate" and "Folic Acid" must be used for purposes of declaration in the labeling of conventional foods and dietary supplements. The declaration for folate must be in mcg DFE (when expressed as a quantitative amount by weight in a conventional food or a dietary supplement), and percent DV based on folate in mcg DFE. Folate may be expressed as a percent DV in conventional foods. When folic acid is added or when a claim is made about the nutrient, folic acid must be declared in parentheses, as mcg of folic acid.

[7] DFE = Dietary Folate Equivalents; 1 DFE = 1 mcg naturally occurring folate = 0.6 mcg folic acid.

[8] Based on the reference caloric intake of 2,000 calories for adults and children aged 4 years and older, and for pregnant women and lactating women.

* * * * *

(d)(1) * * *

(iii) Information required in paragraphs (d)(7) and (8) of this section shall be in type size no smaller than 8 point. Information required in paragraph (d)(5) of this section for the "Calories" declaration shall be highlighted in bold or extra bold and shall be in a type size no smaller than 16 point except the type size for this information required in the tabular displays as shown in paragraphs (d)(11), (e)(6)(ii), and (j)(13)(ii)(A)(*1*) of this section and the linear display for small packages as shown in paragraph (j)(13)(ii)(A)(*2*) of this section shall be in a type size no smaller than 10 point. The numeric amount for the information required in paragraph (d)(5) of this section shall also be highlighted in bold or extra bold type and shall be in a type size no smaller than 22 point, except the type size for this information required for the tabular display for small packages as shown in paragraph (j)(13)(ii)(A)(*1*) of this section, and for the linear display for small packages as shown in paragraph (j)(13)(ii)(A)(*2*) of this section no smaller than 14 point. The information required in paragraphs (d)(4), (6), and (9) of this section shall be in a type size no smaller than 6 point. When provided, the information described in paragraph (d)(10) of this section shall be in a type size no smaller than 6 point.

* * * * *

(e) * * *

(5) The following sample label illustrates the provisions of paragraph (e) of this section:

Dual Columns, Two Forms of the Same Food

Nutrition Facts

12 servings per container

Serving size **1/4 cup dry mix (44g)**

	Per 1/4 cup dry mix		Per baked portion	
Calories	**170**		**300**	
		% DV*		% DV*
Total Fat	1.5g	**2%**	16g	**21%**
Saturated Fat	1g	**5%**	5g	**25%**
Trans Fat	0g		0g	
Cholesterol	0mg	**0%**	60mg	**20%**
Sodium	300mg	**13%**	375mg	**16%**
Total Carb.	36g	**13%**	36g	**13%**
Dietary Fiber	<1g	**2%**	<1g	**2%**
Total Sugars	18g		18g	
Incl. Added Sugars	18g	**36%**	18g	**36%**
Protein	2g		3g	
Vitamin D	0mcg	0%	0mcg	0%
Calcium	100mg	8%	100mg	8%
Iron	1mg	6%	1mg	6%
Potassium	40mg	0%	40mg	0%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

(6) * * *

(i) Nutrient information for vitamins and minerals shall be separated from information on other nutrients by a bar and shall be arrayed vertically in the following order: Vitamin D, calcium, iron, and potassium as shown in the following sample labels.

Dual Column Display, Per Serving and Per Container

Nutrition Facts

2 servings per container

Serving size **1 cup (255g)**

	Per serving		Per container	
Calories	**220**		**440**	
		% DV*		**% DV***
Total Fat	5g	**6%**	10g	**13%**
Saturated Fat	2g	**10%**	4g	**20%**
Trans Fat	0g		0g	
Cholesterol	15mg	**5%**	30mg	**10%**
Sodium	240mg	**10%**	480mg	**21%**
Total Carb.	35g	**13%**	70g	**25%**
Dietary Fiber	6g	**21%**	12g	**43%**
Total Sugars	7g		14g	
Incl. Added Sugars	4g	**8%**	8g	**16%**
Protein	9g		18g	
Vitamin D	5mcg	25%	10mcg	50%
Calcium	200mg	15%	400mg	30%
Iron	1mg	6%	2mg	10%
Potassium	470mg	10%	940mg	20%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

Dual Columns, Per Serving and Per Unit

Nutrition Facts

12 servings per container

Serving size **1/2 muffin (144g)**

	Per 1/2 muffin		Per 1 muffin	
Calories	**380**		**760**	
		% DV*		% DV*
Total Fat	16g	**21%**	32g	**41%**
Saturated Fat	3g	**15%**	6g	**30%**
Trans Fat	0g		0g	
Cholesterol	50mg	**17%**	100mg	**33%**
Sodium	480mg	**21%**	960mg	**42%**
Total Carb.	56g	**20%**	112g	**41%**
Dietary Fiber	2g	**7%**	4g	**14%**
Total Sugars	32g		64g	
Incl. Added Sugars	30g	**60%**	60g	**120%**
Protein	3g		6g	
Vitamin D	0.1mcg	0%	0.2mcg	2%
Calcium	40mg	4%	80mg	6%
Iron	2mg	10%	4mg	20%
Potassium	190mg	4%	380mg	8%

* The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

(ii) The following sample label illustrates the provisions of paragraphs (b)(2)(i)(D) and (b)(12)(i) of this section for labels that use the tabular display.

Tabular Dual Column Display

Nutrition Facts

2 servings per container

Serving size
1 cup (255g)

Calories
220 per serving | **440** per container

	Per serving	% DV*	Per container	% DV*		Per serving	% DV*	Per container	% DV*
Total Fat	5g	**6%**	10g	**13%**	**Total Carb.**	35g	**13%**	70g	**25%**
Saturated Fat	2g	**10%**	4g	**20%**	Dietary Fiber	6g	**21%**	12g	**43%**
Trans Fat	0g		0g		Total Sugars	7g		14g	
Cholesterol	15mg	**5%**	30mg	**10%**	Incl. Added Sugars	4g	**8%**	8g	**16%**
Sodium	240mg	**10%**	480mg	**21%**	**Protein**	9g		18g	
Vitamin D	5mcg	25%	10mcg	50%	Iron	1mg	6%	2mg	10%
Calcium	200mg	15%	400mg	30%	Potassium	470mg	10%	940mg	20%

*The % Daily Value (DV) tells you how much a nutrient in a serving of food contributes to a daily diet. 2,000 calories a day is used for general nutrition advice.

* * * * *

(j) * * *

(13)(i) * * *

(A) The manufacturer, packer, or distributor shall provide on the label of packages that qualify for and use this exemption an address or telephone number that a consumer can use to obtain the required nutrition information (*e.g.,* ''For nutrition information, call 1–800–123–4567'').

(B) When such products bear nutrition labeling, either voluntarily or because nutrition claims or other nutrition information is provided, all required information shall be in type size no smaller than 6 point or all upper-case type of 1–16 inches minimum height, except that individual serving-size packages of food served with meals in restaurants, institutions, and on board passenger carriers, and not intended for sale at retail, may comply with § 101.2(c)(2).

* * * * *

■ 3. In § 101.36 revise paragraphs (b)(2)(i)(B) introductory text, (b)(2)(ii)(B), (e) introductory text, (e)(11)(ii) and (iv), and (e)(12) to read as follows:

§ 101.36 Nutrition labeling of dietary supplements.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) The names of dietary ingredients that are declared under paragraph (b)(2)(i) of this section shall be presented in a column aligned on the

left side of the nutritional label in the order and manner of indentation specified in § 101.9(c), except that calcium and iron shall follow choline, and sodium and potassium shall follow chloride. This results in the following order for vitamins and minerals: Vitamin A, vitamin C, vitamin D, vitamin E, vitamin K, thiamin, riboflavin, niacin, vitamin B6, folate and folic acid, vitamin B12, biotin, pantothenic acid, choline, calcium, iron, phosphorus, iodine, magnesium, zinc, selenium, copper, manganese, chromium, molybdenum, chloride, sodium, potassium, and fluoride. The (b)(2)-dietary ingredients shall be listed according to the nomenclature specified in § 101.9 or in paragraph (b)(2)(i)(B)(*2*) of this section.

* * * * *

(ii) * * *

(B) The amounts of vitamins and minerals, excluding sodium, shall be the amount of the vitamin or mineral included in one serving of the product, using the units of measurement and the levels of significance given in § 101.9(c)(8)(iv), except that zeros following decimal points may be dropped, and additional levels of significance may be used when the number of decimal places indicated is not sufficient to express lower amounts (*e.g.,* the RDI for zinc is given in whole milligrams (mg), but the quantitative amount may be declared in tenths of a mg). The amount of vitamin D may, but is not required to, be expressed in IUs, in addition to the mandatory declaration in mcg. Any declaration of the amount of vitamin D in IUs must appear in parentheses after the declaration of the amount of vitamin D in mcg.

* * * * *

(e) Except as provided for small and intermediate sized packages under paragraph (h)(3)(i)(2) of this section, information other than the title, headings, and footnotes shall be in uniform type size no smaller than 8 point. Type size no smaller than 6 point may be used for column headings (*e.g.,* ''Amount Per Serving'' and ''% Daily Value'') and for footnotes (*e.g.,* ''Percent Daily Values are based on a 2,000 calorie diet'').

* * * * *

(11) * * *

(ii) Multiple vitamins for children and adults (excludes Servings Per Container which is stated in the net quantity of contents declaration):

Supplement Facts

Serving Size 1 Tablet

Amount Per Serving		% Daily Value for Children 1 through 3 Years of Age	% Daily Value for Adults and Children 4 or more Years of Age
Calories	5		
Total Carbohydrate	1 g	<1%**	<1%*
Total Sugars	1 g	†	†
Includes 1g Added Sugars		4%**	2%*
Vitamin A (50% as beta-carotene)	450 mcg	150%	50%
Vitamin C	60 mg	400%	67%
Vitamin D	20 mcg	133%	100%
Vitamin E	8 mg	133%	53%
Thiamin	0.9 mg	180%	75%
Riboflavin	0.9 mg	180%	69%
Niacin	11.2 mg	187%	70%
Vitamin B_6	0.9 mg	180%	53%
Folate	300 mcg DFE (180 mcg folic acid)	200%	75%
Vitamin B_{12}	2.0 mcg	222%	83%

* Percent Daily Values are based on a 2,000 calorie diet.
** Percent Daily Values are based on a 1,000 calorie diet.
† Daily Value not established.

Other ingredients: Sugar, sodium ascorbate, gelatin, maltodextrin, dl-alpha tocopheryl acetate, niacinamide, magnesium stearate, Yellow 6, artificial colors, stearic acid, palmitic acid, artificial flavors, pyridoxine hydrochloride, thiamin mononitrate, vitamin A acetate, cholecalciferol, and cyanocobalamin.

* * * * *

(iv) Dietary supplement containing dietary ingredients with and without RDIs and DRVs:

Supplement Facts

Serving Size 1 Capsule
Servings Per Container 100

Amount Per Capsule	% Daily Value
Calories 20	
Total Fat 2 g	3%*
Saturated Fat 0.5 g	3%*
Polyunsaturated Fat 1 g	†
Monounsaturated Fat 0.5 g	†
Vitamin A 765 mcg	85%
Vitamin D 21 mcg	105%
Omega-3 fatty acids 0.5 g	†

* Percent Daily Values are based on a 2,000 calorie diet.
† Daily Value not established.

Ingredients: Cod liver oil, gelatin, water, and glycerin.

* * * * *

(12) If space is not adequate to list the required information as shown in the sample labels in paragraph (e)(11) of this section, the list may be split and continued to the right as long as the headings are repeated. The list to the right must be set off by a line that distinguishes it and sets it apart from the dietary ingredients and percent of Daily Value information given to the left. The following sample label illustrates this display:

Supplement Facts

Serving Size 1 Packet
Servings Per Container 10

Amount Per Packet		% Daily Value	Amount Per Packet		% Daily Value
Vitamin A (from cod liver oil)	900 mcg	100%	Magnesium (as magnesium oxide)	63 mg	15%
Vitamin C (as ascorbic acid)	250 mg	278%	Zinc (as zinc oxide)	11 mg	100%
Vitamin D (as ergocalciferol)	20 mcg	100%	Selenium (as sodium selenate)	25 mcg	45%
Vitamin E (as dl-alpha tocopherol)	75 mg	500%	Copper (as cupric oxide)	0.5 mg	56%
Thiamin (as thiamin mononitrate)	60 mg	5000%	Manganese (as manganese sulfate)	5 mg	217%
Riboflavin	60 mg	4615%	Chromium (as chromium chloride)	50 mcg	143%
Niacin (as niacinamide)	60 mg	375%	Molybdenum (as sodium molybdate)	50 mcg	111%
Vitamin B_6 (as pyridoxine hydrochloride)	60 mg	3529%	Potassium (as potassium chloride)	200 mg	4%
Folate	400 mcg DFE (240 mcg folic acid)	100%	Betaine (as betaine hydrochloride)	25 mg	*
Vitamin B_{12} (as cyanocobalamin)	100 mcg	4167%	Glutamic Acid (as L-glutamic acid)	25 mg	*
Biotin	100 mcg	333%	Inositol (as inositol monophosphate)	75 mg	*
Pantothenic Acid (as calcium pantothenate)	60 mg	1200%	*para*-Aminobenzoic acid	30 mg	*
Choline (as choline chloride)	100 mg	18%	Deoxyribonucleic acid	50 mg	*
Calcium (from oystershell)	130 mg	10%	Boron	500 mcg	*
Iron (as ferrous fumarate)	10 mg	56%			
Iodine (from kelp)	150 mcg	100%			

* Daily Value not established.

Other ingredients: Cellulose, stearic acid, and silica.

* * * * *

■ 4. Revise appendix B to part 101 to read as follows:

Appendix B to Part 101—Graphic Enhancements Used by the FDA

Examples of Graphic Enhancements used by the FDA

A. Overall

1. The Nutrition Facts label is boxed and contains all black or one color type printed on a white or neutral background.

B. Typeface and size

1. The "Nutrition Facts" label uses 6 point or larger Helvetica Black and/or Helvetica Regular type. In order to fit some formats, the typography may be kerned as much as -4 (tighter kerning reduces legibility).

2. Key nutrients and their % Daily Values are set in 8 point Helvetica Black. The "%" symbol also may be set in Helvetica Black.

3. "Nutrition Facts" is set in either Franklin Gothic Heavy or Helvetica Black to fit the width of the label flush left and flush right.

4. "Servings per container" is set in 10 point Helvetica Regular and "Serving size" is set in 10 point Helvetica Black and with 1 point of leading. "Amount per serving" is set in 6 point Helvetica Black.

5. "Calories" is set in 16 point Helvetica Black and the numerical value of calories is set in 22 point Helvetica Black.

6. Absolute measures of nutrient content (for example, "1g") and nutrient subgroups are set in 8 point Helvetica Regular with 4 points of leading.

7. Vitamins and minerals are set in 8 point Helvetica Regular, with 4 points of leading, separated by 8 point bullets.

8. The type for the footnote is set in 6 point Helvetica Regular with 1 point of leading.

C. Rules

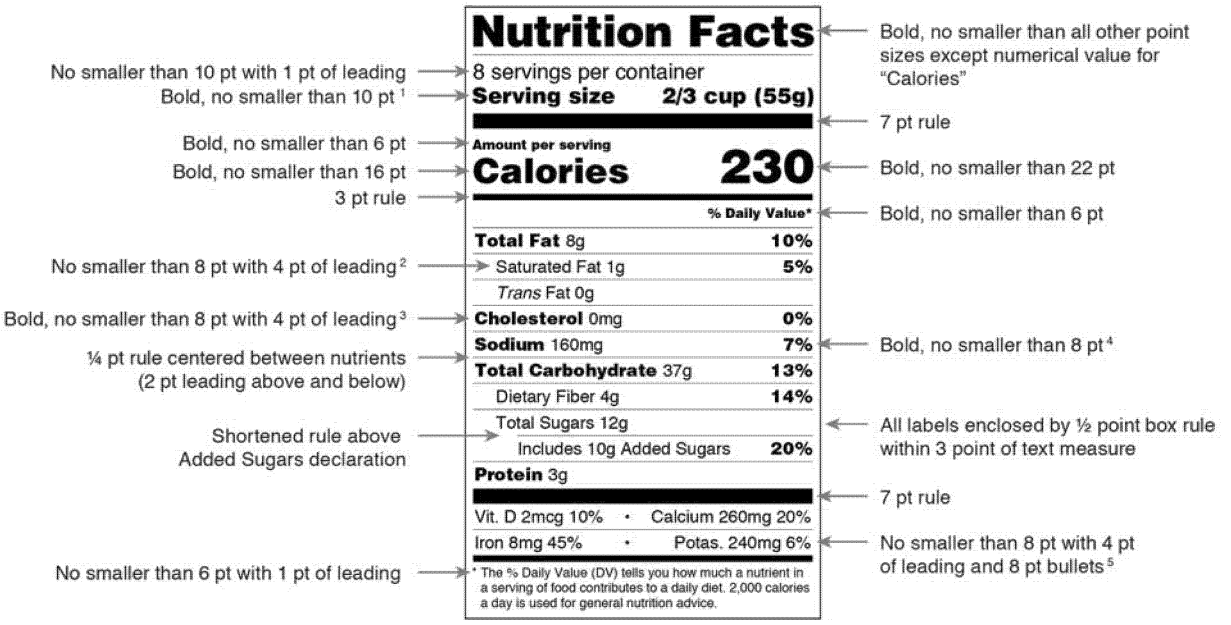
1. A 7 point rule separates large groupings as shown in the example. A 3 point rule separates calorie information from the nutrient information.

2. A hairline rule or ¼ point rule separates individual nutrients, as shown in the example. Descenders do not touch rule. The top half of the label (nutrient information) has 2 points of leading between the type and the rules and the bottom half of the label (footnote) has 1 point of leading between the type and the rules. The rule above the "Added Sugars" declaration is shortened as shown in the example.

D. Box

1. All labels are enclosed by ½ point box rule within 3 points of text measure.

Examples of Graphic Enhancements used by the FDA



[1] Text in bold font is Helvetica Black; text not bolded is Helvetica Regular; leading may be "at least" the point size indicated in all instances

[1] "Serving size" declaration may be decreased to no smaller than 8 pt bold if additional space is needed for the declaration

[2] Saturated fat, *Trans* Fat, Dietary Fiber, Total Sugars, Added Sugars, voluntary nutrients (if listed) and their g/mg values: No smaller than 8 pt with 4 pt of leading

[3] Total Fat, Cholesterol, Sodium, Total Carbohydrate, and Protein: Bold, no smaller than 8 pt with 4 pt of leading

[4] % Daily Values for nutrients that appear between 7 point rules: Bold, no smaller than 8 pt.

[5] Vit. D, Calcium, Iron, Potas., voluntary nutrients (if listed) and their mg/mcg values and % Daily Values: No smaller than 8 pt and with 4 pt of leading

Dated: December 13, 2018.

Scott Gottlieb,

Commissioner of Food and Drugs.

[FR Doc. 2018–27431 Filed 12–19–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 543

RIN 3141–AA60

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC) amends its minimum internal control standards for Class II gaming under the Indian Gaming Regulatory Act to correct an erroneous deletion of the key control standards and to make other minor edits and additions for clarity.

DATES: *Effective Date:* January 22, 2019.

FOR FURTHER INFORMATION CONTACT: Jennifer Lawson at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (''NIGC'' or ''Commission'') and set out a comprehensive framework for the regulation of gaming on Indian lands. On January 5, 1999, the NIGC published a final rule in the **Federal Register** called *Minimum Internal Control Standards.* 64 FR 590. The rule added a new part to the Commission's regulations establishing Minimum Internal Control Standards (MICS) to reduce the risk of loss because of customer or employee access to cash and cash equivalents within a casino. The rule contains standards and procedures that govern cash handling, documentation, game integrity, auditing, surveillance, and variances, as well as other areas.

The Commission recognized from their inception that the MICS would require periodic review and updates to keep pace with technology and has substantively amended them numerous times, most recently in late 2013 (78 FR 63873).

II. Development of the Rule

On September 21, 2012, the Commission concluded nearly two years of consultation and drafting with the publication of comprehensive amendments, additions, and updates to Part 543, the minimum internal control standards (MICS) for Class II gaming operations (77 FR 58708). The regulations require tribes to establish controls and implement procedures at least as stringent as those described in

this part to maintain the integrity of the gaming operation. In late 2013, the Commission published a final rule, adding kiosk drop, count, fill, and surveillance standards to Part 543 (78 FR 63873).

Now, the Commission is finalizing additional revisions, largely technical in nature, that are meant to correct earlier editing oversights and to better clarify the intent of the provisions. The proposed rule was published June 8, 2018 (83 FR 26620), and the comment period expired July 9, 2018.

III. Review of Public Comments

NIGC received the following comments in response to the proposed rule:

Comment: One commenter recommended requiring an inventory under § 543.10(e) if a table is open going into the next gaming day.

Response: The standard requires a count at the end of each shift and the Commission notes that the majority of operations have shifts that coincide with their gaming days. Tribes have the option of requiring an additional count where a shift crosses over from one gaming day to the next.

Comment: One commenter argued that it is too burdensome to require a supervisor to count the table inventory in § 543.10(e).

Response: Since its inception, § 543.10(e) has required a supervisor to count the table inventory. The rule now also requires a supervisor to count the main card room bank.

Comment: One commenter believed that the amendments eliminated kiosks from § 543.17(j).

Response: The kiosk provisions remain in the regulations and can be found at §§ 543.17(i) (Kiosk count standards) and (j)(9): ''Controls must be established and procedures implemented to safeguard the use, access, and security of keys for kiosks.''

Comment: Two commenters expressed concern that § 543.17(j)(4), which requires the key holder to be independent of those conducting the drop, would prevent those responsible for drops from having access to the keys necessary to conduct them. One commenter specifically identified the need for security personnel's assistance in emergency drops as problematic under these regulations because the security department holds the keys.

Response: The term ''custody'' seems to have been confused with physical use of the key. Typically, security personnel are not used as drop agents: they only accompany the drop team as they remove Financial Instrument Storage Components. Occasionally, operations allow card tables to be dropped by a security agent and the shift supervisor.

Custody involves more than just physical custody (*i.e.,* stored in security room or other area controlled by security), and includes logical custody (*i.e.,* I.T. controls of lock box). Additionally, the complete inventory records for the keys should be kept with accounting department.

A separation of duties must be established for granting or limiting access to the keys, custody of the keys, and recordkeeping duties for the keys. Each operation is unique and, to maintain independence, security should either be precluded from acting as drop team agents or have limited control over the keys.

Comment: One commenter requested clarification on § 543.17(j)(7), particularly whether it is intended to address emergency drop situations requiring immediate access.

Response: The standard is meant to address emergency drop situations. Use of the keys outside the scheduled time for use includes an emergency drop. Other times can include, but are not limited to, inventory or replacement. The standard is intended to ensure security of the box contents and require proper authorization to issue of keys outside of the scheduled count.

Comment: One commenter asked whether § 543.17(j)(8) applies to manually-controlled key boxes, electronic boxes, or both, and whether removal of the player interface drop and count will need to meet requirements set forth for regularly scheduled drop and count (*e.g.* § 543.17(e)(4)) in addition to these requirements.

Response: The standard applies to computerized, electronic, and alternative key systems. A manual key system does not have an override key. In the event of power loss or other issue, the emergency manual keys allow access to the key box. These keys should be secured by other means and only accessed in an emergency.

The removal of a financial instrument can occur during a regularly scheduled drop or an emergency drop. Standards are provided for each situation and the operation should determine which are appropriate to follow based on the circumstances.

Comment: One Commenter asked whether § 543.17(j)(8)(i) also applies to financial instrument storage components and drop boxes.

Response: It does not. The standard applies to emergency manual keys. The standard later states at § 543.17(j)(8)(iii) that if the player interface drop and count keys are not accessed, then only two agents are required: Those are the keys used for the financial instrument storage components and drop boxes.

Comment: One commenter expressed a general concern that overly burdensome key controls lead to delay, customer frustration and inefficiency of the gaming operation and noted the need for balance between security and functionality.

Response: The Commission agrees and believes it has done its best to strike a proper balance between protection of tribal assets and efficiency. These standards are consistent with those of other jurisdictions, but also allow some flexibility. Tribes and operation management must establish controls and implement procedures to best fit their needs and manage risks specific to their operations.

Comment: One commenter believes § 543.17(j)(6) is in conflict with § 543.17(d)(4) and the entire key control process needs further clarification.

Response: Without further discussion, it is unclear what conflict the commenter sees. The Commission believes the provisions can be read harmoniously. Section 543.17(j)(6) restricts access to drop box release keys to the count team and authorized agents.

Section 543.17(j)(7) requires anyone using the keys outside of the scheduled drop and count time to be authorized—thereby becoming an authorized agent under (j)(6))—and documented. This allows for an emergency drop to be conducted by authorized agents so the drop team does not need to be called.

Section 543.17 (d)(4) requires drop boxes to be removed only at the time previously designated by the gaming operation and reported to the TGRA, but it specifically allows for emergency drops, which require surveillance and TGRA to be notified.

IV. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State,

local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, *et seq.,* and assigned OMB Control Number 3141–0009. The OMB control number expires on November 30, 2018.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

The key control language proposed here is the most substantive of all the changes and was the subject of extensive consultation in 2012 (77 FR 58708). The language has not changed since initially adopted. It was inadvertently written over with the addition of kiosk controls in 2013, and this rule is to include the controls back into the regulations. The remaining changes are all technical in nature, correcting numbering and adding minor clarifications.

List of Subjects in 25 CFR Part 543

Accounting, Administrative practice and procedure, Gambling, Indian—Indian lands, Reporting and recordkeeping requirements.

For the reasons discussed in the Preamble, the Commission amends 25 CFR part 543 as follows:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

■ 1. The authority citation for part 543 continues to read as follows:

Authority: 25 U.S.C. 2702(2), 2706(b)(1–4), 2706(b)(10).

■ 2. Amend § 543.10 by revising paragraph (e) to read as follows:

§ 543.10 What are the minimum internal control standards for card games?

* * * * *

(e) *Standards for reconciliation of card room bank.* Two agents—one of whom must be a supervisory agent—must independently count the main card room bank and table inventory at the end of each shift and record the following information:

(1) Date;

(2) Shift;

(3) Table number (if applicable);

(4) Amount by denomination;

(5) Amount in total; and

(6) Signatures of both agents.

* * * * *

■ 3. Amend § 543.17 by revising paragraphs (d), (i)(4)(i), and (j) to read as follows:

§ 543.17 What are the minimum internal control standards for drop and count?

* * * * *

(d) *Card game drop standards.* Controls must be established and procedures implemented to ensure security of the drop process. Such controls must include the following:

(1) Surveillance must be notified when the drop is to begin so that surveillance may monitor the activities.

(2) At least two agents must be involved in the removal of the drop box, at least one of whom is independent of the card games department.

(3) Once the drop is started, it must continue until finished.

(4) All drop boxes may be removed only at the time previously designated by the gaming operation and reported to the TGRA. If an emergency drop is required, surveillance must be notified before the drop is conducted and the TGRA must be informed within a timeframe approved by the TGRA.

(5) At the end of each shift:

(i) All locked card game drop boxes must be removed from the tables by an agent independent of the card game shift being dropped;

(ii) For any tables opened during the shift, a separate drop box must be placed on each table, or a gaming operation may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Card game drop boxes must be transported directly to the count room or other equivalently secure area by a minimum of two agents, at least one of whom is independent of the card game shift being dropped, until the count takes place.

(6) All tables that were not open during a shift and therefore not part of the drop must be documented.

(7) All card game drop boxes must be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number, and shift, if applicable.

* * * * *

(i) * * *

(4) * * *

(i) The count of each box must be recorded in ink or other permanent form of recordation.

* * * * *

(j) *Controlled keys.* Controls must be established and procedures implemented to safeguard the use, access, and security of keys in accordance with the following:

(1) Each of the following requires a separate and unique key lock or alternative secure access method:

(i) Drop cabinet;

(ii) Drop box release;

(iii) Drop box content; and

(iv) Storage racks and carts used for the drop.

(2) Access to and return of keys or equivalents must be documented with the date, time, and signature or other

unique identifier of the agent accessing or returning the key(s).

(i) For Tier A and B operations, at least two (2) drop team agents are required to be present to access and return keys. For Tier C operations, at least three (3) drop team agents are required to be present to access and return keys.

(ii) For Tier A and B operations, at least two (2) count team agents are required to be present at the time count room and other count keys are issued for the count. For Tier C operations, at least three (two for card game drop box keys in operations with three tables or fewer) count team agents are required to be present at the time count room and other count keys are issued for the count.

(3) Documentation of all keys, including duplicates, must be maintained, including:

(i) Unique identifier for each individual key;

(ii) Key storage location;

(iii) Number of keys made, duplicated, and destroyed; and

(iv) Authorization and access.

(4) Custody of all keys involved in the drop and count must be maintained by a department independent of the count and the drop agents as well as those departments being dropped and counted.

(5) Other than the count team, no agent may have access to the drop box content keys while in possession of storage rack keys and/or release keys.

(6) Other than the count team, only agents authorized to remove drop boxes are allowed access to drop box release keys.

(7) Any use of keys at times other than the scheduled drop and count must be properly authorized and documented.

(8) Emergency manual keys, such as an override key, for computerized, electronic, and alternative key systems must be maintained in accordance with the following:

(i) Access to the emergency manual key(s) used to access the box containing the player interface drop and count keys requires the physical involvement of at least three agents from separate departments, including management. The date, time, and reason for access, must be documented with the signatures of all participating persons signing out/in the emergency manual key(s);

(ii) The custody of the emergency manual keys requires the presence of two agents from separate departments from the time of their issuance until the time of their return; and

(iii) Routine physical maintenance that requires access to the emergency manual key(s), and does not involve accessing the player interface drop and count keys, only requires the presence of two agents from separate departments. The date, time, and reason for access must be documented with the signatures of all participating agents signing out/in the emergency manual key(s).

(9) Controls must be established and procedures implemented to safeguard the use, access, and security of keys for kiosks.

* * * * *

■ 4. Amend § 543.18 by revising paragraph (d)(6)(v) to read as follows:

§ 543.18 What are the minimum internal control standards for the cage, vault, kiosk, cash and cash equivalents?

* * * * *

(d) * * *

(6) * * *

(v) Dollar amount per financial instrument redeemed;

* * * * *

■ 5. Amend § 543.23 by revising paragraph (c)(1)(viii) to read as follows:

§ 543.23 What are the minimum internal control standards for audit and accounting?

* * * * *

(c) * * *

(1) * * *

(viii) Drop and count standards, including supervision, count room access, count team, card game drop standards, player interface and financial instrument drop standards, card game count standards, player interface financial instrument count standards, collecting currency cassettes and financial instrument storage components from kiosks, kiosk count standards, and controlled keys;

* * * * *

■ 6. Amend § 543.24 by revising paragraphs (a) and (d)(5) to read as follows:

§ 543.24 What are the minimum internal control standards for auditing revenue?

(a) *Supervision.* Supervision must be provided as needed for revenue audit by an agent(s) with authority equal to or greater than those being supervised.

* * * * *

(d) * * *

(5) *Complimentary services or items.* At least monthly, review the reports required in § 543.13(c). These reports must be made available to those entities authorized by the TGRA or by tribal law or ordinance.

* * * * *

Washington, DC.

Dated: December 12, 2018.

Jonodev O. Chaudhuri,

Chairman.

Dated: December 12, 2018.

Kathryn Isom-Clause,

Vice Chair.

Dated: December 17, 2018.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2018–27651 Filed 12–20–18; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 148

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: Department of the Treasury.

ACTION: Notification of exemptions.

SUMMARY: The Secretary of the Treasury (the ''Secretary''), as Chairperson of the Financial Stability Oversight Council (''FSOC''), after consultation with the Federal Deposit Insurance Corporation (the ''FDIC''), is issuing a determination regarding requests for exemption from certain requirements of the rule implementing the qualified financial contracts (''QFC'') recordkeeping requirements of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act'').

DATES: The exemptions granted are effective December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Peter Phelan, Deputy Assistant Secretary for Capital Markets, (202) 622–1746; Peter Nickoloff, Financial Economist, Office of Capital Markets, (202) 622–1692; Steven D. Laughton, Assistant General Counsel (Banking & Finance), (202) 622–8413; or Stephen T. Milligan, Acting Deputy Assistant General Counsel (Banking & Finance), (202) 622–4051.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2016, the Secretary published a final rule pursuant to section 210(c)(8)(H) of the Dodd-Frank Act requiring certain financial companies to maintain records with respect to their QFC positions, counterparties, legal documentation, and collateral that would assist the FDIC as receiver in exercising its rights and fulfilling its obligations under Title II of the Act (the ''final rule'' or ''rule'').[1]

[1] 31 CFR part 148; 81 FR 75624 (Oct. 31, 2016).

Section 148.3(c)(3) of the rule provides that one or more records entities may request an exemption from one or more of the requirements of the rule by writing to the Department of the Treasury (''Treasury''), the FDIC, and the applicable primary financial regulatory agency or agencies, if any.[2] The written request for an exemption must: (i) Identify the records entity or records entities or the types of records entities to which the exemption would apply; (ii) specify the requirements from which the records entities would be exempt; (iii) provide details as to the size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system of each records entity, to the extent appropriate, and any other relevant factors; and (iv) specify the reasons why granting the exemption will not impair or impede the FDIC's ability to exercise its rights or fulfill its statutory obligations under sections 210(c)(8), (9), and (10) of the Act.[3]

The rule provides that, upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agency or agencies for the applicable records entity or entities, that takes into consideration each of the factors referenced in section 210(c)(8)(H)(iv) of the Act [4] and any other factors the FDIC considers appropriate, the Secretary may grant, in whole or in part, a conditional or unconditional exemption from compliance with one or more of the requirements of the rule to one or more records entities.[5] The rule further provides that, in determining whether to grant an exemption, the Secretary will consider any factors deemed appropriate by the Secretary, including whether application of one or more requirements of the rule is not necessary to achieve the purpose of the rule.[6]

Requests for Exemptions

Overview

On August 23, 2017, The Clearing House Association L.L.C. (''TCH'') and the Securities Industry and Financial Markets Association (''SIFMA'' and, together with TCH, ''TCH–SIFMA'' or the ''associations''), jointly submitted a written request for seven separate exemptions from certain recordkeeping requirements of the rule.[7] The associations' request was submitted on behalf of 33 corporate groups that are members of a working group organized by TCH–SIFMA.[8] As discussed in greater detail below, TCH–SIFMA requested an exemption (1) for cash market transactions, (2) for transactions that mature overnight, (3) for seeded funds, (4) for subsidiaries of excluded entities, (5) for corporate groups for which the preponderance of assets and derivatives exposures in the group are in an insured depository institution, (6) for entities that are not identified as material entities in a corporate group's resolution plan, and (7) from the requirement to report, in the corporate organization master table, excluded entities and non-financial companies of a corporate group.

As discussed more fully in the preamble to the final rule,[9] the FDIC has the authority under Title II of the Dodd-Frank Act to transfer the assets and liabilities of any financial company for which it has been appointed receiver under Title II (a ''covered financial company'') to either a bridge financial company established by the FDIC or to another financial institution.[10] The FDIC generally has broad discretion under Title II as to which QFCs it transfers to the bridge financial company or to another financial institution, subject to certain limitations, including the requirement that, if the FDIC is to transfer a QFC with a particular counterparty, it must transfer to a single financial institution (i) all QFCs between the covered financial company and such counterparty and (ii) all QFCs between the covered financial company and any affiliate of such counterparty.[11] Similarly, if the FDIC determines to disaffirm or repudiate any QFC with a particular counterparty, it must disaffirm or repudiate (i) all QFCs between the covered financial company and such counterparty and (ii) all QFCs between the covered financial company and any affiliate of such counterparty.[12] This requirement is referred to as the ''all or none rule.''

Treasury received a recommendation from the FDIC, prepared in consultation with the relevant primary financial regulatory agencies,[13] regarding the TCH–SIFMA exemption requests. After consultation with the FDIC, Treasury is making the determinations discussed below.[14] The remaining exemption requests by TCH–SIFMA will be addressed separately.

Cash Market Transactions

TCH–SIFMA requested an exemption from all of the recordkeeping requirements of the rule for any cash market QFC that typically settles in accordance with a market standard settlement cycle. For purposes of this discussion, ''cash market QFC'' refers to an agreement to purchase or sell an equity or fixed income security or, in the case of a foreign exchange spot transaction, an agreement to purchase or sell one currency in exchange for another currency.[15]

The associations stated that requiring recordkeeping for these transactions is unnecessary because (1) cash market QFCs are standardized and do not have unique terms and, accordingly, the relevant data for FDIC decision making as to whether to transfer such QFCs would be limited to identifying counterparties to such QFCs and the net exposure with such counterparties; (2) records entities execute a high volume of cash market QFCs on a daily basis, making compliance with the daily recordkeeping requirements with respect to such transactions burdensome; (3) records entities already have systems in place for evaluating counterparty exposure on a net basis

[2] 31 CFR 148.3(c)(3).

[3] 12 U.S.C. 5390(c)(8), (9), and (10).

[4] 12 U.S.C. 5390(c)(8)(H)(iv).

[5] 31 CFR 148.3(c)(4)(i).

[6] 12 U.S.C. 148.3(c)(4)(ii).

[7] TCH has since been succeeded by the Bank Policy Institute.

[8] The participants in the TCH–SIFMA working group are Bank of America Corporation; BancWest Corporation; The Bank of New York Mellon Corporation; Barclays US LLC; BB&T Corporation; BMO Financial Corp.; Capital One Financial Corporation; Citigroup Inc.; Citizens Financial Group, Inc.; Comerica Incorporated; Credit Suisse Holdings (USA), Inc.; Deutsche Bank Trust Corporation; Fifth Third Bancorp; The Goldman Sachs Group, Inc.; HSBC North America Holdings Inc.; JPMorgan Chase & Co.; KeyCorp; M&T Bank Corporation; Morgan Stanley; MUFG Americas Holding Corporation; Nomura Holding America Inc.; Nuveen, LLC; The PNC Financial Services Group, Inc.; RBC USA Holdco Corporation; Regions Financial Corporation; Santander Holdings USA, Inc.; State Street Corporation; SunTrust Banks, Inc.; Teachers Insurance and Annuity Association of America; Toronto Dominion Holdings (U.S.A.), Inc.; US Bancorp; UBS Americas, Inc.; and Wells Fargo & Company.

[9] *See* 81 FR at 75624–25.

[10] *See, e.g.,* 12 U.S.C. 5390(a)(1)(G)(i).

[11] 12 U.S.C. 5390(c)(9)(A).

[12] 12 U.S.C. 5390(c)(11).

[13] The FDIC consulted with staff of the Board of Governors of the Federal Reserve System (''Board of Governors''), the Commodity Futures Trading Commission (''CFTC''), and the Securities and Exchange Commission (''SEC'').

[14] All exemptions to the recordkeeping requirements of the rule are made at the discretion of the Secretary, and the Secretary's discretion is not limited by any recommendations received from other agencies. Exemptions to the FDIC's recordkeeping rules under 12 CFR part 371 (Recordkeeping Requirements for Qualified Financial Contracts) are at the discretion of the board of directors of the FDIC and entail a separate request and process and separate policy considerations. References to the FDIC in this notice should not be taken to imply that the FDIC has determined that similar exemptions under Part 371 would be available.

[15] Such transactions are qualified financial contracts as defined in Title II of the Dodd-Frank Act and the rule. *See* 12 U.S.C. 5390(c)(8)(D)(ii)(I), (vi)(I); 31 CFR 148.2(m).

and the FDIC should use these existing systems for cash market QFCs, rather than imposing the burden of new recordkeeping requirements for cash market QFCs, particularly since they are short-dated and thus most will not be in existence on any particular date when the FDIC is appointed receiver of a records entity; (4) these transactions pose little risk to records entities due to their limited leverage and complexity and short settlement period; and (5) the FDIC would likely focus on ensuring the settlement of cash market QFCs rather than repudiating or disaffirming them which, TCH–SIFMA argued, would undermine financial stability in the event of adverse market conditions.

The associations raised points similar to the foregoing in their comment letter submitted in response to Treasury's proposal of the rule.[16] In adopting the final rule, Treasury noted, with respect to this comment, that all QFCs, including cash market QFCs, are subject to the all or none rule. Treasury also stated that the large volume of these short-term transactions supports the determination that to be useful to the FDIC, any QFC records must be maintained in the standard format specified in the final rule to ensure rapid aggregation and evaluation of the information by the receiver. For these reasons, Treasury determined not to exclude or otherwise provide an exemption for cash market QFCs in the rule but noted the rule's provision for requests for further exemptive relief. Treasury further stated that any request for such an exemption would need to be defined in such a way as to ensure consistency of treatment by any records entity.[17]

In response to the present exemption request, Treasury believes that an exemption can be granted for cash market QFCs that would be consistent across records entities and that would permit the FDIC to comply with its obligations and fulfill its responsibilities under Title II of the Act, including the all or none rule. Specifically, Treasury is granting an exemption applicable to all records entities for cash market QFCs that have standardized terms and that have a ''T plus 3'' [18] or shorter settlement cycle, conditioned on records entities maintaining certain limited records.

As noted by the associations, cash market QFCs present settlement risk—the risk that the counterparty to the QFC defaults on its obligation to perform on the settlement date. In the case of a securities transaction, settlement involves the payment of a fixed price against the delivery of a security; in the case of a foreign exchange spot transaction, settlement involves the payment of a fixed amount of one currency against the delivery of an amount of a second currency equal to the fixed amount adjusted by the foreign exchange spot rate as of the time the transaction is executed. Although settlement risk may increase during a period of general financial distress that could prevail during the resolution of a covered financial company under Title II, the risk that a settlement failure could occur and the risk of any loss to the covered financial company, or the bridge financial company (or other financial institution) if the QFC is transferred, are largely mitigated by, depending on the nature of the cash market QFC, collateral posted by the counterparty and central clearing and settlement. In addition, a cash market QFC could present market risk in that the market value of a security or foreign currency that the covered financial company has agreed to purchase could fall during the settlement period to a value below the purchase price, a risk that could also increase during a period of general financial distress. This risk is partially mitigated by the limited length of the settlement period.

The FDIC is required, to the extent practicable, to conduct its operations as receiver for a covered financial company, including making QFC transfer decisions, in a way that mitigates the potential for serious adverse effects to the financial system.[19] Given that cash market QFCs that meet the exemption criteria generally impose relatively limited risk, the FDIC's primary objectives in deciding whether to transfer cash market QFCs likely would be to maintain the continuity of the former operations of the covered financial company, to maintain the operations of the clearing agencies for cash market QFCs, and to otherwise avoid disruption to the financial markets. In such a case, the position level data provided by the recordkeeping requirements of the rule, as applied to cash market QFCs, would be less critical for the FDIC's transfer decisions.

With respect to QFCs other than cash market QFCs, other considerations would more likely bear on the FDIC's transfer decisions. In addition to considering financial stability implications, the FDIC would have to weigh whether the transfer of QFCs would be detrimental to the financial position of the bridge financial company. At a minimum, the FDIC would need to ensure that the bridge financial company would be solvent after the transfer of any assets and liabilities to it.[20] But given the all or none rule, for a covered financial company that has both cash market QFCs and non-cash market QFCs with a counterparty or with that counterparty's affiliates, the FDIC would need certain information about the cash market QFCs to inform its transfer decisions.

As noted above, TCH–SIFMA argued that with respect to any cash market QFCs, the records that records entities already maintain for their own business purposes and, in the case of broker-dealers, that are required by the SEC would be sufficient for the FDIC.[21] Given the time constraints imposed on the FDIC's decisionmaking by Title II, as discussed in the preamble to the final rule, the FDIC generally needs information about QFCs to be maintained in the standardized format provided by the rule.[22] As discussed below, the FDIC may be able to refer to existing records in certain cases to evaluate a covered financial company's exposure as a result of its cash market QFCs, but the FDIC nevertheless would need certain limited information to be maintained in the standardized format provided by the rule.

Under the terms of the exemption provided below, with respect to a counterparty that is a natural person, if a records entity only has cash market QFCs with that counterparty, the records entity would not be required to maintain any record of those QFCs because the all or none rule would apply only to those cash market QFCs. With respect to a counterparty that is a non-natural person, if the records entity's QFCs with the counterparty and the counterparty's affiliates, if any, are limited to cash market QFCs and other

[16] *See* Letter from TCH, SIFMA, the American Bankers Association, the Financial Services Roundtable, and the International Swaps and Derivatives Association, Inc. (April 7, 2015), pp. 21–22.

[17] 81 FR at 75637.

[18] ''T plus 3'' means the trade date plus three business days. The vast majority of cash market QFCs settle on a T plus 3 or shorter basis.

[19] *See* 12 U.S.C. 5390(a)(9)(E).

[20] As discussed in the preamble to the final rule, the FDIC is required to confirm that the aggregate amount of liabilities, including QFCs, of the covered financial company that are transferred to, or assumed by, the bridge financial company from the covered financial company do not exceed the aggregate amount of the assets of the covered financial company that are transferred to the bridge financial company from the covered financial company. *See* 12 U.S.C. 5390(h)(5)(F); 81 FR at 75626, 75649.

[21] *See, e.g.,* 17 CFR 240.17a–3, 17a–4.

[22] *See* 81 FR at 75648.

exempt QFCs (*i.e.,* unless another exemption has been provided to a specific records entity, the overnight QFCs discussed separately below), the records entity would need to identify the date of the record (fields A1.1, A2.1, A3.1, and BL.1 of Tables A–1 through A–3 and the Booking Location Master Table, respectively, of Appendix A to the rule), the records entity identifier (fields A1.2, A2.2, A3.2, and BL.2), the position identifier (field A1.3), the counterparty identifier (fields A1.4, A1.10, A2.3, and A3.6), and the QFC type (field A1.7) and maintain the information required by the corporate organization master table and the counterparty master table. With respect to the QFC type field (field A1.7), the records entity would be permitted simply to record ''cash market QFC'' as the QFC type. This would permit the FDIC to verify that no additional QFCs would be subject to the all or none rule as a result of the transfer or retention of the cash market QFCs with that counterparty.

If a records entity, in addition to its cash market QFCs with the counterparty, also has non-exempt QFCs with either the counterparty (whether the counterparty is a natural person or not) or with its affiliates, if any, the same information with respect to cash market QFCs would be required to be maintained by the records entity as described in the paragraph above except that the QFC type (field A1.7) would be required to be recorded at the same level of specificity as the records entity classifies the QFC in its internal systems (*e.g.,* as a foreign exchange spot transaction or more specifically as a U.S. dollar/Japanese yen spot transaction, depending on how the records entity classifies the QFC in its internal systems), as is currently the case for QFCs not subject to any exemption. For such cases, a separate record would be required to be maintained for each such QFC type for each particular counterparty. Different cash market QFC types may present different considerations for the FDIC's transfer determination, and including the QFC type in the standardized records of the records entity would permit the FDIC to identify quickly the QFC positions about which it may need more information. The FDIC may determine, for instance, that, given prevailing market conditions or the business of the covered financial company, it would need more information about the exposure of a covered financial company with respect to its spot transactions in a particular currency. The QFC product type is also expected to be helpful to the FDIC in obtaining from the covered financial company the relevant internal records relating to such QFCs because corporate groups may use different internal systems to maintain records regarding different QFC types.

For the reasons discussed above, in order to be useful to the FDIC, the information specified above would have to be maintained in the same standardized format as applies to the recordkeeping requirements of the rule generally, but for fields other than those specified above, records entities may provide specified default entries. No entries relating to such exempted QFCs would need to be provided with respect to Table A–4 (collateral detail data) or the safekeeping agent master table. Tables specifying the data that would be required to be provided for exempted cash market QFCs and, as discussed below, overnight QFCs are set forth in Appendix A to this notice.

Overnight QFCs

TCH–SIFMA requested an exemption from all of the recordkeeping requirements of the rule for QFCs that are overnight repurchase agreements and reverse repurchase agreements or overnight securities borrowing and lending agreements (''overnight QFCs'').[23] Such overnight QFCs provide that the transaction will terminate on the business day following the day the transaction is entered into. The associations asserted that, for this reason, transaction-specific information regarding overnight QFCs is not relevant to any decision by the FDIC regarding which QFCs to transfer to the bridge financial company. The associations also asserted that, because the rule requires records to be maintained based on values and information that are no less current than previous end of day values, the records required by the rule would not include information regarding overnight QFCs that are outstanding on the day the receiver is appointed.

The one business day stay relating to QFCs of the covered financial company discussed in the preamble to the final rule lasts until the earlier of 5:00 p.m. Eastern Time on the business day following the date of the appointment of the FDIC as receiver or the FDIC's notice to the counterparty of the transfer of the QFC.[24] During such stay, the FDIC may decide to structure asset transfers of a covered financial company such that QFCs would be transferred as of a time prior to the termination of the overnight QFCs, and the all or none rule would apply in connection with such a transfer. As with cash market QFCs, the FDIC could transfer overnight QFCs to the bridge financial company to help maintain the continuity of the former operations of the covered financial company and to otherwise avoid disruption to the financial markets. The settlement risk and market risk of overnight securities lending and repurchase and reverse repurchase agreements are partially mitigated by their short duration, collateralization requirements, and, with respect to much of the repurchase and reverse repurchase agreement market, central clearing. However, if the receiver decided to retain any non-overnight QFCs with a counterparty, it would also need to retain any overnight QFCs with that counterparty and that counterparty's affiliates. TCH–SIFMA's contention that the records would not provide information regarding any overnight QFCs entered into on the day the FDIC is appointed as receiver does not take into consideration the FDIC's ability to obtain records on the day following its appointment as receiver of QFCs entered into on the day of its appointment as receiver.

Absent a transfer of the contract by the FDIC, an overnight QFC would remain with the covered financial company and simply terminate in accordance with its terms, and the counterparty to the overnight transaction would be able to exercise its rights under the terms of the QFC. If the FDIC were to contemplate retaining an overnight transaction in the receivership, the FDIC would need more information about the transaction in order to assess the effect of doing so. As with cash market QFCs, the limited recordkeeping requirements set forth below are expected to facilitate the FDIC's ability to consult the records entity's internal records to obtain the information needed to make this assessment.

Under the terms of the exemption, the same set of records would need to be maintained with regard to overnight QFCs as would be required to be maintained with respect to cash market QFCs as set forth above. Specifically, if the records entity's QFCs with the counterparty and the counterparty's affiliates, if any, are limited to overnight QFCs and other exempt QFCs (*i.e.,* unless another exemption has been provided to a specific records entity, the cash market QFCs discussed separately

[23] Overnight repurchase agreements and reverse repurchase agreements and overnight securities borrowing and lending agreements are qualified financial contracts as defined in Title II of the Dodd-Frank Act and the rule. *See* 12 U.S.C. 5390(c)(8)(D)(ii)(I), (v); 31 CFR 148.2(m).

[24] *See* 12 U.S.C. 5390(c)(10)(B)(i).

above), the records entity would need to identify the date of the record (fields A1.1, A2.1, A3.1, BL.1), the records entity identifier (fields A1.2, A2.2, A3.2, and BL.2), the position identifier (field A1.3), the counterparty identifier (fields A1.4, A1.10, A2.3, and A3.6), and the QFC type (field A1.7) and would need to maintain the information required by the counterparty master table. With respect to the QFC type field (field A1.7), in this case, the records entity would be permitted simply to record ''overnight QFC'' as the QFC type. If a records entity, in addition to its overnight QFCs with the counterparty, also has non-exempt QFCs with either the counterparty or with its affiliates, if any, the same information with respect to overnight QFCs would be required to be maintained by the records entity as provided above except that the QFC type in field A1.7 would be recorded at the same level of specificity as the records entity classifies the QFC in its internal systems (*e.g.,* as a repurchase agreement). For such cases, a separate record would be required to be maintained for each such QFC type for each particular counterparty.

Seeded Funds

TCH–SIFMA requested an exemption from the rule for certain ''covered funds'' and registered investment companies and business development companies during their ''seeding period'' subject to restrictions imposed by section 13 of the Bank Holding Company Act of 1956, as amended,[25] (known as the ''Volcker Rule'') and implementing rules. The requested exemption would apply only to a seeded fund that does not on its own meet the assets and derivatives thresholds for qualifying as a records entity.

Seeded funds are funds in which the sponsor has made an initial investment of seed capital, amounting to up to 100% of the equity of the fund, during a limited period in which the fund establishes an investment record and attracts third party investment. Because a member of a corporate group that includes records entities could, during the seeding period, own a sufficient amount of the capital of such a seeded fund that the seeded fund would become an affiliate of the sponsor under the rule, the seeded fund, no matter its size or level of derivatives activity, would be subject to the rule as well, provided it otherwise meets the records entity definition.

Treasury considered a similar issue in addressing two comments received in response to the proposed rule that requested an exemption for seeded funds.[26] Treasury noted in response to these comments that changes made to the definition of ''records entity'' in the final rule should limit the circumstances in which a seeded fund would become a records entity by virtue of its sponsor's investment.[27] Further, Treasury noted that, in the event that such a seeded fund were to be deemed a records entity under the rule, the fund would be able to request an exemption from the recordkeeping requirements of the final rule for the duration of the seeding period; otherwise, the seeded fund would be treated as any other financial company member of the corporate group of a records entity and required to maintain records of its QFCs if they exceed the de minimis threshold.[28]

In their request for an exemption, TCH–SIFMA stated that the final rule presents a significant burden with regard to corporate groups' investments in seeded funds, sponsored by their members, that are records entities even with the revised definition adopted in the final rule. The associations argued that the pursuit of individual exemptions by each seeded fund would be impractical and burdensome given the limited duration of each such fund. Further, TCH–SIFMA raised a point not previously identified by the commenters to the proposed rule as to why an exemption would be appropriate for seeded funds. Specifically, TCH–SIFMA stated that the information barriers, such as corporate firewalls intended to protect trading positions and the confidentiality of asset management customers, that companies are required to establish between their seeded funds and the rest of the corporate group would significantly increase the cost of these funds' compliance with the recordkeeping requirements of the rule. The final rule had presumed that companies would likely comply with the rules by utilizing a centralized recordkeeping system that would obviate the need for each member of the corporate group to maintain its own recordkeeping system in order to comply with the rules.[29] While the additional costs imposed by information barriers established within corporate groups for regulatory and other reasons cannot be avoided in all cases, in this case, the additional cost may not be justified given that the fund would only be required to comply with the rules for the relatively short duration of its seeding period.

Given the additional burden faced by such funds and the reduced probability that the FDIC would need to have QFC information from one of these funds during the relatively short duration of its seeding period, Treasury has determined to grant an exemption for certain types of seeded funds that do not on their own meet the asset or derivative thresholds of the records entity definition. As proposed by TCH–SIFMA, the exemption is formulated to be consistent with the exemptions provided by the Volcker Rule and its implementing regulations with respect to such seeded funds. Although the Volcker Rule and this recordkeeping rule have different purposes, the limitations imposed on the exemptions—particularly the limitation on the seeding period discussed below—reduce the likelihood that the FDIC would need the QFC records of such a fund. Further, using the existing framework of the Volcker Rule permits records entities that are already subject to the Volcker Rule to rely on their compliance with the Volcker Rule in order to meet the conditions of this exemption.

The Volcker Rule imposes various prohibitions on proprietary trading by ''banking entities'' and on banking entities' investments in and relationships with certain funds, including, generally, private equity and hedge funds, referred to as ''covered funds.'' The Volcker Rule and its implementing regulations provide an exemption from the general prohibition on banking entity investments in covered funds if the investment is for the purpose of establishing the fund and providing it with sufficient initial equity to permit it to attract unaffiliated investors.[30] Such a seed investment must not exceed, together with other permissible investments by the banking entity and its affiliates in covered funds,

[25] 12 U.S.C. 1851.

[26] *See* Letter from TIAA–CREF (Apr. 7, 2015), p. 6; Letter from the Investment Company Institute (Apr. 7, 2015), p. 10.

[27] *See* 81 FR at 75633. In particular, Treasury adopted in the final rule the suggestion of commenters to revise the definition of ''records entity'' to identify which members of a corporate group are records entities by reference to whether they are consolidated under accounting standards rather than by reference to whether they are controlled for purposes of the Bank Holding Company Act. *See id.*

[28] *See id.* The final rule provides a de minimis exemption whereby a records entity that is a party to 50 or fewer open QFC positions is not required to maintain the records described in § 148.4 of the rule, other than the records described in § 148.4(i). *See* 31 CFR 148.3(c)(1).

[29] 81 FR at 75644.

[30] *See* 12 U.S.C. 1851(d)(4)(A); 12 CFR 248.12(a) (the rule adopted by the Board of Governors). The other agencies charged with implementing the Volcker Rule—the CFTC, the FDIC, the Office of the Comptroller of the Currency, and the SEC—have adopted substantively identical rules.

3% of the tier 1 capital of the banking entity.[31] Further, during the seeding period, the banking entity and its affiliates must actively seek unaffiliated investors in order to reduce the banking entity's investment in the fund to 3% or less of the total number or value of shares or other ownership interests of the fund, and the seeding period may not last for more than one year, unless extended by the Board of Governors for up to a maximum of two additional years.[32] The exemption granted by Treasury for covered funds is subject to the condition that the investments by a corporate group in the covered fund that cause the covered fund to become a member of the corporate group must be permitted pursuant to the Volcker Rule's seeded funds exemption described above.

Separately, the Volcker Rule implementing regulations provide that registered investment companies, business development companies, and companies formed for the purpose of becoming registered investment companies and business development companies are excluded from the definition of ''covered fund.'' [33] Further, the agencies implementing the Volcker Rule have provided staff guidance that such funds should not be considered to be banking entities under the implementing rules if the fund is established with a limited seeding period.[34] Without this relief, such funds (referenced as ''registered investment companies and business development companies'' in the exemption below) would themselves be subject to the prohibitions on proprietary trading and covered funds investments by banking entities. As to the length of the limited seeding period, the guidance cites, as an example, the maximum three year limitation on the permissible investments in seeded funds by covered funds discussed above.[35] The agencies in their recent proposal to amend the implementing regulations raised questions as to whether the length of the permitted seeding period should be made more definite, perhaps with provision for extensions.[36] The exemption granted by Treasury provides relief for registered investment companies and business development companies that are not deemed to be banking entities as a result of being in their seeding periods pursuant to the above described guidance or the implementing regulations, should they be amended to provide for similar relief.

Corporate Organization Table

The rule requires that information regarding a records entity's affiliates be maintained in a corporate organization master data lookup table, set forth in appendix A to the rule. The rule requires this information to be maintained on a daily basis by a records entity with respect to itself and all of the members of its corporate group, which includes all of the records entity's affiliates whether or not those entities meet the definitions of ''records entity'' or ''financial company'' under the rule.

TCH–SIFMA requested an exemption from this requirement such that a records entity may exclude from the corporate organization master table any affiliate that is an excluded entity [37] or that is not a financial company because it is not organized under the provisions of Federal law or the laws of any U.S. state; *i.e.,* because it is a non-U.S. affiliate.[38] TCH–SIFMA stated that these requirements are burdensome; that the reasons cited in the preamble to the final rule for including affiliates in this table do not support the inclusion of such entities; and that information that would be included in the table about these affiliates would not be useful to the FDIC as receiver.

Treasury determined in the final rule, and reaffirms in this notice, that it is important for the FDIC to have access to this information in the event it is appointed receiver of a covered financial company. As discussed in the preamble to the final rule, under section 210(c)(16) of the Dodd-Frank Act, the QFCs of subsidiaries or affiliates of a covered financial company that are guaranteed or otherwise supported by or linked to such covered financial company can be enforced by the FDIC as receiver of the covered financial company notwithstanding the insolvency, financial condition, or receivership of the covered financial company if the FDIC transfers the guarantee or other support to a bridge financial company or other third party.[39] The FDIC's decision as to whether to transfer such a guarantee or credit support pursuant to sections 210(c)(9) and (10) of the Act may be influenced by the information required to be maintained as to a records entity's affiliates. In particular, the FDIC as receiver may need to know whether the affiliate is a wholly-owned subsidiary or a partially-owned subsidiary since the extent of such control over the subsidiary would likely be a factor the FDIC considers in making any such transfer decision. Information about affiliates of the records entity will also provide the FDIC, in the event of a resolution of a covered financial company, with greater certainty that the required QFC records from each records entity have been maintained by allowing the FDIC to quickly ascertain, by reference to field CO.12 (regarding the entity's reporting status), whether the entity has not maintained records because it is not a party to any QFCs, has availed itself of the de minimis exemption (in which case the FDIC would need to manually review the available QFC records) or another exemption, or is excluded from the definition of ''records entity.''

Furthermore, although the associations asserted the FDIC could obtain this information from other sources, particularly, in the case of bank holding companies, from the Report of Changes in Organizational Structure on Form FR Y–10, as with other elements of the recordkeeping requirements of the rule, it is important for the FDIC to have access to this information in a readily-usable format. In this case, the information in the corporate organization master data lookup table is linked to information recorded in the

[31] *See* 12 U.S.C. 1851(d)(4)(B)(ii)(II); 12 CFR 248.12(a)(1)(ii).

[32] *See* 12 U.S.C. 1851(d)(4)(B), (C), 12 CFR 248.12(a)(2).

[33] As relates to the funds discussed herein, this exemption extends to an entity (i) that is registered as an investment company under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), or that is formed and operated pursuant to a written plan to become a registered investment company as described in 12 CFR 248.20(e)(3) and that complies with the requirements of section 18 of the Investment Company Act of 1940 (15 U.S.C. 80a–18); or (ii) that has elected to be regulated as a business development company pursuant to section 54(a) of that Act (15 U.S.C. 80a–53) and has not withdrawn its election, or that is formed and operated pursuant to a written plan to become a business development company as described in 12 CFR 248.20(e)(3) and that complies with the requirements of section 61 of the Investment Company Act of 1940 (15 U.S.C. 80a–60). *See* 12 CFR 248.10(c)(12)(i), (iii).

[34] *See* Board of Governors, Frequently Asked Questions, No. 16, *https://www.federalreserve.gov/bankinforeg/volcker-rule/faq.htm.* (Substantively identical frequently asked questions have been issued by the other implementing agencies.)

[35] *Id.* The guidance provides that the seeding period generally would be measured from the date on which the investment adviser or similar entity begins making investments pursuant to the written investment strategy of the fund.

[36] *See* Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds, 83 FR 33432, 33444–45 (July 17, 2018).

[37] As defined in the final rule, ''excluded entity'' means an insured depository institution, certain subsidiaries of an insured depository institution, or an insurance company. 31 CFR 148.2(f).

[38] As defined in the final rule (by cross-reference to 12 U.S.C. 5381(a)(11)), the term ''financial company'' includes only companies that are ''incorporated or organized under any provision of Federal law or the laws of any State.'' 31 CFR 148.2(g).

[39] *See* 12 U.S.C. 5390(c)(16); 81 FR at 75642.

other tables required under the final rule.

Nevertheless, Treasury accepts that the requirement to provide daily updating of information pertaining to excluded entity and non-U.S. affiliates imposes a significant burden on records entities. Treasury has determined to grant an exemption such that this information need only be updated within 30 days of a change. This 30-day period aligns with the existing requirement imposed by Form FR Y–10, and this accommodation should not significantly impair the FDIC's ability to make the determinations discussed above.

Entities That Are Not Material Entities Under a Group's Resolution Plan

TCH–SIFMA requested an exemption from the recordkeeping requirements of the rule for any records entity that is not identified as a ''material entity'' in its corporate group's resolution plan filed under section 165(d) of the Dodd-Frank Act. Certain financial companies—including bank holding companies with at least $250 billion in total consolidated assets and nonbank financial companies for which the FSOC has made a determination under section 113 of the Act—are required to file plans with the FDIC, the Board of Governors, and FSOC for their resolution under the Bankruptcy Code.[40] Under the implementing rules jointly adopted by the FDIC and Board of Governors, such financial companies are required to identify and provide certain information regarding their material entities.[41] ''Material entities'' is defined by the implementing rules as including subsidiaries that are significant to the activities of a critical operation or core business line.[42] The term ''core business lines'' is defined as those business lines, including associated operations, services, functions and support that, in the view of the financial company, upon failure of the financial company would result in a material loss of revenue, profit, or franchise value.[43] ''Critical operations'' is defined as the operations of a financial company, including associated operations, services, functions and support, the failure or discontinuance of which, in the company's view or as jointly directed by the Board of Governors and the FDIC, would pose a threat to the financial stability of the United States.[44] TCH–SIFMA stated that these material entities are the entities in a group that either would be the most likely to be subject to a Title II proceeding themselves or that would otherwise be material to such a proceeding.

TCH–SIFMA raised the same point in a comment letter submitted in response to the proposed rule and has not presented any additional information in support of this request.[45] As discussed in the preamble to the final rule,[46] Treasury noted that an entity that is part of a larger corporate group could be resolved under Title II without the Secretary making the systemic risk determination required under section 203(b) of the Act with respect to that particular entity. Section 210(a)(1)(E) of the Act provides that the FDIC may appoint itself as receiver of an entity if it is a ''covered subsidiary'' of a covered financial company of which the FDIC has been appointed as receiver and it is jointly determined by the FDIC and the Secretary that (i) the covered subsidiary is in default or in danger of default, (ii) the FDIC's appointment as receiver would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States, and (iii) the FDIC's appointment as receiver would facilitate the orderly liquidation of the covered financial company.[47] As Treasury noted in the preamble to the final rule, if the FDIC appoints itself receiver of a covered subsidiary, that subsidiary is treated as a covered financial company for purposes of Title II, and the FDIC as receiver would have the same rights under the Act and the same obligations under sections 210(c)(8), (9), and (10) of the Act as it does for other covered financial companies.[48]

Furthermore, the definition of ''material entity'' for purposes of the resolution plan is not well aligned with the likelihood of a company being resolved under Title II. In particular, the question of whether an entity is material to the financial company's core business lines is based on the materiality of its revenue, profit, or franchise value to the financial company. In contrast, Treasury, in making a systemic risk determination regarding a covered financial company under section 203(b) of the Act, and Treasury and the FDIC, in making a joint determination as to the FDIC's appointment as receiver of a covered subsidiary under section 210(a)(1)(E) of the Act, would be making a determination as to, among other things, the effects of the company's failure on U.S. financial stability. It is possible, for example, that an entity is not material to the core business lines of a financial company or to its critical operations and yet, because of the nature and extent of particular exposures the market has to that entity or because of the amount and nature of the assets it would liquidate if it were to be resolved in a disorderly manner outside of Title II, the entity could be resolved under Title II in order to preserve U.S. financial stability. It is not the case, therefore, that an entity that has not been identified as a material entity is, by virtue of not having been so identified, less likely to be resolved under Title II than an entity that has been identified as a material entity. Furthermore, because, as discussed above, the identification of an entity as a material entity is made based on the entity's materiality to its own corporate group, the proposed standard cannot be applied in a uniform way across corporate groups that are required to file resolution plans. For these reasons, Treasury has determined not to provide the requested exemption.

Conditions of the Exemptions

Any records entity subject to the rule may avail itself of the exemptions granted herein. With respect to each of the exemptions granted herein, Treasury reserves the right to rescind or modify the exemption at any time. Treasury intends to reassess the exemptions in five years. At that time, Treasury, in consultation with the FDIC and the primary financial regulatory agencies, would evaluate any relevant changes to market structure or applicable law or other relevant factors that might affect the reasons for granting the exemptions.

[40] *See* 12 U.S.C. 5365(d). Pursuant to section 165 of the Dodd-Frank Act, as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174 (May 24, 2018), enhanced prudential standards, including the resolution plan requirements provided by section 165(d) of the Act, are applied to bank holding companies with $250 billion or more in total consolidated assets and nonbank financial companies supervised by the Board of Governors. In addition, the Board of Governors has the authority to apply any such standard, including the resolution plan requirements provided by section 165(d) of the Act, to bank holding companies with $100 billion or more in total consolidated assets if it determines that application of the standard is appropriate to prevent or mitigate risks to U.S. financial stability or to promote safety and soundness.

[41] *See* 12 CFR 243.4 (Board of Governors rule); 12 CFR 381.4 (FDIC rule).

[42] 12 CFR 243.2(l), 381.2(l).

[43] 12 U.S.C. 243.2(d), 381.2(d).

[44] 12 U.S.C. 243.2(g), 381.2(g).

[45] *See* Letter from TCH, SIFMA, the American Bankers Association, the Financial Services Roundtable, and the International Swaps and Derivatives Association, Inc. (April 7, 2015), pp. 14–15.

[46] *See* 81 FR at 75630.

[47] 12 U.S.C. 5390(a)(1)(E)(i). ''Covered subsidiary'' is defined as any subsidiary of a covered financial company, other than an insured depository institution, an insurance company, or a covered broker or dealer. 12 U.S.C. 5381(a)(9).

[48] *See* 81 FR at 75630; 12 U.S.C. 5390(a)(1)(E)(ii).

Treasury expects that it would provide notice to records entities prior to any modification or rescission of any of the exemptions and that, in the event of a rescission or modification, Treasury would grant records entities a limited period of time in which to come into compliance with the applicable recordkeeping requirements of the rule.

Terms and Conditions of the Exemptions

The following exemptions from the requirements of 31 CFR 148.3 and 148.4 are hereby granted to any records entity subject to the rule. All terms undefined below but defined in 31 CFR 148.2 have the meanings set forth therein. Each of these exemptions is subject to modification or revocation at any time the Secretary determines that such action is necessary or appropriate in order to assist the FDIC as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under sections 210(c)(8), (9), or (10).

Cash Market Transactions

An exemption from the recordkeeping requirements of the rule for any QFC that is an agreement to purchase or sell an equity or fixed income security or a foreign exchange spot transaction (a ''cash market QFC''), provided that (i) such cash market QFC is executed on standardized terms and settles within three business days of the trade date and (ii) the records entity maintains, with respect to such cash market QFC, the records as set forth in Appendix A to this notice in the format required under the rule, provided further that no such records are required to be maintained for cash market QFCs a records entity has with a counterparty that is a natural person if the only QFCs the records entity has with such counterparty are cash market QFCs. With respect to a counterparty that is a non-natural person, if the records entity's QFCs with the counterparty and the counterparty's affiliates, if any, are limited to cash market QFCs or other exempt QFCs, the records entity may simply record ''cash market QFC'' as the QFC type (field A1.7); otherwise, the records entity must record the QFC type (field A1.7) for the cash market QFC at the same level of specificity as the records entity classifies the QFC in its internal systems.

Overnight QFCs

An exemption from the recordkeeping requirements of the rule for any QFC that is a repurchase agreement, reverse repurchase agreement, securities borrowing agreement, or securities lending agreement that terminates in accordance with its terms on the business day following the day it is entered into (each an ''overnight QFC''), provided that the records entity maintains, with respect to such an overnight QFC, the records as set forth in Appendix A to this notice in the format required under the rule. If the records entity's QFCs with the counterparty and the counterparty's affiliates, if any, are limited to overnight QFCs or other exempt QFCs, the records entity may simply record ''overnight QFC'' as the QFC type (field A1.7); otherwise, the records entity must record the QFC type (field A1.7) for the overnight QFC at the same level of specificity as the records entity classifies the QFC in its internal systems.

Seeded Funds

An exemption for an entity that is (i) a member of a corporate group with one or more banking entities; (ii) a records entity solely as a result of the application of section 148.2(n)(1)(iii)(E) of the rule; and (iii) a covered fund, provided that the investments in the entity that cause the entity to be a member of the corporate group are permitted pursuant to the section 13 rules for the purposes of establishing the fund and providing it with sufficient initial equity for investment to permit it to attract unaffiliated investors.

An exemption for an entity that is (i) a member of a corporate group with one or more banking entities; (ii) a records entity solely as a result of the application of section 148.2(n)(1)(iii)(E) of the rule; and (iii) excluded from the definition of ''covered fund'' under the section 13 rules as a registered investment company or business development company, provided that the entity is deemed not to be a ''banking entity'' as a result of it being in its seeding period as provided by the section 13 rules or relevant agency guidance.

For purposes of these exemptions, the ''section 13 rules'' refers to the rules of the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, or the Securities and Exchange Commission, as applicable, implementing section 13 of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1851); ''covered fund'' and ''banking entity'' have the meanings provided under the section 13 rules; ''registered investment company'' means a company registered as an investment company under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) or a company formed and operated pursuant to a written plan to become such a company; and ''business development company'' means a company that has elected to be registered as a business development company pursuant to section 54(a) of the Investment Company Act of 1940 (15 U.S.C. 53–a) and has not withdrawn its election or a company formed and operated pursuant to a plan to become such a company.

Corporate Organization Master Table

An exemption from the requirement of section 148.3(b)(1) of the rule to update all records on a daily basis with respect to the information, referenced in the corporate organization master table set forth in appendix A to the rule, regarding any affiliate of a records entity that is an excluded entity or a non-U.S. affiliate, provided that such information is updated at least 30 days after a change in such information. For purposes of this exemption, ''non-U.S. affiliate'' means an affiliate that is not organized under any provision of Federal law or the laws of any State and ''State'' has the meaning provided in 12 U.S.C. 5301(16).

Appendix A

TABLE A–1—POSITION-LEVEL DATA

Field	Instructions and data application	Definition
A1.1 As of date	Provide data extraction date	YYYY–MM–DD.
A1.2 Records entity identifier	Provide LEI for records entity. Information needed to review position-level data by records entity.	Varchar(50).
A1.3 Position identifier	Provide a unique identifier. Should be used consistently across all record entities within the corporate group. Use the unique transaction identifier if available. Information needed to readily track and distinguish positions.	Varchar(100).

TABLE A–1—POSITION-LEVEL DATA—Continued

Field	Instructions and data application	Definition
A1.4 Counterparty identifier	Provide a counterparty identifier. Use LEI if counterparty has one. Should be used consistently by all record entities within the corporate group. Information needed to identify counterparty by reference to Counterparty Master Table.	Varchar(50).
A1.5 Internal booking location identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
A1.6 Unique booking unit or desk identifier.	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
A1.7 Type of QFC	Provide type of QFC. Use unique product identifier if available. If records entity has only QFCs that are cash market QFCs or overnight QFCs with a counterparty and its affiliates, may enter "cash market QFCs" or "overnight QFCs," as applicable. If records entity has both cash market/overnight QFCs and non-exempt QFCs with a counterparty or with its affiliates, the QFC type must be recorded at the same level of specificity as the records entity classifies the QFC in its internal systems.	Varchar(100).
A1.7.1 Type of QFC covered by guarantee or other third party credit enhancement.	*Information not required to be provided Enter "NA"*	*Varchar(500).*
A1.7.2 Underlying QFC obligor identifier	*Information not required to be provided Enter "NA"*	*Varchar(50).*
A1.8 Agreement identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
A1.9 Netting agreement identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
A1.10 Netting agreement counterparty identifier.	Provide a netting agreement counterparty identifier. Use same identifier as provided in A1.4 if counterparty and netting agreement counterparty are the same. Use LEI if netting agreement counterparty has one. Information needed to identify unique netting sets.	Varchar(50).
A1.11 Trade date	*Information not required to be provided. Enter "2099–12–31"*	*YYYY–MM–DD.*
A1.12 Termination date	*Information not required to be provided. Enter "2099–12–31"*	*YYYY–MM–DD.*
A1.13 Next call, put, or cancellation date.	*Information not required to be provided. Enter "2099–12–31"*	*YYYY–MM–DD.*
A1.14 Next payment date	*Information not required to be provided. Enter "2099–12–31"*	*YYYY–MM–DD.*
A1.15 Local currency of position	*Information not required to be provided. Enter "USD"*	*Char(3).*
A1.16 Current market value of the position in local currency.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A1.17 Current market value of the position in U.S. dollars.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A1.18 Asset classification	*Information not required to be provided. Enter "0"*	*Char(1).*
A1.19 Notional or principal amount of the position in local currency.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A1.20 Notional or principal amount of the position In U.S. dollars.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A1.21 Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	*Information not required to be provided. Enter "N"*	*Char(1).*
A1.21.1 Third-party credit enhancement provider identifier (for the benefit of the records entity).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A1.21.2 Third-party credit enhancement agreement identifier (for the benefit of the records entity).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A1.21.3 Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	*Information not required to be provided. Enter "N"*	*Char(1).*
A1.21.4 Third-party credit enhancement provider identifier (for the benefit of the counterparty).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A1.21.5 Third-party credit enhancement agreement identifier (for the benefit of the counterparty).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A1.22 Related position of records entity	*Information not required to be provided. Enter "NA"*	*Varchar(100).*
A1.23 Reference number for any related loan.	*Information not required to be provided. Enter "NA"*	*Varchar(500).*
A1.24 Identifier of the lender of the related loan.	*Information not required to be provided. Enter "NA"*	*Varchar(500).*

TABLE A–2—COUNTERPARTY NETTING SET DATA

Field	Instructions and data application	Definition
A2.1 As of date	Data extraction date	YYYY–MM–DD.
A2.2 Records entity identifier	Provide the LEI for the records entity	Varchar(50).
A2.3 Netting agreement counterparty identifier.	Provide an identifier for the netting agreement counterparty. Use LEI if counterparty has one.	Varchar(50).
A2.4 Netting agreement identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*

TABLE A–2—COUNTERPARTY NETTING SET DATA—Continued

Field	Instructions and data application	Definition
A2.4.1 Underlying QFC obligor identifier	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A2.5 Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	*Information not required to be provided. Enter "N"*	*Char(1).*
A2.5.1 Third-party credit enhancement provider identifier (for the benefit of the records entity).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A2.5.2 Third-party credit enhancement agreement identifier (for the benefit of the records entity).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A2.5.3 Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	*Information not required to be provided. Enter "N"*	*Char(1).*
A2.5.4 Third-party credit enhancement provider identifier (for the benefit of the counterparty).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A2.5.5 Third-party credit enhancement agreement identifier (for the benefit of the counterparty).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A2.6 Aggregate current market value in U.S. dollars of all positions under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.7 Current market value in U.S. dollars of all positive positions, as aggregated under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.8 Current market value in U.S. dollars of all negative positions, as aggregated under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.9 Current market value in U.S. dollars of all collateral posted by records entity, as aggregated under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.10 Current market value in U.S. dollars of all collateral posted by counterparty, as aggregated under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.11 Current market value in U.S. dollar of all collateral posted by records entity that is subject to rehypothecation, as aggregated under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.12 Current market value in U.S. dollars of all collateral posted by counterparty that is subject to rehypothecation, as aggregated under this netting agreement.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.13 Records entity collateral—net	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.14 Counterparty collateral—net	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.15 Next margin payment date	*Information not required to be provided. Enter "2099–12–31"*	*YYYY–MM–DD.*
A2.16 Next margin payment amount in U.S. dollars.	*Information not required to be provided. Enter "0"*	*Num (25,5).*
A2.17 Safekeeping agent identifier for records entity.	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A2.18 Safekeeping agent identifier for counterparty.	*Information not required to be provided. Enter "NA"*	*Varchar(50).*

TABLE A–3—LEGAL AGREEMENTS

Field	Instructions and data application	Definition
A3.1 As of date	Data extraction date	*YYYY–MM–DD.
A3.2 Records entity identifier	Provide LEI for records entity	Varchar(50).
A3.3 Agreement identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
A3.4 Name of agreement or governing document.	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.5 Agreement date	*Information not required to be provided. Enter "2099–12–31"*	*YYYY–MM–DD.*
A3.6 Agreement counterparty identifier	Use LEI if counterparty has one. Information needed to identify counterparty	Varchar(50).
A3.6.1 Underlying QFC obligor identifier	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.7 Agreement governing law	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.8 Cross-default provision?	*Information not required to be provided. Enter "N"*	*Char(1).*
A3.9 Identity of cross-default entities	*Information not required to be provided. Enter "NA"*	*Varchar(500).*

TABLE A–3—LEGAL AGREEMENTS—Continued

Field	Instructions and data application	Definition
A3.10 Covered by third-party credit enhancement agreement (for the benefit of the records entity)?.	*Information not required to be provided. Enter "N"*	*Char(1).*
A3.11 Third-party credit enhancement provider identifier (for the benefit of the records entity).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.12 Associated third-party credit enhancement agreement document identifier (for the benefit of the records entity).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.12.1 Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?.	*Information not required to be provided. Enter "N"*	*Char(1).*
A3.12.2 Third-party credit enhancement provider identifier (for the benefit of the counterparty).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.12.3 Associated third-party credit enhancement agreement document identifier (for the benefit of the counterparty).	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.13 Counterparty contact information: name.	*Information not required to be provided. Enter "NA"*	*Varchar(200).*
A3.14 Counterparty contact information: address.	*Information not required to be provided. Enter "NA"*	*Varchar(100).*
A3.15 Counterparty contact information: phone.	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
A3.16 Counterparty's contact information: email address.	*Information not required to be provided. Enter "NA"*	*Varchar(100).*

TABLE A–4—COLLATERAL DETAIL DATA

Field	Instructions and data application
A4.1 As of date	*No entry required.*
A4.2 Records entity identifier	*No entry required.*
A4.3 Collateral posted/collateral received flag	*No entry required.*
A4.4 Counterparty identifier	*No entry required.*
A4.5 Netting agreement identifier	*No entry required.*
A4.6 Unique collateral item identifier	*No entry required.*
A4.7 Original face amount of collateral item in local currency	*No entry required.*
A4.8 Local currency of collateral item	*No entry required.*
A4.9 Market value amount of collateral item in U.S. dollars	*No entry required.*
A4.10 Description of collateral item	*No entry required.*
A4.11 Asset classification	*No entry required.*
A4.12 Collateral or portfolio segregation status	*No entry required.*
A4.13 Collateral location	*No entry required.*
A4.14 Collateral jurisdiction	*No entry required.*
A4.15 Is collateral re-hypothecation allowed?	*No entry required.*

CORPORATE ORGANIZATION MASTER TABLE [1]

Field	Example	Instructions and data application	Definition
CO.1 As of date	2015–01–05	Data extraction date	YYYY–MM–DD.
CO.2 Entity identifier	888888888	Provide unique identifier. Use LEI if available. Information needed to identify entity.	Varchar(50).
CO.3 Has LEI been used for entity identifier?.	Y/N	Specify whether the entity identifier provided is an LEI	Char(1).
CO.4 Legal name of entity	John Doe & Co	Provide legal name of entity	Varchar(200).
CO.5 Immediate parent entity identifier.	77777777	Use LEI if available. Information needed to complete org structure	Varchar(50).
CO.6 Has LEI been used for immediate parent entity identifier?.	Y/N	Specify whether the immediate parent entity identifier provided is an LEI.	Char(1).
CO.7 Legal name of immediate parent entity.	John Doe & Co	Information needed to complete org structure	Varchar(200).
CO.8 Percentage ownership of immediate parent entity in the entity.	100.00	Information needed to complete org structure	Num (5,2).

CORPORATE ORGANIZATION MASTER TABLE [1]—Continued

Field	Example	Instructions and data application	Definition
CO.9 Entity type	Subsidiary, foreign branch, foreign division.	Information needed to complete org structure	Varchar(50).
CO.10 Domicile	New York, New York.	Enter as city, state or city, foreign country	Varchar(50).
CO.11 Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction	Varchar(50).
CO.12 Reporting status	REN	Indicate one of the following, as appropriate, given status of entity under this part. Information needed to validate compliance with the requirements of this part: REN = Records entity (reporting) NFC= Non-financial company (not reporting) EXC = Excluded entity (not reporting) ZER = Records entity with 0 QFCs (not reporting) DEM = Records entity de minimis exemption (not reporting) OTH = Records entity using another exemption (not reporting)	Char(3).

[1] Foreign branches and divisions shall be separately identified to the extent they are identified in an entity's reports to its PFRAs.

COUNTERPARTY MASTER TABLE

Field	Example	Instructions and data application	Definition
CP.1 As of date	2015–01–05	Data extraction date	YYYY–MM–DD.
CP.2 Counterparty identifier	888888888	Use LEI if counterparty has one. Should be used consistently across all records entities within a corporate group. The counterparty identifier shall be the global legal entity identifier if one has been issued to the entity. If a counterparty transacts with the records entity through one or more separate foreign branches or divisions and any such branch or division does not have its own unique global legal entity identifier, the records entity must include additional identifiers, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for each entity with the same ultimate parent entity as the counterparty.	Varchar(50).
CP.3 Has LEI been used for counterparty identifier?	Y/N	Indicate whether the counterparty identifier is an LEI	Char(1).
CP.4 Legal name of counterparty	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).
CP.5 Domicile	New York, New York.	Enter as city, state or city, foreign country	Varchar(50).
CP.6 Jurisdiction under which incorporated or organized.	New York	Enter as state or foreign jurisdiction	Varchar(50).
CP.7 Immediate parent entity identifier.	77777777	Provide an identifier for the parent entity that directly controls the counterparty. Use LEI if immediate parent entity has one.	Varchar(50).
CP.8 Has LEI been used for immediate parent entity identifier?	Y/N	Indicate whether the immediate parent entity identifier is an LEI	Char(1).
CP.9 Legal name of immediate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200).
CP.10 Ultimate parent entity identifier.	666666666	Provide an identifier for the parent entity that is a member of the corporate group of the counterparty that is not controlled by another entity. Information needed to identify counterparty. Use LEI if ultimate parent entity has one.	Varchar(50).
CP.11 Has LEI been used for ultimate parent entity identifier?	Y/N	Indicate whether the ultimate parent entity identifier is an LEI	Char(1).
CP.12 Legal name of ultimate parent entity.	John Doe & Co	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(100).

BOOKING LOCATION MASTER TABLE

Field	Instructions and data application	Definition
BL.1 As of date	Data extraction date	YYYY–MM–DD.
BL.2 Records entity identifier	Provide LEI	Varchar(50).
BL.3 Internal booking location identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
BL.4 Unique booking unit or desk identifier	*Information not required to be provided. Enter "exempt"*	*Varchar(50).*
BL.5 Unique booking unit or desk description	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
BL.6 Booking unit or desk contact—phone	*Information not required to be provided. Enter "NA"*	*Varchar(50).*
BL.7 Booking unit or desk contact—email	*Information not required to be provided. Enter "NA"*	*Varchar(100).*

SAFEKEEPING AGENT MASTER TABLE

Field	Instructions and data application
SA.1 As of date	No entry required.
SA.2 Safekeeping agent identifier.	No entry required.
SA.3 Legal name of safekeeping agent.	No entry required.
SA.4 Point of contact—name.	No entry required.
SA.5 Point of contact—address.	No entry required.
SA.6 Point of contact—phone.	No entry required.
SA.7 Point of contact—email.	No entry required.

Dated: December 14, 2018.

Peter Phelan,

Deputy Assistant Secretary for Capital Markets.

[FR Doc. 2018–27758 Filed 12–20–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0705]

RIN 1625–AA00

Regulated Navigation Area and Safety Zone: Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is extending the effective period of the temporary regulated navigation areas and safety zone for the navigable waters of the Hudson River, NY, surrounding the Tappan Zee Bridge. This rule will extend the effective period of the existing temporary interim rule for an additional year, now ending on December 31, 2019. This rule will continue to prohibit all persons and vessel traffic from the safety zone and enforce speed and wake restrictions for the Eastern and Western regulated navigation areas as cited in this rule unless exceptions are authorized by the First District Commander or a designated representative. These regulated navigation areas and safety zone continue to be necessary to protect personnel, vessels, and the marine environment from potential hazards during the removal of the existing Tappan Zee Bridge and construction of a new bridge.

DATES: The effective period of § 165.T01–0174 is extended to December 31, 2019. The amendments in this rule are effective from December 31, 2018, through December 31, 2019.

Comments and related material must be received by the Coast Guard on or before April 1, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2013–0705 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG–2013–0705 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Craig Lapiejko, Waterways Management at Coast Guard First District, telephone 617–223–8351, email *craig.lapiejko@uscg.mil* or, Mr. Jeff Yunker, Coast Guard Sector New York Waterways Management Division, U.S. Coast Guard; telephone 718–354–4195, email *jeff.m.yunker@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
NYSTA New York State Thruway Authority
RNA Regulated Navigation Area
NPRM Notice of proposed rulemaking
TIR Temporary Interim Rule
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On September 26, 2013, the Coast Guard published a temporary interim rule (TIR) establishing a regulated navigation area (RNA) on the navigable waters of the Hudson River, NY, for the Tappan Zee Bridge replacement project (78 FR 59231). We received no comments on the September 26, 2013, TIR. No public meeting was requested, and none was held. Construction on the Tappan Zee Bridge replacement project began on October 1, 2013.

On July 25, 2014, the Coast Guard published a change to the original TIR which established a new safety zone and expanded the RNA to create both an Eastern and Western RNA for the Tappan Zee Bridge replacement project on navigable waters of the Hudson River, NY (79 FR 43250). We received two comments on the July 25, 2014, TIR. The first comment referenced an unrelated rulemaking effort to establish anchorage locations along the Hudson River. The second comment merely provided the environmental checklist for the TIR. No public meeting was requested, and none was held.

Today's TIR extends the effective period of the rule for one year until December 31, 2019, due to delays of the Tappan Zee Bridge replacement project.

On August 23, 2018, the NYSTA requested the RNAs and safety zone be extended until December 31, 2019, to complete all remaining contract operations in and over the Hudson River, including, but not limited to steel erection, concrete bridge deck placements, installation of navigation lighting, and removal of the original Tappan Zee Bridge.

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. The notice allowing the construction project to proceed and providing updated timelines for the project was only recently finalized and provided to the Coast Guard, which did not give the Coast Guard enough time to publish a NPRM, take public comments, and issue a final rule before the existing regulation expires. Timely action is needed to respond to the potential safety hazards associated with removal of the original bridge and construction of a new replacement bridge. It would be impracticable and contrary to the public interest to publish a NPRM because we must extend the effective period of the safety zone and RNAs as soon as possible to protect the safety of the waterway users, construction crew, and other personnel associated with the bridge project. A delay of the project to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the completion date of the bridge project and subsequent reopening of the Hudson River for normal operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for

making it effective less than 30 days after publication in the **Federal Register**. For reasons stated in the preceding paragraph, delaying the effective date of this rule would be impracticable and contrary to the public interest because timely action is needed to respond to the potential safety hazards associated with the project.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231.

The First District Commander has determined that potential hazards exist associated with this bridge construction, and removal project that has already commenced, and will continue through December 31, 2019, will be a safety concern for anyone within the work zone. The construction and removal of the bridge continues to be extremely complex and presents many safety hazards including overhead crane operations, overhead cutting operations, potential falling debris, and barges positioned in the Hudson River, and along the length of the bridge. In order to mitigate the inherent risks involved with the removal of a bridge, and installation of the new bridge, it is necessary to control vessel movement through the area. The purpose of this TIR is to ensure the safety of waterway users, the public, and construction workers for the duration of the new bridge construction and demolition. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. In order to minimize such unexpected or uncontrolled movement of water, any vessel transiting through the Western and Eastern RNA must make a direct and expeditious passage. No vessel may stop, moor, anchor, or loiter within the RNA at any time unless they are working on the bridge construction operations. This rule is needed to protect personnel, vessels, and the marine environment on the navigable waters of the Hudson River, NY, during the bridge project.

IV. Discussion of the Rule

This rule extends the effective period of the temporary interim rule for the navigable waters of the Hudson River, NY, surrounding the Tappan Zee Bridge for one additional year until December 31, 2019. There are no other changes to the regulatory text of this rule as cited in 33 CFR § 165.T01–0174. This rule will continue to prohibit all persons and vessel traffic from the safety zone and enforce speed and wake restrictions for the Eastern and Western RNAs unless exceptions are authorized by the First District Commander or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: Vessel traffic would only be restricted from the Eastern RNA for limited durations. The Eastern RNA covers only a small portion of the navigable waterway which includes the Federal navigation channel. Furthermore, while the Federal navigation channel on the Hudson River is closed, vessels that can safely navigate outside the channel may still be able to transit through the Western RNA or the portion of the Eastern RNA which does not encompass the Federal Navigation channel, depending on the project schedule and location of project vessels in these areas. The Coast Guard does not expect to receive any additional requests to close the entire Federal navigation channel in 2019, based upon the current construction progress, except in case of an emergency.

Advance public notifications will also be made to local mariners through appropriate means, which may include but are not limited to, Local Notice to Mariners, Broadcast Notice to Mariners, and the Boater Safety Information section of the project website at *http://www.newnybridge.com.*

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 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 RNAs and safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant 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 temporary interim 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 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 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 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 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 rule involves extending the effective time for one year restricting vessel movement within regulated navigation areas and safety zone on the navigable waters of Hudson River in vicinity of the Tappan Zee Bridge construction project. 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 for Categorically Excluded Actions 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 temporary interim 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.

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. 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 TIR 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 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. Amend § 165.T01–0174 by revising the introductory text of paragraph (d) to read as follows:

§ 165.T01–0174 Regulated Navigation Areas and Safety Zone Tappan Zee Bridge Construction Project, Hudson River; South Nyack and Tarrytown, NY.

* * * * *

(d) *Enforcement periods.* This regulation will be enforced 24 hours a day from 11:59 p.m. on December 31, 2018 until 11:59 p.m. on December 31, 2019.

* * * * *

Dated: December 18, 2018.

Andrew J. Tiongson,

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

[FR Doc. 2018–27669 Filed 12–20–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1097]

RIN 1625–AA00

Safety Zone; Wolf River, Winneconne Bridge Blasting, Winneconne, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Wolf River in Winneconne, WI, for blasting operations. This action is necessary to protect mariners, vessels, and property from potential hazards associated with blasting operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan or a designated representative.

DATES: This rule is effective without actual notice from 6 a.m. on December 21, 2018 until 5 p.m. on January 21, 2019. For the purposes of enforcement, actual notice will be used from 6 a.m. on December 17, 2018, until 6 a.m. on December 21, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–1097 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 document, call or email the marine event coordinator, MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI;

telephone (414) 747–7148, email *D09-SMB-SECLakeMichigan-WWM@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would inhibit the Coast Guard's ability to protect the public, vessels, mariners, and property from the hazards associated with the blasting operations from December 17, 2018 through January 21, 2019.

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** for the reasons discussed in the preceding paragraph. Delaying the effective date by waiting for a 30 day notice period to run would be impracticable and contrary to the rule's objectives of protecting safety of life on the navigable waters and protection of persons and vessels near the blasting area.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard will enforce a safety zone from 6 a.m. through 5 p.m. each day from December 17, 2018 through January 21, 2019, for the blasting operations of the Winneconne Bridge (STH 116) on the Wolf River in Winneconne, WI. The Captain of the Port Lake Michigan determined that the blasting operations will pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, falling debris, and collisions among spectator vessels.

IV. Discussion of the Rule

With the aforementioned hazards in mind, the Captain of the Port Lake Michigan determined that this temporary safety zone is necessary to protect persons and vessels during the blasting operations in the waters of Wolf River, in Winneconne, WI. This zone will be enforced from 6 a.m. through 5 p.m. each day from December 17, 2018 through January 21, 2019. The safety zone encompasses all navigable waters of Wolf River within 700 feet of the Winneconne Bridge (STH 116) located at 44°6.646 N, 088°42.697 W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. The safety zone created by this rule will be relatively small and enforced for 11 hours each day. Thus, restriction on vessel movement within that particular area are expected to be minimal. Under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the affected portion of Wolf River, in Winneconne, WI between 6 a.m. through 5 p.m. December 17, 2018 through January 17, 2019. This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we will issue local Broadcast Notice to Mariners and Public Notice of Safety Zone so vessel owners and operators can plan accordingly.

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 the establishment of a safety zone surrounding the Winneconne Bridge (STH 116) on the Wolf River, in Winneconne, WI. It is categorically excluded from further review under paragraph L[60(a)] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T09–1097 to read as follows:

§ 165.T09–1097 Safety Zone; Wolf River, Winneconne Bridge Blasting, Winneconne, WI.

(a) *Location.* All navigable waters of Wolf River within 700 feet of the Winneconne Bridge (STH 116) located at 44°6.646 N, 088°42.697 W (NAD 83).

(b) *Enforcement period.* This rule will be enforced from 6 a.m. through 5 p.m. each day from December 17, 2018 through January 21, 2019.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or an on-scene representative.

Dated: December 17, 2018.

Thomas J. Stuhlreyer,

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

[FR Doc. 2018–27599 Filed 12–20–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–1082]

RIN 1625–AA87

Security Zone; Puget Sound, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the navigable waters within 500 yards of the M/V CAPE HUDSON, Official Number 901127, during its departure from Terminal 7 in Tacoma, WA. This security zone is necessary to protect the vessel and associated personnel from terrorist acts, accidents, sabotage, or other subversive acts associated with the vessel's movement of military cargo. Entry of vessels or persons into this zone is prohibited while the M/V CAPE HUDSON is in transit unless specifically authorized by the Captain of the Port Puget Sound.

DATES: This rule is effective without actual notice from 8:45 a.m. on December 21, 2018, through 9 p.m. on January 2, 2019. For the purposes of enforcement, actual notice will be used from 8:00 a.m. on December 20, 2018, through 8:44 a.m. December 21, 2018.

ADDRESSES: To view documents mentioned in this preamble as being

available in the docket, go to *https://www.regulations.gov,* type USCG–2018–1082 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 Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206–217–6051, email *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notification of the movement of military cargo until December 3, 2018, and immediate action is needed to protect the security of M/V CAPE HUDSON and its personnel from terrorist acts, accidents, sabotage, or other subversive acts. It is impracticable to publish a NPRM because we must establish this security zone by December 20, 2018.

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 impracticable because immediate action is needed to respond to the potential security risks associated with the shipment of military cargo onboard the M/V CAPE HUDSON.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Puget Sound (COTP) has determined that there are potential security concerns associated with the shipment of military cargo aboard the M/V CAPE HUDSON. This rule is needed to protect the M/V CAPE HUDSON and its personnel from terrorist acts, accidents, sabotage, or other subversive acts while underway from Terminal 7 in Tacoma, WA to the Puget Sound Traffic Separation Lane Lighted Buoy SE.

IV. Discussion of the Rule

This rule establishes a security zone from 8 a.m. on December 20, 2018 through 8 p.m. on January 2, 2019. The security zone will cover all navigable waters within 500 yards of the M/V CAPE HUDSON while underway from Terminal 7 in Tacoma, WA until the vessel arrives near the Puget Sound Traffic Separation Lane Lighted Buoy SE. The duration of the zone is intended to protect the M/V CAPE HUDSON and its personnel during its departure transit. Because weather conditions may affect the vessel's loading timeframes, the actual planned departure of the vessel will occur between 8 a.m. on December 20, 2018 and 8 p.m. on January 2, 2019. Enforcement of the security zone will only occur while the vessel is in transit, and no vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the security zone. Vessel traffic will be able safely transit around this security zone which would impact a small designated area around the M/V CAPE HUDSON during the vessel's departure transit through Puget Sound for less than 6 hours.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 security zone limited in duration to M/V CAPE HUDSON's departure from Terminal 7 in Tacoma, WA until the vessel reaches the Puget Sound Traffic Separation Lane Lighted Buoy SE that will prohibit entry within 500 yards of the vessel. It is categorically excluded from further review under paragraph L 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 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.T13–1082 to read as follows:

§ 165.T13–1082 Security Zone; Puget Sound, Tacoma, WA.

(a) *Location.* The following area is a security zone: All navigable waters, from surface to bottom, within 500 yards of the M/V CAPE HUDSON while underway from Terminal 7 in Tacoma, WA until the vessel reaches the Puget Sound Traffic Separation Lane Lighted Buoy SE.

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

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF CH 16 or at 206–217–6051. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This rule is effective without actual notice from 8:45 a.m. on December 21, 2018, through 9 p.m. on January 2, 2019. For the purposes of enforcement, actual notice will be used from 8:00 a.m. on December 20, 2018, through 8:44 a.m. December 21, 2018. This rule will be enforced with actual notice by COTP's designated representatives on scene during M/V CAPE HUDSON departure transit.

Dated: December 17, 2018.

L.A. Sturgis,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 2018–27579 Filed 12–20–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 9

RIN 2900–AQ12

Veterans' Group Life Insurance Increased Coverage

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: Current statutory provisions provide Veterans' Group Life Insurance (VGLI) insureds under the age of 60 with the opportunity to increase their VGLI coverage by $25,000 not more than once in each five-year period beginning on the one-year anniversary of the date a person becomes insured under VGLI. The Department of Veterans Affairs (VA) is finalizing the amendment of its VGLI regulations to establish a permanent regulatory framework for such elections of increased coverage. The final rule clarifies that coverage increases in an amount less than $25,000 are available only when existing VGLI coverage is within $25,000 of the Servicemembers' Group Life Insurance maximum of $400,000, and any increases of less than $25,000 must be only in an amount that would bring the insurance coverage up to the statutory maximum.

DATES: *Effective date:* This rule is effective on January 22, 2019.

FOR FURTHER INFORMATION CONTACT: Karen Naccarelli, Department of Veterans Affairs Insurance Center (310/290B), P.O. Box 13399, Philadelphia, Pennsylvania 19101, (215) 381–3029. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 27, 2018, VA published in the **Federal Register** (83 FR 18491) a proposed rule seeking comments regarding amendment of 38 CFR 9.2 to reflect Section 404 of the *Veterans' Benefits Act of 2010,* Public Law 111–275, 124 Stat. 2879–2880 (2010). The amendment

provides that insureds who are under 60 years of age and who have less than the statutory maximum of SGLI coverage can elect in writing to increase coverage by $25,000 not more than once in each five-year period beginning on their one-year VGLI coverage anniversary date. Section 404 added to 38 U.S.C. 1977(a) a new paragraph (3), which took effect April 11, 2011. To promptly implement this statutory change, VA adopted interim procedures for increasing VGLI coverage. See the ''Servicemembers' and Veterans' Group Life Insurance Handbook, Chapter 12.01, on the VA Insurance website at *http://www.benefits.va.gov/INSURANCE/resources_handbook_ins_chapter12.asp* which outlines the interim process. This final regulation is intended to establish a permanent regulatory framework for affording additional VGLI coverage under section 404.

The proposed regulation was published in the **Federal Register** for public comments on April 27, 2018. Two public comments were received that support the proposed amendment. The comments stated that the rule provides the insured with the right to the earliest opportunity to increase coverage under the law. The comments also noted that the opportunity to increase coverage is provided at predictable times, which benefits both the insured and the insurer as it relates to planning potential changes in coverage and premiums.

Based on the rationale set forth in the preamble of the proposed rule and the two public comments received, VA adopts, without change, the proposed rule published on April 27, 2018, at 83 FR 18491.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule 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 (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, and tribal governments or the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C 3501–3521).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for ''VA Regulations Published from FY 2004 through FYTD.'' This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule would directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the programs affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 9

Life insurance, Military personnel, Veterans.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on December 17, 2018, for publication.

Dated: December 17, 2018.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 9 as follows:

PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. In § 9.2, add new paragraph (b)(5) to read as follows:

§ 9.2 Effective date; applications.

* * * * *

(b) * * *

(5) Pursuant to 38 U.S.C. 1977(a)(3), former members under the age of 60 can elect to increase their Veterans' Group Life Insurance coverage by $25,000, up to the existing Servicemembers' Group Life Insurance maximum. The insured's first opportunity to elect to increase coverage is on the one-year Veterans' Group Life Insurance coverage anniversary date. Thereafter, the insured could elect to increase coverage on the five-year anniversary date of the first VGLI coverage increase election opportunity and subsequently every five years from the anniversary date of the insured's last VGLI coverage increase election opportunity. Increases of less than $25,000 are only available when existing Veterans' Group Life Insurance

coverage is within less than $25,000 of the Servicemembers' Group Life Insurance maximum and any increases of less than $25,000 must be only in the amount needed to bring the insurance coverage up to the statutory maximum allowable amount of Servicemembers' Group Life Insurance. The eligible former members must apply for the increased coverage through the administrative office, within 120 days of invitation prior to the initial one-year anniversary date or within 120 days prior to each subsequent five-year coverage anniversary date from the first VGLI coverage increase election opportunity. The increased coverage will be effective from the anniversary date immediately following the election.

* * * * *

[FR Doc. 2018–27749 Filed 12–20–18; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–21 and CP2010–36]

Update to Product List

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the competitive product list. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The competitive product list, which is re-published in its entirety, include these updates.

DATES: *Effective Date:* December 21, 2018. For applicability dates, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6800.

SUPPLEMENTARY INFORMATION:

Applicability Dates: July 2, 2018, Priority Mail Contract 451 (MC2018–184 and CP2018–258); July 2, 2018, Priority Mail Contract 452 (MC2018–185 and CP2018–259); July 6, 2018, Priority Mail Express, Priority Mail & First-Class Package Service Contract 40 (MC2018–187 and CP2018–261); July 9, 2018, Global Expedited Package Services (GEPS)—Non-Published Rates 14 (MC2018–186 and CP2018–260); July 10, 2018, Priority Mail Express & Priority Mail Contract 69 (MC2018–188 and CP2018–262); July 10, 2018, Priority Mail & First-Class Package Service Contract 83 (MC2018–189 and CP2018–263); July 12, 2018, Global Plus 4 Contracts (MC2018–150 and CP2018–216); July 17, 2018, Priority Mail Express & Priority Mail Contract 70 (MC2018–190 and CP2018–264); July 18, 2018, Priority Mail Contract 453 (MC2018–191 and CP2018–267); July 26, 2018, Priority Mail Express, Priority Mail & First-Class Package Service Contract 41 (MC2018–192 and CP2018–270); July 30, 2018, Priority Mail & First-Class Package Service Contract 84 (MC2018–194 and CP2018–272); July 30, 2018, Priority Mail Contract 454 (MC2018–195 and CP2018–273); July 30, 2018, Priority Mail Express, Priority Mail & First-Class Package Service Contract 42 (MC2018–193 and CP2018–271); August 7, 2018, Priority Mail & First-Class Package Service Contract 85 (MC2018–196 and CP2018–274); August 7, 2018, Parcel Select Contract 32 (MC2018–197 and CP2018–275); August 7, 2018, Priority Mail Express, Priority Mail & First-Class Package Service Contract 43 (MC2018–198 and CP2018–276); August 7, 2018, Priority Mail Contract 455 (MC2018–199 and CP2018–277); August 7, 2018, Priority Mail Contract 456 (MC2018–200 and CP2018–278); August 8, 2018, Priority Mail Contract 457 (MC2018–201 and CP2018–279); August 10, 2018, Priority Mail Contract 458 (MC2018–202 and CP2018–281); August 14, 2018, Priority Mail Contract 459 (MC2018–203 and CP2018–282); August 20, 2018, Priority Mail Contract 461 (MC2018–205 and CP2018–285); August 21, 2018, Priority Mail Contract 460 (MC2018–204 and CP2018–284); August 23, 2018, Priority Mail Contract 462 (MC2018–206 and CP2018–288); August 29, 2018, Global Expedited Package Services 10 (MC2018–207 and CP2018–289); August 29, 2018, Priority Mail Express & Priority Mail Contract 71 (MC2018–209 and CP2018–291); August 30, 2018, Priority Mail Contract 463 (MC2018–208 and CP2018–290); September 4, 2018, Priority Mail Express, Priority Mail & First-Class Package Service Contract 44 (MC2018–210 and CP2018–292); September 4, 2018, Priority Mail & First-Class Package Service Contract 86 (MC2018–211 and CP2018–293); September 4, 2018, Priority Mail Express Contract 64 (MC2018–212 and CP2018–294); September 5, 2018, Priority Mail & First-Class Package Service Contract 87 (MC2018–213 and CP2018–295); September 5, 2018, Priority Mail Express & Priority Mail Contract 72 (MC2018–214 and CP2018–296); September 10, 2018, Priority Mail & First-Class Package Service Contract 88 (MC2018–215 and CP2018–297); September 12, 2018, Priority Mail Express Contract 65 (MC2018–217 and CP2018–299); September 12, 2018, Priority Mail Contract 464 (MC2018–218 and CP2018–300); September 24, 2018, Priority Mail Express, Priority Mail & First-Class Package Service Contract 45 (MC2018–216 and CP2018–298); September 25, 2018, Priority Mail & First-Class Package Service Contract 89 (MC2018–219 and CP2018–305); September 26, 2018, Priority Mail Contract 465 (MC2018–220 and CP2018–306); September 27, 2018, Parcel Select Contract 33 (MC2018–221 and CP2018–307).

This document identifies updates to the competitive product list, which appears as 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List. Publication of the updated product list in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Docket Nos. MC2010–21 and CP2010–36, Order No. 445, April 22, 2010, at 8.

Changes. The competitive product list is being updated by publishing a replacement in its entirety of 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List. The following products are being added, removed, or moved within the competitive product list:

Competitive Product List

1. Priority Mail Contract 451 (MC2018–184 and CP2018–258) (Order No. 4694), added July 2, 2018.
2. Priority Mail Contract 452 (MC2018–185 and CP2018–259) (Order No. 4695), added July 2, 2018.
3. Priority Mail Express, Priority Mail & First-Class Package Service Contract 40 (MC2018–187 and CP2018–261) (Order No. 4699), added July 6, 2018.
4. Global Expedited Package Services (GEPS)—Non-Published Rates 14 (MC2018–186 and CP2018–260) (Order No. 4702), added July 9, 2018.
5. Priority Mail Express & Priority Mail Contract 69 (MC2018–188 and CP2018–262) (Order No. 4704), added July 10, 2018.
6. Priority Mail & First-Class Package Service Contract 83 (MC2018–189 and CP2018–263) (Order No. 4705), added July 10, 2018.
7. Global Plus 4 Contracts (MC2018–150 and CP2018–216) (Order No. 4709), added July 12, 2018.
8. Priority Mail Express & Priority Mail Contract 70 (MC2018–190 and CP2018–264) (Order No. 4715), added July 17, 2018.
9. Priority Mail Contract 453 (MC2018–191 and CP2018–267) (Order No. 4716), added July 18, 2018.

10. Priority Mail Express, Priority Mail & First-Class Package Service Contract 41 (MC2018–192 and CP2018–270) (Order No. 4729), added July 26, 2018.

11. Priority Mail & First-Class Package Service Contract 84 (MC2018–194 and CP2018–272) (Order No. 4733), added July 30, 2018.

12. Priority Mail Contract 454 (MC2018–195 and CP2018–273) (Order No. 4734), added July 30, 2018.

13. Priority Mail Express, Priority Mail & First-Class Package Service Contract 42 (MC2018–193 and CP2018–271) (Order No. 4736), added July 30, 2018.

14. Priority Mail & First-Class Package Service Contract 85 (MC2018–196 and CP2018–274) (Order No. 4743), added August 7, 2018.

15. Parcel Select Contract 32 (MC2018–197 and CP2018–275) (Order No. 4744), added August 7, 2018.

16. Priority Mail Express, Priority Mail & First-Class Package Service Contract 43 (MC2018–198 and CP2018–276) (Order No. 4745), added August 7, 2018.

17. Priority Mail Contract 455 (MC2018–199 and CP2018–277) (Order No. 4746), added August 7, 2018.

18. Priority Mail Contract 456 (MC2018–200 and CP2018–278) (Order No. 4747), added August 7, 2018.

19. Priority Mail Contract 457 (MC2018–201 and CP2018–279) (Order No. 4749), added August 8, 2018.

20. Priority Mail Contract 458 (MC2018–202 and CP2018–281) (Order No. 4754), added August 10, 2018.

21. Priority Mail Contract 459 (MC2018–203 and CP2018–282) (Order No. 4760), added August 14, 2018.

22. Priority Mail Contract 461 (MC2018–205 and CP2018–285) (Order No. 4768), added August 20, 2018.

23. Priority Mail Contract 460 (MC2018–204 and CP2018–284) (Order No. 4770), added August 21, 2018.

24. Priority Mail Contract 462 (MC2018–206 and CP2018–288) (Order No. 4791), added August 23, 2018.

25. Global Expedited Package Services 10 (MC2018–207 and CP2018–289) (Order No. 4800), added August 29, 2018.

26. Priority Mail Express & Priority Mail Contract 71 (MC2018–209 and CP2018–291) (Order No. 4801), added August 29, 2018.

27. Priority Mail Contract 463 (MC2018–208 and CP2018–290) (Order No. 4804), added August 30, 2018.

28. Priority Mail Express, Priority Mail & First-Class Package Service Contract 44 (MC2018–210 and CP2018–292) (Order No. 4809), added September 4, 2018.

29. Priority Mail & First-Class Package Service Contract 86 (MC2018–211 and CP2018–293) (Order No. 4810), added September 4, 2018.

30. Priority Mail Express Contract 64 (MC2018–212 and CP2018–294) (Order No. 4811), added September 4, 2018.

31. Priority Mail & First-Class Package Service Contract 87 (MC2018–213 and CP2018–295) (Order No. 4813), added September 5, 2018.

32. Priority Mail Express & Priority Mail Contract 72 (MC2018–214 and CP2018–296) (Order No. 4814), added September 5, 2018.

33. Priority Mail & First-Class Package Service Contract 88 (MC2018–215 and CP2018–297) (Order No. 4817), added September 10, 2018.

34. Priority Mail Express Contract 65 (MC2018–217 and CP2018–299) (Order No. 4820), added September 12, 2018.

35. Priority Mail Contract 464 (MC2018–218 and CP2018–300) (Order No. 4821), added September 12, 2018.

36. Priority Mail Express, Priority Mail & First-Class Package Service Contract 45 (MC2018–216 and CP2018–298) (Order No. 4833), added September 24, 2018.

37. Priority Mail & First-Class Package Service Contract 89 (MC2018–219 and CP2018–305) (Order No. 4835), added September 25, 2018.

38. Priority Mail Contract 465 (MC2018–220 and CP2018–306) (Order No. 4839), added September 26, 2018.

39. Parcel Select Contract 33 (MC2018–221 and CP2018–307) (Order No. 4841), added September 27, 2018.

The following negotiated service agreements have expired, or have been terminated early, and are being deleted from the Competitive Product List:

1. Priority Mail Contract 111 (MC2015–30 and CP2015–39) (Order No. 2352).

2. Priority Mail Contract 126 (MC2015–56 and CP2015–84) (Order No. 2559).

3. Priority Mail Contract 127 (MC2015–60 and CP2015–90) (Order No. 2570).

4. Priority Mail & First-Class Package Service Contract 6 (MC2015–63 and CP2015–94) (Order No. 2583).

5. Priority Mail Contract 130 (MC2015–64 and CP2015–95) (Order No. 2595).

6. Priority Mail Contract 131 (MC2015–65 and CP2015–96) (Order No. 2596).

7. Priority Mail Contract 134 (MC2015–70 and CP2015–108) (Order No. 2637).

8. Priority Mail Contract 138 (MC2015–74 and CP2015–112) (Order No. 2640).

9. Priority Mail & First-Class Package Service Contract 7 (MC2015–75 and CP2015–114) (Order No. 2641).

10. Priority Mail Contract 137 (MC2015–73 and CP2015–111) (Order No. 2642).

11. Priority Mail Contract 140 (MC2015–79 and CP2015–126) (Order No. 2680).

12. Priority Mail Contract 141 (MC2015–80 and CP2015–134) (Order No. 2706).

13. Priority Mail Contract 144 (MC2015–84 and CP2015–140) (Order No. 2734).

14. Parcel Select Contract 24 (MC2018–13 and CP2018–26) (Order No. 4196).

Updated product list. The referenced changes to the competitive product list is incorporated into 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix B to Subpart A of Part 3020 to read as follows:

Appendix B to Subpart A of Part 3020—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Domestic Products*

Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service
USPS Retail Ground

International Products*

Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air List (ISAL)
International Direct Sacks—M-Bags
Outbound Single-Piece First-Class Package International Service

Negotiated Service Agreements*

Domestic*
- Priority Mail Express Contract 26
- Priority Mail Express Contract 27
- Priority Mail Express Contract 28
- Priority Mail Express Contract 29
- Priority Mail Express Contract 30

Priority Mail Express Contract 31
Priority Mail Express Contract 32
Priority Mail Express Contract 34
Priority Mail Express Contract 35
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Priority Mail Express Contract 58
Priority Mail Express Contract 59
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Priority Mail Express Contract 62
Priority Mail Express Contract 63
Priority Mail Express Contract 64
Priority Mail Express Contract 65
Parcel Return Service Contract 5
Parcel Return Service Contract 6
Parcel Return Service Contract 7
Parcel Return Service Contract 8
Parcel Return Service Contract 9
Parcel Return Service Contract 10
Priority Mail Contract 77
Priority Mail Contract 78
Priority Mail Contract 80
Priority Mail Contract 123
Priority Mail Contract 125
Priority Mail Contract 132
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Priority Mail Contract 136
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Priority Mail Express & Priority Mail Contract 67
Priority Mail Express & Priority Mail Contract 68

Priority Mail Express & Priority Mail Contract 69
Priority Mail Express & Priority Mail Contract 70
Priority Mail Express & Priority Mail Contract 71
Priority Mail Express & Priority Mail Contract 72
Parcel Select & Parcel Return Service Contract 3
Parcel Select & Parcel Return Service Contract 5
Parcel Select & Parcel Return Service Contract 6
Parcel Select Contract 2
Parcel Select Contract 8
Parcel Select Contract 9
Parcel Select Contract 10
Parcel Select Contract 11
Parcel Select Contract 12
Parcel Select Contract 13
Parcel Select Contract 14
Parcel Select Contract 15
Parcel Select Contract 16
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Parcel Select Contract 25
Parcel Select Contract 26
Parcel Select Contract 27
Parcel Select Contract 28
Parcel Select Contract 29
Parcel Select Contract 30
Parcel Select Contract 31
Parcel Select Contract 32
Parcel Select Contract 33
Priority Mail—Non-Published Rates
Priority Mail—Non-Published Rates 1
First-Class Package Service Contract 38
First-Class Package Service Contract 39
First-Class Package Service Contract 40
First-Class Package Service Contract 41
First-Class Package Service Contract 42
First-Class Package Service Contract 43
First-Class Package Service Contract 44
First-Class Package Service Contract 45
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Priority Mail Express, Priority Mail & First-Class Package Service Contract 5
Priority Mail Express, Priority Mail & First-Class Package Service Contract 6
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Nonpostal Services*

Advertising
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Mail Service Promotion
Officially Licensed Retail Products (OLRP)
Passport Photo Service
Photocopying Service
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Training Facilities and Related Services
USPS Electronic Postmark (EPM) Program

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Stacy L. Ruble,

Secretary.

[FR Doc. 2018–27593 Filed 12–20–18; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2017–0170; FRL–9988–17–Region 10]

Air Plan Approval; ID, West Silver Valley $PM_{2.5}$ Clean Data Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination that the West Silver Valley, Idaho nonattainment area has clean data for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS). This clean data determination (CDD) is based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing the area has attained the 2012 $PM_{2.5}$ NAAQS based on the 2015–2017 data available in the EPA's Air Quality System (AQS) database. The EPA also is taking final agency action on the September 2017 wildfire exceptional event at the Pinehurst monitoring station as having affected $PM_{2.5}$ and PM_{10} values. Based on this clean data determination, the EPA determines that the obligation for Idaho to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area is suspended for as long as the area continues to attain the 2012 annual $PM_{2.5}$ NAAQS. Additionally, the sanctions and Federal Implementation Plan (FIP) clocks triggered by the March 26, 2018 Finding of Failure to Submit action will be suspended. No adverse comments were received on this action.

DATES: This action is effective on January 22, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2017–0170. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Justin Spenillo at (206) 553–6125, or *spenillo.justin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

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I. Background

On December 14, 2012, the Environmental Protection Agency (EPA) revised the level of the primary annual $PM_{2.5}$ standard, lowering the level from 15.0 micrograms per cubic meter (μg/m^3) to 12.0 μg/m^3. Effective April 15, 2015, the EPA made designation determinations for the 2012 annual $PM_{2.5}$ NAAQS.[1] In that action, EPA designated the West Silver Valley area in Shoshone County, Idaho (WSV NAA) as moderate nonattainment for the 2012 annual $PM_{2.5}$ NAAQS. *See* 40 CFR 81.313.

On March 26, 2018, the EPA issued a finding of failure to submit under section 110(k) of the CAA finding that several states, including Idaho, failed to submit specific moderate area SIP elements for the 2012 annual $PM_{2.5}$ NAAQS required under subpart 4 of part D of Title I of the CAA.[2] In particular, Idaho failed to submit the following specific moderate area SIP elements for the WSV NAA: An attainment demonstration; control strategies, including reasonably available control measures (''RACM'') and reasonably available control technologies (''RACT''); a reasonable further progress (RFP) plan; quantitative milestones; and contingency measures. This finding triggered the sanctions clock under Section 179 of the CAA, as well as an obligation under Section 110(c) of the CAA for EPA to promulgate a FIP no later than 2 years from the effective date of the finding.

On October 22, 2018 (83 FR 53201), the EPA proposed to determine, based on the most recent 3 years (2015–2017) of valid data, that the WSV NAA has attained the 2012 $PM_{2.5}$ annual NAAQS. The EPA also proposed to take final agency action on the September 2017 wildfire exceptional event at the Pinehurst monitoring station as having affected $PM_{2.5}$ and PM_{10} values on September 4 through September 8, 2017 as described in Table 1.

TABLE 1—24-HR $PM_{2.5}$ AND PM_{10} VALUES AT THE PINEHURST MONITORING STATION THAT MEET THE EPA EXCEPTIONAL EVENT CRITERIA

Date	24-hr $PM_{2.5}$ Concentration (μg/m^3) 16–079–0017 POC1	24-hr PM_{10} Concentration (μg/m^3) 16–079–0017 POC3
9/4/2017	144.9	
9/5/2017	222.2	
9/6/2017	147.1	169.6
9/7/2017	123.8	149.8
9/8/2017	116.7	143.7

[1] 80 FR 2206.

[2] 83 FR 14759.

Based on the clean data determination (CDD), the EPA also proposed to determine that the obligation to submit the attainment planning elements for the $PM_{2.5}$ NAAQS are not applicable so long as the area continues to attain the 2012 annual $PM_{2.5}$ NAAQS. Additional detail can be found in the October 22, 2018, proposed action (83 FR 53201). Finally, the action proposed to suspend the sanctions and FIP clocks triggered by the March 26, 2018, Finding of Failure to Submit action.

II. Response to Comments

The comment period for the proposed action closed on November 21, 2018. The EPA received seven supportive comments regarding this action. The EPA received no adverse comments. All comments can be found in the docket for this action.

III. Final Action

The EPA is finalizing this action as proposed. Pursuant to 40 CFR 51.1015(a), the EPA determines that based on 3-years of certified, valid monitoring data between 2015 and 2017, the WSV NAA has attained the 2012 annual $PM_{2.5}$ NAAQS. Pursuant to 50 CFR 50.14, the EPA is also taking final action excluding the 2017 24-hr $PM_{2.5}$ and PM_{10} values listed in Table 1, above, at the Pinehurst monitoring station because those NAAQS exceedances were caused by a wildfire exceptional event. Pursuant to 40 CFR 51.1015(a), and based upon our determination that the WSV NAA has attained the standard, the EPA determines that the obligation to submit any attainment-related SIP revisions arising from classification of the WSV NAA as a moderate nonattainment area under subpart 4 of part D, of title I of the Act for the 2012 annual $PM_{2.5}$ NAAQS is not applicable for so long as the area continues to attain the 2012 annual $PM_{2.5}$ NAAQS. In particular, the obligation for Idaho to submit attainment demonstrations, projected emissions inventories, RACM (including RACT), RFP plans, motor vehicle emissions budgets, quantitative milestones, and contingency measures for the WSV NAA are suspended until such time as: (1) The area is redesignated to attainment, after which such requirements are permanently discharged; or (2) the EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the state shall submit such attainment plan elements for the Moderate nonattainment area by a future date to be determined by the EPA and announced through publication in the **Federal Register** at the time the EPA determines the area is violating the $PM_{2.5}$ NAAQS.

Although the obligation has been suspended, this action does not preclude Idaho from submitting, nor the EPA from acting on the suspended attainment plan elements. As a result of this final action, the sanctions and FIP clocks triggered by the EPA's March 26, 2018, Finding of Failure to Submit are suspended. *See* 83 FR 14759.

Today's final action does not constitute a redesignation of the WSV NAA to attainment for the 2012 annual $PM_{2.5}$ NAAQS under CAA section 107(d)(3) because we have not yet approved a maintenance plan for WSV NAA as meeting the requirements of section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains Moderate nonattainment for this area until such time as the EPA determines that Idaho has met the CAA requirements for redesignation to attainment for the WSV NAA.

IV. Statutory and Executive Orders Review

This action finalizes a determination of attainment based on air quality and suspends certain federal requirements, and thus will not impose additional requirements beyond those imposed by state law. For this reason, this final action:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 4, 2018.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2018–27607 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–RO5–OAR–2018–0302; EPA–R05–OAR–2018–0303; EPA–RO5–OAR–2018–0589; FRL–9988–04–Region 5]

Air Plan Approval; Illinois; NAAQS and VOC Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revised rules submitted by the State of Illinois as State Implementation Plan (SIP) revisions. The submitted rules update Illinois definitions and requirements for handling monitoring data influenced by exceptional events, update implementation rules for the 2012 primary annual National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$), and update designated reference and equivalent methods for multiple NAAQS. In addition, the submitted rules amend the Illinois Administrative Code (IAC) by updating the definition of volatile organic compounds (VOC).

DATES: This direct final rule will be effective February 19, 2019, unless EPA receives adverse comments by January 22, 2019. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–RO5–OAR–2018–0302, EPA–RO5–OAR–2018–0303, or EPA–RO5–OAR–2018–0589 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Samantha Panock, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8973, *panock.samantha@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

Section 109 of the Clean Air Act (CAA) requires EPA to establish national primary (protective of human health) and secondary (protective of human welfare) air quality standards for pollutants for which air quality criteria have been issued under section 108 of the CAA (the criteria pollutants [1]). Individually and collectively these standards are referred to as NAAQS. Section 109(d)(1) of the CAA requires EPA to review, and if necessary, based on accumulated health and welfare data, to revise each NAAQS every five years. If a NAAQS is revised, states whose rules include state air quality standards may revise their rules to address the revised NAAQS and associated monitoring requirements, and submit them to EPA as SIP revision requests. *See, e.g.,* 415 ILCS 5/10(H). Moreover, section 10(H) of the ILCS requires that Illinois adopt ambient air quality standards that are identical-in-substance to the Federal NAAQS using identical-in-substance rulemaking procedure (415 ILCS 5/10(H)(2016).

The Illinois Environmental Protection Agency (IEPA) submitted revisions on ambient air quality standards in the Illinois SIP to EPA for approval on April 2, 2018 and July 26, 2018. Specifically, these SIP revisions update: (1) Illinois ambient air quality definitions and requirements for handling monitoring data influenced by exceptional events, (2) implementation rules for the 2012 primary annual $PM_{2.5}$ NAAQS, and (3) designated reference and equivalent methods for multiple NAAQS. These updates correspond to EPA's rulemakings related to NAAQS that occurred between July 1, 2016 and December 31, 2017.

IEPA also submitted a revision to the definitions for VOC in the Illinois SIP to EPA for approval on April 2, 2018. The change included the addition of 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane to the list of chemical species excluded from the Federal definition of VOC. This update corresponds to EPA's rulemaking related to VOC regulations adopted August 1, 2016.

II. What are the State rule revisions?

35 IAC 243.101 Definitions

Illinois amended 35 IAC 243.101 to add and revise definitions regarding the exceptional events rule. These definitions were adopted by EPA in ''Treatment of Data Influenced by Exceptional Events'' (81 FR 68216, October 3, 2016).

35 IAC 243.105 Air Quality Monitoring Data Influenced by Exceptional Events

Illinois amended 35 IAC 243.105 to update procedural requirements, requirements for air agency demonstrations, criteria for EPA's approval of the exclusion of event influenced air quality data, and requirements for air agencies to take appropriate and reasonable actions to protect public health from exceedances or violations of the NAAQS.

[1] The criteria pollutants are ozone (O_3), nitrogen oxides (represented by nitrogen dioxide (NO_2)), sulfur oxides (represented by sulfur dioxide (SO_2)), carbon monoxide (CO), particulate matter (represented by total suspended particulates (TSP), particulates (PM_{10}), and fine particulates ($PM_{2.5}$)), and lead (Pb). Note that Illinois also has air quality standard and monitoring rules for ''coarse particulate matter'' ($PM_{2.5–10}$), although this is not a criteria pollutant and is generally considered to be included in PM_{10}.

Additionally, Illinois repealed Section 243.TABLE A ''Schedule for Submission for Data Influenced by Exceptional Events for Use in Initial Area Designations.''

EPA revised the requirements for handling monitoring data influenced by exceptional events (81 FR 68216, October 3, 2016). EPA recognizes that basing regulatory determinations on data influenced by exceptional events may not be appropriate in some instances. The rules provide a procedure for exclusion of data influenced by exceptional events from regulatory decision-making. An exceptional event has a clear relationship with violation of NAAQS, is not reasonably controlled or preventable, unlikely to reoccur at a particular location, and has been declared such by EPA. The revisions require written mitigation plans for areas that have ''historically documented'' or ''known seasonal'' exceptional events. Several revisions relate to wildfires and controlled burns as exceptional events.

35 IAC 243.108 Incorporations by Reference

Illinois revised this section to incorporate by reference EPA's updated ''List of Designated Reference and Equivalent Methods'' from January 1, 2016, to December 31, 2017. EPA issued updated versions of the ''List of Designated Reference and Equivalent Methods'' that included new Federal Equivalent Methods (FEMs) and Federal Reference Methods (FRMs) for monitoring of Carbon Monoxide (CO), oxides of nitrogen (NO_X), and $PM_{2.5}$. See 82 FR 14325 (March 20, 2017), 82 FR 21995 (May 11, 2017) 82 FR 44612 (September 25, 2017), 82 FR 45842 (October 2, 2017). The list with all approved FEMs and FRMs is located at: *https://www3.epa.gov/ttn/amtic/criteria.html.*

Illinois also added a statement to 35 IAC 243.108 that the incorporation by reference of EPA's promulgated monitoring methods ''includes the following USEPA methods designations that occurred after December 16, 2017.''

Additionally, Illinois updated 35 IAC 243.108 to incorporate by reference the 2017 versions of appendices A–1, A–2, B, C, D, F, G, H, I, J, K, L, N, O, P, Q, R, S, T and U of 40 CFR part 50. These appendices contain the reference monitoring methods for and the ''interpretation'' of (*i.e.,* data handling conventions and computations) the ambient standards for the criteria air pollutants.

EPA made one change in the 2017 versions of these appendices relative to the 2016 versions. EPA revised the appendix N ''Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Particulate Matter.'' These revisions address a number of important attainment planning issues including the process for determining control strategies, including Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT) for Moderate areas; and Best Available Control Measures/Best Available Control Technology (BACM/BACT) and Most Stringent Measures (MSM) for Serious areas; guidelines for attainment demonstrations for areas that can attain by the statutory attainment date, and ''impracticability'' demonstrations for areas that cannot practicably attain by the statutory attainment date; contingency measures for areas that fail to meet RFP or fail to attain the NAAQS by the attainment date; and codification of the clean data policy for $PM_{2.5}$ NAAQS nonattainment areas. These implementation rules also clarify the specific attainment planning requirements that apply to $PM_{2.5}$ NAAQS nonattainment areas based on their classification (either Moderate or Serious), and the process for reclassifying Moderate areas to Serious. In addition, the updated implementation rules revoke older 1997 annual NAAQS for $PM_{2.5}$, which will no longer apply in areas designated as attainment for that standard. For areas that EPA designated as nonattainment for the 1997 standard, the 1997 primary annual NAAQS for $PM_{2.5}$ will continue to apply until the effective date of an EPA designation of attainment for the area.

Illinois' rule revisions incorporate by reference these amended CFR appendices.

35 IAC 243.120 PM_{10} and $PM_{2.5}$

Illinois amended 35 IAC 243.120 to include the revocation language for 1997 $PM_{2.5}$ NAAQS. As stated above, the 1997 $PM_{2.5}$ NAAQS standard no longer applies to any area that is in attainment of the 1997 $PM_{2.5}$ standard 82 FR 14325 (August 24, 2016). In Illinois all areas are designated attainment or attainment/unclassifiable for the 1997 $PM_{2.5}$ NAAQS except the Metro East St. Louis nonattainment area. These area are Madison, Monroe, and St. Clair Counties and the Baldwin Village area of Randolph County (40 CFR 81.214, 2016).

35 IAC 211.7150 Volatile Organic Material (VOM) or Volatile Organic Compound (VOC)

Illinois amended 35 IAC 211.7150 to incorporate a change to the list of chemical species excluded from the Federal definition of VOC (81 FR 50330, August 1, 2016). The change included the addition of 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane to the list of chemical species excluded from the Federal definition of VOC.

In 2007, EPA received a petition requesting that 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane be exempted from VOC control based on its lower reactivity than ethane and that it is not expected to contribute to the depletion of the stratospheric O_3 layer. On August 1, 2016 (81 FR 50330), EPA responded to the petition by amending 40 CFR 51.100(s) to exclude this chemical compound from the definition of VOC for purposes of preparing SIPs to attain the ozone NAAQS under title I of the CAA (78 FR 9823). Based on the mass maximum incremental reactivity value for the compound being equal to or less than that of ethane, EPA concluded that this compound makes negligible contributions to tropospheric ozone formation (81 FR 50330). EPA's action became effective August 1, 2016. IEPA's SIP revision to the Illinois definition of VOM is consistent with EPA's action amending the definition of VOC at 40 CFR 51.100(s).

III. Did the State hold public hearings for these submittals?

Illinois held public hearings for the NAAQS updates on September 21, 2017 and April 12, 2018. The public hearing held on September 21, 2017 addressed NAAQS updates regarding updated definitions and requirements for handling monitoring data influenced by exceptional events, implementation rules for the 2012 primary annual NAAQS for $PM_{2.5}$, maintenance of primary and secondary NAAQS for lead without revision, addition of EPA-promulgated monitoring methods for multiple NAAQS, and an adoption of a correction to an equation used for calculating $PM_{2.5}$ compliance. One comment addressed concern of error in placement of language in the implementation rule for the 2012 $PM_{2.5}$ as stated in EPA regulations. EPA indicated that the placement of language in the Federal regulations was not in error and no further action was taken.

The public hearing held on April 12, 2018 addressed the NAAQS updates regarding the addition of EPA-promulgated monitoring methods for multiple NAAQS and updated List of

Designated Reference and Equivalent Methods. No adverse comments were received.

Illinois held a public hearing for the VOM updates regarding the request of 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane being exempted from VOC regulations on September 21, 2017. No adverse comments were received.

IV. What is EPA's analysis of the State's submittals?

EPA finds the state's requested SIP revisions to be approvable, because the state's rule revisions make the state's air quality standards and associated monitoring requirements identical-in-substance to EPA's promulgated NAAQS and VOC updates.

V. What action is EPA taking?

EPA is approving NAAQS updates into the Illinois SIP to 35 IAC 243.101, 35 IAC 234.105, 35 IAC 243.108, 35 IAC 243.120 35, and removal of IAC 243.TABLE A contained in the April 2, 2018 submittal and the July 26, 2018 submittal. EPA is approving VOC updates into the Illinois SIP to 35 IAC 211.7150 contained in the April 2, 2018 submittal. EPA is also removing an incorrect reference in 40 CFR 52.720(b)(3) on how copies of materials incorporated by reference may be inspected.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective February 19, 2019 without further notice unless we receive relevant adverse written comments by January 22, 2019. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective February 19, 2019.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

VII. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

[2] 62 FR 27968 (May 22, 1997).

shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA.)

List of Subjects in 40 CFR Part 52

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

Dated: December 3, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.720 is amended by:

■ a. Revising paragraph (b)(3);

■ b. Revising the table entries in paragraph (c) for 211.7150, 243.101, 243.105, 243.108, and 243.120; and

■ c. Removing the table entry in paragraph (c) for 243.TABLE A.

The revisions read as follows:

§ 52.720 Identification of plan.

* * * * *

(b) * * *

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, IL 60604, or the National Archives and Records Administration. 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.*

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
Part 211: Definitions and General Provisions				
*	*	*	*	*
Subpart B: Definitions				
*	*	*	*	*
211.7150	Volatile Organic Material (VOM) or Volatile Organic Compound (VOC).	10/23/2017	12/21/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
Part 243: Air Quality Standards				
Subpart A: General Provisions				
243.101	Definitions	10/23/2017	12/21/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
243.105	Air Quality Monitoring Data Influenced by Exceptional Events.	10/23/2017	12/21/2018, [Insert **Federal Register** citation].	
*	*	*	*	*
243.108	Incorporation by Reference	05/29/2018	12/21/2018, [Insert **Federal Register** citation].	
Subpart B: Standards and Measurement Methods				
243.120	PM_{10} and $PM_{2.5}$	10/23/2017	12/21/2018, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2018–27610 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0562; FRL–9985–52]

Mefenoxam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mefenoxam in or on cacao bean; the fruit, small, vine climbing, except grape, subgroup 13–07E; and wasabi. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 21, 2018. Objections and requests for hearings must be received on or before February 19, 2019, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0562, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0562 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 19, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0562, 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 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.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 26, 2018 (83 FR 3658) (FRL–9971–46), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8610) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the fungicide mefenoxam, including its metabolites and degradates in or on the raw agricultural commodities cacao bean, bean at 0.2 parts per million (ppm); wasabi, tops at 6.0 ppm; wasabi, stem at 3.0 ppm; and fruit, small, vine climbing, except grape, crop subgroup 13–07E at 0.10 ppm. Additionally, the petition requested to amend 40 CFR 180.546 by removing the tolerance in or on kiwifruit at 0.10 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received in the docket for the notice of filing, but as it raised concerns about the Obama Administration's application of the National Environmental Protection Agency and Endangered Species Act, it is not relevant to this tolerance action.

Based upon review of the data supporting the petition, EPA has modified the commodity definition for cacao and the tolerance level to be consistent with the Agency's policy on significant figures.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the

pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for mefenoxam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with mefenoxam follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Mefenoxam (metalaxyl-m) is a systemic phenylamide fungicide which inhibits protein synthesis in fungi. Mefenoxam is an *R*-isomer enriched formulation. Metalaxyl is the racemic *R/S* isomer formulation. The Agency compared the available chemistry and toxicity data for mefenoxam and metalaxyl and concluded that metalaxyl data may be used in support of mefenoxam regulatory actions because the two chemicals have similar toxicity. Therefore, for the purposes of this assessment, mefenoxam will refer to both mefenoxam and metalaxyl-m.

In rat and dog repeat dose (*i.e.,* subchronic and chronic) oral toxicity studies, there were no indications of adverse effects up to the highest dose tested (HDT). Adverse effects were only observed from acute exposure to rats. In the rat developmental toxicity study of metalaxyl, maternal toxicity consisted of dose-related increased incidence of convulsions that occurred shortly after dosing, as well as other clinical signs. In a range-finding acute neurotoxicity study of mefenoxam, females showed abnormal functional observation battery (FOB) findings at doses lower than males, but higher than the rat developmental study. However, there was no indication of toxicity up to the HDT in the mefenoxam subchronic neurotoxicity study, which confirms the lack of adverse effects observed in all other repeat-dose studies.

There was no indication of developmental toxicity in studies of mefenoxam or metalaxyl. There was no indication of immunotoxicity in a mouse immunotoxicity study of mefenoxam. Metalaxyl and mefenoxam have been classified as ''not likely to be carcinogenic in humans'' based on the results of the carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in rats.

All toxicity endpoints and points of departure (PODs) are based on convulsions that occurred minutes after dosing in the rat developmental toxicity study of metalaxyl. This POD is appropriate for acute, short-term, and intermediate-term exposure scenarios via the oral and inhalation routes. No hazard was identified for chronic or long-term exposure scenarios, or for exposure via the dermal route.

Specific information on the studies received and the nature of the adverse effects caused by mefenoxam as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''*Mefenoxam (Metalaxyl-M). Human Health Risk Assessment for the Establishment of Permanent Tolerances and New Uses in/on Wasabi, Cacao, and Crop Group Expansion from Kiwifruit to Fruit, Small, Vine Climbing, Except Grape, Crop Subgroup 13–07E*'' on pages 23–21 in docket ID number EPA–HQ–OPP–2017–0562.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for mefenoxam used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MEFENOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All Populations)	NOAEL = 50 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.5 mg/kg/day. aPAD = 0.5 mg/kg/day	*Metalaxyl Prenatal Developmental Toxicity—Rat* LOAEL = 250 mg/kg/day Based on dose-related increases in clinical signs of toxicity (*e.g.,* post-dosing convulsions).

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR MEFENOXAM FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	No endpoint was identified. No systemic toxicity was observed in the reproduction and fertility effects study or in any of the chronic and subchronic toxicity studies. Toxicity was only evident in gavage-dosed animals.		
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 50 mg/kg/ day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	*Metalaxyl Prenatal Developmental Toxicity—Rat* LOAEL = 250 mg/kg/day Based on dose-related increases in clinical signs of toxicity (*e.g.,* post-dosing convulsions).
Cancer (Oral, dermal, inhalation).	Classification: ''not likely to be carcinogenic to humans'' based on adequately conducted carcinogenicity studies in rats and mice treated with metalaxyl.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to mefenoxam, EPA considered exposure under the petitioned-for tolerances as well as all existing mefenoxam tolerances in 40 CFR 180.546. EPA assessed dietary exposures from mefenoxam in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for mefenoxam. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture's National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed 100 percent crop treated (PCT), DEEM default and empirical processing factors and tolerance level residues.

ii. *Chronic exposure.* No chronic endpoint was identified and therefore no chronic dietary assessment was conducted.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that mefenoxam does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue or PCT information in the dietary assessment for mefenoxam. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency only considered the parent compound metalaxyl as a residue of concern (ROC). Exposure modeling for mefenoxam is not necessary because exposure estimates for metalaxyl are expected to exceed those for mefenoxam, and the two compounds are anticipated to behave identically in the environment. Therefore, EDWCs provided for metalaxyl are protective of exposures to mefenoxam through drinking water. Maximum annual application rates for metalaxyl, up to 12.3 pounds active ingredient/per Acre (lb ai/A), were modeled. These rates are approximately twice those of mefenoxam.

The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for mefenoxam/metalaxyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of mefenoxam/metalaxyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Water Calculator (PWC version 1.52) the estimated drinking water concentrations (EDWCs) of mefenoxam/metalaxyl for acute exposures are estimated to be 350 parts per billion (ppb) for surface water and 155 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the acute dietary risk assessment, the water concentration value of 350 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Mefenoxam and metalaxyl are currently registered for the following uses that could result in residential exposures: Lawns, ornamentals, gardens, and trees. EPA assessed residential exposure using the following assumptions: For residential handlers, all registered metalaxyl and mefenoxam product labels with residential use sites (lawns, ornamentals and garden and trees) require that handlers wear specific clothing (*e.g.,* long sleeve shirt/ long pants) and chemical resistance gloves. Therefore, EPA has made the assumption that these products are not for homeowner use, and has not conducted a quantitative residential handler assessment.

There is potential for residential post-application exposures to mefenoxam (metalaxyl-m). Since no dermal endpoints were identified, only incidental oral post-application exposures to small children ages 1 to <2 have been assessed. Metalaxyl and mefenoxam are registered for use on home lawns; therefore, there is the potential for incidental oral exposure (hand-to-mouth, object-to-mouth, soil ingestion and granular ingestion).

The recommended residential exposure for use in the children 1 to <2 years old aggregate assessment reflects hand-to-mouth incidental oral exposures from treated turf using a liquid formulation. Ingestion of granules is considered an episodic event and not a routine behavior. Because the Agency

does not believe that this would occur on a regular basis, the concern for human health is related to acute poisoning rather than short-term residue exposure. Therefore, an acute dietary dose is used to estimate exposure and risk resulting from episodic ingestion of granules. For these same reasons, the episodic ingestion scenario was not included in the aggregate assessment.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to metalaxyl and mefenoxam and any other substances and metalaxyl and mefenoxam do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that metalaxyl and mefenoxam have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence for qualitative or quantitative offspring susceptibility in developmental toxicity studies in rabbits and rats, or in the reproduction and fertility effects study in rats. In adult rats treated with metalaxyl or mefenoxam, clinical signs and abnormal Functional Observation Battery (FOB) findings were noted only after a bolus gavage dose, but not in repeated dose studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity databases for mefenoxam and metalaxyl are complete.

ii. In the rat prenatal developmental toxicity with metalaxyl, maternal animals exhibited clinical signs indicative of neurobehavioral effects as previously discussed.

In the range-finding acute neurotoxicity study with mefenoxam, females exhibited abnormal functional observation battery (FOB) findings at doses lower than in males. In the subchronic neurotoxicity study with mefenoxam, there were no indications of neurotoxicity up to the HDT. In metalaxyl and mefenoxam treated adult animals, clinical signs and abnormal FOB findings were noted. However, a developmental neurotoxicity (DNT) study is not required for metalaxyl or mefenoxam because (1) there are no indications of increased susceptibility for infants or children; (2) the convulsions observed in the rat prenatal developmental toxicity study occurred in the maternal animals with no effects being observed in the young; (3) the convulsions occurred only after a bolus dose; (4) the available developmental and range-finding acute neurotoxicity studies provided clear NOAELs and LOAELs for evaluating effects; (5) the current POD is below the level at which any effects were seen in either study, and (6) there were no other indications of neurotoxicity in the mefenoxam or metalaxyl databases, which include a subchronic (adult rat) neurotoxicity study for mefenoxam. Therefore, there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that mefenoxam or metalaxyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to mefenoxam and metalaxyl in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by mefenoxam or metalaxyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to mefenoxam will occupy 21% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account chronic exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from repeated exposure was identified and no chronic dietary endpoint was selected. Therefore, mefenoxam is not expected to pose a chronic risk.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Mefenoxam and metalaxyl are currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to mefenoxam and metalaxyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 538 for children.

Because EPA's level of concern for mefenoxam is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, mefenoxam is not registered for any use patterns that would result in intermediate-term residential exposure.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, mefenoxam is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to mefenoxam residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for determination of the residues of concern in crop commodities. The enforcement methods are common moiety methods which determine residues of metalaxyl/mefenoxam and metabolites that are convertible to 2,6-dimethylaniline (2,6–DMA). These methods include: (1) Method I in PAM, Vol. II (Method AG–348), which determines residues in plant commodities using a gas-liquid chromatography procedure employing an alkali flame ionization detector (GLC/AFID); (2) Method AG–395 (submitted for inclusion in PAM, Vol. II as Method III), an improved version of Method AG–348, which determines residues in plant commodities using GLC/nitrogen phosphorus detection (NPD); and (3) the multiresidue method in PAM, Vol. I, Section 302 (Protocol D). Method 456–98, a chiral liquid chromatography/mass spectrometric detection (LC/MS) method, is available to distinguish between R- and S-enantiomers, to determine whether metalaxyl or mefenoxam was applied.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

No Codex MRLs have been established for wasabi. The tolerances for the fruit, small, vine climbing, except grape, subgroup 13–07E and cacao bean are harmonized with Codex.

C. Revisions to Petitioned-For Tolerances

The Agency revised the petitioned-for tolerance on cacao to correct for the significant figures based on current practice, and to correct the commodity definition to reflect the common commodity vocabulary currently used by the Agency.

V. Conclusion

Therefore, tolerances are established for residues of mefenoxam, including its metabolites and degradates, in or on cacao, dried bean at 0.20 ppm; the fruit, small, vine climbing, except grape, subgroup 13–07E at 0.10 ppm; wasabi, stem at 3.0 ppm; and wasabi, tops at 6.0 ppm. Additionally, the existing tolerance for kiwifruit at 0.10 ppm is removed as unnecessary due to the establishment of the new tolerances.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). 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), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). 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).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 6, 2018,

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.546:

■ i. Remove the entry ''Kiwifruit'' from the table in paragraph (a).

■ ii. Add alphabetically the entries ''Cacao, dried bean''; ''Fruit, small, vine climbing, except grape, subgroup 13–07E''; ''Wasabi, stem''; and ''Wasabi, tops'' to the table in paragraph (a).

The additions read as follows:

§ 180.546 Mefenoxam; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Cacao, dried bean	0.20
* * * * *	
Fruit, small, vine climbing, except grape, subgroup 13–07E	0.10
* * * * *	
Wasabi, stem	3.0
Wasabi, tops	6.0

* * * * *

[FR Doc. 2018–27764 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0587; FRL–9987–34]

Tolfenpyrad; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tolfenpyrad in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 21, 2018. Objections and requests for hearings must be received on or before February 19, 2019 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0587, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0587 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 19, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0587, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of January 26, 2018 (83 FR 3658) (FRL–9971–46), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8613) by IR–4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.675 be amended by establishing tolerances for residues of the insecticide tolfenpyrad, 4-chloro-3-ethyl-1-methyl-N-[4-(p-tolyloxy)benzyl]pyrazole-5-carboxamide), in or on Arugula at 30.0 parts per million (ppm); Avocado at 1.5 ppm; Berry, low growing, subgroup 13–07G, except Cranberry and Blueberry, lowbush at 3.0 ppm; Bushberry, subgroup 13–07B at 7.0 ppm; Caneberry, subgroup 13–07A at 7.0 ppm; Celtuce at 30.0 ppm; Cottonseed, subgroup 20C at 0.70 ppm; Florence fennel at 30.0 ppm; Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; Garden cress at 30.0 ppm; Leaf petiole vegetable, subgroup 22B at 30.0 ppm; Leafy greens, subgroup 4–16A at 30.0 ppm; Onion, bulb, subgroup 3–07A at 0.09 ppm; Onion, green, subgroup 3–07B at 10.0 ppm; Upland cress at 30.0 ppm; Vegetable, fruiting, group 8–10 at 1.0 ppm; and Vegetable, tuberous and corm, subgroup 1C at 0.01 ppm.

The petitioner also requested that the following established tolerances be removed upon establishment of the petitioned-for tolerances: Cotton, undelinted seed at 0.70 ppm; Grape at 2.0 ppm; Potato at 0.01 ppm; and Vegetable, leafy, except Brassica, group 4 at 30.0 ppm. That document referenced a summary of the petition prepared by Nichino America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* Although a comment was submitted to the docket for the notice of filing, the issue raised is outside the scope of this rulemaking.

Based upon review of the data supporting the petition, EPA is establishing the petitioned-for tolerances with some variations consistent with its authority in FFDCA section 408(d)(4)(A). The reasons for these variations are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for tolfenpyrad including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tolfenpyrad follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A variety of toxic effects were noted in the toxicology database for tolfenpyrad. However, the most consistent findings across species and studies were effects on bodyweight and bodyweight gain which were observed in adults of all species (rat, mice, rabbit, and dog) in the majority of the subchronic oral and dermal toxicity studies, and all chronic toxicity studies.

Further detail of the toxicological profile for tolfenpyrad is discussed in Unit III.A. of the final rule published in the **Federal Register** of June 22, 2018 (83 FR 29017) (FRL–9976–21).

Specific information on the studies received and the nature of the adverse effects caused by tolfenpyrad as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''*Tolfenpyrad-Aggregate Human Health Risk Assessment for Section 3 New Use Requests and Crop Group Tolerance Conversions*'' on page 31 in docket ID number EPA–HQ–OPP–2017–0587.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks.*

A summary of the toxicological endpoints for tolfenpyrad used for human risk assessment is discussed in Unit III B. of the final rule published in the **Federal Register** of June 22, 2018 (83 FR 29020) (FRL–9976–21).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tolfenpyrad, EPA considered exposure under the petitioned-for tolerances as well as all existing tolfenpyrad tolerances in 40 CFR 180.675. EPA assessed dietary exposures from tolfenpyrad in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for tolfenpyrad. In estimating acute dietary exposure, EPA used the Dietary

Exposure Evaluation Model DEEM–FCID™ (Ver. 3.16). This model uses food consumption data from the 2003–2008 United States Department of Agriculture's (USDA) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA used tolerance-level residues for all foods and assumed 100% crop treated (PCT) for all current and proposed crops. The assessment was refined with the application of empirical processing factors where available. Where empirical processing factors were not available or were not translated, default processing factors were used. Additional refinements include a factor to account for the reduction in residues when wrapper leaves are removed (head lettuce, radicchio, cabbage, Chinese Napa cabbage, and Brussels sprouts). Empirical processing factors were available for processed commodities of apple, orange, cottonseed, grape, plum, potato and tomato, and were translated to other processed commodities where appropriate. Where empirical processing factors were not available or were not translated, default processing factors were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the DEEM–FCID™ (Ver. 3.16). This model uses food consumption data from the 2003–2008 USDA's NHANES/WWEIA. As to residue levels in food, EPA assumed 100% PCT and average residue levels from crop field trials as well as the refinements described above for the acute assessment.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that tolfenpyrad does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Although EPA did not use any percent crop treated estimates for this action, the Agency relied on average residue information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for tolfenpyrad in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of tolfenpyrad. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of tolfenpyrad for acute exposures are estimated to be 26.9 parts per billion (ppb) for surface water and 11.0 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 12.2 ppb for surface water and 11.0 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 26.9 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 12.2 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Tolfenpyrad is not registered for any specific use patterns that would result in residential exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found tolfenpyrad to share a common mechanism of toxicity with any other substances, and tolfenpyrad does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that tolfenpyrad does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Although there is evidence of increased qualitative susceptibility in the young in the developmental immunotoxicity study (DIT) in rats, there is low concern, and there are no residual uncertainties regarding increased quantitative or qualitative pre- and/or postnatal susceptibility for tolfenpyrad. When the DIT study is considered along with the reproduction study, the offspring toxicity in the DIT study was observed at the same dose as comparable maternal toxicity (moribundity/mortality) was observed in the reproduction study. Therefore, EPA does not consider the isolated incident in the DIT a true indicator of qualitative susceptibility. Additionally, the effects observed in the DIT study are well characterized, a clear NOAEL was identified, and the endpoints chosen for risk assessment are protective of potential offspring effects.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF

were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for tolfenpyrad is complete.

ii. There is no indication that tolfenpyrad is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. While there was evidence of qualitative susceptibility in one study, the Agency's concern for the susceptibility is low because it was not observed in other studies with tolfenpyrad; offspring effects consistently occurred at or above the dose associated with significant maternal toxicity; there was a clear NOAEL/LOAEL; and endpoints and doses selected for risk assessment are protective of the susceptibility.

iv. There are no residual uncertainties with regard to the exposure assessment. The acute dietary exposure assessment is based on high-end health protective residue levels (that account for parent and metabolites of concern), processing factors, and percent crop treated assumptions (100%). The chronic dietary assessment incorporates some refinement in that average residue values were used. For both the acute and chronic dietary exposure, actual exposures to tolfenpyrad will likely be lower than the estimated exposures. Furthermore, conservative, upper-bound assumptions were used to estimate exposure through drinking water, such that these exposures have not been underestimated. No residential exposures are expected. These assessments will not underestimate the exposure and risks posed by tolfenpyrad.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to tolfenpyrad will occupy 63% of the aPAD for children 1–2 years of age, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tolfenpyrad from food and water will utilize 97% of the cPAD for children 1–2 years of age, the population group receiving the greatest exposure. There are no residential uses for tolfenpyrad.

3. *Short-and Intermediate-term risk.* Short- and intermediate-term aggregate exposures take into account short- and intermediate-term residential exposures plus chronic exposures to food and water (considered to be background exposure levels). Short- and intermediate-term adverse effects were identified; however, tolfenpyrad is not registered for any use patterns that would result in short- or intermediate-term residential exposures. Short- and intermediate-term risks are assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there are no short- or intermediate-term residential exposures and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- and intermediate-term risk), no further assessment of short- and intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for tolfenpyrad.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, tolfenpyrad is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tolfenpyrad residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies utilizing high-performance liquid chromatography method with tandem mass spectrometry detection (LC/MS/MS) is available for enforcement of tolfenpyrad residue tolerances in/on plant commodities (Morse Laboratories Analytical Method #Meth-183, Revision #2). For livestock, a method described in PTRL West Study No. 1841W is available. The livestock method adequately determines residues of tolfenpyrad and its metabolites, PT–CA, OH–PT–CA, and PCA in milk, bovine meat, kidney, liver and fat. Residues are determined by LC/MS/MS analysis. These methods are adequate to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for tolfenpyrad on potato at 0.01 ppm. Due to crop group conversions, the established potato tolerance will be covered by Vegetable, tuberous and corm, subgroup 1C. Therefore, the Codex MRL for potato is harmonized with the U.S. tolerance for Vegetable, tuberous and corm, subgroup 1C at 0.01 ppm.

C. Revisions to Petitioned-For Tolerances

The petitioner requested tolerances for residues of tolfenpyrad and cited the International Union of Pure and Applied Chemistry (IUPAC) name for the chemical. The residue definition for tolfenpyrad tolerances currently established under 40 CFR 180.675 complies with the Agency's *Guidance on Tolerance Expressions,* except that the IUPAC chemical name is listed rather than the Chemical Abstracts Service (CAS) chemical name. The Agency's practice is to use the CAS name; therefore, the tolerance expression is being revised. This change also results in harmonization of the chemical name expression with that used by the Pest Management Regulatory Agency (PMRA).

EPA reviewed the current residue data and tolerance conversion proposals and is establishing some the proposed tolerance levels for residues of tolfenpyrad in accordance with the Agency's rounding practice. In addition, using the highest overall average residue level from the greenhouse tomato decline trial (at a post-harvest interval (PHI) of 5 days instead of a PHI of 1 day), the Agency is establishing a tolerance for Vegetable, fruiting, group 8–10 at 1.5 ppm instead of 1.0 ppm.

While the petitioner requested individual tolerances for arugula, garden cress, and upland cress, individual tolerances are not necessary since these commodities are included in *Brassica,* leafy greens, subgroup 4–16B.

Finally, the Agency is establishing a tolerance for the requested commodity Florence fennel as a tolerance for Fennel, Florence, fresh leaves and stalk to conform to the Agency's preferred vocabulary for this commodity.

V. Conclusion

Therefore, tolerances are established for residues of tolfenpyrad, (4-chloro-3-ethyl-1-methyl-*N*-[[4-(4-methylphenoxy)phenyl]methyl]-1*H*-pyrazole-5-carboxamide), including its metabolites and degradates, in or on Avocado at 1.5 ppm; Berry, low growing, subgroup 13–07G, except cranberry and lowbush blueberry at 3.0 ppm; Bushberry subgroup 13–07B at 7.0 ppm; Caneberry subgroup 13–07A at 7.0 ppm; Celtuce at 30 ppm; Cottonseed subgroup 20C at 0.70 ppm; Fennel, Florence, fresh leaves and stalk at 30 ppm; Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; Leaf petiole vegetable subgroup 22B at 30 ppm; Leafy greens subgroup 4–16A at 30 ppm; Onion, bulb, subgroup 3–07A at 0.09 ppm; Onion, green, subgroup 3–07B at 10 ppm; Vegetable, fruiting, group 8–10 at 1.5 ppm; and Vegetable, tuberous and corm, subgroup 1C at 0.01 ppm. In addition, EPA is removing the following tolerances from paragraph (a) as they are superseded by the new tolerances being established in this rulemaking Cotton, undelinted seed at 0.70 ppm; Grape at 2.0 ppm; Potato at 0.01 ppm; and Vegetable, leafy except *Brassica,* group 4 at 30.0 ppm. EPA is also removing the time-limited tolerance for onion, dry bulb at 0.09 ppm in § 180.675(b) as it is no longer needed with the establishment of a new permanent tolerance for onion, bulb subgroup 3–07A in paragraph (a)(1).

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). 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), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). 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).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 10, 2018.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.675:

■ a. Revise the introductory text of paragraph (a)(1);

■ b. In the table to paragraph (a)(1):

■ i. Add alphabetically the entries ''Avocado''; ''Berry, low growing, subgroup 13–07G, except cranberry and lowbush blueberry''; ''Bushberry, subgroup 13–07B''; ''Caneberry, subgroup 13–07A''; ''Celtuce''; ''Cottonseed, subgroup 20C''; ''Fennel, Florence, fresh leaves and stalk''; ''Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F''; ''Leaf petiole vegetable subgroup 22B''; ''Leafy greens, subgroup 4–16A''; ''Onion, bulb, subgroup 3–07A''; ''Onion, green, subgroup 3–07B''; and ''Vegetable, tuberous and corm, subgroup 1C'';

■ ii. Revise the entry for ''Vegetable, fruiting, group 8–10'';

■ iii. Remove the entries ''Cotton, undelinted seed''; ''Grape''; ''Potato'';

and ''Vegetable, leafy except *Brassica,* group 4'';

■ c. Revise the introductory text of paragraph (a)(2);

■ d. Revise paragraph (b).

The additions and revisions read as follows:

§ 180.675 Tolfenpyrad; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide tolfenpyrad, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only tolfenpyrad (4-chloro-3-ethyl-1-methyl-*N*-[[4-(4-methylphenoxy)phenyl]methyl]-1*H*-pyrazole-5-carboxamide) in or on the commodity.

Commodity	Parts per million
* * * * * * *	
Avocado	1.5
Berry, low growing, subgroup 13–07G, except cranberry and lowbush blueberry	3.0
* * * * * * *	
Bushberry, subgroup 13–07B	7.0
Caneberry, subgroup 13–07A	7.0
Celtuce	30
* * * * * * *	
Cottonseed, subgroup 20C	0.70
Fennel, Florence, fresh leaves and stalk	30
* * * * * * *	
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.0
* * * * * * *	
Leaf petiole vegetable subgroup 22B	30
Leafy greens, subgroup 4–16A	30
* * * * * * *	
Onion, bulb, subgroup 3–07A	0.09
Onion, green, subgroup 3–07B	10
* * * * * * *	
Vegetable, fruiting, group 8–10	1.5
Vegetable, tuberous and corm, subgroup 1C	0.01

(2) Tolerances are established for residues of the insecticide tolfenpyrad, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of tolfenpyrad, 4-chloro-3-ethyl-1-methyl-*N*-[[4-(4-methylphenoxy)phenyl]methyl]-1*H*-pyrazole-5-carboxamide, and its metabolite 4-[4-[(4-chloro-3-ethyl-1-methylpyrazol-5-yl)carbonylamino-methyl]phenoxy]-benzoic acid, calculated as the stoichiometric equivalent of tolfenpyrad.

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

* * * * *

[FR Doc. 2018–27605 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 18–4, 17–105; FCC 18–145]

Filing of Contracts

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *document,* the Federal Communications Commission eliminates a paper filing requirement for broadcast station contracts and documents and instead requires that these same documents are either uploaded or listed in the online public file within 30 days.

DATES: *Effective Date:* January 22, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher Clark, Industry Analysis Division, Media Bureau, FCC, (202) 418–2609. For additional information concerning the information collection requirements contained in the *Report and Order,* contact Cathy Williams at (202) 418–2918, or via the internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* FCC 18–145, in MB Docket Nos. 18–4 and 17–105, adopted and released on October 23, 2018. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at *https://apps.fcc.gov/edocs_public/* (*https://apps.fcc.gov/edocs_public/*). The complete document is available for inspection and copying in the FCC Reference Information Center, 445 12th Street SW, Room CY–A257, Washington, DC 20554 (for hours of operation, see *https://www.fcc.gov/general/fcc-reference-information-center*). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* (mail to: *fcc504@fcc.gov*) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Report and Order (Order), we eliminate the paper filing requirement in § 73.3613 of our rules. § 73.3613 currently requires licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations to file paper copies of certain documents with the Commission within 30 days of execution. Broadcast licensees and permittees have been required to file paper copies of station documents with the Commission since the late 1930s. As part of our Modernization of Media Regulation Initiative, earlier this year we released a *Notice of Proposed Rulemaking* (*NPRM*) tentatively concluding that the paper filing requirement for § 73.3613 documents had outlived its usefulness and should be eliminated. We adopt that tentative conclusion herein and eliminate the routine paper filing requirement as discussed below. Our action today advances our goal of eliminating outdated and unnecessary regulatory burdens that can impede competition and innovation in media markets. In addition, our action today is consistent with other steps the Commission has taken to reduce paper submissions and make documents available electronically.

2. *Elimination of Routine Paper Filings for Commercial and Noncommercial AM, FM, and Television Stations.* Consistent with the *NPRM*'s tentative conclusion, we eliminate the paper filing requirement for § 73.3613 documents for commercial and noncommercial AM, FM, and television stations.[1] Given the ready access afforded by the online public inspection file (OPIF), stations already provide easy access to such documents, making routine paper filings redundant and unnecessary. Commenters agree that we can eliminate the 1930s-era paper filing requirement and rely on the OPIF to ensure that the public has access to relevant documents. As currently set forth in §§ 73.3526 and 73.3527 of our regulations,[2] our existing OPIF rules require that stations retain in the OPIF a copy of their most recent, complete ownership report together with all related material. And under our rules, ownership reports must include a list of all documents currently filed with the Commission pursuant to § 73.3613 for the stations covered by the report. Our present rules require that these documents be made available for public inspection via the OPIF. Specifically, stations are currently required to either (i) upload the documents directly to the OPIF or (ii) maintain an up-to-date list of the documents in the OPIF and provide copies to requesting parties within seven days.[3] Accordingly, we eliminate the routine paper filing requirement for such documents, and we rely on our OPIF rules as discussed herein. In addition, we will continue to rely on our long-standing ability to obtain § 73.3613 documents from licensees and permittees upon request, as needed. If the Commission requests a copy of a § 73.3613 document, then, as is currently the case under our existing rules, the licensee or permittee must provide the Commission with a complete, unredacted copy of such document. Currently, LPTV stations are required to file network affiliation agreements with the Commission as specified in § 73.3613(a). Because we are retaining our ability to obtain § 73.3613 documents upon request, LPTV stations will be required to submit network affiliation agreements to the Commission upon request and within seven days of such request.

3. Consistent with the previous practice for paper filings under § 73.3613, we will require that stations update their inventory of § 73.3613 documents in the public file within 30 days of execution of such documents, including amendments, supplements, and cancellations. Nearly all commenters support such a requirement. While the public broadcasting organizations assert that requiring ''periodic updates'' would be sufficient for public broadcast stations, we are concerned that such a vague requirement would create uncertainty as to when these stations must update the public file to reflect changes to their inventory of § 73.3613 documents. Accordingly, rather than rely on each station to define the appropriate frequency of updates, we require that all stations, including public broadcast stations, update their inventory of § 73.3613 documents in the OPIF within 30 days of execution of such documents, including amendments, supplements, and cancellations.

4. We decline to require that all § 73.3613 documents, rather than simply a list of such documents, be uploaded directly to the OPIF. Since 1998, our public file rules have allowed stations the option of retaining either copies or a list of § 73.3613 documents in the public file, and no commenter asserts that the option to retain a list in the file has deprived the public of information that is relevant to station ownership or assessing renewal applications. In addition, we note that the public has direct access to information about station owners via ownership reports, which are also retained in the OPIF. Thus, contrary to some commenters' assertions, retaining the option for stations to list § 73.3613 documents in the public file and provide them upon request will not deprive the Commission and the public of information relevant to station ownership. As discussed below, we reject assertions that eliminating paper filings and allowing stations to provide access to § 73.3613 documents via the options set forth in our existing OPIF rules will decrease transparency and delay access to such documents by the public. Under the approach we adopt herein, interested parties will be able to obtain § 73.3613 documents either directly from the OPIF or within seven days of submitting a request to a station that lists the documents in the OPIF, without having to travel to the Commission's Reference Information Center (RIC) to request a copy of a document filed with the Commission in paper. Rather than delaying access to § 73.3613 documents and increasing burdens on the Commission and the public, we believe that the OPIF reduces the time and expense for interested parties to obtain copies of § 73.3613 documents. Indeed, as discussed below, today only a limited number of people visit the RIC to view § 73.3613 documents filed with the Commission in paper.

5. We agree with Gray Television that a station that lists its § 73.3613 documents in the OPIF should be required to include the execution and expiration dates, if any, for each such document. No commenter opposes this proposal. Accordingly, we require stations that list § 73.3613 documents in the OPIF to include on their list all of the information required for such documents on ownership reports. This will provide the information necessary to keep track of expiring documents and thereby help ensure that stations maintain a current inventory of their § 73.3613 documents in the OPIF.

6. We conclude that eliminating the paper filing requirement and relying on our OPIF rules as discussed herein will reduce burdens on broadcasters while preserving transparency and ensuring

[1] Consistent with the proposal in the *NPRM,* we will require that stations make their § 73.3613 documents available to the Commission and the public via the options set forth in the existing public file rules, as discussed below.

[2] § 73.3526 of our rules contains OPIF requirements for commercial broadcast stations, while § 73.3527 contains OPIF requirements for noncommercial educational broadcast stations.

[3] Our public file rules also require licensees and permittees to retain copies of TBAs and JSAs involving a commercial AM, FM, or television station in the station's public file.

that the Commission and the public can obtain relevant information in a timely fashion. As a result of our decision today, stations will no longer have to spend time and money preparing paper copies of § 73.3613 documents and having them mailed or hand-delivered to the Commission, often by outside legal counsel. Importantly, the Commission and the public will still have easy access to § 73.3613 documents via the OPIF as discussed above. Furthermore, the Commission will continue to have the ability to obtain unredacted copies of such documents from stations upon request. Therefore, contrary to some commenters' assertions, we do not believe that eliminating routine paper filings will meaningfully impact the ability of the Commission and other interested parties to review § 73.3613 documents for commercial and noncommercial AM, FM, and television stations. Because § 73.3613 documents are either contained in the OPIF or available upon request to the station, there is no longer a need for the public to travel to the Commission's RIC to view these documents. Indeed, based on a review of the Commission's internal records, just over 500 people—or an average of 2 people per business day—visited the RIC from September 2017 through August 2018, including Commission staff and people viewing other available files. The RIC files include not only § 73.3613 documents filed with the Commission but also a lot of information on licensing applications, as well as Commission proceedings, programs, and activities. Thus, the total number of visitors to the RIC cannot be equated to the number of people who viewed the broadcast station paper files made available in the RIC, or more specifically, the § 73.3613 documents contained in those files, which is unknown but could be much fewer than the total number of visitors to the RIC. Moreover, the total number of visitors to the RIC includes Commission staff, and it is unknown how many visitors were members of the public.

7. To effectuate the changes we adopt today, we will revise the relevant public file rules by replacing the current reference to the documents listed on ownership reports (*i.e.,* § 73.3613 documents) with a direct reference to the list of documents in § 73.3613. We agree with the National Association of Broadcasters that this approach will clarify the relevant public file requirements in §§ 73.3526(e)(5) and 73.3527(e)(4) of our rules and also avoid the need to attempt to incorporate the lengthy, detailed list of § 73.3613 documents into two distinct sections of our rules. Incorporating the list of § 73.3613 documents into our public file rules would significantly increase the length and complexity of those rules. While one commenter asserts in general terms that we should eliminate § 73.3613 from our rules entirely, no commenter has proposed a specific method of doing so in a manner that addresses our concerns. In addition to significantly increasing the length and complexity of our public file rules, we also raised other concerns about eliminating § 73.3613 of our rules entirely. Specifically, in the *NPRM* we sought comment on how we would address the documents currently specified in § 73.3613(e), which licensees and permittees currently are not required to file with the Commission but must keep at the station and make them available for inspection upon request by the Commission. We also sought comment on how we would address § 73.3613(a)(1), which currently includes a definition of ''network'' that is cross referenced in the Telecommunications Act of 1996 and in our Dual Network Rule. No commenter has offered a proposal for addressing these issues. Accordingly, we conclude that retaining the list of documents in § 73.3613 and revising our public file rules to refer directly to that list is best for clarity and will most effectively keep stations informed of their obligations.

8. The text of the revised rules can be found in Appendix A hereto. In addition to the specific rule changes discussed above, we are also eliminating § 73.1226(c) of our rules, which currently requires that certain documents be kept at the station and made available for inspection by any authorized representative of the FCC upon request. Because § 73.3613(e) currently contains a similar list of documents that must be kept at the station and made available for inspection upon request by the FCC, we conclude that we can eliminate § 73.1226(c) and revise the relevant subsection of § 73.3613 to include every document that is currently listed in § 73.1226(c), except for ''contracts relating to the sale of broadcast time to 'time brokers' for resale,'' which are already required to be made available for inspection pursuant to our OPIF rules. In addition, we are also eliminating § 73.3613(a)(3) of our rules, which currently requires that stations notify the Commission in writing when a network affiliation agreement is cancelled or terminated. Because we are no longer requiring that stations file network affiliation agreements with the Commission in paper routinely, it does not make sense to continue requiring routine written notifications whenever such an agreement is cancelled or terminated. Further, such written notifications are no longer necessary given that (i) the expiration date of the affiliation agreement will be available either through the copy uploaded to the OPIF or in the document list; and (ii) the documents in the OPIF or the list must be updated within 30 days of a cancellation of an agreement. We also reformat the notes to §§ 73.3526 and 73.3527 to conform to the requirements of the Office of the Federal Register and make additional, conforming edits as shown in Appendix A. We direct the Media Bureau to make all form modifications and take any other steps necessary to implement all the rule changes and other decisions adopted herein.

9. *Streamlining Disclosure Requirements for TBAs and JSAs.* In order to avoid overlap and duplication in our rules, we adopt the *NPRM*'s tentative conclusion to eliminate the filing requirement for attributable time brokerage agreements (TBAs) and attributable joint sales agreements (JSAs) in § 73.3613(d) of our rules. This provision duplicates an existing OPIF disclosure requirement; therefore, it is no longer necessary to retain § 73.3613(d) following the elimination of the paper filing requirement. Because § 73.3613(d) also contains important definitional information describing the subset of TBAs and JSAs that must be included on ownership reports which remain undisturbed by this item, we find it necessary to incorporate this definitional information elsewhere, as discussed below.

10. § 73.3613(d) currently defines attributable TBAs and attributable JSAs and requires that they be filed with the Commission by the brokering station. A TBA, also referred to as local marketing agreement (LMA), involves ''the sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it.'' A JSA is an agreement that authorizes a broker to sell some or all of the advertising time on the brokered station. As discussed above, stations must also disclose these and other § 73.3613 documents on ownership reports and make the documents available via the OPIF pursuant to § 73.3526(e)(5). However, as discussed in the *NPRM,* our existing OPIF rule for commercial stations contains another provision that specifically requires stations to upload

all TBAs and JSAs directly to the OPIF for both the brokering and brokered stations, regardless of whether or not such agreements are attributable. Thus, we do not need to retain § 73.3613(d) to ensure that the Commission and the public have access to this subset of TBAs and JSAs. Accordingly, we eliminate § 73.3613(d) of our rules to streamline our disclosure requirements for TBAs and JSAs. Consistent with our decision above to require updates to the OPIF within 30 days of executing a § 73.3613 document, we will require that stations update the OPIF to reflect new or amended TBAs and JSAs within 30 days of execution of such documents, including amendments, supplements, and cancellations.

11. Despite the elimination of the paper filing requirement, we continue to require that attributable TBAs and attributable JSAs be disclosed by the licensee of the brokering station on its ownership report. The Commission has previously determined that such agreements permit a degree of influence or control that is cognizable as an attributable ownership interest in the brokered station for purposes of determining the brokering licensee's compliance with our broadcast ownership rules. As such, the Commission included attributable TBAs and attributable JSAs in the list of agreements that must be disclosed on ownership reports. Because our decision today does not change these prior determinations,[4] licensees brokering time under an attributable TBA or an attributable JSA must continue listing such agreements on ownership reports. We will make this clear in the instructions to FCC Form 323.

12. *Redaction of Confidential or Proprietary Information.* We adopt our tentative conclusion to extend the explicit redaction allowance for TBAs and JSAs to all § 73.3613 documents to the extent they contain confidential or proprietary information, and require that unredacted copies be provided to the Commission upon request. No commenter asserts that we should not extend this explicit redaction allowance for confidential or proprietary information to all § 73.3613 documents, although some commenters urge us to clarify what constitutes ''confidential or proprietary information'' and the procedure for indicating redactions.

13. We clarify that, for purposes of the redaction allowance, confidential or proprietary information is information that would be accorded confidential treatment pursuant to our general rules for seeking non-disclosure of information submitted to the Commission. §§ 0.457(d) and 0.459 of our rules provide for confidential treatment of trade secrets and commercial or financial information obtained from any person and privileged or confidential. Because an individualized determination is required to decide whether confidential or proprietary information not specified in § 0.457 of our rules is to be withheld from routine public inspection, we reject the American Cable Association's assertion that information related in any way to retransmission consent should never be redacted. However, we emphasize that the redaction allowance applies to § 73.3613 documents only to the extent they contain confidential or proprietary information. Thus, we expect that licensees and permittees will redact only such information that is actually confidential or proprietary, if any, and leave all other information unredacted in the copy of the § 73.3613 document they make available to the Commission and the public.

14. Moreover, we require that each copy of a § 73.3613 document containing confidential or proprietary information have the same material redacted and that licensees and permittees must not provide different redacted versions of the same document to requesting parties. Licensees and permittees must clearly indicate where redactions are being made. If a person believes that a § 73.3613 document has been inappropriately redacted, he or she may file a response in opposition under § 0.459(d) of our rules if the licensee or permittee of the station filed a request for confidentiality pursuant to § 0.459. Otherwise, the person may file a complaint with the Commission if he or she believes that the station has violated our public file rules or redacted information that is not actually confidential or proprietary.

15. A station that provides a redacted version of a § 73.3613 document to a requesting party must provide the party with the redacted document within seven days of the party's request for a copy of the document. Thus, we will not permit stations that choose to retain a list of § 73.3613 documents in the public file to wait months before providing a copy of those documents to a requesting party. We note that under our existing rules, information submitted to the Commission under a request for confidentiality is treated as confidential until the Commission acts on the request and all subsequent appeal and stay proceedings have been exhausted. Thus, even absent an explicit redaction allowance, broadcasters would still be able to redact information submitted to the Commission under a request for confidentiality, and the Commission would withhold that information from third parties in accordance with its existing rules. Therefore, we reject the notion that the explicit redaction allowance will delay parties' access to relevant information.

16. *Elimination of Routine Paper Filings for International Broadcast Stations.* International broadcast stations, which are authorized on a seasonal basis, employ frequencies allocated to the broadcasting service between 5,900 and 26,100 kHz, the transmissions of which are intended to be received in foreign countries. These stations, which are often operated by churches and other religious organizations, do not serve local communities in the United States. We adopt our tentative conclusion to eliminate the requirement that licensees and permittees of international broadcast stations routinely file § 73.3613 documents with the Commission and retain our ability to obtain these documents from licensees and permittees upon request, as needed. No commenter opposes elimination of the § 73.3613 paper filing requirement for international broadcast stations.

17. We conclude that the current justifications for requiring disclosure of § 73.3613 documents by commercial and noncommercial AM, FM, and television stations do not apply to international broadcast stations. As discussed in the *NPRM,* the routine disclosure of § 73.3613 documents by commercial and noncommercial AM, FM, and television stations supplements the information that these stations are required to provide in their ownership reports. However, the same is not true for international broadcast stations, which are not subject to the routine ownership reporting obligations that apply to the other broadcast services. Moreover, international broadcast stations are not subject to the ownership rules applicable to commercial AM, FM, and television stations, nor are they subject to the relevant operational provisions applicable to noncommercial FM and television stations. For purposes of enforcing the statutory bar against de facto transfers of control of international broadcast stations without prior Commission authorization, we believe it is sufficient to retain our ability to obtain § 73.3613 documents from licensees and permittees of international broadcast stations upon request, as needed. Because the record provides no basis for continuing to

[4] We also note that the *NPRM* did not propose to eliminate the requirement that these agreements be disclosed on ownership reports and that any such change is beyond the scope of this proceeding.

require that international broadcast stations routinely file § 73.3613 documents with the Commission, we eliminate the routine paper filing requirement for § 73.3613 documents for international broadcast stations.

18. *Paperwork Reduction Act Analysis.*—This document contains a non-substantive and non-material modification of information collection requirements that is subject to approval by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In the present document, we have assessed the effects of our decision to eliminate the paper filing requirement for § 73.3613 documents and rely instead on our public file rules and our ability to obtain § 73.3613 documents from broadcast licensees and permittees upon request. We find that the rule changes adopted herein will relieve broadcast licensees and permittees of the time and expense associated with filing paper copies of § 73.3613 documents with the Commission, and that affected small entities, including those with fewer than 25 employees, will only benefit from the actions taken in this document.

Final Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*) in MB Docket 18–4. The Commission sought written public comments on proposals in the *NPRM,* including comment on the IRFA. The Commission received no direct comments on the IRFA. The present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

20. *Need for, and Objectives of, the Report and Order.* The *Report and Order* (*Order*) eliminates the requirement that licensees and permittees of commercial and noncommercial AM, FM, television, and international broadcast stations routinely file paper copies of station contracts and other documents with the Commission as currently specified in § 73.3613 of the Commission's rules. Given that the Commission's existing public file rules now require that licensees and permittees of commercial and noncommercial AM, FM, and televisions stations make copies of their § 73.3613 documents available online, the *Order* finds that § 73.3613's requirement that licensees and permittees also file copies of such documents in paper with the Commission to be outdated and unnecessary. Rather than retaining this antiquated paper filing requirement, the Commission will rely on its existing public file rules to ensure access to § 73.3613 documents as discussed in the *Order* and retain the ability to obtain these documents from licensees and permittees upon request, as needed. The Commission's existing public file rules require licensees and permittees to either (i) upload the documents directly to the OPIF or (ii) maintain an up-to-date list of the documents in the OPIF and provide copies to requesting parties within seven days.

21. In addition to eliminating the paper filing requirement for § 73.3613 documents, the *Order* also eliminates a redundant disclosure requirement pertaining to certain § 73.3613 documents and expands an existing redaction allowance for confidential or proprietary information in § 73.3613 documents. The *Order* requires that unredacted copies the documents be provided to the Commission upon request and that any confidential or proprietary information that is redacted must be marked consistently throughout the document.

22. The *Order* arises from a Public Notice issued by the Commission in May 2017, launching an initiative to modernize the Commission's media regulations. The majority of the parties that filed comments in this proceeding agree that the routine paper filing requirement at issue is redundant and should be eliminated. The *Order* concludes that eliminating this requirement is consistent with other actions the Commission has taken to reduce paper submissions and advances the Commission's goal of eliminating outdated and unnecessary regulatory burdens that can impede competition and innovation in media markets.

23. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in direct response to the IRFA.

24. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the SBA and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to this proceeding.

25. *Description and Estimate of the Number of Small Entities to Which Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules 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. The final rules adopted herein affect small television and radio broadcast stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

26. Television Broadcasting. This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of less than $25,000,000, and 95 had annual receipts of $25,000,000 or more. Based on this data, we estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

27. In addition, the Commission has estimated the number of licensed commercial television stations to be 1,349. Of this total, 1,277 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 1, 2018. Such entities, therefore, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial

educational (NCE) television stations to be 412. The Commission, however, does not compile and does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

28. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the proposed rules would apply does not exclude any television station from the definition of a small business on this basis and therefore could be over-inclusive.

29. There are also 1,911 LPTV stations and 389 Class A stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

30. Radio Stations. This economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25,000,000, and 43 firms had annual receipts of $25,000,000 or more. Therefore, based on the SBA's size standard, the majority of such entities are small entities.

31. Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,626 stations and the number of commercial FM radio stations to be 6,737, for a total number of 11,363. Of this total, 11,362 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 1, 2018. In addition, the Commission has estimated the number of noncommercial educational FM radio stations to be 4,130. NCE stations are non-profit, and therefore considered to be small entities. Therefore, we estimate that the majority of radio broadcast stations are small entities.

32. International Broadcast Stations. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to international broadcast stations. The closest applicable SBA size standards and U.S. Census Bureau category is Radio Stations. Establishments in this industry are primarily engaged in broadcasting aural programs by radio to the public with programming that may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this category is firms having $38.5 million or less in annual receipts. U.S. Census Bureau data for 2012 shows that 2,849 radio station firms operated during that year. Of this number, 2,806 firms had annual receipts of less than $25,000,000, and 43 firms had annual receipts of $25,000,000 or more. Therefore, based on the SBA's size standard the majority of entities in this industry are small entities.

33. According to the Commission's records there were 16 international broadcast stations operating as of September 13, 2018. The Commission however does not request nor collect annual revenue information; therefore, the Commission is unable to estimate the number of international broadcast stations that would constitute a small business under the SBA definition.

34. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In this section, we identify the reporting, recordkeeping, and other compliance requirements in the *Order* and consider whether small entities are affected disproportionately by any such requirements.

35. Reporting Requirements. The *Order* requires licensees and permittees to update the § 73.3613 documents in their online public file or the list of such documents within 30 days of executing such documents. This 30-day timeframe for updating the inventory of § 73.3613 documents in the public file is consistent with the previous rule, which required licensees and permittees to file the documents with the Commission in paper within 30 days of execution.

36. Recordkeeping Requirements. The existing public file rules give stations the option of either (i) retaining copies of their § 73.3613 documents in the public file or (ii) maintaining an up-to-date list of such documents in the public file and providing copies to a requesting party within seven days. The *Order* retains these existing options for disclosing § 73.3613 documents in the public file. To preserve the current level of access to § 73.3613 documents, the *Order* clarifies that stations must ensure that their inventory of such documents in the public file is up to date, regardless of whether the station chooses to retain copies or a list of § 73.3613 documents in the public file, and provide copies of their § 73.3613 documents to the Commission and the public within seven days upon request. Stations that upload a list of § 73.3613 documents to the public file must include on that list all of the information that the Commission requires for such documents on broadcast ownership reports, including a description of each document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type. This will provide the information necessary for the public to keep track of expiring documents and help ensure that stations maintain a current record of their § 73.3613 documents in the public file.

37. Other Compliance Requirements. The *Order* does not adopt new compliance requirements.

38. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

39. The *Order* eliminates the paper filing requirement for § 73.3613 documents and adopts other rule changes to streamline disclosure requirements and explicitly allow for the redaction of confidential or proprietary information in such documents. These actions are intended to modernize the Commission's regulations and reduce costs and recordkeeping burdens for affected entities, including small entities. Under the revised rules, affected entities no longer will need to expend time and resources filing paper copies of § 73.3613 documents with the Commission.

40. For commercial and noncommercial AM, FM, and television

stations, the Commission will rely on its existing public file rules, which already require that these stations make copies of § 73.3613 documents available to the public online. The existing public file rules provide these stations with flexibility to select the disclosure method that is less burdensome with respect to § 73.3613 documents, while still ensuring timely access to the documents by the public and the Commission. In the *Order,* the Commission declines to eliminate this flexibility by requiring that stations upload all their § 73.3613 documents directly to the online public file, as suggested by certain commenters. Eliminating the existing option allowing these stations to maintain an up-to-date list of § 73.3613 documents in the public file and to provide copies to requesting parties within seven days would impose unnecessary burdens on broadcast licensees and permittees, including small businesses. For international broadcast stations, the Commission retains its ability to obtain § 73.3613 documents from licensees and permittees upon request, as needed.

41. The *Order* also eliminates a redundant disclosure obligation pertaining to certain § 73.3613 documents and expands an existing redaction allowance for confidential or proprietary information in § 73.3613 documents. Currently, § 73.3613 explicitly allows the redaction of confidential or proprietary information for attributable TBAs and JSAs, provided that unredacted versions of the agreements shall be provided to the Commission upon request. The *Order* concludes that § 73.3613's specific provision allowing the redaction of TBAs and JSAs, including the requirement that unredacted copies shall be made available to the Commission upon request, should apply to all § 73.3613 documents to the extent that they contain confidential or proprietary information. Redaction would be necessary only when a document is posted to the online public file or provided to the Commission or the public upon request.

42. The rule amendments adopted in the *Order* will relieve affected broadcast stations, including smaller stations, of the obligation to file paper copies of certain information with the Commission. We find it reasonable to conclude that the benefits of adopting the amendments discussed in the *Order* will outweigh any associated costs, and we anticipate that affected entities, including small entities, will benefit from the actions taken in the *Order.*

Ordering Clauses

43. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 310, and 336, this Report and Order *is adopted.*

44. *It is further ordered* that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, 310, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, 310, and 336, the Commission's rules *are amended* as set forth in Appendix A. The amendments in this final rule shall become effective thirty (30) days after publication of the text of this Report and Order or a summary thereof in the **Federal Register**.

45. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

46. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18–4 shall be *terminated* and its docket closed.

List of Subjects

47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.1226 [Amended]

■ 2. Amend § 73.1226 by removing paragraph (c).

■ 3. Amend § 73.3526 by removing the note to paragraph (e)(3) and notes 1 and 2 to paragraph (e), revising paragraphs (e)(3), (5), (14), and (16), and adding paragraph (f) to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

* * * * *

(e) * * *

(3)(i) *Citizen agreements.* A copy of every written citizen agreement. These agreements shall be retained for the term of the agreement, including any renewal or extension thereof.

(ii) For purposes of this section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups, entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operations in the public interest, in areas such as—but not limited to—programming and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation, syndication, program supply contracts, etc. However, the mere inclusion of commercial terms in a primarily noncommercial agreement—such as a provision for payment of fees for future services of the citizen-parties (see ''Report and Order,'' Docket 19518, 57 FCC 2d 494 (1976))—would not cause the agreement to be considered commercial for purposes of this section.

* * * * *

(5) *Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any statements filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the station documents listed in § 73.3613(a) through (c) or an up-to-date list of such documents. If the permittee or licensee elects to maintain an up-to-date list of such documents, the list must include all the information that the permittee or licensee is required to provide on ownership reports for each document, including, but not limited to, a description of the document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type (*e.g.,* network affiliation agreement, articles of incorporation,

bylaws, management consultant agreement with independent contractor). Regardless of which of these two options the permittee or licensee chooses, it must update the inventory of § 73.3613 documents in the public file to reflect newly executed § 73.3613 documents, amendments, supplements, and cancellations within 30 days of execution thereof. Licensees and permittees that choose to retain a list of § 73.3613 documents must provide a copy of any § 73.3613 document(s) to requesting parties within 7 days. In maintaining copies of such documents in the public file or providing copies upon request, confidential or proprietary information may be redacted where appropriate.

* * * * *

(14) *Radio and television time brokerage agreements.* For commercial radio and television stations, a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

* * * * *

(16) *Radio and television joint sales agreements.* For commercial radio and commercial television stations, a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

* * * * *

(f)(1) For purposes of this section, action taken on an application tendered with the FCC becomes final when that action is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term ''all related material'' includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§ 0.451 through 0.461 of this chapter are open for public inspection at the offices of the FCC.

■ 4. Amend § 73.3527 by removing notes 1 and 2 to paragraph (e), revising paragraph (e)(4), and adding paragraph (f) to read as follows:

§ 73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(4) *Ownership reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the station documents listed in § 73.3613(a) through (c) or an up-to-date list of such documents. If the permittee or licensee elects to maintain an up-to-date list of such documents, the list must include all the information that the permittee or licensee is required to provide on ownership reports for each document, including, but not limited to, a description of the document, the parties to the document, the month and year of execution, the month and year of expiration, and the document type (*e.g.,* network affiliation agreement, articles of incorporation, bylaws, management consultant agreement with independent contractor). Regardless of which of these two options the permittee or licensee chooses, it must update the inventory of § 73.3613 documents in the public file to reflect newly executed § 73.3613 documents, amendments, supplements, and cancellations within 30 days of execution thereof. Licensees and permittees that choose to maintain a list of § 73.3613 documents must provide a copy of any § 73.3613 document(s) to requesting parties within 7 days. In maintaining copies of such documents in the public file or providing copies upon request, confidential or proprietary information may be redacted where appropriate.

* * * * *

(f)(1) For purposes of this section, a decision made with respect to an application tendered with the FCC becomes final when that decision is no longer subject to reconsideration, review, or appeal either at the FCC or in the courts.

(2) For purposes of this section, the term ''all related material'' includes all exhibits, letters, and other documents tendered for filing with the FCC as part of an application, report, or other document, all amendments to the application, report, or other document, copies of all documents incorporated therein by reference and not already maintained in the public inspection file, and all correspondence between the FCC and the applicant pertaining to the application, report, or other document, which according to the provisions of §§ 0.451 through 0.461 of this chapter are open for public inspection at the offices of the FCC.

■ 5. Amend § 73.3613 by revising the section heading, the section introductory text and paragraph (a) introductory text, removing paragraphs (a)(3) and (e), and revising paragraphs (a)(2), (b)(3)(iii) introductory text, (b)(4), and (d) to read as follows:

§ 73.3613 Availability to FCC of station contracts.

Each licensee or permittee of a commercial or noncommercial AM, FM, TV or International broadcast station shall provide the FCC with copies of the following contracts, instruments, and documents together with amendments, supplements, and cancellations (with the substance of oral contracts reported in writing), within 7 days of a request by the FCC.

(a) Network service: Network affiliation contracts between stations and networks will be reduced to writing and filed upon request as follows:

* * * * *

(2) Each such filing shall consist of all of the terms and conditions of such contract, agreement or understanding, including any other paper or document incorporated by reference or otherwise.

(b) * * *

(3) * * *

(iii) Agreements for the acquisition of licensee's or permittee's stock by the issuing licensee or permittee corporation, pledges, trust agreements or abstracts thereof, options to purchase stock and other executory agreements. Should the FCC request an abstract of the trust agreement in lieu of the trust agreement, the licensee or permittee will submit the following information concerning the trust:

* * * * *

(4) Proxies with respect to the licensee's or permittee's stock running for a period in excess of 1 year, and all proxies, whether or not running for a period of 1 year, given without full and

detailed instructions binding the nominee to act in a specified manner. With respect to proxies given without full and detailed instructions, a statement showing the number of such proxies, by whom given and received, and the percentage of outstanding stock represented by each proxy shall be submitted by the licensee or permittee if the stock covered by such proxies has been voted. However, when the licensee or permittee is a corporation having more than 50 stockholders, such complete information need be filed only with respect to proxies given by stockholders who are officers or directors, or who have 1% or more of the corporation's voting stock. When the licensee or permittee is a corporation having more than 50 stockholders and the stockholders giving the proxies are not officers or directors or do not hold 1% or more of the corporation's stock, the only information required to be filed is the name of any person voting 1% or more of the stock by proxy, the number of shares voted by proxy by such person, and the total number of shares voted at the particular stockholders' meeting in which the shares were voted by proxy.

* * * * *

(d) Other agreements: Subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the television vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators or other engineering personnel.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 6. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

§ 74.780 [Amended]

■ 7. Section 74.780 is amended by revising the entry for ''Section 73.3613—Filing of contracts (network affiliation contracts for low power TV stations only)'' to read ''Section 73.3613—Availability to FCC of station contracts (network affiliation contracts for low power TV stations only)''.

[FR Doc. 2018–26595 Filed 12–20–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

[Docket DARS–2018–0058]

RIN 0750–AK21

Defense Federal Acquisition Regulation Supplement: Modification of the Limitations on Single-Source Task or Delivery Order Contracts (DFARS Case 2018–D060)

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 implement a section of the National Defense Authorization Act for Fiscal Year 2019 that modifies the limitations on awarding single-source task or delivery order contracts exceeding $112 million.

DATES: Effective December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 816 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. Section 816 amends 10 U.S.C. 2304a(d)(3)(A) by modifying the limitations on single-source task or delivery order contracts. Currently, FAR 16.504(c)(1)(ii)(D)(*1*)(*i*) prohibits the award of a task or delivery order contract in an amount exceeding $112 million to a single source unless the head of the agency determines that the orders expected under the contract are so integrally related that only a single source can reasonably perform the work. Section 816 amends this limitation in 10 U.S.C. 2304a to require the head of the agency to determine that only a single source can ''efficiently perform the work,'' instead of ''reasonably perform the work'' as required by 41 U.S.C. 4103. This rule adds text to DFARS 216.504 to require agency heads to make the determination required by section 816, in lieu of the determination at FAR 16.504(c)(1)(ii)(D)(*1*)(*i*). In addition, editorial changes are made in DFARS 215.504(c) to add paragraph headings and renumber subparagraphs to align with the FAR.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

III. 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 it only impacts determination and documentation processes that are internal to the agency.

IV. 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, 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).

V. Executive Order 13771

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

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 III. 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 Part 216

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 216.504 by—

■ a. Adding headings to paragraphs (c) and (c)(1); and

■ b. Revising paragraph (c)(1)(ii)(D).

The additions and revision read as follows:

216.504 Indefinite-quantity contracts.

(c) *Multiple award preference*—(1) *Planning the acquisition.* (ii)(D) A copy of each determination made in accordance with FAR 16.504(c)(1)(ii)(D) shall be submitted to the Director, Defense Procurement and Acquisition Policy, via the OUSD(AT&L)DPAP/CPIC email address at *osd.pentagon.ousd-atl.mbx.cpic@mail.mil.*

(*1*) The authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(*1*) shall not be delegated below the level of the senior procurement executive.

(*i*) In accordance with section 816 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), when making the determination at FAR 16.504(c)(1)(ii)(D)(*1*)(*i*), the agency head shall determine that the task or delivery orders expected under the contract are so integrally related that only a single source can ''efficiently perform the work,'' instead of ''reasonably perform the work'' as required by the FAR.

[FR Doc. 2018–27560 Filed 12–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2018–0004]

RIN 0750–AJ22

Defense Federal Acquisition Regulation Supplement: Restrictions on Acquisitions From Foreign Sources (DFARS Case 2017–D011)

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 implement sections of the National Defense Authorization Act for Fiscal Year 2017 to apply domestic source requirements to acquisitions at or below the simplified acquisition threshold when acquiring athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces, and add Australia and the United Kingdom to the definition of the ''National Technology and Industrial Base.''

DATES: Effective December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 42828 on August 24, 2018, to implement sections 817 and 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017.

Section 817 extends the domestic source requirements of 10 U.S.C. 2533a (the Berry Amendment) below the simplified acquisition threshold, when acquiring athletic footwear to be furnished to the members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces.

Section 881(b) amends 10 U.S.C. 2500(1) by adding Australia and the United Kingdom of Great Britain and Northern Ireland to the United States and Canada as the countries within which the activities of the national technology and industrial base are conducted. 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, requires that DoD only procure certain items if the manufacturer of the items is part of the national technology and industrial base.

One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

The public comment received addressed concern with regard to importation of radioactive steel and use of radioactively contaminated scrap metal. This issue is outside the scope of this rule. There were no changes from the proposed rule as a result of this public comment.

However, the final rule is affected by a change in the baseline. On May 30, 2018, DoD published a final rule in the **Federal Register** (83 FR 24890) to amend the DFARS to implement section 813(a) of the NDAA for FY 2018 (Pub. L. 115–91), which amended 10 U.S.C. 2534(c) to establish a sunset date of October 1, 2018, for the limitation on procurement of chemical weapons antidote contained in automatic injectors (and components for such injectors). The final rule deleted DFARS 225.7005 in its entirety to remove the limitation as implemented in the DFARS. As a result, this final rule does not include the changes proposed to DFARS 225.7005–1.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the applicability of existing DFARS solicitation provisions and contract clauses as follows:

- To implement section 817 of the NDAA for FY 2017, this rule extends use of DFARS clause 252.225–7012, Preference for Certain Domestic Commodities, to acquisitions at or below the simplified acquisition threshold (SAT) when buying athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces. This clause is already prescribed for use in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

• To implement section 881(b) of the NDAA for FY 2017, this rule modifies the provision at DFARS 252.225–7037, Evaluation of Offers for Air Circuit Breakers, and the clause at DFARS 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, to add Australia as a country from which items restricted by 10 U.S.C. 2534 may be purchased. This rule does not change the prescriptions for the use of this provision or clause, which are already required for use in solicitations and contracts for commercial items, including COTS items. The clause does not apply below the SAT.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulation (FAR) Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPC, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

C. Determinations

A determination under 41 U.S.C. 1905 is not required to prescribe DFARS 252.225–7012 for use in solicitations and contracts valued at or below the SAT, because section 817 of the NDAA for FY 2017 specifically states that DoD shall acquire athletic footwear that complies with the requirements of 10 U.S.C. 2533a ''without regard to the applicability of any simplified acquisition threshold under chapter 137 of title 10 (or any other provision of law).''

A determination under 41 U.S.C. 1906 and 1907 is not required to apply the requirements of DFARS 252.225–7037 and 252.225–7038 to acquisitions for commercial items, including COTS items, because the statute that this provision and clause implements is not a covered statute subject to 41 U.S.C. 1905–1907. At the time of the Federal Acquisition Streamlining Act of 1994 (FASA) (Pub. L. 103–355), now codified in part at 41 U.S.C. 1905–1907, this provision and clause were a single clause, DFARS 252.225–7029, Restriction on Acquisition of Air Circuit Breakers, which implemented 10 U.S.C. 2534. Because 10 U.S.C. 2534 predated FASA, it was not subject to 41 U.S.C. 1905–1907. The DFARS clause 252.225–7029 was included on the initial list of statutes applicable to the acquisition of commercial items at DFARS 252.212–7001, incorporated in the DFARS by DFARS Case 95–D712 on November 30, 1995 (Defense Acquisition Circular 91–9).

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared and is summarized as follows:

This rule implements sections 817 and 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). The objective of the rule is to—

• Remove the exception to domestic source restriction of the Berry Amendment (10 U.S.C. 2533a) for acquisitions at or below the simplified acquisition threshold when buying athletic footwear to be furnished to enlisted members of the Armed Forces upon their initial entry into the Armed Forces, as required by section 817 of the NDAA for FY 2017; and

• Allow acquisition of certain items from Australia and the United Kingdom, for which purchase is currently restricted to items from the United States or Canada, in accordance with 10 U.S.C. 2534, in accordance with section 881(b) of the NDAA for FY 2017 and 10 U.S.C. 2534.

There were no significant issues raised by the public comment in response to the initial regulatory flexibility analysis.

With regard to implementation of section 817, this rule may apply to only a few small entities, because there are few sources that meet the domestic source requirements of the Berry Amendment with regard to athletic footwear. The Defense Logistics Agency (DLA) estimates a potential annual demand for approximately 200,000 to 250,000 pairs of athletic shoes to be delivered at the rate of approximately 27,500 pairs per month. In response to a request for information issued by DLA in December 2016, there were 5 responses from athletic footwear manufacturers, one of which was a small business. Small entities who are athletic shoe manufacturers could likely support portions of the Department's total requirements for athletic footwear. In addition, there are likely a number of domestic component suppliers who are small entities who would benefit from this new requirement as well. On the other hand, small entities that cannot provide athletic shoes that meet the domestic source requirements of the Berry Amendment, will no longer be able to compete for acquisition of athletic footwear at or below the simplified acquisition threshold that are for the purpose of providing athletic

footwear to enlisted members of the Armed Forces upon their initial entry into the Armed Forces.

With regard to implementation of section 881(b), this rule will not apply to any small entities at the prime contract level, as there are only a few prime contractors for the restricted items, which are all U.S. firms that are other than small businesses. For the definition of ''small business,'' the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105(a)(1) discuss who is a small business, providing that except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity 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. Therefore, if an item currently purchased from a U.S. entity that is other than a small business were to be purchased from an entity in the Australia or the United Kingdom, there could be an impact on a few small entities that are currently subcontractors to a U.S. prime contractor.

There are no reporting, recordkeeping, or other compliance requirements of the rule, other than to furnish athletic footwear compliant with the Berry Amendment and the other restricted items manufactured by a manufacturer that is part of the national technology and industrial base (which is now expanded to include the United Kingdom and Australia, as well as the United States and Canada).

By extending the restriction of the Berry Amendment to acquisitions that do not exceed simplified acquisition threshold, this rule may benefit small entities that can provide Berry Amendment-compliant athletic footwear, because they may be more able to compete for smaller acquisitions. DoD was unable to identify any alternatives that would meet the requirements of the statutes).

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 225 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Amend section 225.7002–2 by revising paragraph (a) to read as follows:

225.7002–2 Exceptions.

* * * * *

(a) Acquisitions at or below the simplified acquisition threshold, except for athletic footwear purchased by DoD for use by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the Armed Forces (section 817 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328)).

* * * * *

225.7002–3 [Amended]

■ 3. Amend section 225.7002–3, in paragraph (a) by removing ''commercial items, that exceed the simplified acquisition threshold'' and adding ''commercial items'' in its place.

225.7004–1 [Amended]

■ 4. Amend section 225.7004–1 by removing ''United States or Canada'' and adding ''United States, Australia, Canada, or the United Kingdom'' in its place.

225.7004–3 [Amended]

■ 5. Amend section 225.7004–3 by:

■ a. In paragraph (a) by removing ''manufactured in the United States or Canada'' and adding ''manufactured in the United States, Australia, Canada, or the United Kingdom'' in two places.

■ b. In paragraphs (a), (b), and (c) by removing ''United States and Canada'' and adding ''United States, Australia, Canada, or the United Kingdom'' in its place wherever it appears.

225.7006–1 [Amended]

■ 6. Amend section 225.7006–1 by removing ''United States or Canada'' and adding ''United States, Australia, Canada, or the United Kingdom'' in its place.

■ 7. Revise section 225.7006–3 to read as follows:

225.7006–3 Waiver.

The waiver criteria at 225.7008(a) apply to this restriction.

■ 8. Amend section 225.7006–4 by revising paragraphs (a)(2) and (b)(2) to read as follows:

225.7006–4 Solicitation provision and contract clause.

(a) * * *

(2) A waiver has been granted.

(b) * * *

(2) A waiver has been granted.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7037 [Amended]

■ 9. Amend section 252.225–7037 by:

■ a. Removing the provision date of ''(JUN 2012)'' and adding ''(DEC 2018)'' in its place; and

■ b. In paragraphs (a) and (b), removing ''outlying areas, Canada,'' and adding ''outlying areas, Australia, Canada,'' in its place in both places.

252.225–7038 [Amended]

■ 10. Amend section 252.225–7038 by:

■ a. Removing the provision date of ''(JUN 2005)'' and adding ''(DEC 2018)'' on its place; and

■ b. Removing ''outlying areas, Canada,'' and adding ''outlying areas, Australia, Canada,'' in its place.

[FR Doc. 2018–27557 Filed 12–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2018–0018]

RIN 0750–AJ42

Defense Federal Acquisition Regulation Supplement: Submission of Summary Subcontract Reports (DFARS Case 2017–D005)

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 change the entity to which contractors submit Summary Subcontract Reports in the Electronic Subcontracting Reporting System (eSRS) and to change the entity that acknowledges receipt of, or rejects, the reports in eSRS.

DATES: Effective December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 30666 on June 29, 2018, to implement a policy that streamlines the submission and review of Summary Subcontract Reports (SSRs) for DoD contractors and brings the DFARS into compliance with changes to the Federal Acquisition Regulation (FAR). Instead of submitting multiple SSRs to departments and agencies within DoD, contractors with individual subcontracting plans will submit a single, consolidated SSR in eSRS at the DoD level. The consolidated SSR will be acknowledged or rejected in eSRS at the DoD level.

There were no public comments submitted in response to the proposed rule. There are no changes made to the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and its Alternate I. The objective of the rule is to simplify the submission and review of SSRs in eSRS.

DoD does not apply the clause and its Alternate I to solicitations and contracts with a value at or below the Simplified Acquisition Threshold, because subcontracting plans are not required at that dollar value.

DoD currently applies the clause and its Alternate I to solicitations and contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items, as defined at FAR 2.101. Not applying this guidance to contracts for the acquisition of commercial items, including COTS items, would exclude contracts intended to be included in the streamlined SSRs and undermine the overarching purpose of the rule. As such, DoD is applying the rule to contracts for the acquisition of commercial items, including COTS items.

III. Expected Cost Savings

This rule amends the DFARS to implement a policy that streamlines the submission and review of SSRs for DoD contractors. Instead of the current practice of submitting multiple SSRs to various departments or agencies within DoD, contractors with individual subcontracting plans will submit one consolidated SSR at the DoD level in eSRS. The consolidated SSR will be acknowledged or rejected in eSRS at the DoD level.

This rule impacts only large businesses that have individual subcontracting plans and at least one contract with DoD. Although the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and its Alternate I currently require large business contractors to submit SSRs to the department or agency within DoD that administers the majority of the contractor's individual subcontracting plans, these contractors frequently must submit SSRs to each department or agency within DoD with which they have contracts. This results in extra work for the contractors and creates problems with duplicate subcontracting data. By requiring submission and review of SSRs at the DoD level, this rule resolves these issues.

The following is a summary of the estimated public cost savings calculated in 2016 dollars at a 7-percent discount rate and in perpetuity:

Summary	Public	Government	Total
Present Value	−$384,404	−$101,487	−$485,891
Annualized Costs	−26,908	−7,104	−34,012
Annualized Value Costs (as of 2016 if Year 1 is 2019)	−21,965	−5,799	−27,764

To access the full regulatory cost analysis for this rule, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''DFARS Case 2017–D005,'' click ''Open Docket,'' and view ''Supporting Documents.''

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is considered to be an E.O. 13771 deregulatory action. The total annualized value of the cost savings is $27,764 (as of 2016 if Year 1 is 2019). Details on the estimated cost savings can be found in section III of this preamble.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary to provide updates on the submission and review of Summary Subcontract Reports (SSRs) in the Electronic Subcontracting Reporting System (eSRS). This rule amends the DFARS to require contractors with individual subcontracting plans to submit a single, consolidated SSR in eSRS at the DoD level instead of submitting multiple SSRs to departments and agencies within DoD. The consolidated SSR will be acknowledged or rejected in eSRS at the DoD level. The rule will bring the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and its Alternate I, into compliance with the requirement for a consolidated SSR in the clause at FAR 52.219–9, Small Business Subcontracting Plan.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The rule will apply to DoD contractors who have individual subcontracting plans and must comply with the clause at DFARS 252.219–7003. Small entities are not required to comply with this clause and, therefore, will not be affected by the rule.

The rule does not impose any reporting or recordkeeping requirements on any small entities.

There are no known alternative approaches that would accomplish the stated objectives.

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 Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 252.219–7003 by—

■ a. Removing the clause date of ''(APR 2018)'' and adding ''(DEC 2018)'' in its place;

■ b. Revising paragraphs (a), (b), (f)(1)(ii), and (f)(2)(ii);

■ c. Removing paragraph (f)(2)(iii); and

■ d. In Alternate I—

■ i. Removing the clause date of ''(APR 2018)'' and adding ''(DEC 2018)'' in its place; and

■ ii. Revising paragraphs (a), (b), (f)(1)(ii), and (f)(2).

The revisions reads as follows:

252.219–7003 Small Business Subcontracting Plan (DoD Contracts).

* * * * *

(a) *Definitions. Summary Subcontract Report (SSR) Coordinator,* as used in this clause, means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (41 U.S.C. 8502–8504), may be counted toward the Contractor's small business subcontracting goal.

* * * * *

(f)(1) * * *

(ii) Submit the consolidated SSR for an individual subcontracting plan to the ''Department of Defense.''

(2) * * *

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

* * * * *

Alternate I. * * *

(a) *Definitions. Summary Subcontract Report (SSR) Coordinator,* as used in this clause, means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (41 U.S.C. 8502–8504), may be counted toward the Contractor's small business subcontracting goal.

* * * * *

(f)(1) * * *

(ii) Submit the consolidated SSR to the ''Department of Defense.''

(2) For DoD, the authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan in eSRS resides with the SSR Coordinator.

* * * * *

[FR Doc. 2018–27556 Filed 12–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2016–0346]

RIN 2126–AB98

Commercial Learner's Permit Validity

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to allow States the option of issuing a commercial learner's permit (CLP) with an expiration date of up to one year from the date of initial issuance. The CLP must be valid for no more than one year from the initial date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for more than one year from the date of initial issuance. This rule does not require a State to revise its current CLP issuance practices, unless it chooses to do so. This rule is a deregulatory action as defined by Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

DATES: This final rule is effective February 19, 2019.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than January 22, 2019.

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, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2016–0346 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.dot.gov/privacy.*

II. Executive Summary

Purpose and Summary of the Major Provisions

This final rule allows States the option of issuing a CLP valid for up to one year from the date of initial issuance. Within that one year period, the CLP may be renewed at the State's discretion, but if it is renewed, the CLP may not be valid for more than a total of one year from the date of initial

issuance. After one year from the date of initial issuance, a CLP, or renewed CLP, will no longer be valid. Therefore, if an applicant does not obtain a CDL within one year from the date the CLP, he/she must reapply for a CLP by re-taking the applicable knowledge test(s). This approach provides an alternative to the existing requirements in § 383.25(c).

Costs and Benefits

The primary entities affected by this final rule are State Driver Licensing Agencies (SDLAs) and CLP holders. Under the final rule, the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary, and FMCSA is therefore unable to predict how many of the 51 SDLAs may choose to issue a CLP that is valid for up to one year. Accordingly, FMCSA is also unable to estimate the number of CLP holders that will be affected by the final rule. Nonetheless, there are certain types of cost savings, costs, benefits, and transfer payments that may occur as a result of this rule.

FMCSA does not expect there to be any costs imposed upon CLP holders due to this final rule. CLP holders may realize cost savings resulting from reductions in the opportunity cost of time that, in the absence of this final rule, would be spent by CLP holders traveling to and from an SDLA office and at an SDLA office, to renew a CLP that is initially valid for no more than 180 days.

SDLAs that choose to issue a CLP that is valid for up to one year may incur some information technology (IT) system upgrade costs. Such IT system upgrades may include software programming changes necessary to issue a CLP that is valid for up to one year. However, under the final rule, the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary. Accordingly, the Agency expects that SDLAs will choose to make this change only to the extent that such IT system upgrade costs would be less than the cost reductions associated with no longer having to process renewals of CLPs, thus resulting in a net cost savings to the SDLAs exercising this choice.

In addition to the potential impacts upon cost savings, costs, and benefits discussed above, there are also certain transfer payment effects that may occur as a result of this rule. Transfer payments are monetary payments from one group to another that do not affect total resources available to society, and therefore do not represent actual costs or benefits to society. These potential transfer effects include a transfer of CLP renewal fee amounts from SDLAs to CLP holders, and a transfer of CLP renewal fee amounts from one set of CLP holders to another set of CLP holders.

The FMCSA anticipates no change in safety benefits as a result of this final rule. In the Agency's judgement, this rule will provide SDLAs the choice to implement more efficient licensing operations while maintaining a level of safety equivalent to the level of safety achieved without the rule.

III. Legal Basis for the Rulemaking

This final rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and implemented by 49 CFR parts 383 and 384. The CMVSA provides that ''[a]fter consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses and learner's permits by the States . . .'' (49 U.S.C. 31308).

IV. Background

Regulatory History

On September 1, 2015, the Oregon Department of Transportation (ODOT) applied for an exemption from existing CLP requirements in § 382.25(c) to allow ODOT to initially issue the CLP for one year (with no renewal period).[1] ODOT's application for exemption cited efficiency in CLP processing as the primary basis for the requested regulatory relief, noting that a CLP issued for one year will relieve the CLP holder of the need to visit the DMV in order to renew the CLP for an additional 180 days. Further, ODOT asserted that ''a one-year CLP that simply eliminates the one-year renewal would not lessen safety.'' The Agency published notice of ODOT's application for exemption on November 27, 2015, and requested comment (80 FR 74199). FMCSA granted ODOT's application for exemption for the period April 5, 2016, through April 5, 2018, and also permitted all SDLAs to extend to one year the 180-day timeline (81 FR 19703 (Apr. 5, 2016)). The Agency determined that the exemption would permit ODOT and other SDLAs to implement more efficient operations while maintaining a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

On June 12, 2017, FMCSA published a notice of proposed rulemaking (NPRM) titled ''Commercial Learner's Permit Validity'' (82 FR 26888), which proposed to allow States to issue a CLP with an expiration date of up to one year from the date of initial issuance. Under this proposal, CLPs could also be issued for periods shorter than one year and could be renewed, as long as the total period of time between the date of initial issuance and the date of expiration, with or without renewal, does not exceed one year.

V. Discussion of Comments Received on the Proposed Rule

FMCSA received 13 comments on the NPRM. Four commenters disagreed with the NPRM, including an SDLA (Georgia), two industry trade associations (the Commercial Vehicle Training Association (CVTA) and the Owner-Operator Independent Drivers Association, Inc. (OOIDA)), and one individual. Nine commenters, including one individual, four SDLAs (Arizona, Virginia, Oregon, Michigan), three industry trade associations (the American Trucking Associations (ATA), the National School Transportation Association (NSTA), the American Bus Association (ABA)), and a passenger motor carrier (Burlington Trailways) all supported the NPRM. The comments addressed the NPRM's potential impact on safety, the costs and benefits of the proposal, and related implementation issues.

As discussed below, some of the comments appear to be based on the assumption that the NPRM proposed to replace the existing CLP issuance requirement in § 383.25(c). In fact, FMCSA intended to provide an alternative to that requirement, thereby giving States a choice to continue issuing CLPs in accordance with existing § 383.25(c), or to proceed under the optional procedure outlined in the NPRM. The Agency clarifies this point in the final rule.

A. Safety Impacts

Three commenters believed that the rule would not impact safety. Two commenters believed that this rule could negatively impact safety.

Comments: ODOT stated that it implemented a streamlined CLP issuance process that improves the customer's experience without impacting highway safety. The NSTA also believed that FMCSA's proposal would save time and money for both States and CLP applicants, without affecting safety. ATA commented that, for States that do not require drivers to retake the knowledge exam when renewing an initial CLP that is currently issued for no more than 180 days, the requirement that the CLP be renewed only necessitates that drivers spend

[1] ODOT's application for exemption is available in the docket for this rulemaking.

additional time away from work. ATA further noted that the rule can reduce the burden on SDLAs and the trucking industry without compromising safety.

OOIDA believed that, under the NPRM, carriers would be able to keep drivers with CLPs behind the wheel longer, instead of using drivers with commercial driver's licenses (CDLs), negatively impacting safety. OOIDA provided the example of C.R. England, currently operating under an exemption that allows CLP permit holders to drive commercial motor vehicles (CMVs) without a CDL holder present in the front seat.

The Georgia Department of Driver Services (Georgia DDS) requested that FMCSA consider keeping the current 180 day CLP limit due to highway safety concerns. Georgia DDS stated ''(t)his mandated six (6) month term now helps to ensure that the applicants are testing while their knowledge and training are still fresh and they have not developed bad habits.''

FMCSA Response: Although OOIDA and Georgia DDS both cited safety concerns, neither commenter provided any data to support their view that the NPRM would negatively impact highway safety.

OOIDA commented that ''(u)nder the NPRM, carriers can use CLP drivers longer and keep them behind the wheel instead of CDL drivers.'' In response, the Agency understands that, currently, some States issuing a CLP initially valid for 180 days may provide a grace period of more than five days between the initial CLP issuance period of 180 days and the renewal period allowed under § 383.25(c) thus resulting in a CLP valid for more than one year. Accordingly, the NPRM, by proposing a maximum period of CLP validity of one year, did not represent a significant departure from the current regulations. States choosing the one-year option, as set forth in this final rule, would maintain a *shorter* maximum period of CLP validity than States that may currently allow a grace period of more than five days between the initial validity period of 180-days and the 180-day renewal. Further, FMCSA notes that the exemption granted to C.R. England, referenced by OOIDA, applies to CLP holders who have already passed the CDL skills test after receiving training in a non-domiciled State, and are driving a CMV back to their State of domicile to obtain the CDL. The C.R. England exemption is, therefore, not relevant to this rule.

Georgia DDS did not elaborate on the basis for its highway safety concerns when requesting that FMCSA consider retaining the current 180-day limit, other than to suggest that CLP holders should take the CDL skills test while ''their knowledge and training are still fresh and they have not developed bad habits.'' In response, the Agency notes that the period of CLP validity is an outer limit, by which the applicant must obtain a CDL without having to retake the knowledge test. However, there is no requirement that applicant wait until the end of the CLP validity period to take their skills test. As discussed further below, the CLP holder may take the skills test any time after 14 days have passed since initial issuance of the CLP. In addition, FMCSA did not propose changing any of the protections already in place to ensure CLP-holders do not decrease safety on the highways, including the requirement, in § 383.25(a)(1), that CLP-holders may operate a CMV only when accompanied by a CDL holder physically present in the front seat of the vehicle.

Finally, as noted above, ODOT, in its comments to the NPRM, noted that its adoption of the one-year CLP resulted in streamlined processing ''without impacting highway safety.'' The ODOT also observed that ''[t]he logic of this change is supported by current regulation, since a knowledge test is not required to renew a CLP.'' In addition, FMCSA recently contacted state licensing officials in Iowa, which, like Oregon, is issuing one-year CLPs under the current exemption. Iowa officials stated that no safety issues have arisen as a result of the one-year CLP. For these reasons, FMCSA believes this rule will not diminish highway safety.

B. Impacts to SDLAs

Allowing States to issue CLPs for a term of up to one year is intended to increase efficiency in the commercial driver licensing system, thereby reducing the administrative burdens on SDLAs while maintaining a level of safety equivalent to the level of safety that would exist in the absence of the final rule. The NPRM requested that States and other interested parties identify potential costs (*e.g.,* necessary changes in CLP-related IT systems), cost savings, process efficiencies, and other benefits that may result from the proposed change, along with any supporting data.

Benefits

Comments: Some commenters noted that the rulemaking would reduce the burden on SDLAs. ATA believed the rulemaking would benefit the SDLAs by increasing their flexibility and reducing the burden associated with renewing CLPs. NSTA wrote that the proposed change provides an improved process for CLP issuance and would save time and money for States. Burlington Trailways wrote that the rule would save time for those issuing the permits. While it opposed the NPRM, OOIDA agreed it would reduce administrative costs for SLDAs.

Some commenters believed that the rule would benefit SDLAs by providing consistency. ABA supported the uniformity among the SDLAs that the rulemaking would ensure, rather than requiring each State to request a similar exemption individually. CVTA agreed that consistency is a benefit, but asked why FMCSA wanted to amend its regulations when only one jurisdiction had applied for an exemption.

FMCSA Response: FMCSA agrees with commenters noting that the rule could reduce the burden on SDLAs and, as described below, identifies the potential cost savings to SDLAs that could result from this regulatory change. Neither the NPRM, nor this final rule, was intended to ensure consistency among the SDLAs. Today's rule simply provides an option for SDLAs wishing to issue CLPs valid for up to one year, with or without renewal. Thus, the final rule gives States the flexibility to choose which CLP issuance approach is best suited to their particular needs. FMCSA notes that the original exemption granted to ODOT and other SDLAs, originally valid through April 5, 2018, was renewed and is currently valid to April 5, 2019 (83 FR 14545 (April 4, 2018)). The Agency believes that amending the FMCSRs to permit CLP issuance in accordance with the exemption is more efficient than granting extensions of the exemption, and also provides greater regulatory certainty to SDLAs that opt to implement a one-year CLP.

Costs

Comments: A number of commenters indicated that there are costs associated with the NPRM. Four SDLAs, including the Arizona Department of Transportation (Arizona DOT), the Virginia Department of Motor Vehicles (Virginia DMV), the Michigan Department of State (Michigan DOS) and the Georgia DDS, believed the proposed change would require a change in State laws. The SDLAs also commented that other changes associated with the NPRM, including programming and outreach, would create costs for the States. The Michigan DOS commented that this proposal would require a significant amount of programming effort; based on the low number of CLP drivers anticipated to utilize this extended CLP validity period, the efforts for programming and legislation changes would exceed any

benefit. The Virginia DMV commented that it will evaluate the impact of returning to a process of issuing CLPs valid for one year to determine if it would create cost savings and reduce administrative burdens on the DMV, but the change would require DMV resources to revert to the previous process. The Georgia DDS commented that, conservatively, it had invested $300,000 to comply with the existing rule, including providing training for State and third-party examiners, holding a forum for industry stakeholders, and establishing a communications campaign. The Georgia DDS, having also revamped its business process and updated its 2015 CDL Manual, objected to having to re-invest money and resources to make another change in its licensing process.

FMCSA Response: Today's rule simply provides an additional option for SDLAs wishing to issue CLPs valid for up to one year. Thus, the final rule gives States the flexibility to choose which CLP issuance option is best suited to their needs. The four SDLAs that expressed concerns over costs need not incur any costs because SDLA adoption of the final rule is discretionary.

C. Costs and Benefits to CLP Holders and Motor Carriers

FMCSA anticipates that this change will reduce costs for CLP holders, including reductions in the opportunity cost of time that, in the absence of this final rule, would be spent traveling to and from an SDLA office, plus time spent at an SDLA to renew a CLP initially valid for no more than 180 days.[2] FMCSA does not expect there will be any costs imposed upon CLP holders as a result of this final rule. In addition, the Agency does not expect the rule to impose any direct costs on motor carriers.

Benefits

Comments: NTSA believed that the proposed rule would save time and money for CLP applicants. ODOT commented that its streamlined CLP issuance process, implemented under the exemption, improved the customer's experience, and believed this proposal would help continue that improvement. The Virginia DMV anticipated that issuing a one-year CLP would positively impact commercial drivers if they are not forced to return to the DMV to renew their CLP. ATA stated that the proposed rule would provide costs savings to new commercial drivers entering the industry.

Burlington Trailways stated that the proposed regulation will save time for prospective driving students and potential employers. The proposed regulation would especially benefit CLP holders thinking about driver training because it would give students more time to be comfortable with classroom work and behind-the-wheel experience before needing to renew a permit if training is interrupted. ABA believed that the proposed rule would help ease the driver shortage currently facing the industry by providing entry-level commercial drivers additional flexibility in completing driver training programs at a reasonable pace. The Michigan DOS also believed that this rule may benefit CLP holders by reducing repeat trips to the branch offices for renewal of the CLP.

FMCSA Response: As noted above FMCSA agrees with the commenters noting that, in States choosing to adopt the one-year CLP validity period, the rule would reduce costs for CLP holders.

Costs

Comments: OOIDA believed that the proposal could limit CLP holders' earnings because it would prevent them from receiving their CDL for up to six additional months, thus, limiting their wages. OOIDA stated that the Agency's analysis of the potential benefits of this proposal did not consider lost wages for drivers who will not be granted a CDL after holding a CLP for 180 days. OOIDA wanted FMCSA to fully examine the ''bottom line'' costs for drivers rather than just the administrative costs associated with the proposal.

Two commenters believed the rulemaking might increase costs if States did not adequately fund the CDL process. ABA believed the rulemaking had the potential to disincentive States to address resource issues to decrease CDL testing delays, and wanted FMCSA to consider this concern when finalizing the proposal. CVTA noted that, if FMCSA changes the duration of the CLP to up to one year, it would increase costs for CLP holders who are seeking their CDL and are experiencing skills testing delays. CVTA commented that skills testing delays cost our economy a great deal of money, including the costs to drivers' wages, schools, and employers who are unable to hire employees to move additional freight. CVTA would support granting an exemption from the existing timeframe of 180-days, but only if an SDLA exhibited efficiency in operations.

FMCSA Response: FMCSA believes some commenters misinterpreted the proposal to provide SDLAs the choice to extend the period of CLP validity from no more than 180 days to up to one year. Under current regulations, a CLP holder is not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP. The driver is not, however, required to hold a CLP for 180 days before taking the skills test. The final rule does not prevent a driver from taking their skills test and obtaining a CDL at any time after 14 days have elapsed since CLP issuance, regardless of whether the SDLA has chosen to issue a CLP that is valid for up to one year, or if the SDLA continues to offer a CLP that is valid for up to 180 days. Issuing a CLP that is valid for up to one year simply provides greater flexibility to CLP holders to train for and schedule the CDL skills test, without having to incur opportunity costs associated with the renewal of the CLP.

OOIDA did not offer any data to support its claim that extending the term of a CLP up to one year will facilitate a carrier's ability to prevent CLP holders from receiving their CDL for six months in order to intentionally limit CLP holders' wages. OOIDA did not explain why CLP holders would continue to accept a lower wage if they have sufficient behind-the wheel training to pass the skills test and seek employment with a carrier willing to pay a CDL wage. Finally, OOIDA failed to explain why a carrier would commit a CDL holder to accompany a (CDL-capable) CLP holder on a revenue-producing trip for the sole purpose of limiting the wages of a CLP holder.

Neither ABA nor CVTA provided data to suggest that eliminating the need for a CLP holder to drive to an SDLA to renew their CLP would significantly impact the demand for CLPs, the number of skills tests performed annually, or the supply of skills testers. The Agency is not aware of any negative impact on CDL skills testing delays resulting from ODOT's issuance of CLPs that are valid for one year under the exemption. FMCSA recently contacted state licensing officials in Iowa, which is currently operating under the exemption, and Iowa officials stated that no safety issues have arisen as result of the one-year CLP.

D. Other Comments

Comments: The Agency received several comments not specifically related to the proposal. An individual asked FMCSA to work on the hours-of-service rules, including removing the 14-hour rule. A second individual commented on an NPRM titled,

[2] Some SDLAs may allow renewal of CLPs via the internet, thus allowing CLP holders to avoid travel costs. The Agency lacks the data necessary to quantify transportation costs CLP holders may incur to renew their CLP.

''Military Licensing and State Commercial Driver's License Reciprocity'' (FMCSA–2017–0047).

FMCSA Response: The agency does not address these comments as they are outside the scope of this rulemaking.

VI. Section-by-Section Analysis

FMCSA revises sections 383.25 and 383.73 to allow CLPs to be issued for a period of one year or less from the date of issuance without requiring a CLP holder to retake the general and endorsement knowledge tests. CLPs issued for periods of less than a year may be renewed, but the CLP can only be valid for no longer than one year from the date of issuance of the original CLP.

VII. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving R Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA performed an analysis of the impacts of this final rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), 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 (February 26, 1979)).

The primary entities that will be affected by this final rule are SDLAs and CLP holders. Due to the voluntary nature of the change proposed by the NPRM, the Agency was not able to quantify costs or benefits and sought information on the effects of the proposed rule. FMCSA did not receive sufficient data to quantify the costs or benefits of this final rule, nor can the Agency predict how many of the 51 SDLAs would choose to issue a CLP valid for up to one year. The Agency is aware that as of December 2017, at least two SDLAs (Oregon and Iowa) have chosen to issue a CLP that is valid for one year without renewal, consistent with the limited exemption granted in response to ODOT's application for exemption.

In the NPRM, the Agency described the methodology it used to estimate that the SDLAs issue approximately 476,000 CLPs per year. The Agency requested commenters to provide their assessment of the accuracy of this estimate along with supporting information on how many CLPs are renewed. CVTA was the only commenter that responded to the Agency's data request. CVTA stated that the Agency's estimate was accurate and consistent with similar numbers reported in other rulemakings for CDLs issued. CVTA further stated that, absent access to all 51 SDLA's data, it was not able to confirm how many CLP renewals are issued. For the same reason, the Agency is unable to quantify the impact of the rule on CLP holders.

Cost Savings and Costs

FMCSA does not expect there to be any costs imposed upon CLP holders because of this final rule. CLP holders may realize cost savings under the final rule, including reductions in the opportunity cost of time that, in the absence of this final rule, would be spent by CLP holders traveling to and from an SDLA office, plus the time at an SDLA office to renew a CLP that is valid for no more than 180 days. As discussed below, if SDLAs increase their fee for the initial issuance of a CLP, there may be minimal transfer payment effects among different types of CLP holders. Also, although the potential elimination of CLP renewal fees might appear to be a cost savings for CLP holders, changes in renewal fees are classified as transfers, as discussed below.

SDLAs that choose to issue a CLP valid for up to one year under this final rule may incur some information technology (IT) system upgrade costs to accommodate the change in the CLP business process from issuing a CLP that is valid for up to 180 days (and may be renewable for an additional 180 days) to the alternative of issuing a CLP that is valid for up to one year with no renewal. SDLAs that choose to issue a CLP that is valid for up to one year may also realize cost savings associated with no longer having to process CLP renewals. The Agency expects that SDLAs will make this change only if cost savings from the elimination of the renewal process exceed IT system upgrade costs and ongoing operating costs. Lastly, any reduction in CLP renewal fees collected by SDLAs may appear to be a cost. However, any changes in the amount of renewal fees collected is a transfer, as discussed below.

Benefits

The Agency anticipates no change in safety benefits because of this final rule. The discretionary implementation of the final rule will provide SDLAs the choice to implement more efficient operations while maintaining a level of safety equivalent to the level of safety achieved without the rule.

As discussed earlier, although OOIDA and Georgia DDS both expressed concerns in their comments regarding potential impacts to highway safety, neither commenter provided any data to support their view that the rule would negatively impact highway safety. Currently, a CLP may be valid for a total of 360 days, and in States allowing a ''grace period'' of more than five days between the initial CLP issuance period of 180 days and the renewal period allowed under § 383.25(c), the CLP may be valid for more than one year. Furthermore, the current regulations do not require that the knowledge test be retaken when renewing the initial CLP which is valid for no more than 180 days from the date of issuance. Accordingly, the final rule, by allowing a maximum CLP validity period of one year, does not represent a significant departure from the current regulations. Under this final rule, SDLAs that have concerns regarding potential impacts to highway safety from issuing a CLP valid for up to one year from the date of initial issuance are free to continue issuing CLPs which are valid for no more than 180 days. Finally, the Agency is not aware of any negative impact on safety resulting from ODOT's issuance of CLPs that are valid for one year under the exemption. FMCSA recently contacted state licensing officials in Iowa, which is currently operating under the exemption, and Iowa officials stated that no safety issues have arisen as result of the one-year CLP.

Transfers

In addition to the potential impacts upon costs and benefits discussed above, there are also certain transfer payment effects that may occur because of this rule. Transfer payments are monetary payments from one group to another that do not affect total resources available to society, and therefore do not represent actual costs or benefits to society. Because of the potential elimination of CLP renewal fees, and the potential for changes to CLP issuance fees, there are transfer effects that may result from this final rule. These potential transfer effects include a transfer of CLP renewal fee amounts from SDLAs to CLP holders, and a transfer of CLP renewal fee amounts from one set of CLP holders to another set of CLP holders. In cases where an SDLA maintains the same fee for issuance of a CLP, a transfer will occur from SDLAs to CLP holders. This transfer represents the total amount of CLP renewal fees that, in the absence of this final rule, CLP holders renewing

their CLP would have paid SDLAs.[3] Such reductions in CLP renewal fee amounts to SDLAs are properly classified as a transfer, rather than as a cost to SDLAs (in the form of forgone fee revenue) or as a benefit to CLP holders (in the form of CLP renewal fees no longer expended). There is no aggregate change in social welfare resulting from this impact. It is just a transfer of value from one set of entities to another. Alternatively, in cases where an SDLA were to increase its fee for the issuance of a CLP to offset any reduction in revenue resulting from the elimination of CLP renewals and associated fees, a transfer will occur from those CLP holders who in the baseline would not have renewed their CLP to CLP holders who in the baseline would have renewed their CLP. Here too there is no aggregate change in social welfare resulting from this impact, as again it is a simple transfer of value from one set of entities to another. The extent to which SDLAs that choose under this final rule to issue a CLP that is valid for up to one year may increase their fee for issuance of a CLP is unknown. The incentive for an SDLA to do so, however, is likely low due in part to the fact that CLP renewal fees are expected to be a relatively small proportion of the overall fee revenue collected by any given SDLA.

In summary, overall, the final rule is expected to provide regulatory relief to both SDLAs and CLP holders. Under the final rule, the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary, and the Agency expects that SDLAs will choose to make this change only to the extent that cost savings associated with no longer having to process renewals of CLPs would exceed any IT system upgrade costs, thus resulting in a net cost savings to the SDLA. Furthermore, FMCSA does not expect there to be any costs imposed upon CLP holders because of this final rule. CLP holders domiciled in those States choosing to issue a CLP valid for up to one year may realize cost savings under the final rule, including reductions in the opportunity cost of time that, in the absence of this final rule, would be spent by CLP holders traveling to and from an SDLA office and at an SDLA office, renewing a CLP valid for no more than 180 days. Finally, any transfer payment effects that may occur because of this rule, as described earlier, are expected to be small, to the extent that they occur at all.

[3] In some States, no fee is charged for CLP renewal, and therefore this type of transfer will not occur if CLP renewals were eliminated.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an E.O. 13771 deregulatory action. The Agency cannot estimate the cost savings of the final rule; however, the cost savings are discussed qualitatively in the rule's economic analysis.

C. Regulatory Flexibility Act

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) (5 U.S.C. 601 *et seq.*), requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities, and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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 (5 U.S.C. 601(6)). 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.

In the NPRM (82 FR 26888), in lieu of preparing an Initial Regulatory Flexibility Analysis under section 603(a) of the RFA to assess the impact of the rule, FMCSA performed a certification analysis under section 605(b) of the RFA and certified that the rule will not have a significant economic impact on a substantial number of small entities. The Agency did not receive any comments from the public or from the Small Business Administration regarding impact of the proposed rule on small entities. Moreover, the factual basis upon which the Agency found the proposed rule would not have a significant economic impact on small entities is unchanged. The primary entities affected by the final rule are SDLAs and CLP holders. Under the standards of the RFA, as amended by the SBREFA, neither SDLAs nor CLP holders are small entities. SDLAs are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under Section 601(5) of the RFA, both because State government is not included among the various levels of government listed in Section 601(5), and because, even if this were the case, no State nor the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under Section 601(5) of the RFA. The rule provides SDLAs the flexibility to choose whether to adopt the one-year CLP validity. As described in more detail earlier, because the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary, the Agency expects that SDLAs will choose to make this change only to the extent that there is a net benefit to the SDLA. CLP holders are not considered small entities because they too do not meet the definition of a small entity in Section 601 of the RFA. Specifically, CLP holders are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA. Therefore, this rule will not have an impact on a substantial number of small entities. CLP holders will benefit from reductions in the opportunity cost of time that in the absence of this rule would be spent by CLP holders traveling to and from an SDLA office and at an SDLA office renewing a CLP.

No small entities will be affected by this rule. Accordingly, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

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.[4]

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 that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $156 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. This final rule is a discretionary regulatory action, and does not result in such an expenditure.

F. Paperwork Reduction Act

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 Executive Order 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 will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of 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, eliminates 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 Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 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. This rule does not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Therefore, 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 it 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. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 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.

O. 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.

P. Environment (NEPA)

FMCSA analyzed this rule consistent with 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, paragraph 6.t.(2). The Categorical Exclusion (CE) in paragraph 6.t.(2) includes regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986. The content in this rule is covered by this CE, there are no extraordinary circumstances present, and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *Regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor Carriers.

[4] U.S. Department of Transportation (DOT). ''The Rights of Small Entities to Enforcement Fairness and Policy Against Retaliation.'' Available at: *https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf* (accessed April 20, 2018).

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 383 as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 continues 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; sec. 7208 of Pub. L. 114–94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

■ 2. Amend § 383.25 by revising paragraph (c) to read as follows:

§ 383.25 Commercial learner's permit (CLP).

* * * * *

(c) The CLP must be valid for no more than one year from the initial date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for no more than one year from the date of initial issuance.

* * * * *

■ 3. Amend § 383.73 by revising paragraph (a)(2)(iii) to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) * * *

(iii) Make the CLP valid for no more than one year from the date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for more than one year from the date of initial issuance.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Raymond P. Martinez,

Administrator.

[FR Doc. 2018–27779 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120627194–3657–02]

RIN 0648–XG606

Atlantic Highly Migratory Species; North Atlantic Swordfish Fishery

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

ACTION: Temporary rule.

SUMMARY: NMFS is adjusting the Swordfish General Commercial permit retention limits for the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for January through June of the 2019 fishing year, unless otherwise later noticed. The Swordfish General Commercial permit retention limits in each of these regions are increased from the regulatory default limits (either two or three fish) to six swordfish per vessel per trip. The Swordfish General Commercial permit retention limit in the Florida Swordfish Management Area will remain unchanged at the default limit of zero swordfish per vessel per trip, as discussed in more detail below. These adjustments apply to Swordfish General Commercial permitted vessels and to Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial endorsement when on a non-for-hire trip. This action is based upon consideration of the applicable inseason regional retention limit adjustment criteria.

DATES: The adjusted Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions are effective from January 1, 2019, through June 31, 2019.

FOR FURTHER INFORMATION CONTACT: Rick Pearson or Randy Blankinship, 727–824–5399.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of North Atlantic swordfish by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. North Atlantic swordfish quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented by the United States into two equal semi-annual directed fishery quotas; an annual incidental catch quota for fishermen targeting other species or catching swordfish recreationally, and a reserve category, according to the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated Atlantic HMS FMP) (71 FR 58058, October 2, 2006), as amended, and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

In 2017, ICCAT Recommendation 17–02 specified that the overall North Atlantic swordfish total allowable catch (TAC) be set at 9,925 metric tons (mt) dressed weight (dw) (13,200 mt whole weight (ww)) through 2021. Consistent with scientific advice, this was a reduction of 500 mt ww (375.9 mt dw) from previous ICCAT-recommended TACs. However, the United States' baseline quota remained at 2,937.6 mt dw (3,907 mt ww) per year. The Recommendation (17–02) also continued to limit underharvest carryover to 15 percent of a contracting party's baseline quota. Thus, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest. Absent adjustments, the codified baseline quota is 2,937.6 mt dw for 2019. At this time, given the extent of expected underharvest in 2018, NMFS anticipates carrying over the maximum allowable 15 percent (440.6 mt dw), which would result in a final adjusted North Atlantic swordfish quota for the 2019 fishing year equal to 3,378.2 mt dw (2,937.6 + 440.6 = 3,378.2 mt dw). As in past years we anticipate allocating 50 mt dw from the adjusted quota to the Reserve category for inseason adjustments/research and allocating 300 mt dw to the Incidental category, which includes recreational landings and landings by incidental swordfish permit holders, consistent with § 635.27(c)(1)(i)(D) and (B). This would result in an adjusted quota of 3,028.2 mt dw for the directed fishery, which would be split equally (1,514.1 mt dw) between the two semi-annual periods in 2019 (January through June, and July through December). Landings attributable to the Swordfish General Commercial permit will count against the applicable semi-annual directed fishery quota.

Adjustment of Swordfish General Commercial Permit Vessel Retention Limits

The 2019 North Atlantic swordfish fishing year, which is managed on a calendar-year basis and divided into two equal semi-annual quotas for the directed fishery, will begin on January 1, 2019. Landings attributable to the Swordfish General Commercial permit are counted against the applicable semi-annual directed fishery quota. Regional default retention limits for this permit have been established and are automatically effective from January 1 through June 31 each year, unless changed based on the inseason regional retention limit adjustment criteria at § 635.24(b)(4)(iv). The default retention limits established for the Swordfish General Commercial permit are: (1) Northwest Atlantic region—three swordfish per vessel per trip; (2) Gulf of Mexico region—three swordfish per vessel per trip; (3) U.S. Caribbean region—two swordfish per vessel per trip; and, (4) Florida Swordfish Management Area—zero swordfish per vessel per trip. The default retention limits apply to Swordfish General Commercial permitted vessels and to HMS Charter/Headboat permitted vessels with a commercial endorsement when fishing on non-for-hire trips. As a condition of these permits, vessels may not possess, retain, or land any more swordfish than is specified for the region in which the vessel is located.

Under § 635.24(b)(4)(iii), NMFS may increase or decrease the Swordfish General Commercial permit vessel retention limit in any region within a range from zero to a maximum of six swordfish per vessel per trip. Any adjustments to the retention limits must be based upon a consideration of the relevant criteria provided in § 635.24(b)(4)(iv), which include: (A) The usefulness of information obtained from biological sampling and monitoring of the North Atlantic swordfish stock; (B) the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year; (C) the estimated amounts by which quotas for other categories of the fishery might be exceeded; (D) effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments; (E) variations in seasonal distribution, abundance, or migration patterns of swordfish; (F) effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota; and, (G) review of dealer reports, landing trends, and the availability of swordfish on the fishing grounds.

NMFS has considered these criteria as discussed below and their applicability to the Swordfish General Commercial permit retention limit in all regions for January through June of the 2019 North Atlantic swordfish fishing year. We have determined that the Swordfish General Commercial permit retention limits in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions applicable to persons issued a Swordfish General Commercial permit or HMS Charter/Headboat permit with a commercial endorsement (when on a non-for-hire trip) should be increased from the default levels that would otherwise automatically become effective on January 1, 2019, to six swordfish per vessel per trip from January 1 through June 31, 2019, unless otherwise later noticed. These are the same limits that were implemented through an inseason adjustment for the period July 1 through December 31, 2018 (83 FR 30884, July 2, 2018). Given the rebuilt status of the stock and the availability of quota, increasing the Swordfish General Commercial permit retention limits in three regions to six fish per vessel per trip will increase the likelihood that directed swordfish landings will approach, but not exceed, the available annual swordfish quota, and increase the opportunity for catching swordfish during the 2019 fishing year.

In 2018, a six swordfish per vessel trip limit was in effect for Swordfish General Commercial permit holders in the Northwest Atlantic, Gulf of Mexico, and U.S. Caribbean regions for the entire fishing season. As of November 30, 2018, this limit resulted in total annual directed swordfish landings of approximately 686.8 mt dw, or 22.7 percent of the 3,028.2 mt dw annual adjusted directed quota for 2018.

Among the regulatory criteria for inseason adjustments to retention limits, and given the rebuilt status of the stock and availability of quota, is the requirement that NMFS consider the ''effects of the adjustment on accomplishing the objectives of the fishery management plan and its amendments.'' See § 635.24(b)(4)(iv)(D). A consideration in deciding whether to increase the retention limit, in this case, is the objective of providing opportunities to harvest the full North Atlantic directed swordfish quota without exceeding it based upon the 2006 Consolidated Atlantic HMS FMP goal to, consistent with other objectives of this FMP, ''manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.'' This action will help preserve a traditional swordfish handgear fishery (rod and reel, handline, harpoon, bandit gear, and greenstick). Although this action does not specifically provide recreational fishing opportunities, it will have a minimal impact on the recreational sector because recreational landings are counted against a separate incidental swordfish quota.

NMFS has examined dealer reports and landing trends and determined that the information obtained from biological sampling and monitoring of the North Atlantic swordfish stock is useful. See § 635.24(b)(4)(iv)(A). Regarding the estimated ability of vessels participating in the fishery to land the amount of swordfish quota available before the end of the fishing year, § 635.24(b)(4)(iv)(B), NMFS reviewed electronic dealer landings data, which indicates that sufficient directed swordfish quota will be available for the January through June 2019 semi-annual quota period if recent swordfish landing trends continue. The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded in 2019. Based upon recent landings rates from dealer reports, an increase in the vessel retention limits to six fish for Swordfish General Commercial permit holders and Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) in three regions is not likely to cause quotas for other categories of the fishery to be exceeded. See § 635.24(b)(4)(iv)(C). Similarly, regarding the criteria about the effects of catch rates in one region precluding vessels in another region from having a reasonable opportunity to harvest a portion of the overall swordfish quota, § 635.24(b)(4)(iv)(F), we expect there to be sufficient swordfish quota for the entirety of the 2019 fishing year. Thus, increased catch rates in these three regions as a result of this action would not be expected to preclude vessels in the other region (*e.g.,* the buoy gear fishery in the Florida Swordfish Management Area) from having a reasonable opportunity to harvest a portion of the overall swordfish quota.

In making adjustments to the retention limits NMFS must also consider variations in seasonal distribution, abundance, or migration patterns of swordfish, and the

availability of swordfish on the fishing grounds. See § 635.24(b)(4)(iv)(G). With regard to swordfish abundance, the 2018 report by ICCAT's Standing Committee on Research and Statistics indicated that the North Atlantic swordfish stock is not overfished (B_{2015}/B_{msy} = 1.04), and overfishing is not occurring (F_{2015}/F_{msy} = 0.78). Increasing retention limits for the General Commercial directed fishery is not expected to affect the swordfish stock status determination because any additional landings would be within the ICCAT-recommended U.S. North Atlantic swordfish quota allocation, which is consistent with conservation and management measures to prevent overfishing on the stock. Increasing opportunities by increasing retention limits from the default levels beginning on January 1, 2019, is also important because of the migratory nature and seasonal distribution of swordfish. In a particular geographic region, or waters accessible from a particular port, the amount of fishing opportunity for swordfish may be constrained by the short amount of time that the swordfish are present in the area as they migrate.

Finally, another consideration, consistent with the FMP and its amendments, is to continue to provide protection to important swordfish nursery areas and migratory corridors. Therefore, NMFS has determined that the retention limit for the Swordfish General Commercial permit will remain at zero swordfish per vessel per trip in the Florida Swordfish Management Area at this time. As discussed above, NMFS considered consistency with the 2006 HMS FMP and its amendments, and the importance for NMFS to continue to provide protection to important swordfish nursery areas and migratory corridors. As described in Amendment 8 to the 2006 Consolidated Atlantic HMS FMP (78 FR 52011, August 21, 2013), the area off the southeastern coast of Florida, particularly the Florida Straits, contains oceanographic features that make the area biologically unique. It provides important juvenile swordfish habitat, and is essentially a narrow migratory corridor containing high concentrations of swordfish located in close proximity to high concentrations of people who may fish for them. Public comment on Amendment 8, including from the Florida Fish and Wildlife Conservation Commission, indicated concern about the resultant high potential for the improper rapid growth of a commercial fishery, increased catches of undersized swordfish, the potential for larger numbers of fishermen in the area, and the potential for crowding of fishermen, which could lead to gear and user conflicts. These concerns remain valid. NMFS will continue to collect information to evaluate the appropriateness of the retention limit in the Florida Swordfish Management Area and other regional retention limits. This action therefore maintains a zero-fish retention limit in the Florida Swordfish Management Area.

The directed swordfish quota has not been harvested for several years and, based upon current landing trends, is not likely to be harvested or exceeded during 2019. This information indicates that sufficient directed swordfish quota should be available from January 1 through June 31, 2019, at the higher retention levels, within the limits of the scientifically-supported TAC and consistent with the goals of the 2006 Consolidated Atlantic HMS FMP as amended, ATCA, and the Magnuson-Stevens Act, and are not expected to negatively impact stock health.

Monitoring and Reporting

NMFS will continue to monitor the swordfish fishery closely during 2019 through mandatory landings and catch reports. Dealers are required to submit landing reports and negative reports (if no swordfish were purchased) on a weekly basis.

Depending upon the level of fishing effort and catch rates of swordfish, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure that the available quota is not exceeded or to enhance fishing opportunities. Subsequent actions, if any, will be published in the **Federal Register**. In addition, fishermen may access *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/2019-atlantic-swordfish-landings-updates* for updates on quota monitoring.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated Atlantic HMS FMP, as amended, provide for inseason retention limit adjustments to respond to changes in swordfish landings, the availability of swordfish on the fishing grounds, the migratory nature of this species, and regional variations in the fishery. Based on available swordfish quota, stock abundance, fishery performance in recent years, and the availability of swordfish on the fishing grounds, among other considerations, adjustment to the Swordfish General Commercial permit retention limits from the default levels of two or three fish to six swordfish per vessel per trip as discussed above is warranted, while maintaining the default limit of zero-fish retention in the Florida Swordfish Management Area. Analysis of available data shows that adjustment to the swordfish retention limit from the default levels would result in minimal risk of exceeding the ICCAT-allocated quota.

NMFS provides notification of retention limit adjustments by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the ''News and Announcements'' website at *https://www.fisheries.noaa.gov/news-and-announcements* (filter by ''Atlantic Highly Migratory Species'' under ''Topic''). Delays in temporarily increasing these retention limits caused by the time required to publish a proposed rule and accept public comment would adversely and unnecessarily affect those Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) that would otherwise have an opportunity to harvest more than the otherwise applicable lower default retention limits of three swordfish per vessel per trip in the Northwest Atlantic and Gulf of Mexico regions, and two swordfish per vessel per trip in the U.S. Caribbean region. Limiting opportunities to harvest available directed swordfish quota may have negative social and economic impacts for U.S. fishermen. Adjustment of the retention limits needs to be effective on January 1, 2019, to allow Swordfish General Commercial permit holders and HMS Charter/Headboat permit holders with a commercial endorsement (when on a non-for-hire trip) to benefit from the adjustment during the relevant time period, which could pass by for some fishermen who have access to the fishery during a short time period because of seasonal fish migration, if the action is delayed for notice and public comment. Furthermore, the public was given an opportunity to comment on the underlying rulemakings, including the adoption of the North Atlantic swordfish U.S. quota, and the retention limit adjustments in this action would not have any additional effects or impacts since the retention limit does not affect the overall quota. Thus, there would be little opportunity for

meaningful input and review with public comment on this action. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.24(b)(4) and is exempt from review under Executive Order 12866.

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

Dated: December 18, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–27666 Filed 12–18–18; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180209147–8509–02]

RIN 0648–XG674

Fisheries of the Northeastern United States; Small-Mesh Multispecies Fishery; Inseason Adjustment to the Southern Red Hake Possession Limit

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces that the commercial per-trip possession limit for southern red hake has been reduced for the remainder of the 2018 fishing year. Regulations governing the small-mesh multispecies fishery require this action to prevent the southern red hake total allowable landing limit from being exceeded. This announcement also informs the public of the reduced southern red hake possession limit.

DATES: Effective December 26, 2018, through April 30, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the red hake fishery are found at 50 CFR part 648. The small-mesh multispecies fishery is managed primarily through a series of exemptions from the Northeast Multispecies Fisheries Management Plan. The regulations describing the process to adjust inseason commercial possession limits of southern red hake are described in § 648.86(d)(4) and § 648.90(b)(5). These regulations require the NMFS Regional Administrator, Greater Atlantic Region, to reduce the southern red hake per-trip possession limit from 5,000 lb (2,268 kg) to the incidental limit of 400 lb (181 kg) when landings have been projected to reach or exceed 90 percent of the total allowable landings (TAL), unless such a reduction is expected to prevent the TAL from being reached. The final rule implementing the small-mesh multispecies specifications for 2018–2020 (83 FR 27713; June 14, 2018) set the southern red hake inseason adjustment threshold for the 2018 fishing year as 605,169 lb (274,500 kg); 90 percent of the southern red hake TAL for the year.

Based on commercial landings data reported through December 8, 2018, the southern red hake fishery is projected to reach 90 percent of the TAL on or around December 26, 2018. NMFS is required to reduce the commercial southern red hake possession limit when 90 percent of the TAL is projected to be reached, to prevent the TAL from being exceeded. We do not anticipate that this reduced possession limit will prevent the TAL from being achieved. Therefore, effective December 26, 2018, no person may possess on board or land more than 400 lb (181 kg) of southern red hake per trip for the remainder of the fishing year *(i.e.,* through April 30, 2019).

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action reduces the per-trip possession limit for southern red hake to the incidental limit of 400 lb (181 kg) until April 30, 2019, under current small-mesh multispecies fishery regulations. The regulations at § 648.86(d) require such action to ensure that commercial small-mesh multispecies vessels do not exceed the TAL set for the southern red hake stock. If implementation of this reduction was delayed to solicit prior public comment, the southern red hake TAL for this fishing year may be exceeded, thereby undermining the conservation objectives of the Small-Mesh Multispecies Fishery Management Plan. Therefore, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator further finds good cause to waive the 30-day delayed effectiveness period for the reason stated above.

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

Dated: December 18, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–27689 Filed 12–18–18; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 245
Friday, December 21, 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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1254

RIN 2590–AA98

Validation and Approval of Credit Score Models

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing a rule on the process for validation and approval of credit score models by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (together, the Enterprises. FHFA requests public comment on all aspects of this proposed rule.

DATES: FHFA will accept written comments on the proposed rule on or before March 21, 2019.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AA98, by any one of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AA98.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA98, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA98, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FOR FURTHER INFORMATION CONTACT: Beth Spring, Senior Policy Analyst, Housing & Regulatory Policy, Division of Housing Mission and Goals, at (202) 649–3327, *Elizabeth.Spring@fhfa.gov,* or Kevin Sheehan, Associate General Counsel, (202) 649–3086, *Kevin.Sheehan@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments will be posted without change, and will include any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

Commenters are encouraged to review and comment on all aspects of the proposed rule, including the definition of a complete application, the timelines for submitting applications, and the standards and criteria for validation and approval of credit score models.

II. Background

A. Statutory Requirement for Validation and Approval of Credit Score Models

Section 310 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Pub. L. 115–174, section 310) amended the Fannie Mae and Freddie Mac charter acts and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) to establish requirements for the validation and approval of third party credit score models by Fannie Mae and Freddie Mac.[1] Section 310 does not require an Enterprise to use third party credit scores as part of its business operations or purchase decisions. Instead, it provides that if an Enterprise elects to condition the purchase of a mortgage loan on the provision of a borrower's credit score, that credit score must be produced by a model that has been validated and approved.[2]

Section 310 imposes separate requirements on FHFA and the Enterprises. FHFA must first issue regulations establishing standards and criteria for the validation and approval of credit score models by the Enterprises. Each Enterprise must then publish a description of a validation and approval process that it will use to evaluate applications from credit score model developers, consistent with the standards and criteria established by FHFA regulation. Section 310 sets forth several factors that must be considered in the validation and approval process, including the credit score model's integrity, reliability and accuracy, its historical record of predicting borrower credit behaviors (such as default), and consistency of any model with Enterprise safety and soundness. This proposed rule establishes criteria for the validation and approval process consistent with section 310.

B. Current Enterprise Use of Credit Scores

The Enterprises currently use credit scores in four primary ways. First, some Enterprise loan purchase programs require a minimum credit score as part of determining eligibility. Second, the Enterprises use credit scores within their automated underwriting systems (AUS).[3] Freddie Mac uses credit scores

[1] Section 310 defines ''credit score'' as, in relevant part, ''a numerical value or a categorization created by a third party derived from a statistical tool or modeling system.'' *See* 12 U.S.C. 1454(d)(1) and 1717(b)(7)(A)(i). The proposed rule would define this to mean that the statistical tool or modeling system was created by the third party.

[2] The Enterprises use credit scores derived from credit score models. However, the validation and approval process would apply to the credit score model rather than the credit scores derived from the model.

[3] An Enterprise automated underwriting system (AUS) is a proprietary system made available to

Continued

as part of the risk assessment within its AUS, while Fannie Mae uses credit scores as a minimum threshold in its AUS. Third, the Enterprises publish grids that disclose price adjustments known as Loan Level Price Adjustments (LLPAs) for Fannie Mae, and Post-Settlement Delivery Fees (Delivery Fees) for Freddie Mac. LLPAs and Delivery Fees are based on a combination of the borrower's representative credit score (currently Classic FICO) and the original loan-to-value (LTV) ratio.[4] Finally, the Enterprises disclose credit scores to investors of Enterprise securities, to Credit Risk Transfer (CRT) investors, and in Securities and Exchange Commission (SEC) corporate filings.

Where appropriate, the proposed rule would require an Enterprise to consider how credit scores are used in its systems as part of its evaluation of credit score models (*e.g.,* consideration of LLPAs and Delivery Fees and potential impact on eligibility). However, the proposed rule would not require an Enterprise to use a credit score in any particular system, nor would it require an Enterprise to use a credit score in a particular way. While the Enterprises currently use credit scores in four primary ways, the Enterprises may change how they use credit scores in the future.

For example, Freddie Mac currently uses a third party credit score (if available) combined with borrower attributes and credit attributes supplied by the nationwide consumer reporting agencies (CRAs) within its AUS. Fannie Mae uses borrower attributes and credit attributes from the nationwide CRAs. Fannie Mae also uses a third party credit score as an eligibility threshold for its AUS (currently, Classic FICO 620 if available). The proposed rule would not require an Enterprise to use a credit score in a particular way in its AUS, or in any other system that uses a credit score. In addition, if an Enterprise does not currently use a third party credit score in a particular purchase system, the proposed rule would not require an Enterprise to incorporate a third party credit score into that system.

Credit scores are only one factor considered by the Enterprises in determining whether to purchase a loan. Because an Enterprise AUS can consider borrower-related data independent of the consumer credit data from the consumer reporting agencies (*e.g.,* income and assets) as well as additional information about the loan and property (*e.g.,* LTV ratio), an Enterprise AUS will always be more accurate than any third party credit score model, used alone, at rank ordering loans by likelihood of borrower default.

C. Conservatorship Scorecard Project To Assess Updating Enterprise Credit Score Requirements

One of the strategic goals established by FHFA as conservator of the Enterprises has been to maintain credit availability for new and refinanced mortgages to foster liquid, efficient, competitive, and resilient national housing finance markets.[5] One element of that strategic goal has been the consideration of possible changes to the credit score model required by the Enterprises.[6] Although Classic FICO remains adequate for Enterprise purposes, FHFA has acknowledged potential benefits of the Enterprises using more recently developed credit score models. From 2015 to 2018, FHFA has engaged with the Enterprises, market participants and other interested parties on possible changes to the Enterprise credit score requirements, including understanding the operational challenges and hurdles of various updated credit score proposals.

In response to FHFA's *2015 Conservatorship Scorecard,* the Enterprises began assessing the feasibility of updating their credit score requirements, including the potential impact of a change on Enterprise operations and systems, and whether updating the requirements would generate additional access to mortgage credit for creditworthy borrowers while maintaining consistency with Enterprise credit requirements and risk-management practices.

The 2015 assessment began by defining the scope of potential credit score models to review. FHFA and the Enterprises conducted an in-depth review of three models: Classic FICO, FICO 9, and VantageScore 3.0. While there were other credit score models available at that time, FHFA and the Enterprises limited the evaluation to credit score models that had nationwide coverage and that could produce credit scores based on data from all three nationwide CRAs.[7] FHFA and the Enterprises determined it would not be practical to build and estimate Enterprise internal models for every credit score model available.

In 2016, FHFA and the Enterprises met with lenders, consumer groups, investors, trade associations, and other market participants to discuss the possible impacts of changing the Enterprises' credit score model requirements. FHFA was focused on better understanding how the industry uses credit scores and possible impacts to industry if the Enterprises were to make a change to their credit score model requirements. In addition, FHFA was focused on how long it might take the mortgage finance industry to adopt such a change. The independent outreach FHFA conducted in 2016 informed the four proposals in the 2017 Credit Score Request for Input (RFI).

As part of the industry feedback, most market participants stated that they would need a significant period of time, approximately 18–24 months, to implement a credit score change after an announcement from the Enterprises.

D. Credit Score Request for Input

In 2017, FHFA determined that it would be useful to solicit input publicly. In December of 2017, FHFA issued an RFI on possible updates to the Enterprise credit score model requirements. The RFI was based on FHFA's review of the operational impact of any credit score change and growing concerns about how competition should factor into the decision to update the credit score model. FHFA publicly communicated its intent to make a decision about the Enterprise credit score model requirements in 2018, upon finishing review of responses to the RFI.

The RFI was focused on four proposals: (1) Maintain a single credit score; (2) adopt an optional waterfall of credit scores; (3) require multiple credit scores; or (4) let the lender choose the credit score. The RFI sought public input on the concerns market participants had expressed to FHFA, including concerns about the potential costs and benefits of updating the Enterprise credit score requirements.

other parties (*e.g.,* lenders and loan originators) to help them assess whether a loan is eligible for purchase by an Enterprise.

[4] The Enterprises have required the use of FICO 5 from Equifax, FICO 4 from TransUnion, and FICO Score from Experian, which are collectively referred to as ''Classic FICO,'' since 2004.

[5] *https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/2014StrategicPlan05132014Final.pdf.* This goal aligns with the purposes stated in the Safety and Soundness Act and the Enterprises' charter acts.

[6] Since 2013, FHFA has issued an annual Conservatorship Scorecard that sets forth expectations for activities to be undertaken by the Enterprises to further FHFA's strategic goals as conservator. Beginning in 2015, each Conservatorship Scorecard has called for the Enterprises to increase access to mortgage credit for creditworthy borrowers. This includes assessing the feasibility of updating the credit score requirements consistent with the Enterprises' risk-management practices.

[7] Currently, there are three nationwide CRAs—Equifax, Experian, and TransUnion. These companies gather, store, and sell consumer credit data, including credit scores that are produced by algorithms developed by other companies (*e.g.,* FICO or VantageScore LLC) supplied with consumer credit data from a CRA.

FHFA encouraged all parties to provide as much information and insight as possible in response to the RFI.

FHFA received over 100 responses to the RFI.[8] The responses came from all parts of the mortgage finance industry including consumers, mortgage lenders, mortgage insurers, and non-profit housing agencies. A central theme from RFI respondents was that the operational challenges of implementing a multi-credit score approach would outweigh any benefits. As one RFI respondent noted, ''changes to Enterprise credit score requirements could have widely-felt implications for borrower access to credit, origination costs in the primary mortgage market, the ability to fully analyze and properly price mortgage credit risk, and liquidity in the secondary mortgage market.''

E. Effect of the Act on the Conservatorship Scorecard Project

FHFA was in the process of making a determination on updating the Enterprise credit score requirements when the Economic Growth, Regulatory Relief, and Consumer Protection Act was enacted on May 24, 2018. Although FHFA had announced its intent to make a decision about the Enterprise credit score model requirements in 2018, FHFA announced in July 2018 that it was shifting its focus to development of notice and comment rulemaking to implement the credit score requirements consistent with section 310. FHFA stated that it would not make a decision on updating the credit score required by the Enterprises until after the credit score model validation and approval process required by section 310 has been established.

F. Assessment of Borrowers Without Credit Scores

Each Enterprise has updated its respective AUS in recent years to process loans for borrowers who lack a credit score. In September 2016, Fannie Mae upgraded Desktop Underwriter (DU) with the capability to underwrite loan applications where both the borrower and co-borrower lack a credit score.[9] In June 2017, Freddie Mac updated Loan Product Advisor (LPA) with the same capability to underwrite both borrower and co-borrowers who lack a credit score.[10] Development of the ''no score AUS'' reduces the significance of third party credit scores within each Enterprise's AUS. The Enterprises' guidance to lenders related to borrowers who lack a credit score now provides that if a borrower has other housing-related tradelines (such as demonstrated rental payments or utility payments), those borrowers can be evaluated through the AUS. The ability of an Enterprise AUS to assess borrowers who lack a credit score is an additional consideration in assessing the impact of the use of any credit score model on access to credit.

G. Development of Proposed Rule Reflects Public Input Received

In developing the proposed rule, FHFA has given careful consideration to all aspects of the 2015, 2016, and 2017 Scorecard projects and related work. The proposed rule also has been informed by responses to the RFI. For example, FHFA considered feedback received from the industry related to some of the operational and implementation concerns in determining how often it would be feasible for the Enterprises to update their credit score requirements.

Based on research and analysis conducted for the past three years, a primary consideration in FHFA's analysis has been weighing the costs of adopting a newer credit score model against the potential benefits. The significant costs and complexity for the Enterprises and industry in making a change to the required credit score were weighed against potential improvements in accuracy and borrower access to credit. More recently developed credit score models capture post-crisis borrower behavior, which more accurately reflects today's borrowers than older models, and also include rental payment data, when available. While a newer credit score model would likely be more accurate than an existing credit score model, a borrower's credit score is not the only factor used by an Enterprise AUS to make a purchase decision, reducing the significance of any improvement in accuracy.

The proposed rule reflects FHFA's balancing of these costs and benefits and is based on both the requirements of section 310 and multiple years of public outreach and empirical research by FHFA and the Enterprises.

III. Features of the Proposed Rule

A. Enterprise Validation and Approval Process

The proposed rule would establish a four-phase validation and approval process: (1) Solicitation of applications from credit score model developers, (2) an initial review of submitted applications, (3) Credit Score Assessment, and (4) Enterprise Business Assessment. In addition, the proposed rule would set the minimum standards and criteria for each step in the process.

As part of the solicitation phase of the process, each Enterprise would publish a Credit Score Solicitation that would include the opening and closing dates of the solicitation time period during which the Enterprise would accept applications from credit score model developers. It would include a description of the information that must be submitted with the application; instructions for submitting the application; a description of the Enterprise process for obtaining data for testing; a description of the Enterprise's process and criteria for conducting a Credit Score Assessment and an Enterprise Business Assessment; and other content as determined by an Enterprise.

As part of the application review phase of the process, an Enterprise would determine whether each application submitted by a credit score model developer is complete. An Enterprise could request additional information if necessary. An application would be complete only after the Enterprise has received all required fees and information, including any necessary data from a third party. An Enterprise would not be obligated to conduct an assessment of a credit score model if an Enterprise is not in receipt of a complete application within the timeframes in this proposed rule.

During the Credit Score Assessment phase of the process, each credit score model would be assessed for accuracy, reliability and integrity, independent of the use of the credit score in the Enterprise's systems, as well as any other requirements established by the Enterprise. A credit score model must pass the Credit Score Assessment to be reviewed by an Enterprise during the Business Assessment phase.

During an Enterprise Business Assessment phase, which is the fourth and final phase of the process, an Enterprise would assess the credit score model in conjunction with the Enterprise's business systems. The Enterprise must assess the accuracy and reliability of credit scores where used within the Enterprise's systems,

[8] RFI responses are available online on FHFA's website at *https://www.fhfa.gov/AboutUs/Contact/Pages/input-submissions.aspx* (select ''Credit Score'' in the menu).

[9] Desktop Originator/Desktop Underwriter Release Notes, DU Version 10.0, Fannie Mae (Last Updated June 20, 2016) *https://www.fanniemae.com/content/release_notes/du-do-release-notes-06252016.pdf.*

[10] *http://freddiemac.mwnewsroom.com/press-releases/freddie-mac-loan-advisor-suite-sm-to-cut-mortgage-otcqb-fmcc-1282556.*

possible impacts on fair lending and impact on the Enterprise's operations and risk management. An Enterprise also must consider impacts on the mortgage finance industry, assess competitive effects, conduct a third party vendor review, and perform any other evaluations established by the Enterprise as part of the Enterprise Business Assessment. A credit score model may be approved by an Enterprise during the Business Assessment phase, and only then would the credit score model be considered validated and approved for purposes of section 310.

The Credit Score Assessment and Enterprise Business Assessment steps may not necessarily happen sequentially. However, in order for a credit score model to be approved for use, the credit score model would have to pass both a Credit Score Assessment and an Enterprise Business Assessment. The proposed rule would require that an Enterprise update its credit score requirements to reflect the outcome of the validation and approval process. However, the proposed rule does not address *how* an Enterprise's credit score requirements would be updated should a new credit score model be approved. How approved credit score model(s) are implemented, including the timeframe for the Enterprises to transition from one credit score to another score or scores, would be best addressed through direction that will be provided by FHFA outside of the final rule but consistent with FHFA statutory obligations.

FHFA requests comment on any operational impacts or considerations that should be addressed in implementing any newly approved credit score models, including timing between approval of any new credit score model and required delivery of the new score(s) to an Enterprise or whether there are issues related to implementation that are not covered by the proposed rule.

B. Timeframes for Enterprise Application Determinations

A key consideration in structuring the process in four phases is to address the statutory requirements of section 310, which references solicitation, application, validation, and approval. Section 310 also requires the Enterprises to make ''a determination with respect to any application submitted'' and provide notice of that determination no later than 180 days after the date on which an application is submitted, subject to two 30-day extensions.

The proposed rule would require each Enterprise to complete the Credit Score Assessment in no more than 180 days, with the possibility of no more than two 30-day extensions. The proposed rule would establish a separate 240-day maximum time period for the Enterprises to conduct the Enterprise Business Assessment. As discussed above, the Credit Score Assessment and Enterprise Business Assessment could overlap. However, the maximum, combined time for these two parts of the process could be as much as approximately 16 months depending on whether FHFA granted any extensions for the Credit Score Assessment. This proposal aligns with FHFA's knowledge of the time needed to conduct testing similar to the testing proposed for the Credit Score Assessments. Based on FHFA and Enterprise experience assessing credit score models and the process outlined in this proposed rule, FHFA determined 180 days, or even 240 days, would not give an Enterprise sufficient time to conduct both the Credit Score Assessment and the Enterprise Business Assessment for all possible applications submitted during the solicitation period.

By taking this approach, the proposed rule would establish reasonable and realistic deadlines for each phase of the process—solicitation period, application review, Credit Score Assessment, and Enterprise Business Assessment. The proposed rule would establish a time period for application submission that includes a review for completeness and notification to an applicant to address deficiencies, before the solicitation period ends and the Credit Score Assessment begins. An Enterprise would be required to notify an applicant of its determination under the Credit Score Assessment within 180 days from the start of the Credit Score Assessment, with up to two extensions of 30 days each, consistent with section 310. These timeframes may be adjusted based on future public notice and comment as FHFA and the Enterprises gain experience with the validation and approval process.

Under the proposed rule, the determination that a credit score model passes the Credit Score Assessment would be separate from the determination that a credit score model meets the criteria of an Enterprise Business Assessment resulting in Enterprise approval. A credit score model would only be approved if an Enterprise determines that it meets the criteria under both the Credit Score Assessment and an Enterprise Business Assessment. The Enterprise Business Assessment would allow an Enterprise to complete a comprehensive assessment of the impact of a new credit score when used in an Enterprise's proprietary systems, fair lending impact, impact on Enterprise operations, Enterprise risk management and impact to industry, as well as any other criteria evaluated by an Enterprise. The proposed rule would provide an Enterprise 240 days to complete the Enterprise Business Assessment. This would be in addition to the maximum 240 days (including extensions) to complete the Credit Score Assessment phase.

C. Alignment of Enterprises

FHFA may direct the Enterprises to align their assessment processes or the decisions on approved credit score model(s) under FHFA's authority as regulator or conservator of the Enterprises. For example, FHFA may determine as regulator that it is necessary to align the Enterprises on approved credit score model(s) to help maintain efficiency and liquidity in the secondary mortgage market, a core purpose of the Safety and Soundness Act and the charter acts. Or FHFA may determine that alignment is necessary to facilitate the Enterprise credit risk transfer (CRT) programs or the development and implementation of the Uniform Mortgage-Backed Security (UMBS).[11]

While the Enterprises remain in conservatorship, on the same basis FHFA could use its authority as conservator of the Enterprises to direct the Enterprises to adopt aligned validation and approval processes or outcomes. FHFA may also use its existing authority as regulator or conservator to establish other credit score requirements for the Enterprises. For example, FHFA may require the Enterprises to continue to require lenders to deliver loans with a single credit score, or FHFA may require the Enterprises to allow use of more than one credit score for delivery of loans.

The proposed rule would require the Enterprises to provide FHFA with prior notice of a determination to approve an application. Such prior notice would provide FHFA with an opportunity, if appropriate, to require the Enterprises to adopt aligned determinations on some or all applications. However, the proposed rule itself would not require alignment of the Enterprises. The proposed rule would allow the Enterprises to adopt independent and distinct validation and approval processes, to conduct separate evaluations of any application received and to reach different decisions about

[11] *See, e.g.,* Uniform Mortgage-Backed Security proposed rule, 83 FR 46889 (Sept. 17, 2018).

which credit score models are validated and approved for use.

FHFA expects that the Enterprises will regularly consult with FHFA, in the Agency's role as regulator or as conservator. FHFA would retain its ability, in its role as regulator or conservator, to provide the Enterprises with guidance on alignment and the use of one credit score model or multiple credit score models at any point in the Enterprises' solicitation and review process. However, the proposed rule would not address how multiple credit score models, if approved, would be implemented and/or required by an Enterprise. These decisions could be handled through FHFA's authority as regulator or as conservator.

FHFA requests comments on the approaches described above. In addition, FHFA requests comments on whether the Agency should consider alternatives to these approaches.

D. Credit Score Model Developer Independence

The proposed rule would prohibit an Enterprise from approving any credit score model developed by a company that is related to a consumer data provider through any common ownership or control, of any type or amount. The proposed rule would also require the Enterprises to consider competitive impacts more generally in assessing applications from credit score model developers. In developing this approach, FHFA has considered and worked to balance a number of policy concerns, including potential conflicts of interest, potential competitive effects (positive and negative), and burdens on prospective applicants and the Enterprises.

The Credit Score RFI, as discussed earlier, sought input on credit score competition and consolidation in the credit score marketplace. Feedback indicated concerns with the competitive position of VantageScore, LLC when compared to other credit score model developers, by virtue of its joint ownership by three nationwide consumer reporting agencies (CRAs). The CRAs own the data that both VantageScore, LLC and its competitors use to build their credit score models. They also set the prices for the different credit scores, subject to any license fees charged by the credit score model developer. Each CRA has the ability to set the prices for its own use, or an affiliated company's use, of the consumer credit data that is reported to that CRA. Vertical integration with a credit score model developer could, in theory or practice, permit the CRA to sell credit scores constructed from data (including the scoring algorithm) that the CRA owns more cheaply.

Given these considerations, FHFA believes it is appropriate to propose prohibiting common ownership or control of the credit score model developer and the owner of consumer credit data. To implement this prohibition, the proposed rule would require each application to include a certification that no owner of consumer data necessary to construct the credit score model is related to the credit score model developer through common ownership or control. Establishing a clear threshold requirement in the application process will put an applicant on notice that, unless it can make that certification, its application will not be approved. This approach is intended to avoid a party with a prohibited relationship expending time and money to complete and submit an application with associated fees that an Enterprise ultimately would not validate and approve.

The proposed rule seeks to avoid a possible negative impact on competition among credit score models, for example if pricing of credit scores and consumer credit reports were used to reduce competition and, thereafter, to increase prices. Although the proposed prohibition could limit the number of possible credit score model developers that would be able to submit an application, it would ensure that any approved credit score model would not unfairly benefit the institution that developed the credit score model. To date, FHFA has not identified a degree of common ownership or control that would clearly avoid its concerns. Therefore, even a minority ownership interest would be subject to the prohibition. FHFA requests comment on whether there are examples of common ownership or control by type or amount that would not reasonably give rise to anti-competitive concerns or if there are other safeguards that could address or avoid such concerns.

FHFA also believes changing or using a new credit score model could have other competitive effects, or give rise to other conflicts of interest, that should be considered by an Enterprise in determining whether to approve a model. While feedback on the Credit Score RFI focused on competition concerns related to the joint-ownership structure of VantageScore, LLC, the proposed rule would require the Enterprises to consider competition concerns more broadly. FHFA has previously stated that its ''objective is not to help any particular company sell more credit scores, but to determine how to appropriately balance the safety and soundness of the Enterprises while maintaining liquidity in the housing finance market,'' and this remains the case.[12]

The proposed rule would require an Enterprise to consider potential conflicts of interest and competitive effects in assessing the costs and benefits of approving any credit score model in the Enterprise Business Assessment. An applicant would be required to provide information on any business relationship with any other party that may give rise to a conflict of interest beyond the upfront application certification of whether it is related to a data provider (including information about the credit score model developer's corporate and governance structure, and any ownership, control, or relationship to any other institution). An Enterprise also would be required to consider other potential effects on competition, including positive effects.

FHFA requests comment on the proposed approach of requiring an upfront certification in addition to an assessment of competitive effects in the Enterprise Business Assessment. FHFA also requests comment on any alternative approaches for assessing and evaluating conflicts of interest and other competitive effects.

IV. Summary of the Proposed Rule

A. No Required Use of Credit Scores; No Expectation of Continued Use

The proposed rule would set forth requirements and limitations on how the Enterprises validate and approve credit score models. Section 310 does not require the Enterprises to use a credit score for any purpose. It does require, however, that if an Enterprise elects to condition its purchase of mortgages on provision of a credit score, that score must be derived from a model that has been validated and approved in accordance with statutory and regulatory requirements. Likewise, if an Enterprise elects to condition its purchase of mortgages on provision of a credit score, it also must use the validated and approved credit score in all of its purchase-related systems and procedures that currently use a credit score. The proposed rule would incorporate these statutory provisions and would address several related situations.

First, the proposed rule would expressly state that an Enterprise is not required to use a third party credit score. For example, if an Enterprise in the future no longer uses a third party

[12] *https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/CreditScore_RFI-2017.pdf,* pg. 19.

credit score in any purchase-related systems or procedures, the Enterprise would not be subject to the requirements of this proposed rule. However, if an Enterprise continues to price loans based on credit score and LTV ratios (LLPAs and Delivery fees), the Enterprise would still be subject to the requirements of this proposed rule, even if the Enterprise no longer used credit scores in any other manner.

Second, the proposed rule would expressly state that an Enterprise is permitted either to replace an existing credit score model with a newly approved credit score model or to continue to use the existing credit score model along with the newly approved credit score model. For example, if an Enterprise is using a validated and approved score, and in response to a new solicitation validates and approves a new credit score, an Enterprise could ''retire'' the existing validated and approved credit score. This would be considered replacement of an existing model. Alternatively, an Enterprise would have the option to use both the existing validated and approved credit score model and the new validated and approved credit score model. Section 310 expressly permits replacement of one validated and approved credit score model with another validated and approved model, and it does not establish any standard for replacement, other than that the models must be validated and approved.

Finally, the proposed rule would expressly state that the use of a credit score by an Enterprise does not create any right or expectation to continued use of that credit score. Section 310 does not require an Enterprise to continue to use previously validated and approved credit score models. Section 310 does not create, and FHFA does not recognize, any right or expectation of a party with an interest in a credit score model used by an Enterprise to its continued or continuing use. Under the statute and under the proposed rule, an Enterprise would have the option to stop using a previously approved credit score model, with no obligation or liability of any kind.

B. Enterprise Solicitation of Applications From Credit Score Model Developers

1. Overview

The proposed rule would permit FHFA periodically to require the Enterprises to solicit applications from credit score model developers. The proposed rule addresses the solicitation process, the required content of an Enterprise solicitation, and the review of Enterprise proposed solicitations by FHFA prior to Enterprise publication.

FHFA would establish the need for an Enterprise solicitation by notice to the Enterprises. Because assessing a credit score model is time-consuming and requires the acquisition of significant amounts of consumer credit data, and because of the potentially significant implementation costs to industry, it would not be efficient or cost effective (for an Enterprise, an applicant, or other market participants) to require that an Enterprise consider applications for validation and approval submitted at *any* time. Instead, the proposed rule would allow FHFA to establish a periodic solicitation process.

Under the proposed rule, an Enterprise would *not* be required to consider any application that is *not* received in response to a particular solicitation. An Enterprise could review and conduct preliminary empirical analysis on any application received outside of a particular solicitation. However, an Enterprise would not be permitted to approve any application not submitted in response to a solicitation. Outside of the periodic solicitations required by FHFA, there would be periods of time during which an Enterprise would not be expected or required to solicit applications and during which any credit score it is then using would not be subject to change. The proposed rule addresses timing requirements for the first solicitation for applications, while also creating a framework for setting similar deadlines for future solicitations.

The proposed rule would require FHFA to review and approve each Credit Score Solicitation from an Enterprise. The proposed rule would require that, after an Enterprise receives notification from FHFA, the Enterprise publish the description of its validation and approval process prior to, and in conjunction with, soliciting applications. This approach would ensure that potential applicants and the public are provided with information about regulatory and Enterprise requirements and considerations. Thus, the Enterprise description, which the proposed rule refers to as a ''Credit Score Solicitation,'' would cover the Enterprise's validation and approval process as well as requirements that an application, and the applicant, must meet in order for a credit score model to be considered by an Enterprise. The publication of the Enterprise Credit Score Solicitation would satisfy section 310's requirement that an Enterprise ''make publicly available'' a description of its validation and approval process.

Under the proposed rule, the solicitation process would involve: (1) A notice from FHFA to the Enterprises informing the Enterprises that FHFA has determined that a review of new credit score models is timely; (2) development of a Credit Score Solicitation by each Enterprise; (3) review of each Solicitation by FHFA; (4) publication of the Solicitation by each Enterprise; and (5) a time period, determined by FHFA and communicated through the Enterprises to the public, during which the Enterprises will accept applications for validation and approval of credit score models. These steps are addressed below.

2. FHFA Notice to the Enterprises To Solicit Applications

The proposed rule states FHFA's authority to determine when an Enterprise is required to solicit applications from credit score model developers. An Enterprise would not be permitted to solicit applications except in response to a notice from FHFA. In general, FHFA would provide notice to an Enterprise establishing when the Enterprise must begin soliciting applications, the length of time the solicitation period is open and applications will be accepted, and the deadline for an Enterprise to submit its proposed Credit Score Solicitation to FHFA for review.

To establish a reasonable expectation of when an Enterprise would be required to initiate a validation and approval process, the proposed rule would provide that FHFA require a solicitation every seven years, determined from the date of the preceding solicitation, except as otherwise determined by FHFA. Requiring a solicitation any more frequently would lessen the likelihood that the benefits of transitioning to a new score would outweigh its costs, including costs to applicants and the Enterprises to assess a proposed new model. In proposing seven years, FHFA has attempted to balance those concerns and establish a realistic timeframe not only for the Enterprises but for the rest of the mortgage finance industry. FHFA is seeking comment on whether the proposed seven year solicitation of applications from credit score model developers is too frequent or not frequent enough.

The proposed rule also would permit FHFA to require the Enterprises to solicit applications either sooner or later than seven years, in appropriate circumstances. For example, FHFA may determine not to initiate a solicitation within seven years, and thus that a credit score in use in the future should

continue to be used, because the cost to industry of changing from one score to another could be avoided and any intended benefit of a new score could be achieved by an enhancement to an Enterprise AUS instead. In proposing a very flexible approach to determining the time between Enterprise solicitations, FHFA is seeking to balance the value of a reasonable public expectation that the Enterprises will periodically review updated credit scores, with the ability to act when circumstances indicate that the regulatory time period is either too long or too short.

The proposed rule would require that the process for the initial solicitation begin within 60 days of the effective date of the final rule. The initial solicitation time period would begin on a date determined by FHFA and would extend for 120 days.

3. Enterprise Development of a Credit Score Solicitation and Content

For solicitations after the initial solicitation, each Enterprise must develop a Credit Score Solicitation after receiving a notice from FHFA. The Credit Score Solicitation would describe the Enterprise validation and approval process, which must be in accordance with the minimum standards and criteria of the regulation.

The Credit Score Solicitation also would address the Enterprise process for assessing credit score models, as well as standards or criteria for accuracy, reliability, and integrity, and any method of demonstrating that the credit score has a historical record of measuring and predicting credit behaviors, including default rates, consistent with section 310. The proposed rule would establish minimum standards and criteria for validation and approval of credit score models. An Enterprise may have valid business reasons for imposing additional standards and criteria. Section 310 and the proposed rule both permit additional standards to be imposed by an Enterprise and such additional standards, criteria, or requirements would be addressed in the Credit Score Solicitation.

4. FHFA Review of Enterprise Solicitation

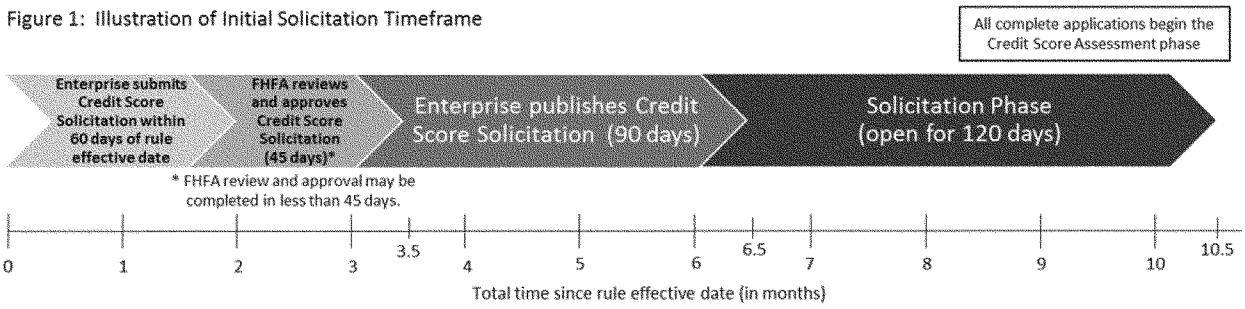
The proposed rule would require an Enterprise to submit a Credit Score Solicitation to FHFA for review prior to the start of any solicitation period. FHFA review will allow the Agency to object to any additional Enterprise standards, criteria or requirements or to impose any terms, conditions or limitations that FHFA determines appropriate. The proposed rule would establish a 45-day period for FHFA review, which may be extended by FHFA if necessary.

Because a notice from FHFA requiring a new solicitation would require each Enterprise to submit a current Credit Score Solicitation to FHFA for review, the review also would meet the statutory requirement that FHFA ''periodically'' review the Enterprise's validation and approval process to ensure the process remains appropriate, adequate, and in compliance with applicable FHFA regulations and requirements.[13] This does not mean, however, that FHFA could not review the Enterprise's approval and validation process as part of its usual supervisory processes, including examinations. Further, FHFA review and approval of an Enterprise Credit Score Solicitation would not prevent FHFA from taking any subsequent appropriate supervisory action.

5. Timeframes for Solicitation

The proposed rule would provide that each Enterprise make publicly available its Credit Score Solicitation for at least 90 days prior to the start of the solicitation period. In order to ensure that the Enterprises are accepting applications during the same time period, FHFA expects to require each Enterprise to publish its Credit Score Solicitation on the same date. Once the initial solicitation period begins, it would extend for 120 days. For subsequent solicitations, FHFA would determine both the frequency of the solicitations and the length of a particular solicitation period. FHFA recognizes that for subsequent solicitation periods, 120 days may not be suitable and therefore builds into the regulation the flexibility to allow for a longer or shorter timeframe that would better serve applicants and the housing industry. The timeframes for the initial solicitation are illustrated in Figure 1.

Figure 1: Illustration of Initial Solicitation Timeframe



These timeframes ensure that the Credit Score Solicitation is handled in an expeditious manner while providing applicants sufficient time to review the fees and the information required for a complete application prior to expending resources to submit an application. The proposed timeframes are consistent with timeframes in practice between FHFA and the Enterprises for reviewing and responding to proposals.

C. Enterprise Initial Review of Submitted Applications

1. Overview

The proposed rule would establish the criteria an application must meet to be considered complete. Each applicant would be required to submit: (1) An application fee; (2) a fair lending certification; (3) information to demonstrate use of the model by industry; (4) a conflicts-of-interest certification and other information on credit score model developer qualifications; and (5) any other information required by an Enterprise in the Credit Score Solicitation. An application would not be considered complete until an Enterprise has obtained any data necessary for testing. An application would be complete when an Enterprise determines that the

[13] 12 U.S.C. 1454(d)(8) and 1717(b)(7)(H).

required information has been received from the applicant and any third party (*i.e.,* any data requested from a third party on behalf of the applicant).

Under the proposed rule, an Enterprise would have no obligation to assess any incomplete application. As required by section 310, each applicant would receive an application status notice informing the applicant of any additional information needed in conjunction with an application. If an Enterprise determines that an application is incomplete, or has questions about information provided, the applicant would have the opportunity to respond within the 120-day solicitation period. FHFA recognizes that information required from a third party, such as consumer credit data, may be beyond the control of the applicant. The proposed rule would allow third parties to deliver information to an Enterprise within a reasonable time period that may extend beyond the 120-day solicitation period.

2. Application Fees and Assessment for Costs

The proposed rule would require each applicant to be responsible for the costs associated with validating and approving its credit score model. It is typical for the Enterprises to assess a fee for reviewing and approving counterparties and/or vendors seeking a business relationship with them. Therefore, the proposed rule would permit an Enterprise to require each applicant to pay an application fee established by the Enterprise to cover reasonable costs, including expenses incurred as part of the application review process. The proposed rule also would permit an Enterprise to assess applicants for the costs associated with acquiring third party data and credit scores, either in addition to or instead of an up-front application fee.

3. Fair Lending Compliance and Certification

The proposed rule would require each applicant to provide a certification that addresses compliance with federal fair lending requirements. The certification would address protected classifications under the Equal Credit Opportunity Act (ECOA), the Fair Housing Act, and the Safety and Soundness Act.[14] Because an Enterprise would not necessarily have access to the factors used in the development of the credit score model or used by the credit score model to produce credit scores, the fair lending certification would provide assurances that the credit score model is not based on any protected classifications. The certification would be required to state that no characteristic that is based directly on or is highly correlated with such a protected classification was used in the development of the credit score model or is used by the credit score model to produce credit scores.

The proposed rule also would require each applicant to address compliance of the credit score model and credit scores produced by it with federal fair lending requirements, including information on any fair lending testing and evaluation of the model. Statements about compliance with consumer regulatory standards that do not relate to the model's compliance with federal fair lending requirements related to protected classifications would be insufficient to satisfy this requirement. For example, statements about the ability to satisfy standards relating to generating reasons for adverse action or satisfying the standard for an empirically derived, demonstrably and statistically sound credit scoring system would not be sufficient.[15]

4. Demonstrated Use

In addition to the fair lending certification, the proposed rule would require the application to demonstrate use of the credit score by creditors to make credit decisions. This requirement would ensure that the credit score model is employed by creditors. To demonstrate use, the application could include testimonials by non-mortgage and/or mortgage lenders or bank validation reports that show the applicant's credit scores were used in underwriting credit.

While FHFA generally believes that the Enterprises should not validate and approve credit scores that have not been used by a creditor in some capacity, FHFA recognizes that limiting applications to those credit score models that have been used to make credit decisions may impede innovation and potential market acceptance of new credit score models. In other words, it may be difficult for credit score model developers to demonstrate the viability of their credit scores to creditors without entities like the Enterprises engaging them in ''test and learn'' pilots. The provisions related to pilot programs are discussed in more detail below.

5. Conflicts of Interest Certification and Qualification of Credit Score Model Developer

The last application criterion in the proposed rule involves the credit score model developer's qualifications. To implement the conflicts of interest prohibition discussed above, FHFA is proposing to require each applicant to certify that no owner of consumer data necessary to construct or test the credit score model is related to the credit score model developer through any degree of common ownership or control. In addition, the proposed rule would require the application to demonstrate the credit score model developer's experience and financial capacity. This would include a detailed description of the developer's corporate and governance structure, including any common ownership or control with an entity that owns, prices, and provides access to consumer data. An application also would be required to provide information about the past financial performance of the credit score model developer, including audited financial statements for the preceding three years. This information provided by the applicant would allow an Enterprise to evaluate the experience and financial capacity of the credit score model developer as well as the basis for the conflicts of interest certification.

As a general prudential standard, each Enterprise is required to manage its counterparty and vendor risk.[16] In this context, if an Enterprise chooses to require provision of a borrower's credit score as a condition of purchasing a mortgage, the Enterprise must be reasonably assured that the type of credit score it specifies will be available within the market, and thus that the credit score model developer is, and will remain, financially viable. To understand the credit score model developer as a potential counterparty, the proposed rule would require each application to address the applicant-developer's corporate structure, governance structure, and financial performance, including audited financial statements for the three full years preceding the year of application. An Enterprise may require an applicant to certify that there has been no material change to information submitted on the developer's qualifications prior to approving a credit score model.

6. Additional Enterprise Standards and Criteria

The proposed rule would permit the Enterprises to establish additional

[14] 15 U.S.C. 1691(a) (ECOA); 42 U.S.C. 3605(a) (Fair Housing Act); 12 U.S.C. 4545(1) (Safety and Soundness Act).

[15] 12 CFR 1002.2(p), 1002.9(b)(2).

[16] *See generally,* 12 U.S.C. 4513b; see also 12 CFR parts 1236 and 1239.

requirements for the application. The Enterprise would be required to include any additional requirements in its Credit Score Solicitation, and those requirements would be subject to FHFA review and approval as discussed above.

7. Data Acquisition

The proposed rule would permit an Enterprise to acquire any data that it may require to conduct the Credit Score Assessment. Such data would typically include historical credit scores on a test set of existing Enterprise loans at origination. For example, in the 2015 assessment conducted by FHFA and the Enterprises, the Enterprises each purchased Classic FICO, VantageScore 3.0, and FICO 9 scores from one of the nationwide CRAs. Each application must include a reasonable process for the Enterprise to acquire the applicant credit score and data on existing loans and future loans. Applicants whose credit scores incorporate multiple sources of consumer credit information (*e.g.,* credit scores based on information from the nationwide CRAs yet augmented with data outside of the three nationwide CRAs) will need to work with the Enterprises on a process to acquire the applicant's credit scores on existing Enterprise loans.

8. Timing and Notices

The proposed rule would require an Enterprise to provide certain notices to an applicant, including an application status notice and a notice of whether an applicant's application is complete. The notices are intended to keep the applicant informed about the status of its application and provide an opportunity to identify and address questions or deficiencies. Section 310 requires that an Enterprise provide an applicant with a status notice no later than 60 days from the date the application is submitted to an Enterprise. The proposed rule would require an Enterprise to include any information about the application, specifically if there is any missing or additional required information. The Credit Score Assessment and the Business Assessment of the validation and approval process also require notifications to the applicant. FHFA is seeking comment on the number of notifications, and whether the proposed notifications are the appropriate notifications for the applicant to be kept abreast of its application throughout the validation and approval process.

Once an Enterprise makes a determination of completeness of an application, the proposed rule would require an Enterprise to notify the applicant that its application is complete. As noted earlier, applications would be considered complete once an Enterprise has all the information needed to begin the Credit Score Assessment, including any information from the applicant as well as any data that may be obtained from a third party.

D. Credit Score Assessment

1. Overview

The proposed rule would require Fannie Mae and Freddie Mac to undertake a Credit Score Assessment of each credit score model for which it has received a complete application. The Credit Score Assessment would include an evaluation of the accuracy and reliability of credit scores on a stand-alone basis (outside of an Enterprise's internal systems and procedures), along with an assessment of the integrity of the scores produced by the model. The tests for accuracy and reliability of credit scores within an Enterprise's internal systems and procedures would be considered after the Credit Score Assessment phase, as part of an Enterprise Business Assessment.

The proposed rule would permit an Enterprise to conduct its own testing for the Credit Score Assessment or to contract with a third party to test each credit score model. Because the Credit Score Assessment considers accuracy and reliability of the credit score outside of the Enterprise systems, FHFA requests comment on whether the Credit Score Assessment could be conducted jointly by the Enterprises for each application. If so, an applicant could submit an application to each Enterprise, but the Enterprises would work together to conduct a single Credit Score Assessment for each application.

The proposed rule would establish standards for accuracy, reliability and integrity and would require that an application pass the Credit Score Assessment in order to be considered in the next phase of the process (Enterprise Business Assessment).[17] A credit score model that does not pass the Credit Score Assessment would not be eligible to be approved by an Enterprise under the Enterprise Business Assessment.

2. Standards or Criteria for Accuracy

A credit score model is accurate if it produces credit scores that appropriately reflect a borrower's propensity to repay a mortgage loan in accordance with its terms. This permits a credit score user to correctly rank order the risk that the borrower will not repay the obligation in accordance with its terms relative to other borrowers. FHFA has considered several options for assessing the accuracy test results. Under each of the options being considered by FHFA, which are discussed further below, the Enterprises would conduct substantially the same statistical tests for credit score accuracy yet the outcome of the accuracy testing would be determined by the assessment option. This section first describes the statistical tests that would be conducted and then describes each of the four options under consideration.

a. Testing for Accuracy

Conceptually, statistical tests of credit score accuracy measure the separation between the credit score distribution of the defaulted loans with the credit score distribution of the non-defaulted loans. The Kolmogorov-Smirnov statistic (K–S), divergence, and Gini coefficient are common statistical measures used to measure the ability of a credit score model to separate defaulted borrowers from non-defaulted borrowers. Beyond the common set of tests, the Enterprises are encouraged to explore additional score performance measures and statistical tests.

The proposed rule would not define specific parameters for the testing that would be conducted by an Enterprise. The proposed rule would require that testing utilize one or more industry standard statistical tests for demonstrating divergence among borrowers' propensity to repay, applied to mortgages purchased by an Enterprise. Although the proposed rule allows flexibility for the Enterprises to define the specific parameters of testing, FHFA expects that the Enterprise testing requirements would include a definition of default.

Critical to accuracy testing of a credit score is the definition of default, which includes two parts, the occurrence of an event (*e.g.,* delinquency) and a time horizon (*e.g.,* 24 months since origination). Currently, the generally accepted definition of default is a 90-day delinquency during a two year period. FHFA expects that the Enterprises will use the generally accepted definition of default and FHFA is seeking comment, with supporting information, on any additional default definitions.

The proposed rule would include a requirement that the Enterprise test accuracy on subgroups of loans. The loan sets obtained for testing would

[17] Section 310 requires an Enterprise to establish a process pursuant to which an Enterprise will not validate and approve a credit score model that does not ''satisf[y] minimum requirements of integrity, reliability, and accuracy.'' 12 U.S.C. 1454(d)(3)(A) and 1717(b)(7)(C)(i). Elsewhere, section 310 states that the credit score model must ''compl[y] with any standards and criteria established by'' FHFA. *Id.,* 1454(d)(3)(D) and 1717(b)(7)(C)(iv).

have to contain sufficient observations to perform the accuracy tests on subgroups. It is unlikely that the accuracy of a credit score is constant across the entire credit score distribution. Subgroup testing could be applied to loan to value groups, credit score groups, thin credit file loans at origination, new credit files, and files with a past delinquency. It is expected that credit score accuracy will decline when applied to thin, stale and new credit files, yet credit score models' accuracy is critically important to borrowers and investors in these challenging cases because the credit scores will be in close proximity to critical thresholds.

b. Options for Evaluating Test Results

FHFA has considered four options for evaluating test results: A comparison-based approach, a champion-challenger approach, a benchmark-based approach, and a transitional approach. The proposed rule language is based on the comparison-based approach, but FHFA may adopt any of the four approaches in the final rule or consider other options suggested in the comments. Each of the four approaches is discussed in more detail below.

Each of the four options under consideration would include a minimum standard that a credit score model must meet, in that ''it produces a credit score that appropriately reflects a borrower's propensity to repay a mortgage loan in accordance with its terms, permitting a credit score user to rank order the risk that the borrower will not repay the obligation in accordance with its terms relative to other borrowers.'' The standard is measured by statistical testing. However, the four options reflect different approaches for comparing the statistical results from the credit score models being evaluated to each other.

FHFA is considering four options for evaluating test results in part to address potential concerns about the continued use of Classic FICO. Section 310 requires an Enterprise to use a validated and approved score at a defined point in the future. One way to ensure that a validated and approved score is available before that defined point would be to approve Classic FICO. This would not require any additional time to implement because Classic FICO is already in use. Continuing to use Classic FICO could be beneficial to the Enterprises and other market participants in smoothing the transition away from using a credit score from a model that has not been validated and approved to an environment in which an Enterprise must only use credit scores from models that have been validated and approved.

i. Comparison-Based Approach

The first option under consideration is a comparison-based approach. This is the option reflected in the proposed rule text. Under this approach, an Enterprise would test the credit scores under consideration for accuracy and would be required to evaluate whether the new model produced credit scores that are more accurate than any credit score the Enterprise is then using. While an Enterprise would be required to assess accuracy on a comparative basis, the proposed rule would not establish a bright-line test for minimum accuracy that a credit score model would have to meet to pass the Credit Score Assessment.

The comparison-based approach would allow flexibility for an Enterprise to make any determination based on the results of the comparison. For example, an Enterprise could determine that a particular credit score model did not meet the Credit Score Assessment based on the comparison if the credit score model performed substantially worse than other credit score models in measuring accuracy. An Enterprise would be permitted to determine that a credit score model met the accuracy standard if it performed substantially as well as other credit score models being tested. Because the comparison-based approach would not include a bright-line test for minimum accuracy, an Enterprise would be permitted to make a determination on this aspect of the Credit Score Assessment even if there were no relevant comparison available for the credit score model being tested. In that case, the accuracy standard would be successful rank-ordering of borrowers, as stated in proposed § 1254.7(b)(1).

The flexibility of a comparison-based approach without a bright-line test could raise certain challenges. Among these are concerns that the accuracy standard itself would not inform the public and applicants as to how an Enterprise would make its determination of accuracy. These transparency concerns would be mitigated by the proposed requirement that an Enterprise provide an explanation of the reasons for disapproval of an application to the applicant. Even so, a requirement that an Enterprise explain after making its decision how it considered and applied the accuracy standard would not inform the public or prospective applicants about how the Enterprise would consider and apply criteria in future decisions.

ii. Champion-Challenger Approach

As another possible standard, the second option under consideration is a champion-challenger approach that would require that the applicant's credit score(s) be more accurate than the existing credit score in use at the Enterprises, as demonstrated by appropriate testing. Score accuracy directly benefits borrowers and investors since an Enterprise relies on credit risk measures generated from its AUS. Accepting a less accurate credit score model would negatively impact borrowers and investors.

Newer credit score models should statistically outperform legacy credit score models for several reasons. First, newer credit score models incorporate borrower information that was not available when the legacy credit score models were designed and estimated. Second, newer credit score models are estimated (or ''trained'') on more recent borrower credit histories. More recent historical borrower behaviors better represent current borrower behaviors than older credit histories. In addition, overlap between the estimation (or ''training'') data and the accuracy testing data should benefit the credit score model with the greatest time period overlap. Lastly, when comparing accuracy tests on old and new credit scores with loans that were originated with the old credit score, studies, such as Hand and Adams (2014), show that a component of the newer credit score's improved accuracy is an artifact of the biased testing sample.[18] Although the amount of bias may be small, the bias makes the new credit score appear more accurate than the old credit score. Therefore a new score is not as accurate as the old score if the new score tests only as accurate as the old score. With expectations that the accuracy results for newer credit score models prove stronger than those for the older credit score model, the standard that a new credit score be more accurate than the existing credit score could be a reasonable minimum standard.

One drawback to requiring as the standard for accuracy that the new score perform *better than* the old score is that it does not provide a standard for assessing the accuracy of the old score. Thus, this standard could effectively prevent an Enterprise from continuing to use an ''old'' score. For example, adoption and application of a ''must perform better than'' comparative standard could result in the Enterprises

[18] The Hand and Adam (2014) study is a simplified study in contrast to the complicated underwriting and purchase process at the Enterprises.

not validating and approving Classic FICO. This could have negative consequences. For example, an Enterprise may determine Classic FICO to be sufficient to meet the business needs of the Enterprise, such that costs and disruptions of changing to a new score are not justified. The champion-challenger approach could prevent the Enterprise from continuing to use Classic FICO in that situation.

To address concerns of a ''more accurate than'' comparative standard, FHFA has considered establishing a standard that any new score must perform ''as well as'' the old score to pass the Credit Score Assessment. Based on the bias described above, however, FHFA has concerns that such a standard may not be appropriate.

iii. Benchmark-Based Approach

To avoid the concerns of either the comparison-based approach or the champion-challenger approach, FHFA is also considering a third option, which would establish an absolute statistical standard and would require all scores to meet a benchmark. FHFA could either adopt the benchmark level as part of this rulemaking or FHFA could determine the benchmark level and publish it through an order issued in conjunction with any notice to an Enterprise at the time of opening a solicitation period. Based on credit score model testing undertaken for the Conservatorship Scorecard project, FHFA believes an appropriate statistical standard would be to define a test statistic (K–S, Gini, or equivalent) as the threshold. All complete applications would be tested for accuracy and the results compared to the threshold test statistic. FHFA also recognizes that other statistical measures could be supported, and for that reason considered whether a K–S range would be another option for measuring accuracy. In this case, however, establishing a range would present the same issues as selecting a single threshold because the lowest end of the range would operate as the binding accuracy measure.

This approach would permit all scores under consideration, and any score then in use, to be measured against the same benchmark. Both a score then in use and any new score being considered could pass or fail the benchmark. Defining a specific regulatory benchmark could present other issues, however. For example, if a specific benchmark is known in advance, applicants or testers could engineer scores or testing methods to meet it. In addition, requiring that a score meet a regulatory benchmark may excessively value that consideration (*i.e.,* accuracy) among other considerations for which there are not regulatory benchmarks.

iv. Transitional Approach

FHFA is also considering a transitional approach, whereby one standard for accuracy would be applied for purposes of the first Credit Score Assessment undertaken by an Enterprise, and another standard applied for subsequent Assessments in response to a future solicitation. This approach would apply the same standard to all applications received in response to the initial solicitation in addition to the existing credit score model currently in use. This could permit an Enterprise to validate and approve Classic FICO pending a determination on any other applications received by the Enterprise. This may be necessary to meet statutory timeframes for an Enterprise to be using a validated and approved credit score model.

Under this approach, FHFA would permit an Enterprise to validate and approve the score currently in use while continuing to consider whether to validate and approve other scores for which it received applications in response to the same Credit Score Solicitation. If, shortly after validating and approving the score currently in use, an Enterprise validated and approved another score, section 310 would permit the Enterprise to replace the first validated and approved score with any other validated and approved score.

If a transitional approach is adopted, FHFA is considering a method for determining accuracy for the initial Credit Score Assessment that could be applied to all ''new'' credit scores and the credit score currently in use (Classic FICO). Because of issues that arise with a champion-challenger approach as applied to a score currently in use, FHFA anticipates that the transitional approach would entail either a benchmark-based approach (meaning, selection of a statistical benchmark that all scores, including the ''old'' score, must meet in order to pass the Credit Score Assessment) or a comparison-based approach. Further, if a transitional approach were adopted, FHFA would establish a standard for determining accuracy for subsequent Credit Score Solicitations in the same rulemaking. That standard could be any that is discussed above (*i.e.,* a comparison-based approach, champion-challenger approach, or a benchmark-based approach) or could be a different approach, taking into consideration comments received.

v. Request for Comment on Specific Options

As discussed above, FHFA sees value in and has concerns with each approach described. FHFA may adopt any of these options in the final rule or may revise any of the options after considering public comments.

If FHFA adopts a comparison-based approach, the final rule would include a requirement that an Enterprise evaluate accuracy based on a comparison of each credit score model to any other credit score model under consideration, including the model that produces the score currently in use by an Enterprise. This approach for assessing the accuracy of a new score is reflected in the proposed rule text set forth below. The comparison-based approach would not include a bright-line test regarding the outcome of the comparison.

If FHFA adopts a champion-challenger approach, the final rule would include a relative measure under which each model under consideration would be compared to the others, and would include a bright-line test regarding the outcome of the comparison.

If FHFA adopts a benchmark-based approach, the final rule would include a bright-line test that a credit score model, or the credit scores produced from it, must meet in order to pass the Credit Score Assessment. The final rule could either include an absolute statistical cutoff to which each model's accuracy test would be compared, or provide that the specific statistical cutoff would be established by FHFA order.

If FHFA adopts a transitional approach, the final rule would include one measure that a credit score model, or the credit scores produced from it, must meet in order to pass the initial Credit Score Assessment, and a different measure that must be met by later applicants in response to subsequent Credit Score Solicitations.

FHFA welcomes comment on all approaches and all standards described above, and in particular on whether there is a basis on which one should be preferred to others or another.

3. Reliability Standard

The proposed rule would establish a reliability standard that must be met as part of the Credit Score Assessment. Under the reliability standard, a credit score model is reliable if it produces credit scores that maintain accuracy through the economic cycle. The proposed rule would require that an Enterprise evaluate whether a new

credit score model produces credit scores that are at least as reliable as the credit scores produced by a credit score model that the Enterprise is then using, as demonstrated by appropriate testing. Delinquency rates increase and decrease over the economic cycle; however, the rank ordering ability of the credit score should remain over the cycle.

The proposed rule would require that the Enterprises test at least two sets of Enterprise loans to evaluate credit score reliability. The first group of loans would represent recently underwritten loans with sufficient performance history consistent with the definition of default. The second set of loans would be selected from a period earlier than the estimation data used to develop the new credit scores and at a point in the economic cycle different from the first loan group. The Enterprises would define the loan sets conditional on origination period (or acquisition period) and include all single-family loans within the specified periods.

The proposed rule would ensure that new credit score models are not ''over-fitted'' to recent loan quality and borrower credit behavior. ''Over-fitting'' is a characterization of a model where the model predicts exceptionally well on the two years of credit records used to estimate the model, yet predicts poorly outside of those two years. Testing credit score accuracy at a minimum of two points in the economic cycle should also ensure the credit score models retain the ability to rank order credit risk over the economic cycle.

4. Integrity Standard

The proposed rule would establish a standard for integrity that must be met as part of the Credit Score Assessment. Under the integrity standard, a credit score model has integrity if, when producing a credit score, it uses relevant data observed by the developer that reasonably encompasses the borrower's credit history and financial performance. To be validated, a credit score model applicant would be required to demonstrate to the Enterprise that the model has integrity, based on appropriate evaluations or requirements identified by the Enterprise (which may address, for example, the level of aggregation of data or observable data that may not be omitted or discounted when constructing a credit score).

The proposed integrity standard would be evaluated subjectively, but consistently, in the Credit Score Assessment. The goal of the standard is to ensure that the credit score model developer utilized available data elements that are relevant and legally permissible. Today, the most common credit score models are developed on consumer credit files owned by the nationwide CRAs. In the future, credit score model developers may use consumer credit information outside of the CRAs or the CRAs may expand the breadth of consumer credit information collected. Improvements in the range of consumer information available to credit score model developers may improve credit score accuracy. The proposed integrity standard is designed to encourage credit score model developers to innovate.

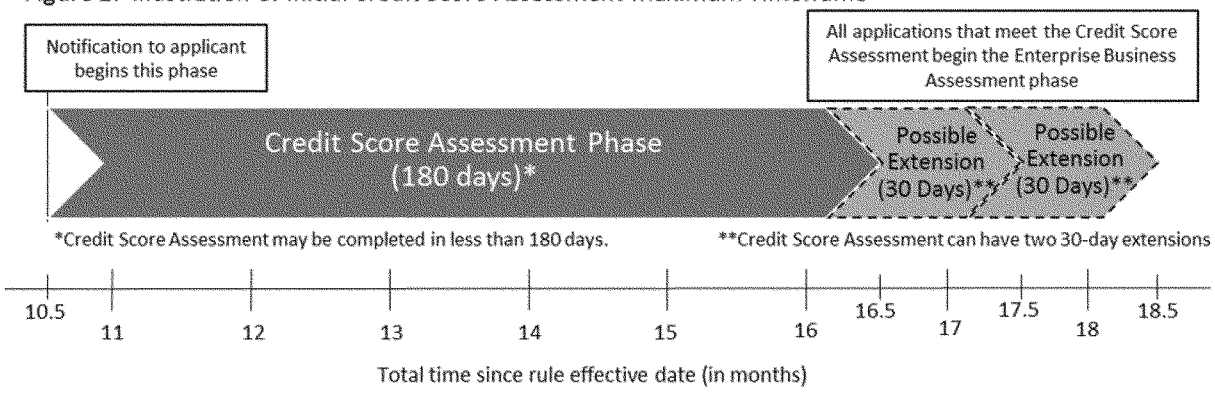
5. Additional Enterprise Standards and Criteria

The proposed rule would permit the Enterprises to establish additional requirements for the Credit Score Assessment. The Enterprise would be required to include any additional requirements in its Credit Score Solicitation, and those requirements would be subject to FHFA review and approval as discussed above.

6. Timing and Notices

The proposed rule would require an Enterprise to provide a notice to each applicant that has submitted a complete application of when an Enterprise will commence the Credit Score Assessment phase. For reasons discussed previously, an Enterprise would have the flexibility to assess applications as they are completed or to assess all applications once an Enterprise has made a determination on complete applications submitted during the solicitation period. The proposed rule would provide that the Credit Score Assessment phase could begin no earlier than the close of the solicitation time period. The proposed rule would require the Credit Score Assessment period to extend for 180 days. The proposed rule would permit the Director to authorize not more than two extensions of the Credit Score Assessment period that shall not exceed 30 days each, upon a written request and showing of good cause by an Enterprise in accordance with section 310. The timeframes for the Credit Score Assessment are illustrated in Figure 2.

Figure 2: Illustration of Initial Credit Score Assessment Maximum Timeframe



The proposed rule would require that a Credit Score Assessment determination notice be provided to the applicant indicating whether the applicant's score meets the criteria of the Credit Score Assessment no later than 270 days from the beginning of the Credit Score Assessment. The proposed rule would require that this notification be provided no later than 30 days after the Enterprise makes a determination. If an applicant does not pass the Credit Score Assessment, the notice must include a description of the reason(s) why the applicant did not pass the Credit Score Assessment.

E. Enterprise Business Assessment

1. Overview

The proposed rule would require Fannie Mae and Freddie Mac to undertake an Enterprise Business Assessment of each credit score model that the Enterprise determines has met the Credit Score Assessment. The proposed Enterprise Business Assessment would be broader than the Credit Score Assessment. The Enterprise Business Assessment would include an evaluation in at least five areas: (1) An assessment of the accuracy and reliability of credit scores within the Enterprise underwriting and other systems; (2) an assessment of possible fair lending impacts; (3) an assessment of potential impacts on Enterprise operations and risk management, and impact on industry; (4) an assessment of possible competitive effects from using a particular credit score model; (5) an assessment of the credit score model provider as a potential third-party vendor; and (6) any other Enterprise standards and criteria. The proposed rule would allow each Enterprise to include, subject to FHFA review and approval, any additional assessment necessary to make a business case decision. The considerations in the Enterprise Business Assessment would not be new to the Enterprises and are generally part of the current course of business for the Enterprises.

In addition to the minimum requirements of accuracy, reliability, and integrity, section 310 requires that a credit score model must be ''consistent with the safe and sound operation of the [Enterprise]'' in order for an Enterprise to validate and approve the model. Several assessment criteria relate to Enterprise safety and soundness, and the use of a credit score model in the Enterprise systems. Because the Enterprises operate different systems, different business models, and different credit tolerances, the Enterprise Business Assessment would allow each Enterprise to assess credit scores based on its specific business needs.

2. Assessment of Credit Scores With Enterprise Proprietary Systems

The proposed rule would require an Enterprise to include an assessment of the accuracy and reliability of the credit score when used within its systems that use credit scores. An Enterprise Business Assessment would not consider a credit score's integrity, because the integrity of a score would be established in the Credit Score Assessment phase and would not change by use in an Enterprise's systems.

The assessment of accuracy and reliability would include statistical testing that would be similar to the tests used in the Credit Score Assessment. However, instead of testing the performance of a credit score model independent of Enterprise systems based on its ability to rank-order applicants, an Enterprise Business Assessment would consider the performance of a credit score model when used in the Enterprise systems that use credit scores, for example as a purchase threshold or as an input to the Enterprise's underwriting systems.

3. Fair Lending Assessment

The proposed rule would require each Enterprise to evaluate the fair lending risk and the fair lending impact of the credit score model in accordance with standards and requirements related to the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)), the Fair Housing Act (42 U.S.C. 3605(a)), and the Safety and Soundness Act (12 U.S.C. 4545(1)) (including identification of potential impact, comparison of the new credit score model with any credit score model currently in use, and consideration of potential methods of using the new credit score model) as part of the Enterprise Business Assessment. The Enterprises currently conduct fair lending analyses when making credit policy changes. FHFA requests comment on whether the fair lending assessment should go beyond traditional fair lending risk and compliance testing to consider, in addition, whether the credit score model has the potential to promote access to mortgage credit for creditworthy applicants across all protected classifications. FHFA requests comment on how any such additional analysis under the Enterprise Business Assessment should be defined or conducted.

4. Assessment of Impact on Enterprise Operations and Risk Management, and Impact on Industry

The proposed rule would require the Enterprise Business Assessment to consider operational impacts to the Enterprises, such as implementation timing, and potential impacts on Enterprise risk management. The Enterprise Business Assessment also would consider potential impacts across the entire mortgage industry of an updated credit score model or models.

In response to the RFI, many market participants indicated that updating to the newest version of FICO would be less operationally complex than updating systems to handle multiple models. Respondents were concerned about impacts to liquidity in the secondary markets if the Enterprises permitted lenders to submit either credit score. Maintaining a single score requirement yet updating the credit score would initiate a series of changes and adoption costs throughout the mortgage industry. Lenders would have to update loan-pricing models and any lender overlays, while mortgage insurers would have to update and submit their premium rate sheets to state insurance regulators for approval. Mortgage Backed Securities (MBS) and Credit Risk Transfer (CRT) investors would have to re-estimate mortgage performance and valuation models. In light of these responses to the RFI, the proposed rule would require an Enterprise to consider impacts of a new credit score model or models and the impacts that updating may have on the entire mortgage finance industry.

The proposed rule also would require the Enterprise Business Assessment to include consideration of potential impacts on eligibility criteria and Enterprise pricing for loan purchases as part of any assessment. The Enterprise Business Assessment also would require each Enterprise to evaluate other possible impacts of a new credit score model. For example, the Enterprises currently use credit score thresholds as eligibility criteria for certain loan purchases. Similarly, the Enterprises currently establish loan delivery fees for loans based on the original credit score and LTV ratio. Switching to a new credit score model could require an Enterprise to adjust its eligibility criteria and loan pricing such that credit risk on new business is unchanged. Changing a credit score model could require updating credit score thresholds in order to maintain Enterprise credit risk tolerances.

The proposed rule would address these business considerations in terms of the impact, benefits, and costs of adopting or changing a credit score model on market participants, market liquidity, and the cost and availability of credit. FHFA believes these are important considerations, as the cost and other impacts of changing a credit score model could be significant. Likewise, FHFA recognizes that it may be difficult to quantify the benefits to borrowers in terms of the cost and availability of credit. FHFA requests comments on these considerations, including whether there are impacts, costs, or benefits that the Enterprises should specifically consider, and whether the impacted parties or areas—market participants (including borrowers, lenders, investors, and the Enterprises), market liquidity, and

availability of credit—are appropriate or should be supplemented.

5. Competitive Effects

The Enterprise Business Assessment must evaluate whether using the credit score model could have an impact on competition in the industry. This evaluation must consider whether use of a particular credit score model could have an impact on competition due to any ownership or other business relationship between the credit score model developer and any other institution.

6. Third-Party Vendor Review

The proposed rule would require the Enterprise Business Assessment to include a comprehensive vendor review for all applicants. FHFA expects an Enterprise, as part of its oversight of third-party vendors, to maintain a third-party vendor risk management program that assesses and manages risks associated with third-party vendor relationships. The Enterprise Business Assessment would address any financial, operational, compliance, legal, and reputational risks associated with the third party. The third-party vendor review in an Enterprise Business Assessment would evaluate the third party under any policies, procedures, and internal standards of the Enterprise, consistent with any Advisory Bulletins in effect at the time the Enterprise submits its Credit Score Solicitation to FHFA for approval. The Enterprise must follow its policies and procedures for approval and management of vendors and other third-party service providers.[19]

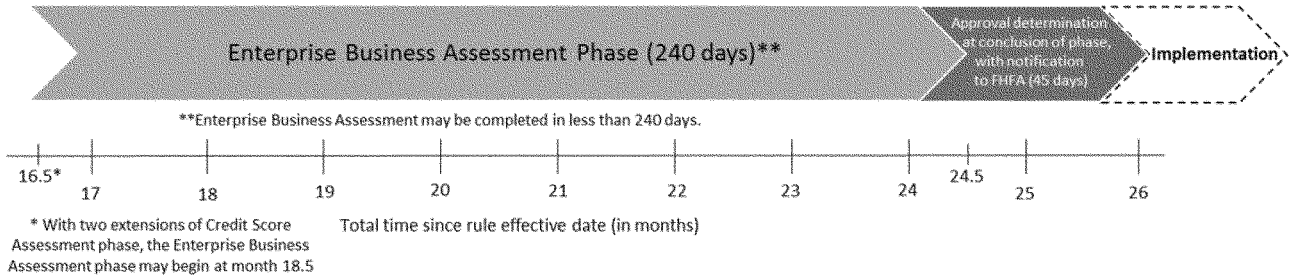
7. Enterprise Standards and Criteria

The proposed rule would permit the Enterprises to establish additional requirements for the Enterprise Business Assessment. The Enterprise would be required to include any additional requirements in its Credit Score Solicitation, and those requirements would be subject to FHFA review and approval as discussed above.

8. Timing and Notices

The proposed rule would require that an Enterprise complete the Enterprise Business Assessment within 240 days as depicted in Figure 3. Section 310 does not address a timeframe for industry adoption of a new credit score model. Based on feedback from the Credit Score RFI, which indicated that it will take the industry approximately 18–24 months to adopt a new credit score model, the proposed rule would require an Enterprise to provide notice to the industry about expected timing of changing any credit score model requirements. Whether multiple credit score models are approved for use may impact the implementation timing required by an Enterprise. The timeframes for the Enterprise Business Assessment are illustrated in Figure 3.

Figure 3: Illustration of Initial Enterprise Business Assessment Maximum Timeframe



9. Enterprise Business Assessment Approval Determination

The proposed rule would require that if an Enterprise made an approval determination at the end of the Enterprise Business Assessment, the Enterprise would have to implement each credit score model that it approves in its mortgage purchase systems that use a credit score. As discussed above, the proposed rule does not address how approved scores will be implemented (*e.g.,* waterfall approach or require all approved credit scores for every loan). FHFA expects that the Enterprise would develop a plan to update their requirements of approved score(s) in a timely manner taking into account the timeframes necessary for any system updates and industry concerns on adequate time for implementation in an orderly fashion.

F. Enterprise Actions on Applications

1. Overview

The proposed rule would require an Enterprise to make a determination on each application that it determines to be complete. An Enterprise could determine that an application should be approved or disapproved. The proposed rule would permit an applicant to withdraw its application at any time during the validation and approval process.

2. Enterprise Determinations

The proposed rule would permit an Enterprise to approve an application after it completes the Enterprise Business Assessment.

The proposed rule would permit an Enterprise to disapprove an application at any point in the validation and approval process. An application could be disapproved based on any of the criteria identified in the Credit Score Solicitation, including any of the application requirements (for example, if an application did not include a required certification) or any of the criteria under the Credit Score Assessment or the Enterprise Business Assessment. If an Enterprise determines that an application should be disapproved, the proposed rule would require an Enterprise to provide the applicant with a notice of disapproval no later than 30 days after a determination is made. If an Enterprise disapproves an application, the Enterprise would be required to provide a description of the reason(s) for disapproval, as provided in section 310. If an application is approved, the Enterprise would be required to make its approval determination public.

3. FHFA Review of Enterprise Determination

The proposed rule would require an Enterprise to provide notice to FHFA

[19] *See* 12 CFR part 1236 (Prudential Management and Operations Standards); Advisory Bulletin 2018–08, ''Oversight of Third-Party Provider Relationships,'' Sept. 28, 2018.

once an Enterprise has made a decision to approve or disapprove an application at least 45 calendar days prior to notifying the applicant and/or the public. This 45-day notice would be required for any decision to approve or disapprove an application. In all cases, the proposed rule would require that FHFA be notified prior to an Enterprise notifying an applicant or the public of its decision. Prior notice to FHFA would ensure that FHFA has had an opportunity to determine how to handle future changes, updates to, or replacement of, any credit score model(s). Prior notice would permit FHFA to take any steps appropriate in FHFA's capacity as conservator or as safety and soundness regulator of the Enterprises. FHFA's review of the Enterprise determinations would be consistent with FHFA's expectations that all Enterprise initiatives be conducted in a safe and sound manner.

4. Withdrawal of Application

The proposed rule would permit an applicant to withdraw its application at any time by notifying the Enterprise. This would allow an applicant to terminate the evaluation process for any reason after providing notice to the Enterprise. However, because an Enterprise may have already devoted considerable resources to the evaluation of the application, the proposed rule would not require the Enterprise to return any application fee paid by the applicant. In appropriate circumstances, an Enterprise may determine that some portion of the application fee should be refunded to the applicant or used to offset the application fee if the applicant submits a new application. However, any decision to return a portion of an application fee or apply it toward a new application would be in the sole discretion of the Enterprise.

G. Pilot Programs

1. Overview

The proposed rule would allow FHFA to approve pilot programs for the use of credit scores. Section 310 does not address pilot programs explicitly but requires that the Enterprises use a validated and approved score model in all automated underwriting systems that use a credit score and in any other mortgage purchase procedures and systems that use a credit score. It also requires that if an Enterprise conditions the purchase of mortgages on a credit score, the credit score model must be validated and approved. In addition, section 310 requires that a credit score model have a historical record of measuring and predicting default rates and other credit behaviors.

One way to gain performance history is to allow an Enterprise to collect an application from model developers and make a business assessment for the use of credit score(s) for pilot programs. If an applicant's credit score lacks usage by industry to underwrite consumer credit, it may be approved initially for a pilot program only.

The proposed rule is seeking feedback on whether an Enterprise should conduct a pilot with a new credit score model, and on how such pilots should be addressed under the regulation. For example, a pilot may be useful in augmenting the Enterprise no-score AUS. While both Enterprises have the capability to review loans that lack credit scores, the addition of a ''supplemental'' score could enhance the no-score AUS.

A pilot may also assist an Enterprise in determining the appropriate standards and criteria for the Credit Score Solicitation, including the requirements for the application. In order to test various standards and criteria for the Credit Score Solicitation, the pilot or testing initiative would itself need to be exempt from the requirements of this regulation.

Any pilot needs to be of limited duration and of limited scope. In addition, the proposed rule would require a pilot to be reviewed and approved by FHFA, which may also require changes to the program. FHFA is seeking comment on all aspects of the proposed approach on credit score pilot programs.

V. Paperwork Reduction Act

The proposed rule would not contain any information collection requirement that would require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to OMB for review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1254

Mortgages.

Authority and Issuance

For the reasons stated in Preamble, under the authority of 12 U.S.C. 4511, 4513, 4526 and Public Law 115–174, section 310, 132 Stat. 1296, FHFA proposes to amend subchapter C of Chapter XII of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER C—ENTERPRISES

■ 1. Add part 1254 to subchapter C to read as follows:

PART 1254—VALIDATION AND APPROVAL OF CREDIT SCORE MODELS

Sec.

Authority: 12 U.S.C. 4511, 4513, 4526 and Sec. 310, Pub. L. 115–174, 132 Stat. 1296.

§ 1254.1 Purpose and Scope.

(a) The purpose of this part is to set forth standards and criteria for the process an Enterprise must establish to validate and approve any credit score model that produces any credit score that the Enterprise requires in its mortgage purchase procedures and systems.

(b) The validation and approval process for a credit score model includes the following phases: Solicitation of applications, submission of applications, Credit Score Assessment, and Enterprise Business Assessment.

§ 1254.2 Definitions.

For purposes of this part, the following definitions apply. Definitions of other terms may be found in 12 CFR part 1201, General Definitions Applying

to All Federal Housing Finance Agency Regulations:

Credit score means a numerical value or a categorization created by a third party derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default.

Credit score model means a statistical tool or algorithm created by a third party used to produce a numerical value or categorization to predict the likelihood of certain credit behaviors.

Credit score model developer means any person with ownership rights in the intellectual property of a credit score model.

Days means calendar days.

Mortgage means a residential mortgage as that term is defined at 12 U.S.C. 1451(h).

Nationwide consumer reporting agency means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined in section 603 of the Fair Credit Reporting Act (15 U.S.C. 1681a).

Person means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, organization, or other legal entity.

§ 1254.3 Computation of time.

For purposes of this part, each time period begins on the day after the relevant event occurs *(e.g.* the day after a submission is made) and continues through the last day of the relevant period. When the last day is a Saturday, Sunday or federal holiday, the period runs until the end of the next business day.

§ 1254.4 Requirements for use of a credit score.

(a) *Enterprise use of a credit score.* An Enterprise is not required to use a credit score for any business purpose. However, if an Enterprise conditions its purchase of a mortgage on the provision of a credit score for the borrower, the Enterprise must:

(1) Require that the credit score be derived from a credit score model that has been approved by the Enterprise in accordance with this part; and

(2) Provide for the use of the credit score by any automated underwriting system that uses a credit score and any other procedures and systems used by the Enterprise that use a credit score for mortgage purchases.

(b) *Replacement of credit score model.* An Enterprise may at its discretion continue to use or replace any credit score model then in use after a new credit score model has been approved in accordance with this part.

(c) *No right to continuing use.* Enterprise use of a particular credit score model does not create any right to or expectation of continuing, future, or permanent use of that credit score model by an Enterprise.

§ 1254.5 Solicitation of applications.

(a) *Required solicitations.* FHFA periodically will require the Enterprises to solicit applications from credit score model developers. FHFA will require solicitation to occur at least every seven (7) years, unless FHFA determines that a solicitation should occur more or less frequently. FHFA will establish the solicitation requirement by notice to the Enterprises, which will include:

(1) A requirement to submit a Credit Score Solicitation to FHFA for review;

(2) A deadline for submission of the Credit Score Solicitation; and

(3) A timeframe for the solicitation period.

(b) *Credit Score Solicitation.* In connection with each required solicitation, an Enterprise must submit to FHFA a Credit Score Solicitation including:

(1) The opening and closing dates of the solicitation time period during which the Enterprise will accept applications from credit score model developers;

(2) A description of the information that must be submitted with an application;

(3) A description of the process by which the Enterprise will obtain data for the assessment of the credit score model;

(4) A description of the process for the Credit Score Assessment and the Enterprise Business Assessment; and

(5) Any other requirements as determined by an Enterprise.

(c) *Review by FHFA.* Within 45 days of an Enterprise submission of its Credit Score Solicitation to FHFA, FHFA will either approve or disapprove the Enterprise's Credit Score Solicitation. FHFA may extend the time period for its review as needed. FHFA may impose such terms, conditions, or limitations on the approval of a Credit Score Solicitation as FHFA determines to be appropriate.

(d) *Publication.* Upon approval by FHFA, the Enterprise must publish the Credit Score Solicitation on its website for at least 90 days prior to the start of the solicitation time period.

(e) *Initial solicitation.* Each Enterprise must submit its initial Credit Score Solicitation to FHFA within 60 days of the effective date of this regulation. The initial solicitation time period will begin on a date determined by FHFA and will extend for 120 days.

§ 1254.6 Submission of applications.

(a) *Application requirements.* Each application submitted in response to a Credit Score Solicitation must meet the requirements set forth in the Credit Score Solicitation to which it responds. Each application must include the following elements, and any additional requirements that may be set forth in the Credit Score Solicitation:

(1) *Application fee.* Each application must include an application fee established by the Enterprise. An Enterprise may address conditions for refunding a portion of a fee in the Credit Score Solicitation. The application fee is intended to cover the direct costs to the Enterprise of conducting the Credit Score Assessment.

(2) *Fair lending compliance and certification.* Each application must address compliance of the credit score model and credit scores produced by it with federal fair lending requirements, including information on any fair lending testing and evaluation of the model conducted. Each application must include a certification that no characteristic that is based directly on or is highly correlated solely with a classification prohibited under the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)), the Fair Housing Act (42 U.S.C. 3605(a)), or the Safety and Soundness Act (12 U.S.C. 4545(1)) was used in the development of the credit score model or is used as a factor in the credit score model to produce credit scores.

(3) *Use of model by industry.* Each application must demonstrate use of the credit score by creditors to make a decision whether to extend credit to a prospective borrower. An Enterprise may address criteria for such demonstration in the Credit Score Solicitation. An Enterprise may permit such demonstration of use to include submission of testimonials by creditors (mortgage or nonmortgage) who use the applicant's score when making a determination to approve the extension of credit.

(4) *Conflict of interest certification and qualification of credit score model developer.* Each application must include a certification that no owner of consumer data necessary to construct the credit score model is related to the credit score model developer through any degree of common ownership or control. Each application must also include any information that an Enterprise may require to evaluate the credit score model developer (*i.e.,* relevant experience and financial

capacity). Such information must include a detailed description of the credit score model developer's:

(i) Corporate structure, including any business relationship to any other person through any degree of common ownership or control;

(ii) Governance structure; and

(iii) Past financial performance, including audited financial statements for the preceding three years.

(5) *Other requirements.* Each application must include any other information an Enterprise may require.

(b) *Historical consumer credit data.* An Enterprise may obtain any historical consumer credit data necessary for the Enterprise to test a credit score model's historical record of measuring and predicting default rates and other credit behaviors. An Enterprise may assess the applicant for any costs associated with obtaining or receiving such data unless such costs were included in the up-front application fee.

(c) *Acceptance of applications.* Each application submitted in response to a Credit Score Solicitation within the solicitation time period must be reviewed for acceptance by the Enterprise.

(1) *Notice of status.* Within 60 days of an applicant's submission, the Enterprise must provide an applicant with an Application Status Notice, which will indicate whether the application requires additional information to be provided by the applicant. An applicant may submit additional information through the end of the solicitation period.

(2) *Complete application.* Completeness of an application will be determined by the Enterprise. An application is complete when an Enterprise determines that required information has been received by the Enterprise from the applicant and from any third party. Information from a third party for a specific application may be received by the Enterprise after the solicitation period closes. The Enterprise must notify the applicant upon determining that the application is complete with a Complete Application Notice.

§ 1254.7 Credit Score Assessment.

(a) *Requirement for Credit Score Assessment.* An Enterprise will undertake a Credit Score Assessment of each application that the Enterprise determines to be complete. An Enterprise must determine whether an application passes the Credit Score Assessment.

(b) *Criteria for Credit Score Assessment.* The Credit Score Assessment is based on the following criteria:

(1) *Testing for accuracy.* A credit score model is accurate if it produces a credit score that appropriately reflects a borrower's propensity to repay a mortgage loan in accordance with its terms, permitting a credit score user to rank order the risk that the borrower will not repay the obligation in accordance with its terms relative to other borrowers. The Credit Score Assessment must evaluate whether a new credit score model produces credit scores that are more accurate than the credit scores produced by any credit score model that the Enterprise is then using, as demonstrated by appropriate testing. Testing is appropriate if it utilizes one or more industry standard statistical tests for demonstrating divergence among borrowers' propensity to repay, applied to mortgages purchased by an Enterprise (including subgroups), as identified by the Enterprise.

(2) *Testing for reliability.* A credit score model is reliable if it produces credit scores that maintain accuracy through the economic cycle. The Credit Score Assessment must evaluate whether a new credit score model produces credit scores that are at least as reliable as the credit scores produced by any credit score model that the Enterprise is then using, as demonstrated by appropriate testing. Testing is appropriate if it utilizes one or more industry standard statistical tests for demonstrating accuracy using the industry standard definition of default, and demonstrates accuracy at a minimum of two points in the economic cycle when applied to mortgages purchased by an Enterprise (including subgroups), as identified by the Enterprise.

(3) *Testing for integrity.* A credit score model has integrity if, when producing a credit score, it uses relevant data that reasonably encompasses the borrower's credit history and financial performance. The Credit Score Assessment must evaluate whether a credit score model applicant has demonstrated that the model has integrity, based on appropriate testing or requirements identified by the Enterprise (which may address, for example, the level of aggregation of data or whether observable data has been omitted or discounted when producing a credit score).

(4) *Other requirements.* An Enterprise may establish requirements for the Credit Score Assessment in addition to the criteria established by FHFA.

(c) *Third-party testing.* Testing required for the Credit Score Assessment may be conducted by:

(1) An Enterprise; or

(2) An independent third party selected or approved by an Enterprise.

(d) *Timing of Credit Score Assessment.* (1) An Enterprise must notify the applicant when the Enterprise begins the Credit Score Assessment. The Credit Score Assessment will begin no earlier than the close of the solicitation time period and will extend for 180 days. FHFA may authorize not more than two extensions of time for the Credit Score Assessment, which shall not exceed 30 days each, upon a written request and showing of good cause by the Enterprise.

(2) The Enterprise must provide notice to the applicant within 30 days of the determination of whether the application has passed the Credit Score Assessment.

§ 1254.8 Enterprise Business Assessment.

(a) *Requirement for Enterprise Business Assessment.* An Enterprise will undertake an Enterprise Business Assessment of each application that the Enterprise determines to have passed the Credit Score Assessment. An Enterprise must determine whether an application passes the Enterprise Business Assessment.

(b) *Criteria for Enterprise Business Assessment.* The Enterprise Business Assessment is based on the following criteria:

(1) *Accuracy; reliability.* The Enterprise Business Assessment must evaluate whether a new credit score model produces credit scores that are more accurate than and at least as reliable as credit scores produced by any credit score model currently in use by the Enterprise. This evaluation must consider credit scores as used by the Enterprise within its systems or processes that use a credit score for mortgage purchases.

(2) *Fair lending assessment.* The Enterprise Business Assessment must evaluate the fair lending risk and fair lending impact of the credit score model in accordance with standards and requirements related to the Equal Credit Opportunity Act (15 U.S.C. 1691(a)(1)), the Fair Housing Act (42 U.S.C. 3605(a)), and the Safety and Soundness Act (12 U.S.C. 4545(1)) (including identification of potential impact, comparison of the new credit score model with any credit score model currently in use, and consideration of potential methods of using the new credit score model). This evaluation must consider credit scores as used by the Enterprise within its systems or

processes that use a credit score for mortgage purchases.

(3) *Impact on Enterprise operations and risk management, and impact on industry.* The Enterprise Business Assessment must evaluate the impact using the credit score model would have on Enterprise operations (including any impact on purchase eligibility criteria and loan pricing) and risk management (including counterparty risk management) in accordance with standards and requirements related to prudential management and operations and governance set forth at parts 1236 and 1239 of this chapter. This evaluation must consider whether the benefits of using credit scores produced by that model can reasonably be expected to exceed the adoption and ongoing costs of using such credit scores, considering projected benefits and costs to the Enterprises. The Enterprise Business Assessment must evaluate the impact of using the credit score model on industry operations and mortgage market liquidity, including costs associated with implementation of a newly approved credit score. This evaluation must consider whether the benefits of using credit scores produced by that model can reasonably be expected to exceed the adoption and ongoing costs of using such credit scores, considering projected benefits and costs to the Enterprises and borrowers, including market liquidity and cost and availability of credit.

(4) *Competitive effects.* The Enterprise Business Assessment must evaluate whether using the credit score model could have an impact on competition in the industry. This evaluation must consider whether use of a credit score model could have an impact on competition due to any ownership or other business relationship between the credit score model developer and any other institution.

(5) *Third-Party Vendor Review.* The Enterprise Business Assessment must evaluate the credit score model developer under the Enterprise standards for approval of third-party service providers.

(6) *Other requirements.* An Enterprise may establish requirements for the Enterprise Business Assessment in addition to the criteria established by FHFA.

(c) *Timing of Enterprise Business Assessment.* The Enterprise Business Assessment must be completed within 240 days.

(d) *Enterprise Business Assessment Determination.* If an Enterprise approves an application for a credit score model, the Enterprise must implement the credit score model in its mortgage purchase systems that use a credit score for mortgage purchases.

§ 1254.9 Enterprise actions on applications.

(a) *Types of actions.* An Enterprise must approve or disapprove each application.

(b) *Approval of a credit score model.* An Enterprise may approve an application upon completion of the Enterprise Business Assessment. An Enterprise must notify the applicant and the public of the approval of an application.

(c) *Disapproval of a credit score model.* An Enterprise may disapprove an application at any time during the validation and approval process based on any of the criteria identified in the Credit Score Solicitation. If an Enterprise disapproves an application at any time, the Enterprise must provide written notice to the applicant within 30 days of the disapproval determination, and the notice must provide a description of the reasons for disapproval.

(d) *Prior notice to FHFA.* An Enterprise must notify FHFA of any decision to approve or disapprove an application at least 45 days prior to an Enterprise's notification to an applicant or the public of its decision.

§ 1254.10 Withdrawal of application.

At any time during the validation and approval process, an applicant may withdraw its application by notifying an Enterprise. The Enterprise may, in its sole discretion, determine whether to return any portion of the application fee paid by the applicant.

§ 1254.11 Pilots.

(a) *Pilots permitted.* An Enterprise may undertake pilots or testing initiatives for a credit score model. If a pilot or testing initiative involves the use of a credit score model not in current use by the Enterprises, that credit score model is not required to be approved under this part.

(b) *Prior notice to FHFA.* Before commencing a pilot or testing initiative, an Enterprise must submit the pilot or testing initiative to FHFA for review and approval. The Enterprise's submission must include a complete and specific description of the pilot or testing initiative, including its purpose. FHFA may impose such terms, conditions, or limitations on the pilot or testing initiative as FHFA determines to be appropriate.

Dated: December 12, 2018.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2018–27565 Filed 12–20–18; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1046; Product Identifier 2018–CE–049–AD]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) Model PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181, PA–28–235, PA–28R–180, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–32–260, and PA–32–300 airplanes. This proposed AD was prompted by a report of a fatigue crack found in a visually inaccessible area of the lower main wing spar cap. This proposed AD would require calculating the factored service hours for each main wing spar to determine when an inspection is required, inspecting the lower main wing spar bolt holes for cracks, and replacing any cracked main wing spar. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 4, 2019.

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

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

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–2018–1046; 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 listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5548; fax: (404) 474–5605; email: *william.mccully@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–2018–1046; Product Identifier 2018–CE–049–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

We received a report of a fatigue crack found in the lower main wing spar cap on a Piper Model PA–28R–201 airplane. An investigation revealed that repeated high-load operating conditions accelerated the fatigue crack growth in the lower main wing spar cap. In addition, because of the structural configuration of the wing assembly, the cracked area was inaccessible for a visual inspection. Model PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181, PA–28–235, PA–28R–180, PA–28R–200, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–32–260, and PA–32–300 airplanes have similar wing spar structures as the Model PA–28R–201.

Airplanes used in training and other high-load environments are typically operated for hire and have inspection programs that require 100-hour inspections. We determined the number of 100-hour inspections an airplane has undergone is the best indicator of the airplane's usage history. Using the criteria in FAA Advisory Circular AC 23–13A, ''Fatigue, Fail-Safe, and Damage Tolerance Evaluation of Metallic Structure for Normal, Utility, Acrobatic, and Commuter Category Airplanes,'' which you can find at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/MainFrame?OpenFrameset,* we developed a factored service hours formula based on the number of 100-hour inspections completed on the airplane. A review of the airplane maintenance records to determine the airplane's usage and the application of the factored service hours formula will identify when an airplane meets the criteria for the proposed eddy current inspection of the lower main wing spar bolt holes.

Only an airplane with a main wing spar that has a factored service life of 5,000 hours, has had either main wing spar replaced with a serviceable main wing spar (more than zero hours TIS), or has airplane maintenance records that are missing or incomplete, must have the eddy current inspection.

This condition, if not addressed, could result in the wing separating from the fuselage in flight.

Related Service Information

We reviewed Piper Aircraft Corporation Service Bulletin No. 886, dated June 8, 1988, and The New Piper Aircraft, Inc. Service Bulletin No. 978A, dated August 6, 1999. These service bulletins contain procedures for determining initial and repetitive inspection times based on the aircraft's usage and visually inspecting the wing lower spar caps and the upper wing skin adjacent to the fuselage and forward of each main spar for cracks. We also reviewed Piper Aircraft Corporation Service Letter No. 997, dated May 14, 1987. This service letter contains procedures for replacing airplane wings.

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 reviewing the airplane maintenance records to determine the number of 100-hour inspections completed on each installed main wing spar and using the number of 100-hour inspections to calculate the factored service hours for each main wing spar. This proposed AD would also require inspecting the lower main wing spar bolt holes for cracks once a main wing spar exceeds the specified factored service hours and replacing any main wing spar when a crack is indicated. This proposed AD would only apply when an airplane has either accumulated 5,000 or more hours time-in-service (TIS); has had either main wing spar replaced with a serviceable main wing spar (more than zero hours TIS); or has missing and/or incomplete maintenance records.

Interim Action

We consider this proposed AD interim action. The inspection reports will provide us additional data for determining the cause of the cracking. After analyzing the data, we may take further rulemaking action.

Costs of Compliance

We estimate that this proposed AD affects 19,696 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Review airplane maintenance records and calculate factored service hours.	2 work-hours × $85 per hour = $170	Not applicable	$170	$3,348,320

We estimate the following costs to do the eddy current inspection. Because some airplanes are only used non-commercially and will not accumulate the specified factored service hours in the life of the airplane, we have no way of determining the number of airplanes that might need this inspection:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect the lower main wing spar and replace the attach nuts and bolts.	1.5 work-hours × $85 per hour = $127.50 per wing spar.	$20	$147.50 per wing spar.
Report inspection results to the FAA	1 work-hour × $85 = $85	N/A	$85.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION REPLACEMENT COSTS

Action	Labor cost	Parts cost	Cost per product
Replace main wing spar	32 work-hours × $85 per hour = $2,720 per wing spar	$5,540	$8,260 per wing spar.

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 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 currently 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, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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

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):

Piper Aircraft, Inc.: Docket No. FAA–2018–1046; Product Identifier 2018–CE–049–AD.

(a) Comments Due Date

We must receive comments by February 4, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. airplanes, certificated in any category, with a model and serial number shown in Table 1 to paragraph (c) of this AD, and that meet at least one of the criteria in paragraphs (c)(1), (2), or (3) of this AD.

(1) Has accumulated 5,000 or more hours time-in-service (TIS); or

(2) Has had either main wing spar replaced with a serviceable main wing spar (more than zero hours TIS); or

(3) Has missing and/or incomplete maintenance records.

Table 1 to paragraph (c) of this AD

Model	Serial Numbers
PA-28-140	All serial numbers
PA-28-150	All serial numbers
PA-28-151	All serial numbers
PA-28-160	All serial numbers
PA-28-161	All serial numbers
PA-28-180	All serial numbers
PA-28-181	All serial numbers
PA-28-235	All serial numbers
PA-28R-180	All serial numbers
PA-28R-200	All serial numbers
PA-28R-201	All serial numbers except 2844029, 2844030, 2844081, 2844125, 2844135, 2844136, 28R-7737078, 28R-7737142, 28R-7837108, 28R-7837125, and 28R-7837257
PA-28R-201T	All serial numbers
PA-28RT-201	All serial numbers
PA-28RT-201T	All serial numbers
PA-32-260	All serial numbers
PA-32-300	Serial numbers 32-40000 through 32-7840202

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(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report of a fatigue crack found in a visually inaccessible area of the lower main wing spar cap. We are issuing this AD to detect and correct fatigue cracks in the lower main wing spar cap bolt holes. The unsafe condition, if not addressed, could result in the wing separating from the fuselage in flight.

(f) Compliance

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

(g) Review Airplane Maintenance Records and Calculate Factored Service Hours for Each Main Wing Spar

(1) Within 30 days after the effective date of this AD, review the airplane maintenance records and determine the number of 100-hour inspections completed on the airplane since new and any record of wing spar replacement(s).

(i) If a main wing spar has been replaced with a new (zero hour TIS) main wing spar, count the number of 100-hour inspections from the time of installation of the new main wing spar.

(ii) If either main wing spar has been replaced with a serviceable main wing spar (more than zero hours TIS) or the airplane maintenance records are missing or incomplete, the factored service hours cannot be determined. Perform the eddy current inspection as specified in paragraph (h) of this AD.

(2) Before further flight after completing the action in paragraph (g)(1) of this AD, calculate the factored service hours for each main wing spar using the following formula: $(N \times 100) + [T-(N \times 100)]/17$ = Factored Service Hours, where N is the number of 100-hour inspections and T is the total hours TIS of the airplane. Thereafter, after each annual inspection and 100-hour TIS inspection, recalculate the factored service hours for each main wing spar until the main wing spar has accumulated 5,000 or more factored service hours.

(3) *An example of determining factored service hours for an airplane with no 100-hour inspections is as follows:* The airplane maintenance records show that the airplane has a total of 12,100 hours TIS, and only annual inspections have been done. Both main wing spars are original factory installed. In this case, N = 0 and T = 12,100. Use those values in the formula as follows:

$(0 \times 100) + [12{,}100 - (0 \times 100)]/17 = 711$ factored service hours on each main wing spar.

(4) *An example of determining factored service hours for an airplane with both 100-hour and annual inspections is as follows:* The airplane was originally flown for personal use, then for training for a period of time, then returned to personal use. The airplane maintenance records show that the airplane has a total of 5,600 hours TIS, and nineteen 100-hour inspections have been done. Both main wing spars are original factory installed. In this case, N = 19 and T = 5,600. Use those values in the formula as follows: $(19 \times 100) + [5{,}600 - (19 \times 100)]/17 = (1{,}900 + 218) = 2{,}118$ factored service hours on each main wing spar.

(h) Eddy Current Inspect

Within the compliance time specified in paragraph (h)(1) or (2) of this AD, eddy current inspect the inner surface of each bolt hole on the lower main wing spar cap for cracks by using the procedure in appendix 1 of this AD.

(1) Within 100 hours TIS after complying with paragraph (g) of this AD or within 100 hours TIS after a main wing spar accumulates 5,000 factored service hours, whichever occurs later; or

(2) For airplanes with an unknown number of factored service hours on a main wing spar, within the next 100 hours TIS after the effective date of this AD or within 60 days after the effective date of this AD, whichever occurs later.

(i) Replace the Main Wing Spar

If a crack is found during an inspection required in paragraph (h) of this AD, before further flight, replace the main wing spar with a new (zero hours TIS) main wing spar or with a main wing spar that has been inspected as specified in appendix 1 of this AD and no cracks were found.

(j) Report Inspection Results

Within 30 days after completing an inspection required in paragraph (h) of this AD, using Appendix 2, ''Inspection Results Form,'' of this AD, report the inspection results to the FAA at the Atlanta ACO Branch. Submit the report to the FAA using the contact information found in appendix 2 of this AD.

(k) Special Flight Permit

A special flight permit may only be issued to operate the airplane to a location where the inspection requirement of paragraph (h) of this AD can be performed. This AD prohibits a special flight permit if the inspection reveals a crack in a main wing spar.

(l) 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 currently 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, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(m) 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 (n) 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.

(n) Related Information

For more information about this AD, contact Dan McCully, Aerospace Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5548; fax: (404) 474–5605; email: *william.mccully@faa.gov.*

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Appendix 1 to this AD

Eddy Current Inspection Procedure

A. Equipment

1. Equipment Requirements

(i) Equipment used must provide impedance plane diagrams.
(ii) Probes may be either absolute or differential coil configurations.
(iii) For manual bolt hole probing: use probe collars at an increment of every 1/64 inch to ensure the uniform depth of rotation and to aid in reducing lift-off effects.
(iv) Automated scanning systems may be used.
(v) Bolt hole probes must match as closely as possible, but not exceed, the bolt hole diameter. Split core probes may be expanded to a maximum of 0.050 inch beyond the probe's nominal diameter (in accordance with on the probe manufacturer's instructions). The fill factor must be 80 percent minimum.
(vi) A right angle (90 degree) surface probe may be used for further detail indication, if needed.

2. Equipment Examples

The following optional inspection equipment has been shown to be adequate to conduct this procedure and is provided as examples only. Other equipment meeting the requirements in A.1. may be used.

(i) Nortec 500D Series Portable Eddy Current Flaw Detector – Olympus
(ii) Bolt hole probe, 0.375 inch with 0.062 inch shielded coil – Olympus
(iii) Right angle (90 degree) surface probe with 0.062 inch shielded coil – Olympus
(iv) Calibration standard (NIST traceable) for bolt holes and surface: Air Force General Purpose Eddy Current Standard
(a) Bolt hole: 0.030 x 0.030 inch corner notch, 0.030 inch radial notch
(b) Surface: 2024-T3: 0.008, 0.020, and 0.040 inch depth EDM notches
(c) Frequency 300 KHz, EDM notch set at five (5) divisions screen height

B. Reference Standard

(1) Use a reference standard of the same conductivity 2024 T-3 within +/-15% IACs. It must have electrical discharge machining (EDM) notches for simulating defects as calibration references.
(2) The surface finish must be 63 RHR or better.
(3) The reference standard must have a corner notch size of 0.030 x 0.030 inch (screen set at minimum of three divisions vertical with a phase signal of between 45 and 120 degrees separation from the horizontal liftoff).
(4) Use a frequency between 100 and 500 kHz.

(5) The calibration must be checked in the beginning and end and every 30 minutes of inspections.

C. Personnel Qualifications

Personnel doing the eddy current inspection must have NAS 410 Level II or Level III certification.

D. Material Required

NOTE: Hardware part numbers and torque values are contained in the Aircraft Maintenance Manual and Illustrated Parts Catalogue for the specific airplane model.

For each wing inspected:

(1) Two (2) wing to spar attach bolts
(2) Two (2) wing to spar attach nuts
(3) Two (2) wing to spar attach washers
(4) Cleaning cloth
(5) Isopropyl alcohol or mineral spirits

E. Conduct Inspection

For each wing to be inspected:

(1) Locate the two (2) lower outboard main spar attach bolts, as shown in Figure 1 of Appendix 1, installed on the lower cap of the main spar, on the forward and aft sides of the spar web.

CAUTION: The interior surface of the bolts holes can be easily damaged during bolt removal and installation. Do not drive out spar to fuselage attach bolts.

(2) Clean the inspection surfaces using a cloth dampened with isopropyl alcohol or mineral spirits.
(3) Use eddy current surface and bolt hole examinations to detect surface and shallow subsurface cracking and discontinuities on the left and right lower outboard spar bolt holes. Use SAE ARP4402, "Eddy Current Inspection of Open Fastener Holes in Aluminum Aircraft Structure," or another FAA-approved eddy current inspection method to do these inspections.

F. Accept/Reject Criteria

A crack or crack-like indication with an amplitude equal to or greater than 50 percent of the reference level signal must be rejected and documented. Such an amplitude reading indicates that the spar does not meet type design.

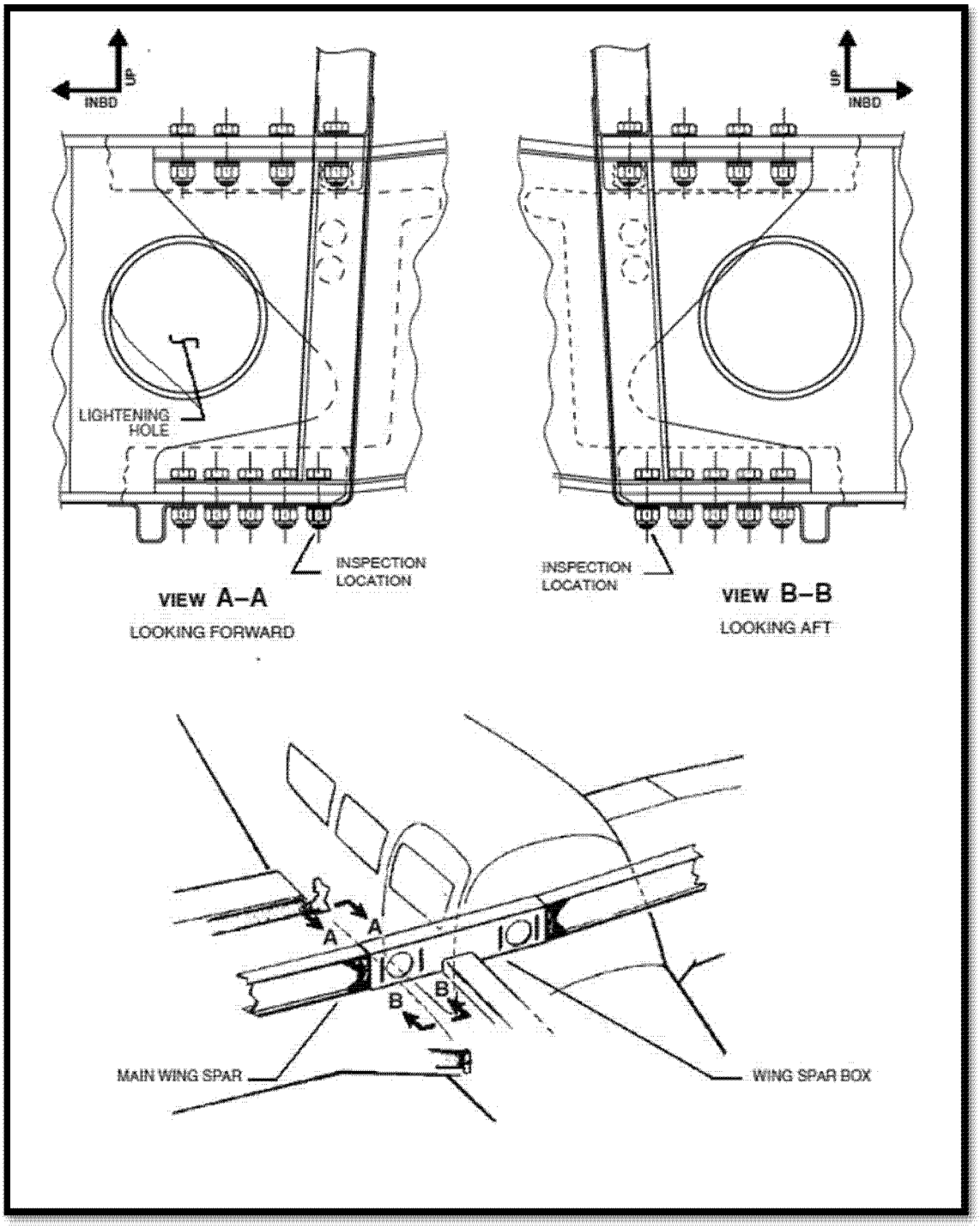

Figure 1. Main Spar Attach Bolt Locations (RH Side Shown)

Appendix 2 to this AD

Inspection Results Form

Email completed form to: **9-ASO-ATLCOS-Reporting@faa.gov**
SUBJECT line : Docket No. FAA-2018-1046

Or mail to: Federal Aviation Administration
Atlanta ACO Branch, AIR-7A1
1701 Columbia Avenue
College Park, GA 30337

Include photos if applicable

Aircraft Model No.: **PA-**	Serial Number:
Aircraft Total Hours Time-In-Service (TIS):	Registration Number:
Factored Flight Hours Left-Hand (LH) Wing:	Right-Hand (RH) Wing:
(If both wings are factory installed original, these number should be the same)	
Inspection Results	
LH Wing Spar Fwd Accepted ☐ Rejected ☐	RH Wing Spar Fwd Accepted ☐ Rejected ☐
LH Wing Spar Aft Accepted ☐ Rejected ☐	RH Wing Spar Aft Accepted ☐ Rejected ☐
Inspector Comments	

Inspector Information

Name (print): _____ Signature: _____

Certificate No.: _____ Date: _____

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Issued in Kansas City, Missouri, on December 7, 2018.

Melvin J. Johnson,

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

[FR Doc. 2018–27577 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239, 240, 243, and 249

[Release No. 33–10588; 34–84842; File No. S7–26–18]

Request for Comment on Earnings Releases and Quarterly Reports

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Commission is requesting public comment on how we can enhance, or at a minimum maintain, the investor protection attributes of periodic disclosures while reducing administrative and other burdens on reporting companies associated with quarterly reporting. We are specifically requesting public comment on the nature and timing of the disclosures that reporting companies are required to provide in their quarterly reports filed on Form 10–Q, including when the disclosure requirements overlap with disclosures these companies voluntarily provide to the public in the form of an earnings release furnished on Form 8–K. We are interested in exploring ways to promote efficiency in periodic reporting by reducing unnecessary duplication in the information that reporting companies disclose and how such changes could affect capital formation, while enhancing, or at a minimum maintaining, appropriate investor protection. We also are requesting public comment on whether our rules should provide reporting companies, or certain classes of reporting companies, with flexibility as to the frequency of their periodic reporting. In addition, we are seeking comment on how the existing periodic reporting system, earnings releases, and earnings guidance, standing alone or in combination with other factors, may affect corporate decision making and strategic thinking—positively or negatively—including whether these factors foster an inefficient outlook among registrants and market participants by focusing on short-term results, sometimes referred to as ''short-termism.''

DATES: Comments should be received by March 21, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–26–18 in the subject line.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–26–18. This file number should be included in 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 website (*http://www.sec.gov/rules/other.shtml*). Comments also are 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. 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 publicly available.

FOR FURTHER INFORMATION CONTACT: Courtney L. Lindsay, Attorney-Adviser, or Lilyanna L. Peyser, Special Counsel at (202) 551–3430, Division of Corporation Finance, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

Overview of Quarterly Reporting

In addition to annual and current reports, companies subject to the periodic reporting requirements under the Securities Exchange Act of 1934 (''Exchange Act''), other than foreign private issuers, must file quarterly reports [1] on Form 10–Q,[2] which include interim financial statements [3] and other disclosure items.[4] Form 10–Q is often forward incorporated by reference into certain registration statements under the Securities Act of 1933 (''Securities Act''), thereby avoiding unnecessary duplication of information about an issuer's recent financial results and material business developments that was previously filed and remains available electronically on EDGAR.[5] This forward incorporation helps reduce the time and costs associated with frequent updating of a registration statement to reflect such developments. A company's Form 10–Q must comply with the requirements of Sections 13(a) or 15(d) of the Exchange Act, as applicable, and is subject to liability under Sections 10(b) and 18 of the Exchange Act and Rule 10b–5 thereunder.[6] In addition, in certain circumstances, including in the offer and sale of securities, reporting companies, affiliates, and underwriters may be subject to liability for their

[1] *See* 17 CFR 240.13a–13 and 17 CFR 240.15d–13.

[2] 17 CFR 249.308a.

[3] *See* 17 CFR 210.8–03 (''Rule 8–03'') and 17 CFR 210.10–01 (''Rule 10–01'').

[4] Form 10–Q also requires a management's discussion and analysis of financial condition and results of operations (''Management's Discussion and Analysis''), along with disclosures on quantitative and qualitative market risk, company disclosure controls and procedures, legal proceedings, material changes to previously disclosed risk factors, unregistered sales of equity securities and the use of proceeds from such sales, defaults upon senior securities, mine safety disclosures, and any information required to be disclosed in a report on Form 8–K during the period covered by the relevant 10–Q that was not reported.

[5] *See* 17 CFR 230.415 (''Rule 415''), Item 12(a) of Part I of Form S–1 [17 CFR 239.11], and Item 12(a) of Part I of Form S–3 [17 CFR 239.13]. All documents, not just a Form 10–Q, subsequently filed pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act may be forward incorporated by reference on Form S–3. Smaller reporting companies may forward incorporate by reference on Form S–1 all documents subsequently filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act.

[6] 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78r; 15 U.S.C. 78j(b); and 17 CFR 240.10b–5. General Instruction F.1. of Form 10–Q states that pursuant to Rule 13a–13(d) [17 CFR 240.13a–13(d)] and Rule 15d–13(d) [17 CFR 240.15d–13(d)], the information presented to satisfy the requirements of Part I Items 1, 2 and 3 shall not be deemed filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, but shall be subject to other provisions of the Exchange Act. Further, companies must submit their Form 10–Q financial statement disclosures in the eXtensible Business Reporting Language (''XBRL'') format, and these XBRL structured financial statement disclosures are subject to the same disclosure liability. *See* 17 CFR 229.601(b)(101) (''Item 601(b)(101) of Regulation S–K''). The Commission recently adopted amendments requiring Inline XBRL, a newer XBRL technology, with phased compliance dates depending on filer status: Large accelerated filers and accelerated filers that prepare their financial statements in accordance with U.S. GAAP must comply with the requirements for fiscal periods ending on or after June 15, 2019 and June 15, 2020, respectively; all other filers must comply with the requirements for fiscal periods ending on or after June 15, 2021. *See* SEC Release No. 33–10514 (Sept. 17, 2018).

disclosure in Form 10–Q under Sections 11, 12, and 17 of the Securities Act.[7]

By contrast, foreign private issuers [8] subject to the periodic reporting requirements of the Exchange Act are required to file annual reports, but are not required to file quarterly reports.[9] Foreign private issuers are required to furnish reports on Form 6–K to the extent that the ''issuer (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its security holders.'' [10] Among other information required to be furnished in this context, foreign private issuers must disclose material information about changes in business, changes in management or control, changes in the registrant's auditors,[11] the financial condition and results of operations, material legal proceedings, and related party transactions.[12] Foreign private issuers are subject to liability for the disclosures they make in Form 6–K under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder.[13] In addition, foreign private issuers, affiliates and underwriters are subject to liability for the disclosures they make in Form 6–K under Sections 11, 12, and 17 of the Securities Act [14] to the extent the Form 6–K is incorporated by reference into a Securities Act registration statement.

There are many jurisdictions and foreign exchanges that have quarterly reporting requirements similar to the United States, including Canada, Hong Kong and Japan.[15] The European Union and other jurisdictions, by contrast, recently developed requirements that differ from those in the United States to address concerns about the frequency of reporting. The evolution of reporting requirements in these jurisdictions may inform the policy considerations presented by potential changes to the United States reporting system. In 2004, the European Union adopted the Transparency Directive (2004/109/EC), which governs the ongoing disclosure requirements for companies whose securities are listed on a European Economic Area (''EEA'')-regulated market.[16] The Transparency Directive required listed companies to publish a quarterly report, known as the interim management statement (''IMS'').[17] Unlike a quarterly report on Form 10–Q, an IMS did not require financial statements, but rather, needed to include only a ''general description of the [company's] financial position and performance since the last half-yearly or annual report and [explain] any material events and transactions that have since taken place.'' [18]

In 2013, the EU adopted the Revised Directive on transparency requirements (2013/50/EU), or the Revised Transparency Directive, which abolished the requirement to publish IMSs.[19] Although a report that preceded the Revised Transparency Directive noted that IMSs were generally well-perceived by market participants,[20] the Revised Transparency Directive noted that the IMSs were a burden for small and medium-sized issuers [21] without being necessary for investor

[7] 15 U.S.C. 77k; 15 U.S.C. 77l; and 15 U.S.C. 77q. Each of these provisions, which we reference throughout this Request for Comment, imposes liability on companies in certain instances for making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. Liability under certain of these provisions, such as Sections 11 and 12 of the Securities Act and Section 18 of the Exchange Act, attaches only to documents that are filed with the Commission or incorporated by reference into a Securities Act registration statement. For example, Section 11 liability can result from disclosure in a Form 10–Q that is incorporated by reference into a Securities Act registration statement. There are instances, however, when liability may attach to documents that are not deemed to be filed. For example, liability under Section 10(b) and Rule 10b–5 of the Exchange Act may attach to documents that are furnished to, in addition to documents that are filed with, the Commission.

[8] A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that has more than 50% of its outstanding voting securities held of record by U.S. residents and any of the following: A majority of its officers or directors are citizens or residents of the United States; more than 50% of its assets are located in the United States; or its business is principally administered in the United States. *See* 17 CFR 230.405 and 17 CFR 240.3b–4(c). Foreign private issuers with a class of securities listed on the NYSE or NASDAQ must submit semi-annual unaudited financial information under cover of Form 6–K within six months following the end of the second fiscal quarter. *See* NYSE Rule 203.03 and NASDAQ Rule 5250(c)(2). Similarly, Item 8.A.5 of Form 20–F requires a foreign private issuer to include interim financial statements when its registration statement is dated more than nine months after the end of the last audited financial year. In addition, foreign private issuers may have more frequent reporting requirements based on the laws of their home country.

[9] Issuers conducting Tier 2 offerings under Regulation A also are required to file annual and semi-annual reports, as well as current reports, with the Commission, but are not required to file quarterly reports. *See* 17 CFR 230.257(b).

[10] 17 CFR 249.306.

[11] Commission rules and forms use various terms to refer to the accountant that is independent and performs the audit and review of the registrant's financial statements as required by Regulation S–X. For example, Rule 2–01 of Regulation S–X uses the term ''auditor'' interchangeably with ''certified public accountant,'' ''public accounting firm,'' or ''public accountant.'' Form 6–K uses the term ''certifying accountants.'' In this Request for Comment, we refer to these accountants as ''auditors.''

[12] 17 CFR 249.306.

[13] 15 U.S.C. 78j; 17 CFR 240.10b–5.

[14] 15 U.S.C. 77k; 15 U.S.C. 77l; 15 U.S.C. 77q.

[15] *See* Hong Kong Stock Exchange Listing Rule 18.66, National Instrument 51–102 Continuous Disclosure Obligations (Canada), and Financial Instruments and Exchange Act (Act No. 25 of 1948) (Japan).

[16] Directive 2004/109/EC on the Harmonisation of Transparency Requirements in Relation to Information about Issuers Whose Securities Are Admitted to Trading on a Regulated Market and Amending Directive 2001/34/EC (Dec. 15, 2004) (OJ L 390, 31.12.2004, p.38–57) (''Transparency Directive'').

[17] A key argument in favor of quarterly reports was to increase investor protection and investor confidence, as well as to ''close the transparency gap between the USA and the EU.'' *See* Thomas Schleicher & Martin Walker, *Are Interim Management Statements Redundant?* 233 (Mar. 2015), *available at http://dx.doi.org/10.1080/00014788.2014.1002444* (''Are Interim Management Statements Redundant?''). Prior to the Transparency Directive, most European Union member states required only semi-annual and annual reports, although several countries required quarterly reports, specifically: Finland, Greece, Portugal, Sweden, Italy, and Spain.

[18] *See* Transparency Directive, *supra* note 16. Commentators observed that ''IMSs are lightly regulated trading statements with management retaining considerable control over form and content'' and that ''the issuer can choose which financial statement line item, if any, to comment on . . . .'' *See* Are Interim Management Statements Redundant?, *supra* note 17.

[19] Directive 2013/50/EU Amending Directive 2004/109/EC on the Harmonisation of Transparency Requirements in Relation to Information About Issuers Whose Securities are Admitted to Trading on a Regulated Market, Directive 2003/71/EC on the Prospectus to be Published When Securities are Offered to the Public or Admitted to Trading and Commission Directive 2007/14/EC Laying Down Detailed Rules for the Implementation of Certain Provisions of Directive 2004/109/EC of the European Parliament and of the Council of 22 October 2013 Amending Directive 2004/109/EC, (Oct. 22, 2013) (OJ L 294, 6.11.2013, p. 13–27). This followed the 2010 European Commission report reviewing the operation of the Transparency Directive, which considered whether quarterly disclosures contributed to undue focus on near-term results. The report noted that abolishing the quarterly information requirement would alleviate pressure on issuers and establish incentives for a longer-term vision. *See* Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions—Operation of Directive 2004/109/EC on the Harmonisation of Transparency Requirements in Relation to Information About Issuers Whose Securities are Admitted to Trading on a Regulated Market (May 27, 2010) (SEC 611) (''EU Commission Report'').

[20] *See* EU Commission Report, *supra* note 19.

[21] *See* Commission Recommendation of 6 May 2003 Concerning the Definition of Micro, Small and Medium-Sized Enterprises, (May 5, 2003) (OJ L 124 20.5.2003, p. 36–41) (defining ''micro,'' ''small'' and ''medium-sized'' enterprises as ''enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million'' and further clarifying that ''small'' enterprises as those that ''[employ] fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.'').

protection.[22] Furthermore, the IMSs were thought to encourage a focus on short-term performance and discourage long-term investment.[23]

Under the Revised Transparency Directive, a European Union member state may require issuers to publish additional periodic financial information on a more frequent basis than the annual or half-yearly reports only under specific conditions.[24] Companies may nonetheless publish quarterly information on a voluntary basis.

In addition, effective November 7, 2014, the Financial Conduct Authority (''FCA'') of the United Kingdom [25] eliminated IMS requirements. Issuers are permitted to continue to publish IMSs on a voluntary basis, but the FCA does not treat them as regulated information.[26] A 2017 market survey found that, in a sample of 516 U.K. companies, 471 (91.3%) continued issuing quarterly reports in 2015.[27] A more recent analysis found that ''between October 2016 and [August 2017], the number of [Financial Times Stock Exchange (''FTSE'')] 100 companies issuing quarterly reports fell by nearly a fifth, from 70 to 57. Among the FTSE 250, the figure fell by a quarter, from 111 to 83.'' [28]

We also note that a 2017 study found that when quarterly reporting was no longer required of U.K. companies in 2014, there was no significant difference between the levels of corporate investment of the U.K. companies that stopped quarterly reporting and those that continued quarterly reporting.[29] There was, however, a general decline in the analyst coverage of those companies that reduced the frequency of reporting.[30]

Observations on Quarterly Reporting and Earnings Release Practices

Many companies required to file Form 10–Q also voluntarily communicate certain quarterly financial results through earnings releases.[31] Federal securities laws do not require reporting companies to publish earnings releases, conduct earnings calls with investors and analysts, or issue forward-looking earnings guidance.[32] To the extent that a company makes such communications, neither the disclosure of specific information, nor the structure of that information, is regulated by the Commission. The Commission does, however, regulate the presentation of certain financial measures by reporting companies, including in their earnings releases.[33] To the extent that a company elects to make a public announcement or release of earnings information,[34] it must furnish the earnings release on Form 8–K.[35]

While some companies provide earnings releases in advance of the corresponding Form 10–Q filings, many companies now issue earnings releases concurrently with their Form 10–Q filings.[36] Given the potential overlap between the financial information provided in the earnings release and the Form 10–Q, some market participants view the Form 10–Q primarily as a compliance document that subsequently (or concurrently) confirms the material information about the quarterly period included in an earnings release issued before (or at the same time as) the Form 10–Q.[37] Other market participants, however, view the Form 10–Q as distinct from earnings releases and as an

[22] *See* Revised Transparency Directive, *supra* note 19 at 13 (''The obligations to publish interim management statements or quarterly financial reports represent an important burden for many small and medium-sized issuers whose securities are admitted to trading on regulated markets, without being necessary for investor protection.'').

[23] *See* the Revised Transparency Directive at 13 (''Those obligations also encourage short-term performance and discourage long-term investment. In order to encourage sustainable value creation and long-term oriented investment strategy, it is essential to reduce short-term pressure on issuers and give investors an incentive to adopt a longer term vision. The requirement to publish interim management statements should therefore be abolished.'').

[24] Specifically, more frequent reporting may be instituted if, after an assessment of the impacts, it is shown that such additional requirement does not lead to (a) an excessive focus on short-term results and performance of the issuers and (b) to a negative impact on the access of small and medium sized issuers to regulated markets.

[25] The FCA is the conduct regulator for financial services firms and financial markets in the United Kingdom and the prudential regulator for many of those firms.

[26] *See Removing the Transparency Directive's Requirement to Publish Interim Management Statements,* Financial Conduct Authority (Nov. 2014), *available at https://www.fca.org.uk/publication/policy/ps14-15.pdf.*

[27] *See* Suresh Nallareddy, Robert Pozen & Shivaram Rajgopal, *Consequences of Mandatory Quarterly Reporting: The U.K. Experience,* Columbia Business School Research Paper No. 17–33 (Mar. 1, 2017), *available at https://ssrn.com/abstract=2817120* (the survey also found evidence that the companies that ceased issuing quarterly reports were smaller than average, were less likely to provide marginal guidance in mandatory reporting, and were more likely to be in the energy industry). *See also* PricewaterhouseCoopers' survey on quarterly reporting for listed companies and transition to IFRS 16 (Nov. 9, 2017), *available at https://www.pwc.no/no/publikasjoner/kapitalmarkedstjenester/PwC-survey-quarterly-reporting-listed-companies-and-transition-ifrs-16.pdf* (finding that 5% of surveyed companies stated that they would not continue to report quarterly or had not yet made a decision).

[28] Owen Walker, *The Long and Short of the Quarterly Reports Controversy,* Financial Times (July 1, 2018), *available at https://www.ft.com/content/e61046bc-7a2e-11e8-8e67-1e1a0846c475.*

[29] *See* Robert Pozen, Suresh Nallareddy & Shivaram Rajgopal, *Impact of Reporting Frequency on UK Companies,* CFA Institute Research Foundation (Mar. 2017).

[30] *Id.*

[31] Among all Form 10-Qs filed with the Commission in calendar year 2017, we estimate that 63% were accompanied by prior or concurrent earnings releases furnished on Form 8–K. For Form 10-Qs filed by S&P 500 and S&P 1500 Super Composite companies in calendar year 2017, we estimate that 97% and 98%, respectively were accompanied by prior or concurrent earnings releases furnished on Form 8–K.

[32] The term ''earnings release'' as used in this Request for Comment means a public announcement or release by a company, or person acting on its behalf, of material non-public information regarding a company's results of operations or financial condition for a completed quarterly or annual financial period. The requirements of Item 2.02 of Form 8–K are triggered by the disclosure of this information. Forward-looking information provided by a company to its investors on a quarterly basis in a method other than Form 8–K or Form 10–Q is referred to as ''forward-looking earnings guidance'' or ''earnings guidance.''

[33] *See* 17 CFR 244.100 and 17 CFR 229.10. In addition, earnings releases and related communications are subject to the antifraud provisions of the federal securities laws.

[34] Generally, a company publishes an earnings release prior to the occurrence of any associated conference call with investors and analysts.

[35] *See* Item 2.02 of Form 8–K [17 CFR 249.308]. Forms 8–K that are furnished to, as opposed to filed with, the Commission are not automatically incorporated into Securities Act registration statements or subject to liability under Section 18 of the Exchange Act; however, they are subject to liability under Section 10(b) and Rule 10b–5 of the Exchange Act. An issuer also may choose to file, rather than furnish, earnings release information on Form 8–K, for example, in order to ensure that a registration statement currently in use does not contain a material omission of the information contained in an earnings release.

[36] *See* Arif, Salman et. al. *A Growing Disparity in Earnings Disclosure Mechanisms: The Rise of Concurrently Released Earnings Announcements and 10–Ks* (June 6, 2018), Kelley School of Business Research Paper No. 16–50, *available at https://ssrn.com/abstract=2801701* (stating that ''the fraction of concurrent [earnings releases and Form 10–Q filings] has increased from 20% in 2002 to more than 60% by 2015'') (''A Growing Disparity in Earnings Disclosure Mechanisms'').

[37] *See The Promise of Market Reform,* Nasdaq, (May 2017), *available at https://business.nasdaq.com/media/Nasdaq_Blueprint_to_Revitalize_Capital_Markets_April_2018_tcm5044-43175.pdf* (stating that ''companies provide key data via an earnings press release each quarter'' and that ''[f]or virtually all investors, the press release is the quarterly report. Yet companies are then required to file a formal Form 10–Q . . . which is complex, time-consuming, and provides little additional actionable information that cannot be found in the press release'') (''The Promise of Market Reform''). *See, also,* Diamond, Colin J. and Irina Yevmenenko, *Earnings Releases and Earnings Calls,* White & Case LLP (2015), *available at https://www.whitecase.com/sites/whitecase/files/files/download/publications/article-earnings-releases-and-earnings-calls.pdf* (stating that ''earnings releases and calls are among the most material announcements that reporting companies make'' and ''often result in significant movements in a reporting company's stock price,'' and that ''a company's stock price usually is not affected by the filing of its Form 10–K or Form 10–Q following a corresponding earnings release, because all material information has already been disclosed in the earnings release'').

essential component of market transparency.[38]

Form 10–Q typically contains most, if not all, of the historical information presented in an earnings release along with additional information, such as the financial disclosures required by U.S. GAAP. The information in Form 10–Q is typically provided in greater detail than in an earnings release and is easier to machine process and analyze, through the aggregation of results and comparison across filers, because it is required to be structured in interactive data format. While financial statements in Form 10–Q are unaudited, Regulation S–X [39] specifies that the interim financial statements included in Form 10–Q must be reviewed by an auditor [40] and U.S. GAAP prescribes the form and content of interim financial statements.[41] In addition, the Form 10–Q requires certification by the principal executive and financial officers of the reporting company.[42] A Form 8–K, however, is not subject to such requirements. Some of the potential changes and flexibility described in this Request for Comment, therefore, may require coordination with standard-setters, such as the FASB, PCAOB, as well as the stock exchanges and appropriate quoting venues.

II. Purpose of Request for Comment

The purpose of this Request for Comment is to solicit public input on the nature, timing, format and frequency of periodic reporting, as well as the relationship between the periodic reports that Exchange Act reporting companies must provide and the earnings releases that they must furnish on Form 8–K, to the extent they choose to issue such releases. We seek to understand how we might simplify the process by which investors access, process, and evaluate information, for example, by relieving any burdens associated with investors' efforts to compare an earnings release and Form 10–Q to identify information that is new or different. We also are interested in exploring how we might enhance, or at a minimum maintain, the investor protection benefits of disclosure, while reducing the costs (including time) [43] that companies spend complying with quarterly reporting requirements. For example, we seek comment on the potential benefits and drawbacks of providing an option for companies that issue earnings releases to use the releases to satisfy the core disclosure requirements of Form 10–Q.

In addition, we are seeking comment on how the periodic reporting system, earnings releases, and earnings guidance may affect corporate decision making and strategic thinking—positively and negatively—including whether it fosters an inefficient outlook among registrants and market participants by focusing on short-term results. For example, some market participants have urged companies to ''move away from providing'' earnings per share guidance that companies give and instead put more focus in Form 10-Qs on demonstrating progress made against the company's long-term strategic plan.[44]

In the past, the Commission has received input related to some of the issues discussed in this Request for Comment.[45] Most recently, we requested comment on issues related to the frequency of reporting in our Concept Release on business and financial disclosure requirements in Regulation S–K (''Concept Release'').[46] As we continue to evaluate this topic, we are soliciting additional input from the public on issues related to the nature, timing, format, and frequency of reporting in the context of the more narrow scope of this Request for Comment. The Commission encourages commenters to provide any data and information that could help us quantify the effects of the approaches discussed herein on capital formation and investor protection.

III. Issues for Consideration

A. Information Content Resulting From the Quarterly Reporting Process

Certain material information required by Form 10–Q is frequently provided in earnings releases. However, in our observation, there is variation in the items and methods of presentation in earnings releases. Companies often report certain financial (and statistical) information such as net income, earnings per share, and net sales, and some may include condensed income statements, balance sheets, and cash flow statements along with segment information. This financial information

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[38] *See, e.g.,* Jamie Dimon & Warren E. Buffett, *Short-Termism Is Harming the Economy: Public companies should reduce or eliminate the practice of estimating quarterly earnings,* Wall St. J. (Jun. 6, 2018) (''Dimon and Buffet WSJ Article''), *available at https://www.wsj.com/articles/short-termism-is-harming-the-economy-1528336801* (stating that the authors' misgivings about quarterly earnings forecasts should not be misconstrued as opposition to quarterly and annual reporting that offers a retrospective look at actual reporting); Michael Posner, *Why Quarterly Reporting Makes Business Sense,* Forbes (Aug. 17, 2018), *available at https://www.forbes.com/sites/michaelposner/2018/08/17/why-quarterly-reporting-from-business-makes-sense/#1416b5c67ed8* (discussing information that is contained in the Form 10–Q that is distinct from what is providing in an earnings release); Robert C. Pozen & Mark Roe, *Keep Quarterly Reporting,* Brookings Institution (Sept. 5, 2018), *available at https://www.brookings.edu/opinions/keep-quarterly-reporting/* (opposing quarterly earnings guidance and expressing a belief that a semi-annual reporting would not be beneficial).

[39] Rules 8–03 and 10–01(d).

[40] The Public Company Accounting Oversight Board (''PCAOB'') is generally the standard-setter for audit and review procedures in the United States. The PCAOB's AS 4105, *Reviews of Interim Financial Information,* addresses the auditor requirements for reviews of interim financial information.

[41] Financial Accounting Standards Board (''FASB'') *Accounting Standards Codification (''ASC'') 270: Interim Reporting* also provides recognition and measurement guidance for interim periods. The Commission has designated the FASB as the private-sector accounting standard setter for United States financial reporting purposes. Section 108 of the Sarbanes-Oxley Act amended Section 19 of the Securities Act to provide that the Commission ''may recognize, as 'generally accepted' for purposes of the securities laws, any accounting principles established by a standard setting body that met certain criteria.'' The Commission has determined that the FASB satisfies the criteria in Section 19 and, accordingly, the FASB's financial accounting and reporting standards are recognized as ''generally accepted'' for purposes of the federal securities laws. *See Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,* Release No. 33–8221 (Apr. 25, 2003) [68 FR 23333 May 1, 2003].

[42] 17 CFR 240.13a–14 (''Rule 13a–14'') and 17 CFR 240.15d–14 (''Rule 15d–14''). These rules require the certifying officers to certify, among other things, that they have reviewed the Form 10–Q and that based on their knowledge: (i) The 10–Q does not contain any untrue statement of material fact or omit to state a material fact necessary to make any statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the 10–Q; and (ii) the financial statements, and other financial information included in the 10–Q, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in the 10–Q.

[43] *See* The Promise of Market Reform, *supra* note 37.

[44] Matt Turner, *Here is the Letter the World's Largest Investor, BlackRock CEO Larry Fink, Just Sent to CEOs Everywhere,* Business Insider (Feb. 2, 2016) (''2016 Fink Letter to CEOs''), *available at https://www.businessinsider.com/blackrock-ceo-larry-fink-letter-to-sp-500-ceos-2016-2* (affirming support of quarterly reports and stating that companies should stop publishing earnings per share guidance to encourage a focus on a company's long-term plans for value creation). *See also* Dimon and Buffet WSJ Article, *supra* note 38.

[45] *See, e.g., Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission,* Advisory Committee on Improvements to Financial Reporting, (Aug. 1, 2008), *available at https://www.sec.gov/about/offices/oca/acifr/acifr-finalreport.pdf. See also, e.g.,* Final Rule: Conditions for Use of Non-GAAP Financial Measures, Release No. 33–8176; 34–47226 (Jan. 22, 2003), *available at https://www.sec.gov/rules/final/33-8176.htm.*

[46] *See* Business and Financial Disclosure Required by Regulation S–K, Release No. 33–10064; 34–77599 (Apr. 13, 2016) [81 FR 23916 (Apr. 22, 2016)], *available at https://www.sec.gov/rules/concept/2016/33-10064.pdf.* Comment letters related to the Concept Release are *available at https://www.sec.gov/comments/s7-06-16/s70616.htm.*

is often accompanied by a narrative discussion of the financial information provided. However, more detailed information that is generally reported on Form 10–Q, such as the notes to the financial statements, a detailed and comprehensive Management's Discussion and Analysis, disclosure relating to contractual obligations and market risk, and a description of material changes to previously disclosed risk factors,[47] typically does not appear in an earnings release.[48] Information included in earnings releases sometimes does not appear in a Form 10–Q. For example, management may provide its expectations of the company's future financial performance or ''forward-looking earnings guidance'' in the earnings release or on the quarterly earnings call.

Request for Comment

1. Why do reporting companies choose to issue earnings releases, most typically quarterly? What are the costs to such companies in preparing earnings releases? Would companies choose to stop issuing these releases if disclosure of quarterly results was not required on Form 10–Q, or would this provide a greater incentive to issue them? Why do some companies choose to file only a Form 10–Q report and not to issue a separate earnings release?

2. Do quarterly earnings releases provide benefits to investors, companies, or the marketplace separate and apart from the Form 10–Q report? If so, please describe the primary benefits. How do investors use earnings guidance to inform their investment decisions? To the extent there are benefits, do they stem largely from the content of the releases, their timing, or other reasons? Do they have any negative effects on investors, companies, or the marketplace? If so, please describe such effects.

3. How do companies determine the information to present in the earnings release? Is there a market standard, or are companies otherwise generally consistent in the type and amount of information they present in earnings releases? To what extent is the content of earnings releases provided in response to investor and analyst needs or demands? Are such releases satisfying those needs? How would the content of earning releases change if they were required to be filed with the Commission and become subject to applicable liability provisions?

4. Is the Form 10–Q or the earnings release the primary document upon which investors rely when a company provides both? What are the factors or circumstances that an investor considers when determining which document to rely on? Are there any benefits to investors and other market participants from having two sources of historical quarterly financial information, when only one is required? How do investors use quarterly financial information, and how does it inform, if at all, their investments decisions made throughout the year? Are there specific pieces of quarterly information that are important to long-term investors?

5. Are there meaningful differences between the financial information typically provided in an earnings release and the financial information required by Form 10–Q? What accounts for the differences?

6. When a company issues an earnings release that includes much of the information required by Form 10–Q before the form is filed, is the Form 10–Q still useful? Why or why not? How important to investors is the confirmation or interpretation by the Form 10–Q of the information in the earnings release? If investors rely on Form 10–Q as the primary document, is the historical financial information about the quarterly period included in the earnings release useful? Why or why not? Does the fact that Form 10–Qs are filed as opposed to furnished, and include certifications, impact the extent to which investors rely on them? [49] Are there any instances when information disclosed in earnings releases may be useful to investors for purposes of interpreting the content of Form 10–Q? If so, when and how?

7. Does confusion arise from overlapping disclosures in the earnings release and Form 10–Q? If so, are there changes we could make to our rules that would discourage the practice of providing earnings releases that contain information that is different than what is contained in Form 10–Q? Are there unnecessary burdens to investors or other market participants associated with reviewing, comparing, and digesting two presentations of similar financial information?

8. Some have suggested that the practice of providing quarterly forward-looking earnings guidance creates an undue focus on short-term financial results and thereby negatively affects the ability of companies to focus on long-term results.[50] Is this the case and, if so, are there changes we could make to our rules that would discourage this practice or address this concern? For example, should we require that earnings guidance be filed with or furnished to the Commission? Are there other factors that promote a focus on short-term results? If so, what are they and what is their impact on investors and companies?

9. What are the specific benefits of the required Form 10–Q disclosures to investors and the marketplace separate and apart from the earnings releases? Do they stem largely from the incremental financial statement disclosures, incremental management discussion and analysis, auditor review, officer certificates or other items? Are there sections of the Form 10–Q that are particularly informative for investors? Are there any quarterly disclosure requirements that we should eliminate because they elicit disclosures that are not material to investors to make it easier for investors to focus on the disclosures that are material? If so, which requirements should be eliminated?

10. Do the XBRL requirements of Form 10–Q enhance accessibility and/or usability of quarterly information relative to what is available from earnings releases, which are not required to be structured for machine readability or processing? [51] If so, how is

[47] Pursuant to Rule 13a–13(d) and Rule 15d–13(d), the information presented to satisfy the requirements of Part I Items 1, 2 and 3 shall not be deemed filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that section, but shall be subject to other provisions of the Exchange Act.

[48] In our observation, the financial information contained in earnings releases is not ordinarily presented in a manner that constitutes interim financial statements pursuant to Rules 8–03 and 10–01. We also note that Rule 10–01(a)(5) includes a presumption that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year. Further, it permits the omission of certain footnote disclosures that substantially duplicates the disclosure contained in the most recent annual report to shareholders or audited financial statements.

[49] *See* General Instruction F of Form 10–Q.

[50] *See, e.g.,* Dimon and Buffet WSJ Article, *supra* note 38 (stating that public companies should move ''away from providing quarterly earnings-per-share guidance'' because it ''often leads to an unhealthy focus on short-term profits at the expense of long-term strategy, growth and sustainability''); 2016 Fink Letter to CEOs, *supra* note 44 (noting that ''CEOs should be more focused in these reports on demonstrating progress against their strategic plans than a one-penny deviation from their EPS targets or analyst consensus estimates''). *See also, e.g.,* Darr, Rebecca and Tim Killer, *How to Build an Alliance Against Corporate Short-Termism,* McKinsey & Company (Jan. 2017), *available at https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-to-build-an-alliance-against-corporate-short-termism* (stating that longer-term investors, who have ''an outsize influence on a company's share price over time'' due to their ownership of seven in ten shares of U.S. companies, ''generally oppose earnings guidance, especially quarterly guidance'' and ''don't like quarterly calls and find them a waste of time'' due to the quality of the calls).

[51] *See* Item 601(b)(101) of Regulation S–K. *See also* Ken Tysiac, *Driving Faster Decisions,* Journal

Continued

that information used and by whom? Would similar benefits be achieved if companies structured earnings releases using XBRL? Why or why not? How would the costs of structuring earnings releases in XBRL compare to the costs of complying with the XBRL requirements for Form 10–Q?

11. What is the impact of the auditor review requirement of quarterly financial information on investors, companies, and other market participants? Do investors value the independent auditor review of quarterly financial information? Why or why not? Does the auditor review requirement have a relationship to the cost of capital for companies? If so, how?

12. What are the cost burdens associated with the preparation of a Form 10–Q? Are these cost burdens borne solely from the preparation of the Form 10–Q? How do the costs of preparation vary among different sections of the report? Would there be costs to a company to the extent it does not file a Form 10–Q? Would additional cost burdens be associated with the preparation of a registration statement in which a company would otherwise incorporate by reference a previously filed Form 10–Q?

13. Are there other sources of information investors use to supplement information from earnings releases or quarterly reports? If so, please describe these sources.

14. Are there approaches the Commission should consider to help alleviate any burden associated with the preparation of a Form 10–Q without adversely affecting the total mix of information provided to investors? For example, should we permit companies to omit certain disclosures currently furnished on Form 10–Q, such as unregistered sales of securities, so long as the information is provided elsewhere, such as on their websites? If so, should the information provided elsewhere be expressly incorporated by reference into the Form 10–Q, such that the same liability attaches to the disclosure of that information? What would be the benefits and drawbacks to investors and other market participants of such additional flexibility?

B. Timing of the Quarterly Reporting Process

Some companies issue an earnings release prior to filing the associated Form 10–Q,[52] though, as noted above, many companies now issue earnings releases concurrently with the filing of these forms. While we did not specifically solicit comment in the Concept Release on issues related to earnings releases, some commenters nonetheless provided input on this topic.[53] One commenter suggested requiring registrants to file Form 10–Q simultaneously with any earnings release filed or furnished on Form 8–K, on the ground that this would help investors to be more informed and better able to address issues with management on earnings calls.[54] Other commenters suggested requiring the Form 10–Q to be filed prior to earnings releases and earnings calls to allow analysts to digest U.S. GAAP disclosures before receiving earnings release information, which may include non-U.S. GAAP disclosures.[55] Finally, one commenter suggested that structured reporting in XBRL format is most effective when it is applied broadly to all aspects of reporting, including earnings releases.[56]

Request for Comment

15. One study indicates that the ''average public company needed 31.7 days to announce its earnings . . . and another four days after that to file its formal quarterly report.'' [57] The study finds that companies that release both documents on the same day tend to ''take more time to deliver those pronouncements,'' while companies that publish an earnings release ''soon after the end of the quarter take more time to file their quarterly report.'' [58] Why do some companies publish an earnings release before filing Form 10–Q while other companies publish an earnings report and file Form 10–Q on the same day or near the same time? Should the Commission take any action to address time lapses between an earnings release and Form 10–Q, and if so, what action? If the Commission should take action to facilitate a decrease in this delay, what is the best mechanism to facilitate such a decrease? Is it more or less burdensome to issue the two documents concurrently?

16. What is the impact on investors and other market participants participating in earnings calls when a company publishes its earnings release before filing its Form 10–Q? Are investors or other market participants disadvantaged at the time of the earnings call by not having access to the more detailed information contained in the Form 10–Q? If so, what are those disadvantages? Do the same disadvantages exist for the fourth quarter earnings release in comparison to the filing of Form 10–K?

17. To what extent are auditors involved with earnings releases? Does such involvement or the auditor review of the quarterly financial statements contribute to any delay between publication of an earnings release and the filing of a Form 10–Q? If so, how? What steps could or should be taken to help ameliorate this delay? Do auditors conduct their review of quarterly financial information in phases due to companies' preparation of two reporting documents? If so, does this result in efficiencies or inefficiencies based upon the nature of the two disclosure documents?

C. Earnings Release as Core Quarterly Disclosure

The Commission is requesting comment on different ways to alleviate burdens related to Form 10–Q reporting while maintaining investor protection. Among other approaches, we are requesting comment on whether we should provide an option for companies that issue earnings releases to use the releases to satisfy the core financial disclosure requirements of Form 10–Q. Under this option, a company would use its Form 10–Q to supplement a Form 8–K earnings release with additional material information required by the Form 10–Q not already presented in the Form 8–K or alternatively incorporate by reference disclosure from the Form 8–K earnings release into its Form 10–Q (the ''Supplemental Approach''). For example, registrants that do not provide interim financial statements in accordance with Regulation S–X [59] in the earnings release would be required to include them in the Form 10–Q under the Supplemental Approach.

Request for Comment

18. To what extent do companies take advantage of General Instructions D.1 and D.2 of Form 10–Q to satisfy the

of Accountancy (Apr. 13, 2015), *available at https://www.journalofaccountancy.com/issues/2015/apr/data-driven-auditing.html.*

[52] *See* A Growing Disparity in Earnings Disclosure Mechanisms.

[53] *See* Concept Release at 280.

[54] *See* letter from R.G. Associates, Inc. (July 6, 2016).

[55] *See* letters from Council of Institutional Investors (July 8, 2016), Railpen Investments (July 21, 2016), and California State Teachers' Retirement System (July 21, 2016).

[56] *See* letter from CFA Institute (Oct. 6, 2016).

[57] *How Long Does It Take to Announce Earnings?* Calcbench, Inc. (Oct. 20, 2016), *available at https://www.calcbench.com/home/pdf?name=CB-EarningsDays-Advisory-20161027.pdf.*

[58] *Id.*

[59] Item 1 of Form 10–Q requires interim financial statements in accordance with Rule 8–03 or 10–01. These rules require disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. ASC 270–10–50–1 also requires certain disclosures that must be provided at a minimum when reporting companies report summarized financial information at interim dates.

requirements of Form 10–Q?[60] What changes to our rules, if any, would increase the use of these Instructions? Is the required quarterly reporting process complex and burdensome for investors or companies? If so, how is it complex and burdensome? If so, what approaches should we consider apart from the Supplemental Approach (hereafter ''other suggested approach'') to simplify the process by which investors collect and evaluate information and ease the burdens associated with the publication of earnings releases and the preparation and filing of Form 10–Q without adversely affecting the total mix of information provided to investors?

19. Should Commission rules, accounting standards, and auditing standards allow for the interim financial statements to be separated so that certain parts could be presented only in the earnings release to satisfy the Form 10–Q requirements under the Supplemental Approach or other suggested approach? For example, should a registrant be able to present condensed interim income statements only in the earnings release and the remaining Regulation S–X required interim statements and footnotes in the Form 10–Q? What changes would be needed to the current accounting and/or auditing standards to accomplish such separation? Would separation of the financial statements help, harm, or have no effect on an investor's ability to evaluate a company's performance?

20. Should information in an earnings release that is submitted on Form 8–K be allowed to satisfy the Form 10–Q requirements? Why or why not, and if so to what extent? What are the potential benefits and drawbacks to investors, companies, and other market participants of the Supplemental Approach or other suggested approach?

21. If companies were permitted to omit from Form 10–Q information already contained in a Form 8–K earnings release, what specific information should they be allowed to omit? Is there any earnings release information that should not be allowed to satisfy the requirements of Form 10–Q? Would companies be likely to rely on the Supplemental Approach or other suggested approach, if available? If so, would certain types of companies benefit more from the Supplemental Approach other suggested approach than others?

22. If we adopt the Supplemental Approach or other suggested approach, should we require the relevant Form 8–K to be filed rather than furnished?[61] Should we further require the relevant Form 8–K to be incorporated by reference into the Form 10–Q, in whole or in part? Should we require a hyperlink from the Form 10–Q to the relevant Form 8–K? Should we require the relevant Form 8–K to include certain disclosures that are otherwise required in Form 10–Q? If so, which disclosures should be required and why?

23. Are there issues or concerns with the above approaches in relation to a registration statement and the ability to incorporate by reference? If so, please describe. For example, should a company relying on the Supplemental Approach or other suggested approach have to incorporate by reference the historical financial information in its earnings release into a Securities Act registration statement so that Securities Act liability would apply to that information, just as such liability applies to Form 10–Q information that is incorporated by reference into a registration statement?

24. Would the Supplemental Approach or other suggested approach affect the quantity, quality, or nature of the disclosure being made to the public? If so, how? Would the Supplemental Approach or other suggested approach simplify or complicate the process by which investors collect and evaluate information? How would the Supplemental Approach or other suggested approach affect investors' evaluation of company performance? Overall, what impact would the Supplemental Approach or other suggested approach have on investors?

25. Would the Supplemental Approach affect the timing of earnings releases? If so, how? If we implement the Supplemental Approach or other suggested approach, should we modify the due date of Form 10–Q? Why or why not, and if so, how?

26. How should the Supplemental Approach or other suggested approach take into consideration the XBRL requirements of Form 10–Q? If information currently required to be structured using the XBRL format on Form 10–Q were instead only disclosed in an unstructured format on Form 8–K, would this adversely affect investors or other market participants?

27. If an earnings release were used to satisfy the requirements of Form 10–Q, should any financial statements included in an earnings release be subject to auditor review procedures at the time the Form 8–K is filed? Why or why not?

28. Would the Supplemental Approach or other suggested approach reduce or add to companies' disclosure or auditor review burdens? How should the Supplemental Approach other suggested approach take into consideration the requirements regarding disclosure controls and procedures set forth in Rules 13a–15 and 15d–15,[62] as well as the related officer certification requirements, which apply to Forms 10–Q but not to earnings releases furnished on Form 8–K?[63]

29. Does the Supplemental Approach or other suggested approach raise concerns regarding a company's liability under the federal securities laws? If so, please explain.

D. Reporting Frequency

As noted above, we previously solicited public input on issues related to the frequency of interim reporting in connection with the Concept Release. Prior to adoption of Form 10–Q in 1970,[64] reporting companies were not required to provide specific information on a quarterly basis, other than to satisfy the requirements of Form 8–K.[65] However, as noted in the Concept Release, prior to the adoption of Form 10–Q, more than 70% of public companies produced quarterly reports,

[60] General Instruction D.1 of Form 10–Q permits companies to incorporate information by reference from a document that meets some or all of the requirements of Part I of Form 10–Q and General Instruction D.2. directs registrants to Exchange Act Rule 12b–23 with respect to other information that may be incorporated by reference in response to all or some of Part II of Form 10–Q.

[61] The information required by Items 1 (Financial Statements), 2 (Management's Discussion and Analysis of Financial Condition and Results of Operations) and 3 (Quantitative and Qualitative Disclosures About Market Risk) of Part I of the Form 10–Q is not deemed to be filed for purposes of Section 18 of the Exchange Act, but an issuer may choose to file, rather than furnish, earnings release information on Form 8–K, for example, to ensure that a registration statement currently in use does not contain a material omission of the information contained in an earnings release.

[62] 17 CFR 240.13a–15; 17 CFR 240.15d–15.

[63] Rules 13a–14 and 15d–14.

[64] *See* SEC Release No. 34–9004 (Oct. 28, 1970).

[65] Prior to the adoption of Form 9–K in 1955, reporting companies were only required to provide limited information related to quarterly results in response to requirements on Form 8–K. *See* SEC Release No. 34–5129 (Jan. 27, 1955). With the adoption of Form 9–K, companies were required to report certain financial information on a semi-annual basis. *See* SEC Release No. 34–5189 (June 23, 1955). In 1969, the Commission proposed to rescind Form 9–K and adopt Form 10–Q for the reporting of quarterly financial and other information based on the observation that ''Current Reports on Form 8–K [were] not widely used by investors and their advisors. This may be because these reports [were] not filed at regular intervals and they [were] not truly current reports since they need not be filed until 10 days after the end of a month in which a reportable event occurred.'' The Commission reasoned that mandated quarterly reports may ''provide detailed information as a back-up to information released pursuant to timely disclosure policies.'' *See* SEC Release 34–8683 (Sept. 15, 1969).

partly in response to exchange listing standards.[66]

Commenters' responses to this issue as set forth in the Concept Release were mixed. Many commenters recommended a less-than-quarterly reporting requirement, such as a semi-annual reporting requirement, either for all companies or a subset of companies.[67] A number of commenters expressly opposed increasing the frequency of reporting,[68] with many of these commenters noting the costs and burdens associated with the current quarterly reporting regime as one reason for opposition.[69] Many other commenters, citing a wide variety of reasons, specifically supported retaining quarterly reporting.[70] Some of these commenters recommended evaluating the content of quarterly reports, rather than changing the frequency.[71] Other commenters suggested that semi-annual reporting may increase the risk of insider trading by lengthening the time insiders would be unable to trade in order to comply with the insider trading prohibitions of Section 10(b) and Rule 10b–5.[72]

We recognize that there is ongoing debate regarding the adequacy and appropriateness of mandated quarterly reporting.[73] As we continue to evaluate the existing reporting frequency, we are soliciting additional input on reporting frequency and what alternate approaches, if any, should be considered that would appropriately address the informational needs of investors while reducing the costs and other burdens on registrants who provide that information.

Request for Comment

30. What are the benefits and costs to investors, companies, and other market participants associated with the current reporting frequency model, which requires from domestic issuers quarterly reports on Form 10–Q, annual reports on Form 10–K, and current reports on Form 8–K? Does the frequency of reporting lead managers to focus on short-term results to the detriment of long-term performance? Why or why not? If so, does this negatively affect investors? If so, how? Would less frequent reporting change management decision-making or otherwise positively affect investors? Or does the practice of issuing earnings guidance, including the frequency with which companies issue earnings guidance, lead managers to focus on short-term results to the detriment of long-term performance? Why or why not? Would more frequent reporting change management decision-making?

31. Should we move to a semi-annual reporting model for all or certain categories of reporting companies? Why or why not, and to which categories of reporting companies (*e.g.,* smaller reporting companies, non-accelerated filers, emerging growth companies)? Are there other categories of reporting companies, such as by industry, that we should consider? For example, are there any unique considerations we should give to certain commodity trusts, business development companies, and other collective investment vehicles? Would any other frequency of reporting model be more appropriate for these or other types of companies?

32. What would the costs and benefits be to investors, companies, and other market participants of a semi-annual reporting model for all or certain categories of reporting companies? Are there market practices in place, for example contractually mandated reports to lenders and indenture trustees, that rely on the current regulatory reporting regime? If so, how would these market practices be affected by changes to that regime and what are the downstream effects?

33. Would a change in reporting frequency affect the cost of capital to companies? Why or why not, and if so, how?

34. How would a semi-annual reporting model affect the general use of Form 8–K to report material information? Should we consider any particular additional Form 8–K requirements or triggers under a semi-annual reporting model? If so, what type(s)?

35. How would a semi-annual reporting model affect the use of earnings releases? If we were to allow semi-annual reporting, should we require voluntarily published earnings releases, either on a quarterly or semi-annual basis, to be filed rather than furnished? Or, if we were to allow semi-annual reporting, should we require companies to file earnings releases?

36. Should we allow for additional flexibility by permitting companies to select an approach to periodic reporting that best suits their needs and the needs of their investors? For example, should we allow a company conducting an initial public offering to announce its approach to periodic reporting, such as semi-annual periodic reporting, during registration and implement the elected approach going forward? Should a company be permitted to change its approach to frequency of reporting once it selects a reporting frequency? Why or why not? If it is permitted to change the frequency of reporting after it has established an approach, how often should the company be permitted to change its reporting frequency?

37. What are the downstream effects of changing the reporting frequency to investment companies, investment advisers, broker-dealers, data aggregators, and other users of the reports?

38. Should an emerging growth company or smaller reporting company be permitted to elect a semi-annual reporting frequency?

39. What would the costs and benefits be to investors, companies, and other market participants of moving to a flexible reporting frequency model (rather than a mandatory quarterly or mandatory semi-annual model)? How would a flexible reporting frequency model (rather than a mandatory

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[66] *See* Concept Release at 281.

[67] *See* letters from Dylan Schweitzer (Apr. 20, 2016); Legal & General Investment Management (July 20, 2016); National Association of Real Estate Investment Trusts (July 21, 2016); Eric Bormel (July 27, 2016); Ball Corporation (July 19, 2016); Frederick D. Lipman (May 2, 2016); Ernst & Young LLP (July 21, 2016); American Council of Life Insurers (July 19, 2016); Insured Retirement Institute (July 21, 2016); and Committee of Annuity Insurers (July 21, 2016).

[68] *See* letters from American Bankers Association (July 15, 2016) (''American Bankers Association''); U.S. Chamber of Commerce (July 20, 2016) (''Chamber''); FedEx Corporation (July 21, 2016) (''FedEx''); Business Roundtable (July 21, 2016) (''BRT''); Securities Industry and Financial Markets Association (July 21, 2016) (''SIFMA''); Allstate Insurance Company (July 21, 2016) (''Allstate''); General Motors Company (Sept. 30, 2016); and Financial Executives International (Oct. 3, 2016).

[69] *See* letters from American Bankers Association; Chamber; FedEx; BRT; SIFMA; and Allstate.

[70] *See* letters from Sat Parashar (Apr. 20, 2016); A. Whigman (May 4, 2016); SEC Investor Advisory Committee (June 15, 2016); R.G. Associates, Inc. (July 6, 2016); US SIF and US SIF Foundation (July 14, 2016); New York State Society of Certified Public Accountants (July 19, 2016); Investment Program Association (July 21, 2016); Committee on Securities Law, Maryland State Bar Association (July 21, 2016) (''Maryland Bar Securities Committee''); AFL–CIO (July 21, 2016); Bloomberg LP (July 21, 2016); Stephen P. Percoco (July 24, 2016); National Investor Relations Institute (Aug. 4, 2016) (''NIRI''); Institute of Management Accountants (July 29, 2016) (''IMA''); Nasdaq Inc. (Sept. 16, 2016) (''Nasdaq''); and Northrop Grumman Corporation (Sept. 27, 2016).

[71] *See* letters from Nasdaq and IMA.

[72] *See* letters from NIRI and Maryland Bar Securities Committee.

[73] *See, e.g.,* Zweig, Jason, *The End of Quarterly Reporting? Not Much to Cheer About,* The Wall Street Journal (Aug. 17, 2018), *available at https://www.wsj.com/articles/the-end-of-quarterly-reporting-not-much-to-cheer-about-1534540127. See also, e.g.,* Whelan, Tensie, *Trump is Right: Quarterly Earnings Reports Should Go,* CNN Money (Aug. 23, 2018), *available at https://money.cnn.com/2018/08/23/news/trump-quarterly-reporting/index.html,* and La Croix, Kevin, *Is It Time to End Quarterly Reporting? The D&O Diary* (Aug. 19, 2018), *available at https://www.dandodiary.com/2018/08/articles/corporate-governance/time-end-quarterly-reporting/.*

quarterly or mandatory semi-annual model) affect the ability of investors, analysts, and other market participants to compare results among companies, especially if companies in the same industry report on different schedules? Would companies that choose to report more frequently suffer adverse competitive consequences if peer companies choose to report less frequently (*e.g.,* because relative performance and/or estimates of expected future cash flows would be measured on a less frequent basis)? Alternatively, would companies that choose to report more frequently benefit from their provision to investors of more and more timely information about historical results?

40. What are the accounting and auditing changes that would be necessary for a flexible reporting frequency model (rather than a mandatory quarterly or mandatory semi-annual model)? For example, would there be concerns with how to apply ASC 270 *Interim Reporting* in U.S. GAAP or certain Regulation S–X disclosure requirements in a flexible reporting frequency model? Would there be concerns with how to apply auditing standards [74] in relation to interim financial information, including procedures performed in relation to letters for underwriters and certain other requesting parties, in a flexible reporting frequency model?

41. What other topics may raise concerns or questions with application under a flexible reporting model, and what are those concerns or questions? Do these concerns and questions exist in the current quarterly reporting model and would they still exist with a mandatory semi-annual model?

42. Are existing U.S. GAAP taxonomies used for XBRL reporting appropriate for a flexible reporting frequency model?

43. Should we limit such flexibility in reporting frequency to a particular group of companies as an initial step before considering whether to provide such an option to all companies? If so, which group of companies and why? Should any potential election by a company be limited to a specific period of time?

44. How would a move to either a mandatory or optional semi-annual reporting model affect the current rules of self-regulatory organizations and national securities exchanges? For example, would exchanges still require quarterly reporting as a requirement of listing, as they did prior to 1970 when Form 10–Q was adopted?

45. How would a move to either a mandatory or optional semi-annual reporting model affect a company's ability to comply with current rules relating to Securities Act offerings? For example, given that Form 10–Q is often incorporated by reference into certain registration statements under the Securities Act,[75] how would a company that reports semi-annually ensure that a registration statement currently in use does not contain a material omission of information? For example, how would an issuer ensure that a shelf registration statement on Form S–3 remains current? Under a flexible approach, would companies nonetheless elect to maintain a quarterly reporting model to avoid concerns about keeping their Securities Act registration statements current? How would companies meet the requirements regarding the age of financial statements [76] under Regulation S–X with respect to new registration statements under such an approach? How would a change in reporting frequency impact the Commission's integrated disclosure regime, including, for example, determining issuer eligibility and the speed by which a company may offer securities? How would a change in reporting frequency impact companies who use reports filed in the United States to satisfy state or international reporting requirements?

46. Are there additional approaches that we should consider to better facilitate the dissemination of timely periodic information to investors and other market participants?

IV. Closing

This request for comment is not intended to limit the scope of comments, views, issues or approaches to be considered. In addition to investors and companies, the Commission welcomes comment from other market participants, in particular statistical, empirical and other data from commenters that may support their views and/or support or refute the views or issues raised.

By the Commission.

Dated: December 18, 2018.

Eduardo A. Aleman,

Deputy Secretary.

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BILLING CODE 8011–01–P

[74] For example, would there be questions about how to apply PCAOB AS 4105 and AS 6101, *Letters for Underwriters and Certain Other Requesting Parties.*

[75] *See* Rule 415, Item 12(a) of Part I of Form S–1 [17 CFR 239.11], and Item 12(a) of Part I of Form S–3 [17 CFR 239.13].

[76] *See* 17 CFR 230.3–12.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2018–0388]

RIN 1625–AA01

Anchorage Ground; Sabine Pass, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the anchorage regulations for the Sabine Pass Channel, Sabine Pass, TX anchorage ground for the navigational safety of vessels entering and exiting a new liquefied natural gas terminal mooring basin being constructed on the eastern waterfront of the Sabine Pass Channel. This proposed rulemaking would reduce the overall size of the existing anchorage. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before January 22, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–0388 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 Mr. Scott K. Whalen, Marine Safety Unit Port Arthur, U.S. Coast Guard; telephone 409–719–5086, email: *Scott.K.Whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

In 1967, the Secretary of the Army transferred responsibility for certain functions, power, and duties to the Secretary of Transportation. Among the responsibilities transferred to the Secretary of Transportation was establishment and administration of water vessel anchorages. On December 12, 1967, the regulations for the Sabine Pass Anchorage Ground were

republished in 33 CFR part 110, without change, under this new authority (32 FR 17726). The regulations for the Sabine Pass Channel Anchorage Ground in Sabine, TX are contained in 33 CFR 110.196.

The legal basis and authorities for this notice of proposed rulemaking are found in 33 U.S.C. 471, 33 CFR 1.05–1, and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages. As reflected in title 33 CFR 109.05, the Commandant of the U.S. Coast Guard has delegated the authority to establish anchorage grounds to U.S. Coast Guard District Commanders.

As discussed earlier, administration of the Sabine Pass Anchorage Ground was originally transferred to the Coast Guard in 1967. Under 33 CFR 110.196, the anchorage ground is ''for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and tidal conditions favorable to the resumption of their voyages.'' In 2006, Cheniere Energy began construction of a liquefied natural gas (LNG) terminal on the eastern waterfront of the Sabine Pass Channel, immediately north and adjacent to the Sabine Pass Channel Anchorage Ground. On October 3, 2006, the Coast Guard published a notice of proposed rulemaking proposing to reduce the area of the Sabine Pass Anchorage Ground by 800 feet on the north end of the anchorage in order to reduce the risk of collision between anchored vessels and berthing and unberthing vessels at Cheniere's terminal, as well as to reduce the risk of grounding by providing a larger maneuvering area for vessels calling Cheniere's terminal (71 FR 58330). Both comments we received during that rulemaking process supported the proposed reduction on the basis of enhancing navigation safety. One commenter noted that ''the anchorage was infrequently used and would have minimal impact on the economy.'' On January 5, 2007, the Coast Guard published the final rule reducing the overall size of the anchorage consistent with the proposal (72 FR 463).

On November 8, 2017, we received a request from Sabine Pass LNG L.P. to disestablish the Sabine Pass Anchorage Ground in its entirety. The request states that the anchorage is rarely used and its disestablishment would not significantly impact vessels that use the area.

On June 15, 2018, the Coast Guard published a notice of inquiry; request for comments asking for public comments in response to Sabine Pass LNG's request to disestablish the anchorage ground titled Anchorage Ground; Sabine Pass, TX (83 FR 27932). There, we explained that our data showed that the anchorage is utilized an average of 27 times each year by shallow draft vessels (for example, tows, dredges, and work boats) for shortening tow or for use as a staging area for local work projects such as dredging, and that deep draft vessels have not made use of the anchorage in the last decade. In particular, we requested public input on whether there remains a need for a regulated anchorage in this area, and if so, to what extent and for what purpose; if a reduction in size of the anchorage would meet current and anticipated industry needs; or if options other than disestablishment should also be considered.

In response to the above inquiry, the Coast Guard received three comments. One commenter observed that the navigation channel and the anchorage overlapped, and expressed concern that the elimination of the anchorage ground would reduce the federally maintained channel and have a negative impact on maritime activities. The Coast Guard consulted with the U.S. Army Corps of Engineers and confirmed that although overlapping, the elimination of the anchorage ground would not alter the dimensions of the federal channel. Therefore, there would be no reduction in the dimensions of the federal channel by the disestablishment or the reduction of the anchorage.

One comment was filed after the deadline, but we have added it to the notice of inquiry; request for comments online docket folder. That commenter requested additional time to comment in order to study the effect that the removal of the anchorage ground might have on its proposed upstream facility. That commenter will have an additional period to present their comment during the comment period provided in this notice of proposed rulemaking (NPRM).

One commenter expressed support for maintaining anchorages generally, and listed pros and cons for maintaining this anchorage ground. The Coast Guard agrees that even occasional, or limited use of the anchorage supports maintaining a portion of the anchorage, and that reducing the size of the anchorage would both provide for the safety of vessels using Cheniere's terminal, as well as the needs of the maritime community.

The purpose of this proposed rulemaking is to reduce the overall dimensions of the Sabine Pass Channel anchorage ground. This action would provide for the safe navigation of vessels entering and exiting Cheniere Energy's new vessel berth while retaining a portion of the anchorage for use by those vessels that continue to use the anchorage grounds.

III. Discussion of Proposed Rule

Cheniere Energy is constructing a new LNG mooring basin on the eastern waterfront of the Sabine Pass Channel. This facility is located immediately south and adjacent to the existing mooring basin. Due to the angle that the terminal berth lays relative to the channel, vessels intending to berth at or depart the LNG terminal would have to utilize a portion of the existing anchorage to swing the vessels into position for mooring. Vessels anchored in the existing anchorage would be at an increased risk for being struck by an arriving or departing vessel.

In order to reduce this risk, the Coast Guard proposes to reduce the overall size of the anchorage area. This action would reduce the possible conflict associated with vessels that may anchor too close to the entrance of the LNG terminal. It would also provide a larger maneuvering area for vessels arriving to or departing from the LNG terminal, which consequently would reduce the possibility of a grounding or collision with another vessel in the area.

Vessel Traffic Service data indicates that the anchorage ground described in 33 CFR 110.196 is no longer used for the anchoring of large sea-going vessels, but that it is used infrequently by a handful of smaller vessels each year. The Coast Guard believes that those vessels that have been using the anchorage would be able to continue anchoring in the remaining portion of the anchorage area.

This proposed rule would move the ''long side,'' also known as the channel side, shoreward and adjacent to the federal channel, shortening this side from 5,000 feet to approximately 2,725 feet. No other changes to the anchorage would be made. In order to eliminate confusion regarding the geographic boundary of the proposed anchorage, the current description would be replaced with geographic coordinates that would define the boundary of the anchorage. The proposed coordinates of the anchorage would be:

Latitude	Longitude
29°43′59.0″ N	93°52′08.1″ W
29°44′06.8″ N	93°51′57.6″ W
29°43′53.0″ N	93°51′47.1″ W
29°43′36.7″ N	93°51′50.9″ W

A chart depicting the proposed boundaries is included in the docket where indicated under **ADDRESSES**. The

above coordinates would be the new west, north, east, and south corners of the anchorage, respectively.

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.

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 current information, which indicates that the anchorage area is rarely used, and that the overall reduction in anchorage area would not significantly impact those vessels desiring to use the anchorage.

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.

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 the reduction of size of the Sabine Pass Channel anchorage ground. It is categorically excluded from further review under paragraph L59(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 110.196, revise paragraph (a) to read as follows:

§ 110.196 Sabine Pass Channel, Sabine Pass, TX.

(a) The anchorage area. The water bounded by a line connecting the following coordinates:

Latitude	Longitude
29°43′59.0″ N	93°52′08.1″ W
29°44′06.8″ N	93°51′57.6″ W
29°43′53.0″ N	93°51′47.1″ W
29°43′36.7″ N	93°51′50.9″ W

* * * * *

Dated: December 3, 2018.

Paul F. Thomas,

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

[FR Doc. 2018–27699 Filed 12–20–18; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 2018–12]

Group Registration of Short Online Literary Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to create a new group registration option for certain types of literary works. To qualify for this option, each work must contain at least 100 but no more than 17,500 words. The works must be created by the same individual, and that individual must be named as the copyright claimant for each work. The works must all be published online within a three-calendar-month period. If these requirements have been met, the applicant may submit up to 50 works with one application and one filing fee. The applicant must complete the online application designated for a ''literary work'' and upload a digital copy of each work. The Office will examine each work to determine if it contains a sufficient amount of creative authorship, and if the Office registers the claim, the registration will cover each work as a separate work of authorship. The Office invites comment on this proposal.

DATES: Comments must be made in writing and must be received in the U.S. Copyright Office no later than February 19, 2019.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/rulemaking/shortonline-literaryworks*. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights; Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; or Cindy Paige Abramson, Assistant General Counsel, by telephone at 202–707–8040, or by email at *regans@copyright.gov, rkas@copright.gov, ebertin@copyright.gov,* and *ciab@copyright.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

When Congress enacted the Copyright Act, it authorized the Register to specify by regulation the administrative classes of works for the purpose of seeking a registration and the deposit required for each class. Congress also gave the Register the discretion to allow groups of related works to be registered with one application and one filing fee.[1] This procedure is known as group registration.[2]

As the legislative history explains, allowing ''a number of related works to be registered together as a group represent[ed] a needed and important liberalization of the law.'' [3] Congress recognized that requiring separate applications ''where related works . . . are published separately'' may impose ''unnecessary burdens and expenses on authors.'' [4] Congress provided ''a group of poems by a single author'' as one example of ''a group of related works'' that would be suitable for group registration.[5] When large numbers of literary works are included in one submission, however, information about each work may not be adequately captured. Therefore, group registration options require careful balancing of the need for an accurate public record and the need for an efficient method of facilitating the examination of each work.

II. Petition for Rulemaking

This proposed rulemaking stems from a petition submitted in response to an earlier rulemaking. On December 1, 2016 the Office initiated a rulemaking to update the regulation that governs the group registration option for contributions to periodicals (''GRCP'').[6] In its proposal, the Office explained that GRCP may be used to register works that are first published in a periodical.[7] For purposes of registration, a ''periodical'' is defined as a collective work that is published on an established schedule in successive issues that are intended to be continued indefinitely, such as a newspaper, magazine, newsletter, and other similar works.[8] The Office explained that an electronic publication could be considered a periodical if it is fixed and distributed online or via email as a self-contained work, such as a digital version of a tangible newspaper, magazine, or newsletter.[9] But works that are first published on a website cannot be registered under GRCP, because websites are typically updated on a continual basis, the updates are not distributed as discrete, self-contained issues, and they do not contain numerical or chronological designations that distinguish one update from the next. As such, websites are not considered ''periodicals'' for purposes of registration.[10]

In responding to the proposed rule for GRCP, the National Writers Union (NWU), the American Society of Journalists and Authors (ASJA), the Science Fiction and Fantasy Writers of America, Inc. (SFWA), and the Horror Writers Association (HWA) (collectively ''Petitioners'') jointly submitted a petition for a rulemaking to create a new

[1] *See* 17 U.S.C. 408(c)(1).

[2] *See generally* 37 CFR 202.3(b)(5), 202.4.

[3] H.R. Rep. No. 94–1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770.

[4] *Id.*

[5] *Id.*

[6] 81 FR 86634 (Dec. 1, 2016).

[7] *Id.* at 86635.

[8] *See* 37 CFR 202.4(b)(3).

[9] *See* 81 FR at 86638–39.

[10] *See id.* at 86639.

group registration option to accommodate works distributed online by individual writers, that would not qualify as contributions to periodicals.[11]

According to the petition, individual writers distribute more of their work ''in electronic format on the World Wide Web than in any other format or through any other distribution channel.'' [12] Writers routinely create ''granular'' content that is distributed on websites, blogs, social media platforms, and other internet publications.[13] They also create and distribute online other ''short-form works,'' such as poems, short stories, ''flash'' fiction, short-form ebooks, essays, articles, pamphlets, tracts, and research reports.[14]

Petitioners stated that registration is ''effectively unavailable'' for writers who create ''granular or frequently updated works [that are] distributed electronically, including virtually all Web and social media content.'' [15] They stated that websites, blogs, and social media platforms are typically updated on a daily basis. To register the works that are distributed on these sites, a writer would need to complete and submit a separate application every day, which would be ''prohibitively costly and time-consuming.'' [16]

To address these issues, the Petitioners asked the Office to create a new group registration procedure for ''short-form works'' which would allow individual writers to submit one ''application and fee every three months.'' [17] The Authors Guild, the Association of Garden Communicators (GWA), the Society of Children's Book Authors and Illustrators (SCBWI), the Songwriters Guild of America (SGA), and the Textbook & Academic Authors Association endorsed this petition.[18] They stated that writers ''urgently need a group registration [option] for short pieces, especially those disseminated online,'' including ''blogs, public Facebook posts . . ., short articles, and even copyrightable tweets.'' [19]

In response, when closing the rulemaking for the GRCP registration option, the Office stated that it would consider the Petitioners' requests and ''take them into account when developing its priorities for future upgrades to the electronic registration system.'' [20] On May 8, 2018 the Office met with representatives from NWU, SFWA, ASJA, and the Authors Guild to discuss the Petition. Following discussions with the Authors Guild, the Office presently understands that the Petitioners would support a rule that provides for the registration of up to 50 literary works per quarter and up to 100 works per year. The Office understands Petitioners' position is that the rule should apply to articles, short stories, essays, opinion pieces, columns, blog entries, cartoons, Facebook posts, or other literary works that contain at least 50 words and no more than 40,000 words, that are published as part of a website or online platform, but exclusive of advertising copy, computer programs, and emails.

III. The Proposed Rule

After considering the petition for rulemaking, the Office finds there is a legitimate need for a new group registration option for ''short online literary works,'' to be known as ''GRTX.'' Under the proposed rule, an applicant will be able to register up to 50 literary works with one application and one filing fee. Each work must contain at least 100 words but no more than 17,500 words. The works must be created by the same individual and that individual must be named as the copyright claimant for each work. The works must be published on a website or online platform within a three-calendar-month period. Each of these requirements is discussed below.

A. Eligibility Requirements

Due to the number of works available in this group registration option, along with the complexity of reviewing copyrightability of short-form works, the Office will strictly apply all of the eligibility requirements. To facilitate compliance with the requirements, the Office will provide a checklist in the instructions from the Office, such as in a circular, Compendium update, or web page. Applicants must be certain to adhere to the requirements

1. Works That May Be Included in the Group

A ''literary work'' is defined by statute as a work ''expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects . . . in which [it is] embodied.'' [21] The Office's regulations provide representative examples of works that typically fit within this category, such as fiction, nonfiction, poetry, and other types of textual works.[22]

To qualify for this group registration option, a work must contain sufficient words. A work comprised mainly of numbers, or other verbal or numerical symbols or indicia, will not qualify under this option. The Office will accept deposit copies that contain text combined with another form of authorship. But claims in any accompanying ''artwork,'' ''photograph,'' or any form of authorship other than ''text'' will not be permitted on the application. Examining and cataloging a work that contains multiple forms of authorship requires a significant amount of time and effort. Given the number of works that may be included in each claim, the Office needs to limit the administrative burden that this option will impose on the Literary Division. Therefore, if an applicant asserts a claim in ''text'' and another form of authorship, the examiner may remove the unacceptable authorship statement(s) from the application and add an annotation describing the change, or the examiner may simply refuse registration for the group.

For purposes of registration a ''short'' online literary work will be defined as a work that contains at least 100 words and no more than 17,500 words. The proposed rule provides representative examples of works that typically fit within this range, such as poems, short stories, articles, essays, columns, blog entries, and social media posts. The 100-word threshold is intended to exclude short phrases and slogans, because they are not eligible for copyright protection, and other short forms of expression that contain less than a paragraph of text.[23] While in some cases these types of works may have enough creativity to warrant registration, in other cases they may contain only a *de minimis* amount of

[11] *See* NWU et al. Comments and Petition for Rulemaking at 4 (Jan. 30, 2017) (the ''Petition''), *https://www.regulations.gov/contentStreamer?documentId=COLC-2016-0013-0003&attachmentNumber=1&contentType=pdf.*

[12] Petition at 10.

[13] *See id.* at 4, 9.

[14] *See id.* at 11.

[15] *Id.* at 4.

[16] *See id.* at 4, 10.

[17] *Id.* at 13–14. The Petition echoed a similar request which was submitted in a previous rulemaking by the NWU, ASJA, and the Western Writers of America. *See* NWU et al. Comment on Mandatory Deposit of Electronic Books and Sound Recordings Available Only Online at 3–4, 8–10, 17–19 (Aug. 18, 2016), *https://www.regulations.gov/contentStreamer?documentId=COLC-2016-0005-0009&attachmentNumber=1&contentType=pdf.*

[18] Authors Guild et al. Comment at 8–9 (Nov. 17, 2017), *https://www.regulations.gov/contentStreamer?documentId=COLC-2017-0009-0108&attachmentNumber=1&contentType=pdf.*

[19] *See id.* On November 13, 2017 the Petitioners renewed their request and reiterated that it ''remains prohibitively costly and time-consuming to register . . . most written work distributed online.'' NWU et al. Comment and Renewed Petition for Rulemaking at 4–6 (Nov. 13, 2017), *https://www.regulations.gov/contentStreamer?documentId=COLC-2017-0009-0072&attachmentNumber=1&contentType=pdf.*

[20] 82 FR 29410, 29412 (June 29, 2017).

[21] 17 U.S.C. 101.

[22] *See* 37 CFR 202.3(b)(1)(i).

[23] 37 CFR 202.1(a).

expression. Examining an extremely short work requires careful review and each determination must be made on a case by case basis. It is not feasible to conduct this level of analysis when dozens of works are included within the same claim.

The 17,500-word limit is intended to exclude novels, novellas, or other lengthy works. In drawing the line between ''short'' and ''long'' literary works, the Office considered the word counts specified by the prestigious Hugo, Nebula, and Shirley Jackson awards.[24] The sponsors of these awards classify a ''short story'' as a work that contains less than 7,500 words and a ''novelette'' as a work that contains between 7,500 and 17,500 words. The sponsors define a ''novella'' as a work that contains between 17,500 and 40,000 words,[25] and a ''novel'' as a work that contains more than 40,000 words.[26]

The Petitioners stated that writers are unable to register granular, frequently updated works that are distributed on websites and social media platforms on a daily basis.[27] But they did not provide a compelling reason for creating a similar group registration option for novels, novellas, or other lengthy works of authorship. Such works are more likely to require significant time to create and do not lend themselves to a rapid and continuous publication schedule. Indeed, it seems unlikely that even a prolific author would be able to write, edit, and publish 50 ''long-form'' works within a three-month period.

If a particular work appears to be less than 100 words, the examiner may perform a word count, and if it falls below the 100-word threshold, the examiner may refuse registration for the group. Similarly, the examiner will refuse registration for the group if any work is found to exceed the 17,500-word limit.

A work will be considered an ''online'' literary work if it was first published on the internet. This requirement may be satisfied, for example, if copies of the work were first distributed to the public as part of a website or online platform.[28] Likewise, a work may be eligible for this option if copies were simultaneously published both on the internet and in a physical form. By contrast, a work would not be eligible for GRTX if copies have been distributed solely in a physical form, or if copies were first published in a physical form and then subsequently published online.

2. Number of Works That May Be Included in the Group

Under the proposed rule, an applicant will be allowed to include up to 50 literary works in each submission. The examiner will review each individual work for copyrightable authorship, and if the claim is approved, the registration will cover each work on a separate basis. If an applicant submits more than 50 works, the examiner may accept the first 50 works listed in the application or the examiner may refuse registration for the group.

As discussed below, applicants will be required to submit their claims through the existing registration system. The Office does not currently have the ability to charge differential prices based on the number of works in the group or the complexity of the claim. Given the technical limitations of the current system and the modest filing fee for this option, the Office must impose some limit on the total number of works that may be included in each claim, to manage the administrative burden that this option will impose on the Literary Division. After consulting with the Petitioners, the Office has determined that a limit of 50 works represents an appropriate balance between the interests of the writers and the administrative capabilities of the Office.[29] While each application is limited to 50 works, there is no limit as to how many applications can be submitted.

3. Title Information

The applicant will be required to provide a title for each work in the group, and a title for the group as a whole. The group title will be used to identify the registration in the online public record. The Office will accept any title that reasonably identifies the group. For example, the applicant may provide a title that describes the general subject matter of the works, such as ''Poems, essays, and other reflections on Czech culture and cuisine,'' or a title that includes the author's name, type of works, and publication dates, such as ''Drew McAlister's Facebook Posts May through July 2018.'' In all cases, the applicant will be required to append the term ''GRTX'' to the beginning of the group title, so that the Office can identify the claim and assign it to an appropriate member of the Literary Division.

4. Author and Claimant

Under the proposed rule, all of the works must be created by the same individual. Applicants will not be allowed to submit groups of works created by different authors (such as 25 essays by Carlos Martinez and 25 poems by Rena Martinez). Likewise, the Office will not accept applications claiming that two or more authors jointly created one or more of the works in the group. We would like to hear from commenters as to whether they anticipate any issues with this proposed limitation.

The new group registration option is intended to benefit individual writers who publish their works on the internet, but do not have the time or resources to register their works with the Office. This is less of a concern for corporate authors or authors who are hired to create a work for another party. Therefore, the proposed rule expressly states that works made for hire cannot be registered with GRTX.[30]

The proposed rule states that in all cases, the author must be named as the copyright claimant, even if a different party actually owns the copyright in each work. If the names provided in the author and claimant fields do not match each other, the examiner may remove the claimant's name and replace it with the author's name or the examiner may simply refuse registration. This will improve the efficiency of the

[24] *See Hugo Award Categories,* The Hugo Awards, *http://www.thehugoawards.org/hugo-categories/; Nebula Rules,* Nebula Awards: Science Fiction & Fantasy Writers of America (Nov. 15, 2018), *https://nebulas.sfwa.org/about-the-nebulas/nebula-rules/*; *Award Rules, The Shirley Jackson Awards, https://www.shirleyjacksonawards.org/rules.*

[25] Works of this length include Charles Dickens's *A Christmas Carol,* Ernest Hemingway's *The Old Man and the Sea,* and John Steinbeck's *Of Mice and Men. See, e.g., Word Counts and Other Distractions,* Griffin Paul Jackson (July 25, 2013), *https://griffinpauljackson.com/2013/07/25/book-word-counts/*; Lawrence J. Epstein, *Word Counts in Novels, The Best American Poetry: Blog* (Mar. 20, 2016), *https://blog.bestamericanpoetry.com/the_best_american_poetry/2016/03/word-counts-in-novels-by-lawrence-j-epstein.html.*

[26] Works of this length include Ray Bradbury's *Fahrenheit 451,* F. Scott Fitzgerald's *The Great Gatsby,* and Kurt Vonnegut's *Slaughterhouse-Five. Id.*

[27] *See* Petition at 4.

[28] Because each work must be published ''as part'' of a website or online platform, the website or platform itself would not be eligible for this option. The Office intends to address website registrations in a separate **Federal Register** notice. *See* 83 FR 52336, 52337 (Oct. 17, 2018). Similarly, the Office intends to address publication with respect to the internet, for purposes of registration, in a separate proceeding.

[29] The Office will not accept claims involving a compilation, collective work, or database, because they often contain multiple works of authorship. Likewise, this option may not be used to register podcasts or audiobooks, because they contain two works (namely, a sound recording and the literary work embodied in that recording). These types of works also take more time to examine than traditional literary works, because each recording must be opened, buffered, and played to determine if it is eligible for registration.

[30] In this respect, the proposed rule is similar to the statutory and regulatory provisions that govern the group registration option for contributions to periodicals. *See* 17 U.S.C. 408(c)(3); 37 CFR 202.4(g)(1), (3).

examination process by allowing the Office to focus on the copyrightability of each work. It is also consistent with the basic principle that an author may always be named as the copyright claimant, even if she does not own any of the exclusive rights when the claim is submitted.[31] *See Compendium* sec. 619.7 (citing 42 FR 48944, 48945 (Sept. 26, 1977)). We would like to hear from commenters as to whether they anticipate any issues with this proposed limitation.

5. Publication Information

As mentioned above, an applicant will be allowed to register a group of short literary works if the works were first published as part of a website or online platform. The works may be published on the same site or different sites, but they must be published within a three-calendar-month period.[32]

If the works were published on the same date, the applicant should provide that date in the application. If the works were published on different dates, the applicant should identify the first date that the works were published; the Office will assume that the rest of the works were published on that date or within three months thereafter. Claims with a range of publication dates outside of a three-calendar-month period will be refused, and if any works are later determined to be published outside of the three-month calendar period the registration may be cancelled. *See* 37 CFR 202.4(l), (m).

The GRTX group option may only be used to register published works. This option cannot be used to register a group of unpublished literary works.[33] Likewise, applicants will not be allowed to combine published and unpublished works in the same claim. The Copyright Act requires applicants to separately identify published and unpublished works for purposes of registration, and this requirement cannot be changed without amending the law.[34]

B. Application Requirements

Ordinarily, when the Office creates a new group registration option, it develops a corresponding application form to collect the information needed for that type of claim.[35] But the Office is beginning to work on the technical requirements for its next-generation registration system, and it does not intend to conduct any further development on the current system. In the interim, claims submitted under a new group registration option for short online literary works will need to be adapted to fit within the registration system as it currently exists.

Under the proposed rule, applicants will be required to submit their claims through the electronic registration system and they will be required to use the Standard Application designated for a ''Literary Work.'' [36] Further instructions on how to complete this application will be provided by the Office through traditional avenues, including its website, circulars, or Chapter 1100 of the *Compendium of U.S. Copyright Office Practices.* Recently the Office amended its regulations to require other group registration claims to be filed electronically, and the rationales requiring electronic submission of applications provided in those rulemakings apply equally here.[37] Moreover, GRTX may only be used to register literary works that have been published as part of a website or online platform. It is reasonable to assume that individuals who create and publish these types of works will have access to the internet and will be capable of using the electronic registration system to register their claims.[38]

The Office will not accept claims submitted on a paper application. If an applicant attempts to use a paper form, the Office will refuse registration and instruct the applicant to resubmit the claim on the Standard Application, which will require a new filing fee and result in a later effective date of registration. But as with the other rules mentioned above,[39] the proposed rule would allow the Office to waive this online filing requirement in exceptional cases. If a particular author does not have internet access or is unable to use the Standard Application, the applicant could request a waiver in writing. The Office would review each request and would make appropriate accommodations for applicants who receive an approved waiver. To be sure, since this group registration option involves works that were necessarily published online, the Office expects there to be few, if any, exceptional cases necessitating waiver of this requirement.

The applicant must submit a sequentially numbered list containing a title/file name for each work in the group. The list must also include the publication date and word count for each work. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of the group and the case number assigned to the application by the electronic registration system (*e.g.,* ''Title Of Group Case Number 16283927239.xls'').

C. Deposit Requirements

Under the proposed rule, applicants will be required to submit one complete copy of each work in the group. The copies must be uploaded to the electronic registration system in a digital file, each file must be submitted in one of the acceptable file formats listed on the Office's website, such as PDF, and all of the files must be submitted in the same format.[40] Because this option may only be used to register works that have been published online, it is reasonable to assume that authors will be able to upload their works to the electronic system. Thus, the Office generally will not accept physical

[31] If the author transferred the copyright to another person or entity, the copyright owner may add that information to the public record by recording the bill of sale, exclusive license, or other document that identifies the current owner of each work.

[32] In this respect, the proposed rule is similar to the regulations that govern the group registration options for automated databases, serials, and secure test items. *See* 37 CFR 202.3(b)(5)(i)(F), 202.4(f)(1)(v), 202.13(d)(4).

[33] The Office recently announced that it intends to create a new group registration option for unpublished works, which will be known as ''GRUW.'' The Office also intends to release a new application form that will be specifically designed for these types of claims. *See* 82 FR 47415 (Oct. 12, 2017). The Office expects to issue a final rule in the GRUW rulemaking before the proposed rule on GRTX goes into effect. If an applicant attempts to register a group of unpublished works under GRTX, the Office will instruct the applicant to resubmit the claim using the designated form for GRUW, which will require an additional filing fee and result in a later effective date of registration.

[34] 17 U.S.C. 409(8).

[35] *See, e.g.,* 37 CFR 202.4(d)(2), (e)(5), (f)(2), (g)(6), (h)(8), (i)(8).

[36] As the label suggests, this application is designed for registering one literary work, rather than a group of related works.

[37] *See, e.g.,* 82 FR 29410, 29410–11 (June 29, 2017) (final rule for contributions to periodicals explaining policy considerations supporting online-only registration); 82 FR 51369, 51374 (Nov. 6, 2017) (proposed rule for group newspapers); 83 FR 22896, 22899–900 (May 17, 2018) (proposed rule for group serials); 83 FR 22902, 22905 (May 17, 2018) (proposed rule for group newsletters).

[38] Likewise, the online-filing requirement will apply to the ''supplementary registration'' procedure, which may be used to correct or amplify the information in an existing registration. The Office has announced that if it moves ''registrations for other classes of works into the electronic registration system,'' the procedure for correcting or amplifying those registrations would ''be subject to this same [online filing] requirement.'' 81 FR 86656, 86658 (Dec. 1, 2016). Thus, if an applicant needs to correct or amplify the information in a registration for a group of short online literary works, that request will need to be submitted through the electronic registration system, instead of using a paper form. *See* 37 CFR 202.6(e)(1).

[39] *See, e.g.,* 37 CFR 202.4(g)(9), (h)(11), (i)(11), 202.6(e)(7).

[40] The list of acceptable formats is available at *http://copyright.gov/eco/help-file-types.html.*

copies, such as print-outs, or digital copies that have been saved onto an electronic storage device, such as a disc or thumb drive.[41]

The copies must be submitted in an orderly manner. A submission will be considered ''orderly'' if the applicant uploads each work in a separate digital file. The Office will not accept multiple works within the same digital file because of the burden on the examiner in distinguishing one work from the next. The file name for each work must match the corresponding title entered on the application so that the examiner can easily verify that the correct works were uploaded. The upload should contain no more than 50 files representing 50 complete works. If more than 50 files are uploaded, the examiner may refuse registration for the group.

D. Filing Fee

The filing fee for this option will be $55, which is the fee that currently applies to any claim submitted on the Standard Application. The Office recently issued a proposal to increase this fee from $55 to $75.[42] If that proposal is adopted, the new fee will apply to any claim submitted on the Standard Application, including claims involving short online literary works. As mentioned above, the Office does not have the ability to charge differential prices when multiple works are submitted on the Standard Application. However, the Office will consider this issue as it begins to develop the technical and legal requirements for its next-generation registration system.[43]

E. The Scope of a Group Registration

As mentioned above, the Office will review each work to determine if it contains a sufficient amount of original, creative authorship. If the legal and formal requirements have been met, the examiner will register the claim and will add an annotation to the certificate indicating that the works were registered in accordance with the eligibility requirements for GRTX.[44]

Under the proposed rule, a group registration will cover each work in the group and each work will be considered to be registered as a separate work.[45] Thus, if any of the works are subsequently infringed, the copyright owner should be entitled to seek a separate award of statutory damages for each individual work.[46] By contrast, the group itself is merely an administrative classification created solely for the purpose of registering multiple literary works with one application and one filing fee. Therefore, claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application, and the group will not be considered a compilation or a collective work for purposes of sections 101, 103(b), or 504(c)(1) of the Copyright Act.

IV. Conclusion

The proposed rule will encourage broader participation in the registration system by establishing a new group registration option for individual writers who publish their works on the internet. The Office invites public comments on this proposal.

* * * * *

List of Subjects in 37 CFR Part 202

Copyright.

Proposed Regulation

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

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

Authority: 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.4 as follows:
■ a. Add paragraph (j).
■ b. In paragraph (n) remove ''paragraph (g), (h), (i), or (k)'' and add in their place ''paragraphs (g) through (k)''.

The addition reads as follows:

§ 202.4 Group Registration.

* * * * *

(j) *Group registration of short online literary works.* Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of literary works may be registered in Class TX with one application, the required deposit, and the filing fee required by § 201.3(c) if the following conditions are met:

(1) The group may include up to 50 short online literary works. For purposes of this section, a *short online literary work* is a work consisting of text that contains at least 100 words and no more than 17,500 words, such as a poem, short story, article, essay, column, blog entry, or social media post. The work must be published as part of a website or online platform, including online newspapers, social media websites, and social networking platforms. The group may not include computer programs, audiobooks, podcasts, or emails. Claims in any form of authorship other than ''text'' or claims in the selection, coordination, or arrangement of the group as a whole will not be permitted on the application.

(2) All of the works must be published within a three-calendar-month period, and the application must identify the earliest date that the works were published.

(3) All the works must be created by the same individual and that individual must be named as the copyright claimant for each work in the group.

(4) The works must not be works made for hire and must not be works of joint authorship.

(5) The applicant must provide a title for each work and a title for the group as a whole, and must append the term ''GRTX'' to the beginning of the group title.

(6) The applicant must complete and submit the Standard Application designated for a ''Literary Work.'' The application may be submitted by any of the parties listed in § 202.3(c)(1).

(7) The applicant must submit one complete copy of each work. The works must be assembled in an orderly form with each work in a separate digital file, they all must be submitted in one of the electronic formats approved by the Office, and they must be uploaded to the electronic registration system in no more than 50 files and representing no more than 50 complete works. The file name for each work must match the title as submitted on the application. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(8) The applicant must submit a sequentially numbered list containing a title/file name for each work in the group. The list must also include the publication date and word count for each work. The numbered list must be contained in an electronic file in Excel format (.xls), Portable Document Format (PDF), or other electronic format approved by the Office, and the file name for the list must contain the title of the group and the case number assigned to the application by the electronic registration system (*e.g.,*

[41] If an applicant is unable to upload a particular work to the system, the applicant may request special relief from the deposit requirements under 37 CFR 202.20(d)(1)(iii)–(iv). The Office will consider these requests on a case-by-case basis. *See Compendium* sec. 1508.8.

[42] 83 FR 25054, 24057 (May 24, 2018).

[43] *See* 83 FR 52336, 52339 (Oct. 17, 2018).

[44] If the examiner determines that one or more of the works is not copyrightable, the examiner will require the applicant to exclude that work from the claim. If the applicant disagrees with that assessment, the applicant may resubmit that work on an individual basis (which will require a new application, deposit, and filing fee) and then appeal the subsequent refusal.

[45] *See* 37 CFR 202.4(n).

[46] *See* 17 U.S.C. 504(c)(1) (authorizing a separate award of statutory damages ''with respect to any one work'').

''Title Of Group Case Number 16283927239.xls'').

(9) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (j)(6) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

* * * * *

Dated: December 17, 2018.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2018–27543 Filed 12–20–18; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–RO5–OAR–2018–0302; EPA–RO5–OAR–2018–0303; EPA–R05–OAR–2018–0589; FRL–9988–03–Region 5]

Air Plan Approval; Illinois; NAAQS and VOC Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revised rules submitted by the State of Illinois as State Implementation Plan (SIP) revisions. The submitted rules update Illinois ambient air quality rules to update definitions and requirements for handling monitoring data influenced by exceptional events, implementation rules for the 2012 primary annual National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$), and designated reference and equivalent methods for multiple NAAQS. In addition, the submitted rules amend the Illinois Administrative Code (IAC) by updating the definition of volatile organic compounds (VOC).

DATES: Comments must be received on or before January 22, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA R05 OAR 2018–0302, EPA–RO5–OAR–2018–0303, or EPA–RO5–OAR–2018–0589 at *http://www.regulations.gov,* or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Samantha Panock, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8973, *panock.samantha@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: December 3, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

[FR Doc. 2018–27609 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2013–0495; FRL–9988–16–OAR]

RIN 2060–AT56

Review of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: On December 6, 2018, the Environmental Protection Agency (EPA) Acting Administrator signed a proposed rule titled ''Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.'' The EPA is announcing that it will hold a public hearing on the proposed action. The hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

DATES: The EPA will hold a public hearing on Tuesday, January 8, 2019, in Washington, DC. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: The hearing will be held at the EPA WJC East Building, 1201 Constitution Avenue NW, Room 1153, Washington, DC 20004. The hearing will convene at 8:00 a.m. Eastern Standard Time (EST) and will conclude at 7:00 p.m. EST.

Because this hearing is being held at a U.S. government facility, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. For purposes of the REAL ID Act, the EPA will accept government-issued IDs, including driver's licenses from the District of Columbia and all states and territories. Acceptable alternative forms of identification include: Federal employee badges,

passports, enhanced driver's licenses, and military identification cards. For additional information on the status of your state regarding REAL ID, go to: *https://www.dhs.gov/real-id.* Any objects brought into the building need to fit through the security screening system, such as a purse, laptop bag, or small backpack. Demonstrations will not be allowed on federal property for security reasons.

FOR FURTHER INFORMATION CONTACT: The EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/forms/public-hearing-proposed-nsps-greenhouse-gas-emissions-new* or contact Adrian Gates at (919) 541–4860 or at *gates.adrian@epa.gov.* The last day to pre-register to speak at the hearing will be January 2, 2019. By January 7, 2019, the EPA will post at *https://www.epa.gov/stationary-sources-air-pollution/forms/public-hearing-proposed-nsps-greenhouse-gas-emissions-new* a general agenda for the hearing that will list pre-registered speakers in approximate order. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule. Additionally, requests to speak will be taken the day of the hearing at the hearing registration desk. The EPA will make every effort to accommodate all speakers who arrive and register, although preferences on speaking times may not be able to be fulfilled.

SUPPLEMENTARY INFORMATION: Each commenter will have 5 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form.

The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing. Commenters should notify Adrian Gates if they will need specific equipment or if there are other special needs related to providing comments at the hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/stationary-sources-air-pollution/forms/public-hearing-proposed-nsps-greenhouse-gas-emissions-new.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact Adrian Gates at (919) 541–4860 or *gates.adrian@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

The EPA will not provide audiovisual equipment. Commenters should notify Adrian Gates when they pre-register to speak if they will require the service of a translator or special accommodations such as audio description. We may not be able to arrange accommodations without advanced notice.

Dated: December 17, 2018.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2018–27668 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 209, 211, and 252

[Docket DARS–2018–0059]

RIN 0750–AJ85

Defense Federal Acquisition Regulation Supplement: Applicability of Inflation Adjustment of Acquisition Related Thresholds (DFARS Case 2018–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 to require that inflation adjustments of statutory acquisition-related thresholds apply to existing contracts and subcontracts in effect on the date of the adjustment that contain the adjusted clauses.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 19, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D023, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D023.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D023'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D023 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Heather Kitchens, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Heather Kitchens, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to revise the DFARS to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 821 amends 41 U.S.C. 1908(d) to require that the inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 apply to existing contracts and subcontracts in effect on the date of the adjustment.

41 U.S.C. 1908, Inflation adjustment of acquisition-related dollar thresholds, requires an adjustment every five years of statutory acquisition-related thresholds for inflation using the Consumer Price Index for All Urban Consumers (CPI–U), except for the Construction Wage Rate Requirements statute (formerly known as the Davis-Bacon Act), Service Contract Labor Standards statute (formerly known as the Service Contract Act), and trade agreements thresholds. See Federal Acquisition Regulation (FAR) 1.109. The last DFARS case that raised the thresholds for inflation was 2014–D025, a final rule published in the **Federal Register** (80 FR 36903) on June 26, 2015, effective October 1, 2015. The next final rule to be published raising thresholds for inflation under 41 U.S.C. 1908 will be effective October 1, 2020.

Section 821 adds the words ''and shall apply, in the case of the procurement of property or services by contract, to a contract, and any subcontract at any tier under the contract, in effect on that date without regard to the date of award of the contract or subcontract'' at the end of 41 U.S.C. 1908(d). Therefore, if acquisition-related thresholds are adjusted under 41 U.S.C. 1908 during the life of a contract, then that contract and all of the subcontracts under that contract will now be subject to the adjusted thresholds.

II. Discussion and Analysis

Currently, the DFARS clauses that contain thresholds subject to inflation adjustment provide the specific dollar amount of the threshold. To implement the new requirements under 41 U.S.C. 1908(d), DoD is proposing to replace the dollar amounts of the thresholds in each clause with a reference to the FAR or DFARS section that provides the overarching policy and the acquisition-related threshold. If the DFARS policy section does not currently include the acquisition-related threshold, this rule proposes amendments to those sections to add the thresholds. In addition, within the affected DFARS clauses, additional text is added to clarify that the threshold with which a contractor or subcontractor must comply is the threshold in effect at the time of contract or subcontract award or issuance of the notice, as appropriate.

These changes not only reduce the number of places to update the thresholds for future inflation changes, but also ensures that future contracts containing these clauses always include a reference to the current threshold. The following is a summary of the DFARS clauses affected by this rule and the associated FAR or DFARS policy sections that include or will include the acquisition-related threshold as a result of this rule or the related FAR rule:

DFARS clause	FAR/DFARS policy section	Threshold
252.203–7004, Display of Hotline Posters	DFARS 203.1004(b)(2)(ii)	Currently includes threshold.
252.209–7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism.	FAR 9.405–2(b)	Currently includes threshold.
252.209–7009, Organizational Conflict of Interest—Major Defense Acquisition Program.	DFARS 209.571–1	Threshold to be added under this rule.
252.219–7003, Small Business Subcontracting Plan (DoD Contracts)	FAR 19.702(a)	Currently includes threshold.
252.219–7004, Small Business Subcontracting Plan (Test Program)	FAR 19.702(a)	Currently includes threshold.
252.225–7004, Report of Intended Performance Outside the United States and Canada—Submission after Award.	DFARS 225.870–4(c)(2)(i)(A)(*1*)	Currently includes threshold.
252.249–7002, Notification of Anticipated Contract Termination or Reduction.	DFARS 225.870–4(c)(2)(i)(A)(*1*) and 225.870–4(c)(2)(i)(C).	Currently includes threshold.

In order to incorporate the acquisition-related threshold in the DFARS policy section associated with DFARS clause 252.209–7009 and to be consistent with current drafting conventions, the definitions in DFARS 209.571–1 are proposed to be provided in full text, in lieu of referring to the definitions in clauses. The statutory acquisition-related threshold in DFARS clause 252.211–7000 is proposed to be incorporated in a new DFARS policy section 211.7000.

Finally, this rule proposes to add a new paragraph at 201.109(a) to advise contracting officers of the new requirements of 41 U.S.C. 1908(d) with regard to the effective date of statutory acquisition-related thresholds that are subject to adjustment based on inflation.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses, except for moving dollar values of thresholds in the stated clauses and adding references in these clauses to the location of the threshold in the associated DFARS policy section. Therefore, there is no change to the applicability of any of the clauses to contracts at or below the simplified acquisition threshold, or to the acquisition of commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.s) 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. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

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

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. The scope of the rule relates to amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require that inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 apply to existing contracts and subcontracts in effect on the date of the adjustment. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the DFARS to make inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908(d) applicable to existing contracts and subcontracts in effect on the date of the adjustment that contain the revised clauses.

The objective is to implement section 821 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 821 amends 41 U.S.C. 1908(d) to require inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 apply to existing contracts and subcontracts in effect on the date of the adjustment. Section 821 adds the words ''and shall apply, in the case of the procurement of property or services by contract, to a contract, and any subcontract at any tier under the contract, in effect on that date without regard to the date of award of the

contract or subcontract'' at the end of 41 U.S.C. 1908(d).

This proposed rule will likely affect to some extent all small business concerns that submit offers or are awarded contracts by the Federal Government.

However, this rule is not expected to have any significant economic impact on small business concerns because this rule is only establishing the framework to apply the inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 to existing contracts and subcontracts in effect on the date of the adjustment. Any impact on small business concerns will be beneficial by preventing burdensome requirements from applying to the smaller dollar value acquisitions, which are the acquisitions in which small business concerns are most likely to participate.

For FY 2017, there were 106,438 unique vendors in the Federal Procurement Data System (FPDS) identified as small business concerns.

As of September 30, 2017, there were 637,791 active entity registrations in *SAM.gov*. Of those active entity registrations, 452,310 (71%) completed all four modules of the registration, in accordance with Federal Acquisition Regulation 52.204–7(a)(2), including Assertions (where they enter their size metrics and select their North American Industry Classification System (NAICS) Codes) and Representations and Certifications (where they certify to the information they provided and the size indicator by NAICS).

Of the possible 452,310 active *SAM.gov* entity registrations, 338,207 (75%) certified to meeting the size standard of small for their primary NAICS Code. Therefore, this rule may be beneficial to 338,207 small business entities that submit proposals that may now fall under the micro-purchase threshold and the simplified acquisition threshold, which provide for the use of streamlined procedures.

This proposed rule does not include any new reporting or recordkeeping requirements for small entities.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D023), in correspondence.

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 201, 209, 211, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 209, 211, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 201, 209, 211, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Amend section 201.109 by—

■ a. Designating the paragraph (a) text as paragraph (a)(ii); and

■ b. Adding paragraph (a)(i).

The addition reads as follows:

201.109 Statutory acquisition-related dollar thresholds-adjustment for inflation.

(a)(i) 41 U.S.C. 1908(d) requires the adjustment for inflation of all statutory acquisition-related dollar thresholds in the DFARS be applied to contracts and subcontracts without regard to the date of award of the contract or subcontract, except thresholds based on the Wage Rate Requirements statute, the Service Contract Labor Standards statute, or established by the United States Trade Representative pursuant to the Trade Agreement Act, which are not escalated by the statute.

* * * * *

PART 209—CONTRACTOR QUALIFICATION

■ 3. Amend section 209.571–1 by revising the definitions of ''Lead system integrator'' and ''Major subcontractor'' to read as follows:

209.571–1 Definitions.

* * * * *

''Lead system integrator'' includes *lead system integrator with system responsibility* and *lead system integrator without system responsibility*.

(1) *Lead system integrator with system responsibility* means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(2) *Lead system integrator without system responsibility* means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with respect to the development or production of a major system. ''Major subcontractor'' means a subcontractor that is awarded a subcontract that equals or exceeds—

(1) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontract is awarded; or

(2) $55 million.

* * * * *

PART 211—DESCRIBING AGENCY NEEDS

■ 4. Add section 211.7000 to read as follows:

211.7000 Acquisition streamlining.

Acquisition streamlining is required for all systems acquisition program contracts and for all subcontracts over $1.5 million awarded in the performance of contracts for systems acquisition programs.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 252.203–7004 by—

■ a. Removing the clause date of ''(OCT 2016)'' and adding ''(DATE)'' in its place;

■ b. Revising paragraph (d).

The revision reads as follows:

252.203–7004 Display of Hotline Posters.

* * * * *

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed the threshold specified in Defense Federal Acquisition Regulation Supplement 203.1004(b)(2)(ii) on the date of subcontract award except when the subcontract is for the acquisition of a commercial item.

* * * * *

252.209–7004 [Amended]

■ 6. Amend section 252.209–7004 by—

■ a. Removing the clause date of ''(OCT 2015)'' and adding ''(DATE)'' in its place;

■ b. In paragraph (a), removing ''$35,000'' and adding ''the threshold specified in Federal Acquisition Regulation 9.405–2(b) on the date of subcontract award'' in its place.

■ 7. Amend section 252.209–7009 by—

■ a. Removing the clause date of ''(OCT 2015)'' and adding ''(DATE)'' in its place; and

■ b. Revising paragraph (a).

The revision reads as follows:

252.209–7009 Organizational Conflict of Interest—Major Defense Acquisition Program.

* * * * *

(a) *Definition.* As used in this clause—

Major subcontractor means a subcontractor that is awarded a subcontract that equals or exceeds—

(1) Both the certified cost or pricing data threshold and 10 percent of the value of the contract under which the subcontract is awarded; or

(2) The threshold specified in the definition of ''major subcontractor'' at Defense Federal Acquisition Regulation Supplement 209.571–1 on the date of subcontract award.

* * * * *

■ 8. Amend section 252.219–7003 by—

■ a. Removing the clause date of ''(APR 2018)'' and adding ''(DATE)'' in its place;

■ b. Revising paragraph (g);

■ c. In Alternate I—

■ i. Removing the clause date of ''(APR 2018)'' and adding ''(DATE)'' in its place; and

■ b. Revising paragraph (g).

The revision reads as follows:

252.219–7003 Small Business Subcontracting Plan (DoD Contracts)

* * * * *

(g) Include the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a), and to have further subcontracting opportunities.

* * * * *

Alternate I. * * *

(g) Include the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a), and to have further subcontracting opportunities.

* * * * *

■ 9. Amend section 252.219–7004 by—

■ a. Revising the section heading;

■ b. Removing the clause date of ''(APR 2018)'' and adding ''(DATE)'' in its place;

■ c. Revising paragraph (g) introductory text.

■ d. In paragraph (g)(1), removing ''252.219–7003'' and adding ''Defense Federal Acquisition Regulation Supplement (DFARS) 252.219–7003'' in its place;

■ e. In paragraph (g)(2), removing ''252.219–7003'' and adding ''DFARS 252.219–7003'' in its place; and

■ f. In paragraph (g)(3), removing ''252.219–7004'' and adding ''DFARS 252.219–7004'' in its place.

The revisions read as follows:

252.219–7004 Small Business Subcontracting Plan (Test Program).

* * * * *

(g) *Subcontracts.* The Contractor shall include in subcontracts that offer subcontracting opportunities, are expected to exceed the applicable threshold specified in FAR 19.702(a) on the date of subcontract award, and are required to include the clause at FAR 52.219–8, Utilization of Small Business Concerns, the clauses at—

* * * * *

■ 10. Amend section 252.225–7004 by—

■ a. Removing the clause date of ''(OCT 2015)'' and adding ''(DATE)'' in its place; and

■ b. Revising paragraphs (a) and (b)(1).

The revisions read as follows:

252.225–7004 Report of Intended Performance Outside the United States and Canada—Submission after Award.

* * * * *

(a) *Definition.* As used in this clause—

United States means the 50 States, the District of Columbia, and outlying areas.

(b) * * *

(1) Exceeds the threshold specified in Defense Federal Acquisition Regulation Supplement 225.870–4(c)(2)(i)(A)(*1*) on the date of award of this contract; and

* * * * *

■ 11. Amend section 252.249–7002 by—

■ a. Revising the section heading;

■ b. Removing the clause date of ''(OCT 2015)'' and adding ''(DATE)'' in its place;

■ c. Adding paragraph (a) introductory text; and

■ d. Revising paragraphs (d)(1) and (2).

The addition and revisions read as follows:

252.249–7002 Notification of Anticipated Contract Termination or Reduction.

* * * * *

(a) * * * As used in this clause—

* * * * *

(d) * * *

(1) Provide notice of the anticipated termination or reduction to each first-tier subcontractor with a subcontract that equals or exceeds the threshold specified in Defense Federal Acquisition Regulation Supplement (DFARS) 225.870–4(c)(2)(i)(A)(*1*) at the time of the notice; and

(2) Require that each such subcontractor—

(i) Provide notice to each of its subcontractors with a subcontract that equals or exceeds the threshold specified in DFARS 225.870–4(c)(2)(i)(C) at the time of the notice; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts that equal or exceed the threshold specified in DFARS 225.870–4(c)(2)(i)(C) at the time of the notice.

* * * * *

[FR Doc. 2018–27559 Filed 12–20–18; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 83, No. 245
Friday, December 21, 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

Submission for OMB Review; Comment Request

December 18, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by January 22, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business Cooperative Service

Title: Value Added Producer Grant Program.

OMB Control Number: 0570–0064.

Summary of Collection: The Cooperative Programs unit within Rural Business-Cooperative Service (RBS) an agency within the USDA Rural Development mission area will administer the Value-Added Producer Grants (VAPG) Program. The Program is authorized under section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246). The objective of this program is to encourage producers of agricultural commodities and products of agricultural commodities to further refine these products increasing their value to end users of the product. These grants will be used for two purposes: (1) To fund feasibility studies, marketing and business plans, and similar development activities; and (2) to use the grant as part of the venture's working capital expenses such as inventory, utilities and salaries.

Need and Use of the Information: Rural Development State and Area office staff, as delegated, will collect information from applicants and grantees. RBS will use the information collected by to determine (1) eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities are to be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital to value-added ventures development and sustainability. Without this information, there would be no basis on which to award funds.

Description of Respondents: Individuals or Households; Business or Other for Profit.

Number of Respondents: 556.

Frequency of Responses: Reporting: On occasion; Monthly; Semi-annually, Annually.

Total Burden Hours: 52,818.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–27755 Filed 12–20–18; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 18, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by January 22, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information

displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Federal Marketing Order for Almonds.

OMB Control Number: 0581–New.

Summary of Collection: Marketing Order No. 981 (7 CFR part 81) regulates the handling of almonds grown in California. Enabling legislation is contained in the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.;* Act). The Act authorizes the promulgation and amendment of marketing orders for certain agricultural commodities and the issuance of regulations thereof for providing orderly marketing conditions in interstate and intrastate commerce and for improving returns to producers. The Act provides in section 608(d)(1) that information necessary to determine the extent to which a marketing order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture. The rules of practice and the procedure governing proceedings to formulate marketing orders are contained in 7 CFR part 900.

Need and Use of the Information: The Board is made up of grower and handler members and alternates who are nominated by their industry peers and appointed by the U.S. Department of Agriculture (USDA) for specified terms of office. Board staff use the four ballot forms and one grower petition when conducting the nomination process. These new forms require a minimum of information necessary to effectively carry out the requirements of the marketing order, and their use is necessary to fulfill the intent of the Act as expressed in the marketing order.

Description of Respondents: Individuals or households.

Number of Respondents: 677.

Frequency of Responses: Reporting: On occasion; Other (when forms are requested).

Total Burden Hours: 57.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–27754 Filed 12–20–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 18, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Comments regarding this information collection received by January 22, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Partnership and Public Engagement

Title: USDA/1890 National Scholars Program Application.

OMB Control Number: 0503–0015.

Summary of Collection: The USDA/1890 National Scholars Program is an annual recruiting effort by the USDA/1890 National Program Office and the participating eighteen 1890 Land-Grant Universities. This human capital initiative is a collective effort geared towards attracting graduating high school seniors and currently enrolled college students who are rising sophomores or juniors, into pursuing disciplines in agriculture, natural resources, and related sciences at any of the 1890 Land-Grant Universities. The USDA/1890 National Scholars Program offers scholarships to U.S. citizens who are seeking a bachelor's degree, in the fields of agriculture, food, or natural resources sciences and related majors, at one of the nineteen Historically Black Land-Grant Universities. Each applicant is required to submit a hard copy of the USDA/1890 National Scholars Program Application Form to the USDA/1890 Program Liaison assigned to the 1890 Land-Grant University to which they want to apply.

Need and Use of the Information: The information to be collected from the application includes the applicant name, address, educational background (grade point average, test scores), name of universities interested in attending, desired major, extracurricular activities, interest and habits. The information will be used to assist the selecting agencies in their process of identifying potential recipients of the scholarship. The program would not be able to function consistently without this annual collection.

Description of Respondents: Individuals or households.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,900.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–27626 Filed 12–20–18; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Notice of Funds Availability (NOFA); Market Facilitation Program (MFP) Payments to Producers

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

ACTION: Notice.

SUMMARY: MFP provides payments to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This NOFA announces the new payment rates for

selected commodities. On behalf of the Commodity Credit Corporation (CCC), the Farm Service Agency (FSA) administers MFP. MFP participants will receive an MFP payment, calculated based on the eligible production multiplied by the participant's share multiplied by the MFP payment rate.

DATES: *Application period:* December 21, 2018 through January 15, 2019.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, telephone: (202) 720–3175.

SUPPLEMENTARY INFORMATION:

Background

The MFP regulation in 7 CFR part 1409 specifies the eligibility requirements, payment calculations, and application procedures for MFP. CCC published NOFAs on August 30, 2018 (83 FR 44257–44258), and on September 25, 2018 (83 FR 48410–48411), that announced funds available for MFP commodities and specified the initial payment rates. MFP provides assistance to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports.

The initial payment rates announced in previous NOFAs applied to the first 50 percent of the producer's total production of the selected commodity. The second payment rates, as announced in this NOFA, apply to the remaining 50 percent of the producer's production for the selected commodity.

MFP payment at the second payment rate will be made after a producer harvests 100 percent of the crop and certifies the amount of production.

Payment Rates

The MFP payment rates that have been determined by CCC are as shown in the following table.

Commodity	Unit	Initial rate * ($/unit)	Second rate ** ($/unit)
Soybeans	bushels	$1.65	$1.65
Sorghum	bushels	0.86	0.86
Wheat	bushels	0.14	0.14
Cotton (Upland and ELS)	pounds	0.06	0.06
Corn	bushels	0.01	0.01
Hogs	number of head of hogs	8.00	8.00
Milk	hundredweight (cwt)	0.12	0.12
Shelled Almonds	pounds	0.03	0.03
Fresh Sweet Cherries	pounds	0.16	0.16

* Payment rate for first 50 percent of producer's total production.
** Payment rate for remaining 50 percent of producer's total production.

The actual production used to calculate an MFP payment under this NOFA is 2018 production in which the applicant had an ownership share. Specifically, required production information is as follows:

- Harvested production for the 2018 crop year;
- An ownership share for a crop will be as reported to FSA on the acreage report, form FSA–578, ''Report of Acreage.''

For information about production evidence, payment limitation, and eligible crops, see the previously published MFP NOFAs (83 FR 44257–44258 and 83 FR 48410–48411).

Paperwork Reduction Act Requirements

In the accordance with the Paperwork Reduction Act of 1995, the information collection required by MFP regulation (7 CFR 1409) has been approved by OMB under OMB control number of 0560–0292. FSA does not have any changes to the burden hours and the information collection activities for this NOFA.

Environmental Review

The environmental impacts for MFP have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulation for compliance with NEPA (7 CFR part 799).

As stated in the MFP final rule, the implementation of MFP and the participation in MFP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. The final rule served as documentation of the programmatic environmental compliance decision for this federal program; therefore, CCC will not prepare additional environmental compliance documentation for this NOFA.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this NOFA applies is: 10.123 Market Facilitation Program.

Richard Fordyce,

Administrator, Farm Service Agency.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2018–27614 Filed 12–20–18; 8:45 am]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the New York Advisory Committee to the Commission will convene by conference call at 12:00 p.m. (EST) on: Friday, January 11, 2019. The purpose of the meeting is to discuss topics of study.

DATES: Friday, January 11, 2019 at 12:00 p.m. EST.

ADDRESSES: Public Call-In Information: Conference call-in number: 1–877–260–1479 and conference ID# 5953601.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–877–260–1479 and conference ID# 5953601. Please be advised that before placing them into the conference call, the conference call operator will ask callers to provide their names, their

organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–977–8339 and providing the operator with the toll-free conference call-in number: 1–877–260–1479 and conference ID# 5953601.

Members of the public are invited to make statements during the open comment period of the meetings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Midwest Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265*; click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, January 11, 2019

- Open—Roll Call
- Discussion of Study Topics
- Open Comment
- Adjourn

Dated: December 18, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27741 Filed 12–20–18; 8:45 am]

BILLING CODE P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of accepting written and oral public comments on family separation.

DATES: Friday, December 10, 2019 through Monday, February 25, 2019 (written comments); Friday, January 25, 2019, 1:30 p.m. ET (in-person comments).

ADDRESSES: Place: National Place Building, 1331 Pennsylvania Ave. NW, 11th Floor, Suite 1150, Washington, DC 20245 (Entrance on F Street NW).

FOR FURTHER INFORMATION CONTACT: Brian Walch, (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: In 2015, the Commission issued a *report,* ''With Liberty and Justice for All: The State of Civil Rights at Immigration Detention Facilities.'' In that report, the Commission specifically addressed the status of detained undocumented immigration children and found substantial questions regarding the compliance of both the Office of Refugee Resettlement of the Department of Health & Human Services (HHS) and the Department of Homeland Security (DHS) with the quality care standards and the terms of the Flores Settlement Agreement for unaccompanied minor children. Further, the Commission examined policies and standards surrounding the detention of families at residential centers operated by DHS.

In 2018, as part of implementing its ''zero tolerance'' program for border crossings, the federal government began forcibly separating undocumented immigrant children from their parents. After reversing this policy, the federal government stated it would seek legal authority to allow indefinite detention of children and their families. In July 2018, the Commission voted to reopen its investigation on the conditions of immigration detention, and appointed a Subcommittee to examine the issue further. The Commission's Subcommittee has sought information from DHS and HHS, in the form of interrogatories and document requests. The Commission's requests to DHS and HHS are available on our website.

To supplement the solicited information, the Commission's Subcommittee will hold an in-person public comment session on the condition of immigration detention centers and status of treatment of immigrants, including children. This in-person public comment session will take place from 1:30–4:00 p.m. on Friday, January 25, 2019. The Commission Subcommittee seeks to hear from members of the public, including policy advocates, legal experts, affected persons, and other individuals who wish to speak on the issue.

Members of the public will have up to approximately five (5) minutes to address the Commission, with spots allotted on a first-come, first-serve basis. There will be a limited time for the Commissioners to engage in direct dialogue with the members of the public. Individuals will be able to register for speaking slots, both online and at the public comment session (in person).

The Commission will provide interpretation services in Spanish. Individuals are also welcome to bring their own interpreters (for Spanish or other languages). Additional time may be allotted to individuals requiring interpretation services, as necessary.

Online Registration

On Friday, January 18, 2019, beginning at 9:00 a.m. ET, individuals will be able to register to speak online at Eventbrite. This registration option will remain open until all slots are filled, and no later than 9:00 a.m. ET on Friday January, 25, 2019. An individual who successfully registers online must be physically present for the public comment session no later than 1:00 p.m. ET on Friday, January 25, 2019, or risk forfeiting the individual's speaking slot.

In Person Registration, Friday, January 25

Individuals will have the opportunity to sign up for a limited number of speaking slots, in person, the day of the public comment session, beginning at 1:00 p.m. on Friday, January 25, 2019. If the online registration spots are not filled, or individuals who signed up online do not appear to claim their spot, these spots will open up to any further interested participants.

Written Comments

The Commission also welcomes written submission of material for consideration. Please submit such information to *immigration@usccr.gov* no later than February 25, 2019.

Further detailed information on registration, including the online registration link for the in-person public comment session, will be announced on the Commission's website (*www.usccr.gov*), Twitter (*www.twitter.com/USCCRgov*), and

Facebook (*www.facebook.com/USCCRgov/*).

The public comment period is open to the public. The event will also live-stream at *https://www.youtube.com/user/USCCR/videos.* (Please note that streaming information is subject to change.) If attending in person, we ask that you RSVP to *publicaffairs@usccr.gov.* Persons with disabilities who need accommodation should contact Pamela Dunston at 202–376–8105 or at *access@usccr.gov* at least seven (7) business days before the date of the meeting.

Dated: December 19, 2018.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2018–27892 Filed 12–19–18; 4:15 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Public Meeting of the Missouri Advisory Committee To Discuss Civil Rights Topics in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Friday, January 11, 2019, at 3:00 p.m. (Central) for the purpose discussing civil rights topics in the state.

DATES: The meeting will be held on Friday, January 11, 2019, at 3:00 p.m. (Central).

ADDRESSES: Public Call Information: Dial: 888–256–1007, Conference ID: 4021474.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–256–1007, conference ID: 4021474. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Missouri Advisory Committee link (*https://facadatabase.gov/committee/committee.aspx?cid=258&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call

Discussion of Topics for Study

Next Steps

Public Comment

Adjournment

Dated: December 18, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–27742 Filed 12–20–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Final Affirmative Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain imports of uncovered innerspring units (innersprings) exported from Macau, using materials and/or components sourced from the People's Republic of China (China), are circumventing the antidumping duty (AD) order on innersprings from China.

DATES: Applicable December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Background

On August 21, 2018, Commerce published the *Preliminary Determination* [1] of circumvention of the *Order.*[2] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main

[1] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order,* 83 FR 42254 (August 21, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum and Preliminary Analysis Memorandum.

[2] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order,* 74 FR 7661 (February 19, 2009) (*Order*).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Anti-Circumvention Inquiry of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Order

The products covered by the *Order* are uncovered innerspring units. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Scope of the Anti-Circumvention Inquiry

The products covered by this inquiry are innersprings that are manufactured in Macau by the Macao Commercial Group [4] with Chinese-origin components and materials and are then subsequently exported from Macau to the United States.

Methodology

Commerce is conducting this anti-circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying the Commerce's final determination, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an Appendix. Based on our analysis of the comments received, we made no changes to the *Preliminary Determination.*

Final Affirmative Determination of Circumvention

As detailed in the Issues and Decision Memorandum, we determine that innersprings exported from Macau to the United States, which were assembled or completed in Macau by Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial) and the other companies that are part of the Macao Commercial Group, used materials and/or components from China and are circumventing the *Order.* Therefore, we determine that it is appropriate to include this merchandise within the *Order* and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend any entries of innersprings from Macau, which were manufactured in Macao by the Macao Commercial Group.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries innersprings assembled or completed by the Macao Commercial Group in Macau from Chinese-origin components and/or materials that were entered, or withdrawn from warehouse, for consumption on or after November 22, 2016, the date of initiation of the anti-circumvention inquiry.

The suspension of liquidation instructions will remain in effect until further notice. Commerce will instruct CBP to require AD cash deposits equal to the China-wide rate of 234.51 percent, unless the importer/exporter can demonstrate to CBP that the Chinese-origin innersprings assembled or completed in Macau by the Macao Commercial Group were supplied by a Chinese manufacturer with a separate rate. In that instance, the cash deposit rate will be the rate of the Chinese innersprings manufacturer that has its own rate.[5]

Notification Regarding Administrative Protective Orders

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These determinations are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: December 14, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2018–27677 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewed Request for Applicants for Appointment to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On October 12, 2018, the Department of Commerce (''the Department'') published a **Federal Register** notice, *Request for Applicants for Appointment to the United States-Brazil CEO Forum,* requesting applications for appointment to the United States-Brazil CEO Forum and providing October 31, 2018, as the deadline to submit applications to the Department for immediate consideration. This notice re-opens the request for applications and postpones

[4] The Macao Commercial Group is comprised of the following companies: Macao Commercial, Tai Wa Commercial (a Macao trading company), Tai Wa Machinery (a Macao trading company), Wa Cheong Hong (a Macao trading company), and Heshan Tai Hua Jian Ye Machinery Co., Ltd. (Heshan Tai Hua) (a Chinese manufacturer). In the *Preliminary Determination,* we determined that these companies are affiliated and should be treated as a single entity. *See* PDM at 6–9. No party commented on this determination. We continue to treat the Macao Commercial Group as a single entity in this final determination.

[5] *See Glycine from the People's Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry,* 77 FR 21532, 21535 (April 10, 2012), unchanged in *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order,* 77 FR 73426 (December 10, 2012).

the start of the three-year term of the incoming members of the U.S. Section from December 1, 2018, to February 25, 2019. The term will now expire on February 24, 2022. Nominations received in response to this notice will also be considered for on-going appointments to fill any future vacancies that may arise before February 24, 2022.

DATES: Applications for immediate consideration should be received no later than the close of business on January 22, 2019. After that date, applications will continue to be accepted until February 24, 2022, to fill any new vacancies that may arise.

ADDRESSES: Please send requests for consideration to Raquel Silva, Office of Latin America and the Caribbean, U.S. Department of Commerce, either by email at *Raquel.Silva@trade.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 30014, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Raquel Silva, Office of Latin America and the Caribbean, U.S. Department of Commerce, telephone: (202) 482–4157.

SUPPLEMENTARY INFORMATION: For more information on the United States-Brazil CEO Forum, please see 83 FR 51663 (October 12, 2018), *Request for Applicants for Appointment to the United States-Brazil CEO Forum.* The terms of participation set out in 83 FR 51663 also apply to the current selection process. The Terms of Reference of the CEO Forum may be viewed at *http://www.trade.gov/ceo-forum/.*

As delineated in 83 FR 51663 (October 12, 2018), to be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company's headquarters; location of incorporation; information that the company is U.S.-owned or U.S.-controlled; size of the company; size of company's export trade, investment, and nature of operations or interest in Brazil; an affirmative statement that the applicant meets all Forum eligibility criteria and is neither registered nor required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active, and commitment to attending the majority of Forum meetings. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

Dated: December 14, 2018.

Alexander Peacher,

Director for the Office of Latin America & the Caribbean.

[FR Doc. 2018–27492 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China; Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Muyun Wood Co., Ltd., (Muyun) has not made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise covered by the order includes multilayered wood flooring (MLWF), subject to certain exceptions.[1] The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214. Commerce calculated export prices in accordance with section 772 of the Act. Because the People's Republic of China (China) is a nonmarket economy country (NME) within the meaning of section 771(18) of the Act, Commerce calculated normal value in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the

[1] *See* Memorandum from Commerce, re: '' Decision Memorandum for Preliminary Results of Huzhou Muyun Wood Co., Ltd. Antidumping Duty New Shipper Review, 2014–2015: Multilayered Wood Flooring from the People's Republic of China,'' dated concurrently (Preliminary Decision Memorandum) for a full description of the Scope of the Order.

Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of New Shipper Review

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period of review (POR) December 1, 2014, through May 31, 2015:

Exporter	Producer	Weighted-average dumping margin (percent)
Huzhou Muyun Wood Co., Ltd	Huzhou Muyun Wood Co., Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[2] Rebuttals to case briefs may be filed no later than five days after the time limit for filing case briefs.[3] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. This summary should be limited to five pages total, including footnotes.

Any interested party may request a hearing within 30 days of publication of this notice.[4] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[5]

Commerce intends to issue the final results of this new shipper review, which will include the results of its analysis of issues raised in any such comments, within 90 days of publication of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Upon issuing the final results of this new shipper review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this new shipper review. If the individually examined respondent's weighted-average dumping margin is above *de minimis,* we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[6]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this new shipper review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Commerce announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by Muyun for this new shipper review, Commerce will instruct CBP to liquidate such entries at the China-wide rate. In addition, if Commerce determines that the exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[7]

The final results of this new shipper review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this new shipper review (except, if the rate is zero or *de minimis,* then a zero cash deposit will be required); (2) for previously investigated or reviewed China and non-China exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing producer/exporter-specific combination rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity, or 58.84 percent; and (4) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC producer/exporter combination that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[2] *See* 19 CFR 351.309(c); *see also* 19 CFR 351.303 (for general filing requirements).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.310(d).

[6] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[7] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: December 14, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
5. Bona Fide Sale Analysis
6. Non-Market Economy Country Status
7. Separate Rate
8. Absence of De Jure Control
9. Absence of De Facto Control
10. Surrogate Country
11. Economic Comparability
12. Significant Producer of Comparable Merchandise
13. Data Availability
14. Date of Sale
15. Fair Value Comparisons
16. Differential Pricing Analysis
17. Results of the Differential Pricing Analysis
18. U.S. Price
19. Value Added Tax
20. Normal Value
21. Factor Valuations
22. Currency Conversion
23. Section 777A(f) of the Act

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Bowen or William Horn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0768 or (202) 482–4868, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order [1]

The product covered by the *Order* is wood flooring from China. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[2]

Partial Rescission of Review

We initiated a review of 146 companies and the China-wide entity for this segment of the proceeding.[3] All requests for review of the following producers/exporters were timely withdrawn: Dalian Penghong Floor Products Co., Ltd. (Dalian Penghong), Dalian Shumaike Floor Manufacturing Co., Ltd., Fusong Jinqiu Wooden Product Co., Ltd., Huzhou Jesonwood Co., Ltd. (Huzhou Jesonwood), and Dunhua City Jisen Wood Industry Co., Ltd. (Jisen Wood).[4] Additionally, the *Order* was revoked with respect to the following companies: Armstrong Wood Products (Kunshan) Co., Ltd., Fine Furniture (Shanghai) Limited and Double F Limited, and Jisen Wood.[5] Lastly, we inadvertently initiated the review with respect to Baroque Timber Industries (Zhongshan) Co., Ltd., despite no request for review of this company.[6] Accordingly, Commerce is rescinding the administrative review with respect to these eight companies.[7] *See* Appendix II for a complete list of these companies.

Preliminary Determination of No Shipments

Based on an analysis of information from U.S. Customs and Border Protection (CBP), no shipment certifications, and other record information, we preliminarily determine that 18 companies had no shipments of subject merchandise during the period

[1] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011), as amended in *Multilayered Wood Flooring from the People's Republic of China,* 77 FR 5484 (February 3, 2012) (collectively, *Order*).

[2] *See* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, from James P. Maeder, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review; Multilayered Wood Flooring from the People's Republic of China; 2016–2017,'' (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 8058 (February 23, 2018) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 16298 (April 16, 2018) (initiating with respect to Double F Limited), and *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 19215 (May 2, 2018) (initiating with respect to the China-wide entity).

[4] *See* Huzhou Jesonwood's Letter, ''Withdrawal of Review Request in the 6th Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China,'' dated March 14, 2018; American Manufacturers of Multilayered Wood Flooring's (Petitioner's) Letter, ''Multilayered Wood Flooring from the People's Republic of China: Withdrawal of Request for Administrative Review, in Part,'' dated March 24, 2017; CDC Distributors, Inc.'s Letter, ''Multilayered Wood Flooring from the People's Republic of China: Partial Withdrawal of Administrative Review Request,'' dated March 24, 2017; Petitioner's Letter, ''Multilayered Wood Flooring from the People's Republic of China: Withdrawal of Request for Administrative Review, in Part,'' dated May 3, 2018; and Dalian Penghong and Jisen Wood's letter, ''Multilayered Wood Flooring from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated May 7, 2018.

[5] *See Changzhou Hawd Flooring Co., et al.* v. *United States,* Ct. No. 12–20, Slip Op. 18–82 (Court of Int'l Trade July 3, 2018) and *Changzhou Hawd Flooring Co., et al.* v. *United States,* Ct. No. 12–20, Dkt. No. 199 (Court of Int'l Trade Aug. 15, 2018). *See also Multilayered Wood Flooring from the People's Republic of China: Amendment to Notice of Court Decision Not in Harmony with the Second Amended Final Determination and Amendment to Notice of Third Amended Final Determination of the Antidumping Duty Investigation,* 83 FR 44027 (August 29, 2018).

[6] *See Initiation Notice.*

[7] *See* 19 CFR 351.213(d)(1).

of review (POR).[8] For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with our practice in non-market economy (NME) cases, we are not rescinding this administrative review with respect to these companies but, rather, intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[9]

Separate Rates

We preliminarily determine that, in addition to mandatory respondents, Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Jiangsu Senmao), and Sino-Maple (Jiangsu) Co., Ltd. (Sino-Maple), 59 companies not individually examined are eligible for separate rates in this review.[10] The statute and Commerce's regulations do not address the establishment of a rate to be applied to individual respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for separate-rate respondents which Commerce did not examine individually in an administrative review. For the preliminary results of this review, Commerce has determined the estimated dumping margin for each of the individually examined respondents to be zero or based entirely on facts otherwise available.[11] As a result, following the guidance in section 735(c)(5)(b) of the Act, we assigned to all eligible non-selected respondents the simple average of the separate rates assigned to Jiangsu Senmao and Sino-Maple for the preliminary results of this review.

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[12] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. A request for a review of the China-wide entity was made in this review.[13] Therefore, the China-wide entity is subject to this administrative review.

Aside from the companies we preliminarily find made no shipments and those companies for which the review is being rescinded, Commerce considers all other companies for which a review was requested and which did not demonstrate separate rate eligibility to be part of the China-wide entity.[14] For the preliminary results of this review, we consider 59 companies to be part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Application of Adverse Facts Available (AFA)

We preliminarily determine that the use of facts otherwise available is warranted with respect to the China-wide entity, in accordance with sections 776(a)(1) and (a)(2)(A)–(C) of the Act, because the China-wide entity failed to provide necessary information, withheld information requested by Commerce, and significantly impeded the proceeding by not responding to Commerce's quantity and value questionnaire.[15] Further, pursuant to section 776(b) of the Act, we preliminarily determine that, because the China-wide entity failed to cooperate by not acting to the best of its ability, an adverse inference is warranted.

We also determine that the use of facts otherwise available is warranted with respect to Sino-Maple, in accordance with sections 776(a)(1) and (a)(2)(A)–(C) of the Act, because Sino-Maple failed to provide necessary information, withheld information requested by Commerce, and significantly impeded the proceeding, by not reporting the nature of its relationship with a U.S. affiliate and certain sales information. Further, pursuant to section 776(b) of the Act, we preliminarily determine that, because Sino-Maple failed to cooperate by not acting to the best of its ability, an adverse inference is warranted.

For additional information, *see* the Preliminary Decision Memorandum.

Methodology

We are conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices for Jiangsu Senmao in accordance with section 772 of the Act. Because China is an NME within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act. Additionally, as discussed above, we are basing Sino-Maple's estimated dumping margin entirely on facts otherwise available.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Preliminary Results of Review

In this administrative review, we preliminarily calculated a weighted-average dumping margin for Jiangsu Senmao of zero.[16] As total AFA, we assigned to Sino-Maple the highest transaction-specific margin calculated for any respondent in this segment of the proceeding, or 96.51 percent.[17] As discussed above, for the 59 additional companies subject to this review that established separate rate eligibility, we assigned a simple average of the separate rates assigned to Jiangsu Senmao and Sino-Maple, or 48.26

[8] *See* Appendix II for a list of these companies.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[10] *See* Preliminary Decision Memorandum.

[11] *See* Memorandum, ''Preliminary Results Margin Calculation for Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.,'' dated concurrently with this notice (Jiangsu Senmao Calculation Memorandum). *See also* Preliminary Decision Memorandum.

[12] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[13] *See* the Coalition for American Hardwood Parity's Letter, ''Request for Administrative Review: Multilayered Wood Flooring from the People's Republic of China,'' dated December 28, 2017.

[14] *See Initiation Notice* (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'') Companies that are subject to this administrative review that are considered to be part of the China-wide entity are listed in Appendix II.

[15] *See* Commerce's Letter, ''Quantity and Value Questionnaire for the 2016–2017 Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China,'' dated May 18, 2018.

[16] *See* Jiangsu Senmao Calculation Memorandum.

[17] *Id.* at Attachment. *See also* Preliminary Decision Memorandum.

percent. Further, as noted, the China-wide entity is subject to this administrative review, and therefore, the rate established in the investigation of 25.62 percent is subject to change. As total AFA, we also preliminarily assigned a rate of 96.51 percent to the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

For the 61 companies subject to this review that have established their eligibility for a separate rate, and the China-wide entity, we preliminarily determine that the following estimated dumping margins exist for the period December 1, 2016, through November 30, 2017:

Exporters	Weighted-average dumping margin (percent)
The China-Wide Entity	96.51
Sino-Maple (Jiangsu) Co., Ltd	96.51
Jiangsu Senmao Bamboo and Wood Industry Co., Ltd	0.00
A&W (Shanghai) Woods Co., Ltd	48.26
Benxi Flooring Factory (General Partnership)	48.26
Benxi Wood Company	48.26
Dalian Dajen Wood Co., Ltd	48.26
Dalian Guhua Wooden Product Co., Ltd	48.26
Dalian Huilong Wooden Products Co., Ltd	48.26
Dalian Jiahong Wood Industry Co., Ltd	48.26
Dalian Kemian Wood Industry Co., Ltd	48.26
Dalian Qianqiu Wooden Product Co., Ltd	48.26
Dalian T-Boom Wood Products Co., Ltd	48.26
Dongtai Fuan Universal Dynamics, LLC	48.26
Dunhua City Hongyuan Wood Industry Co., Ltd	48.26
Dunhua City Dexin Wood Industry Co., Ltd	48.26
DunHua SenTai Wood Co., Ltd	48.26
Dunhua Shengda Wood Industry Co., Ltd	48.26
Fusong Jinlong Wooden Group Co., Ltd	48.26
Fusong Qianqiu Wooden Product Co., Ltd	48.26
Guangzhou Homebon Timber Manufacturing Co., Ltd	48.26
Guangzhou Panyu Kangda Board Co., Ltd	48.26
Guangzhou Panyu Southern Star Co., Ltd	48.26
HaiLin LinJing Wooden Products Co., Ltd	48.26
Hangzhou Hanje Tec Co., Ltd	48.26
Hunchun Xingjia Wooden Flooring Inc	48.26
Huzhou Chenghang Wood Co., Ltd	48.26
Huzhou Fulinmen Imp. & Exp. Co., Ltd	48.26
Huzhou Sunergy World Trade Co., Ltd	48.26
Innomaster Home (Zhongshan) Co., Ltd	48.26
Jiangsu Guyu International Trading Co., Ltd	48.26
Jiangsu Mingle Flooring Co., Ltd	48.26
Jiangsu Simba Flooring Co., Ltd	48.26
Jiashan HuiJiaLe Decoration Material Co., Ltd	48.26
Jiaxing Hengtong Wood Co., Ltd	48.26
Jilin Xinyuan Wooden Industry Co., Ltd	48.26
Kember Flooring, Inc	48.26
Kemian Wood Industry (Kunshan) Co., Ltd	48.26
Linyi Anying Wood Co., Ltd	48.26
Linyi Youyou Wood Co., Ltd	48.26
Metropolitan Hardwood Floors, Inc	48.26
Mudanjiang Bosen Wood Industry Co., Ltd	48.26
Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd	48.26
Pinge Timber Manufacturing (Zhejiang) Co., Ltd	48.26
Power Dekor Group Co., Ltd	48.26
Shandong Longteng Wood Co., Ltd	48.26
Shanghai Lairunde Wood Co., Ltd	48.26
Shanghaifloor Timber (Shanghai) Co., Ltd	48.26
Shenyang Haobainian Wooden Co., Ltd	48.26
Shenzhenshi Huanwei Woods Co., Ltd	48.26
Suzhou Dongda Wood Co., Ltd	48.26
Tongxiang Jisheng Import and Export Co., Ltd	48.26
Xuzhou Antop International Trade Co., Ltd	48.26
Xuzhou Shenghe Wood Co., Ltd	48.26
Yekalon Industry Inc	48.26
Yihua Lifestyle Technology Co., Ltd	48.26
Zhejiang Biyork Wood Co., Ltd	48.26
Zhejiang Dadongwu Green Home Wood Co., Ltd	48.26
Zhejiang Fudeli Timber Industry Co., Ltd	48.26
Zhejiang Fuerjia Wooden Co., Ltd	48.26
Zhejiang Longsen Lumbering Co., Ltd	48.26
Zhejiang Shuimojiangnan New Material Technology Co., Ltd	48.26

Disclosure and Public Comment

We intend to disclose to interested parties the calculations performed for these preliminary results within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[18] Rebuttals to case briefs may be filed no later than five days after the written comments are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[19]

Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, we intend to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). We intend to issue appropriate assessment instructions with respect to the companies for which this review is rescinded to CBP 15 days after the publication of this notice.

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). For the respondents that were not selected for individual examination in this administrative review that qualified for a separate rate, the assessment rate will be equal to the simple average of the estimated dumping margins assigned to Jiangsu Senmao and Sino-Maple in the final results of this review.[20] For the final results, if we continue to base the China-wide entity and Sino-Maple's estimated dumping margin on total adverse facts available, we will instruct CBP to apply an *ad valorem* assessment rate of 96.51 percent to all entries of subject merchandise during the POR which were produced and/or exported by those entities.

If, in the final results, Jiangsu Senmao's weighted-average dumping margin continues to be zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries that were not reported in the U.S. sales databases submitted by the company individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide rate. In addition, if we continue to find no shipments of subject merchandise for the 18 companies for which we preliminarily find no such shipments during the POR,[21] any suspended entries of subject merchandise from those companies will be liquidated at the China-wide rate.[22]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, as discussed above; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.221(b)(4).

Dated: December 17, 2018.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

[18] *See* 19 CFR 351.309(c).

[19] *See* 19 CFR 351.309(d).

[20] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016), and accompanying Preliminary Decision Memorandum at 10–11; unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

[21] *See* Appendix II for a list of these companies.

[22] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

1. Sino-Maple and Wholly Foreign-Owned Separate Rate Applicants
2. Jiangsu Senmao and Chinese-Owned Separate Rate Applicants
a. Absence of *De Jure* Control
b. Absence of *De Facto* Control
3. China-Wide Entity
C. Application of AFA to the China-Wide Entity and Sino-Maple
1. Application of Facts Available
2. Application of Facts Available with an Adverse Inference
3. Selection and Corroboration of the AFA Rate
D. Weighted-Average Dumping Margin for Non-Examined Separate-Rate Companies
E. Surrogate Country and SV Data
1. Surrogate Country Selection
2. Economic Comparability
3. Significant Producer of Identical or Comparable Merchandise
4. Data Availability
F. Date of Sale
G. Comparisons to Normal Value
1. Determination of Comparison Method
2. Results of the Differential Pricing Analysis
H. U.S. Price
1. Export Price
2. Value-Added Tax
I. Normal Value
1. Factor Valuation Methodology
a. Direct and Packing Materials
b. Labor
c. Financial Ratios
d. By-Products
J. Adjustment Under Section 777A(f) of the Act
K. Currency Conversion
IX. Recommendation

Appendix II

No Shipments

Anhui Boya Bamboo & Wood Products Co., Ltd.
Anhui Longhua Bamboo Product Co., Ltd.
Changzhou Hawd Flooring Co., Ltd.
Chinafloors Timber (China) Co., Ltd.
Dalian Huade Wood Product Co., Ltd.
Dalian Jaenmaken Wood Industry Co., Ltd.
Hangzhou Zhengtian Industrial Co., Ltd.
Hunchun Forest Wolf Wooden Industry Co., Ltd.
Jiafeng Wood (Suzhou) Co., Ltd.
Jiangsu Yuhui International Trade Co., Ltd.
Jiashan On-Line Lumber Co., Ltd.
Karly Wood Product Limited
Kingman Floors Co., Ltd.
Linyi Bonn Flooring Manufacturing Co., Ltd.
Xiamen Yung De Ornament Co., Ltd.
Yingyi-Nature (Kunshan) Wood Industry Co., Ltd.
Zhejiang Shiyou Timber Co., Ltd.
Zhejiang Simite Wooden Co., Ltd.

China-Wide Entity

Anhui Suzhou Dongda Wood Co., Ltd.
Baishan Huafeng Wooden Product Co., Ltd.
Baiying Furniture Manufacturer Co., Ltd.
Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.
Cheng Hang Wood Co., Ltd.
Dalian Jiuyuan Wood Industry Co., Ltd.
Dalian Xinjinghua Wood Co., Ltd.
Dongtai Zhangshi Wood Industry Co., Ltd.
Dunhua City Wanrong Wood Industry Co., Ltd.
Fu Lik Timber (HK) Co., Ltd.
Fujian Wuyishan Werner Green Industry Co., Ltd.
GTP International Ltd.
Guangdong Fu Lin Timber Technology Limited
Guangdong Yihua Timber Industry Co., Ltd.
HaiLin XinCheng Wooden Products, Ltd.
Hangzhou Dazhuang Floor Co., Ltd. (dba Dasso Industrial Group Co., Ltd.)
Hangzhou Huahi Wood Industry Co., Ltd.
Henan Xingwangjia Technology Co., Ltd.
Hong Kong Easoon Wood Technology Co., Ltd.
Huaxin Jiasheng Wood Co., Ltd.
Huber Engineering Wood Corp.
Huzhou City Nanxun Guangda Wood Co., Ltd.
Huzhou Fuma Wood Co., Ltd.
Huzhou Muyun Wood Co., Ltd.
Jiangsu Kentier Wood Co., Ltd.
Jiangsu Keri Wood Co., Ltd.
Jiashan Fengyun Timber Co., Ltd.
Jiaxing Brilliant Import & Export Co., Ltd.
Jilin Forest Industry Jinqiao Flooring Group Co., Ltd.
Kornbest Enterprises Limited
Kunming Alston (AST) Wood Products Co., Ltd.
Les Planchers Mercier, Inc.
Liaoning Daheng Timber Group Co., Ltd.
Nanjing Minglin Wooden Industry Co., Ltd.
Ningbo Tianyi Bamboo and Wood Products Co., Ltd.
Qingdao Barry Flooring Co., Ltd.
Scholar Home (Shanghai) New Material Co., Ltd.
Shandong Kaiyuan Wood Industry Co., Ltd.
Shandong Puli Trading Co., Ltd.
Shanghai Anxin (Weiguang) Timber Co., Ltd.
Shanghai Demeija Timber Co., Ltd.
Shanghai Eswell Timber Co., Ltd.
Shanghai Lizhong Wood Products Co., Ltd. (also known as The Lizhong Wood Industry Limited Company of Shanghai)
Shanghai New Sihe Wood Co., Ltd.
Shanghai Shenlin Corporation
Shenyang Sende Wood Co., Ltd.
Suzhou Anxin Weiguang Timber Co., Ltd.
Tak Wah Building Material (Suzhou) Co.
Tech Wood International Ltd.
Vicwood Industry (Suzhou) Co. Ltd.
Yixing Lion-King Timber Industry
Zhejiang AnJi Xinfeng Bamboo and Wood Industry Co., Ltd.
Zhejiang Desheng Wood Industry Co., Ltd.
Zhejiang Fuma Warm Technology Co., Ltd.
Zhejiang Haoyun Wooden Co., Ltd.
Zhejiang Jesonwood Co., Ltd.
Zhejiang Jiechen Wood Industry Co., Ltd.
Zhejiang Tianzhen Bamboo & Wood Development Co., Ltd.
Zhejiang Yongyu Bamboo Joint-Stock Co., Ltd.

Rescissions

Armstrong Wood Products (Kunshan) Co., Ltd.
Baroque Timber Industries (Zhongshan) Co., Ltd.
Dalian Penghong Floor Products Co., Ltd.
Dalian Shumaike Floor Manufacturing Co., Ltd.
Dunhua City Jisen Wood Industry Co., Ltd.
Fine Furniture (Shanghai) Limited and Double F Limited
Fusong Jinqiu Wooden Product Co., Ltd.
Huzhou Jesonwood Co., Ltd.

[FR Doc. 2018–27676 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Interim Meeting of the National Conference on Weights and Measures (NCWM) will be held in Charleston, South Carolina, from Sunday, January 13, 2019, through Wednesday, January 16, 2019. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The meeting will be held from Sunday, January 13, 2019, through Wednesday, January 16, 2019, on Sunday through Tuesday, from 8:00 a.m. to 5:00 p.m. Eastern Time, and on Wednesday, from 9:00 a.m. to 12:00 p.m. Eastern Time. The meeting schedule is available at *www.ncwm.net.*

ADDRESSES: This meeting will be held at the Francis Marion Hotel, 387 King Street, Charleston, South Carolina 29403.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Olson, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Olson at (301) 975–2956 or by email at *douglas.olson@nist.gov*. The meeting is open to the public, but a paid registration is required. Please see the NCWM website (*www.ncwm.net*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals or other information contained in this notice or in the publications produced by the NCWM.

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal agencies. These meetings bring together

government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple committees, task groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments, and where recommendations will be developed for consideration and possible adoption at the NCWM 2019 Annual Meeting. The Committees may withdraw or carryover items that need additional development.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of Legal Metrology and Engine Fuel Quality'' and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods.''

NCWM S&T Committee

The following items are proposals to amend NIST Handbook 44:

GEN—General Code

Item GEN–3 G–A.1. Commercial and Law-Enforcement Equipment and G–S.2. Facilitation of Fraud

The S&T Committee will consider a proposal that would expand the application of NIST Handbook 44 to include accessory equipment (*e.g.,* credit/debit card ''skimmers) that can be used to defraud or collect unauthorized personal or financial information from a user when that accessory equipment is used in connection with a commercial weighing or measuring device. The proposal would also expand paragraph G–S.2. Facilitation of Fraud by requiring credit/debit card readers and other devices capable of customer initiated electronic financial transactions used in conjunction with weighing and measuring equipment to: (1) Be designed and constructed to restrict access and tampering by unauthorized persons; and (2) include an event counter that records the date and time of access.

In 2018 the S&T Committee assigned this item to a NCWM Task Group for further development. The Task Group is expected to provide an update on its development of this item at the 2019 NCWM Interim Meeting.

SCL—Scales

Item SCL–2 S.1.8.5. Recorded Representations, Point of Sale Systems

The S&T Committee will consider a proposal requiring additional sales information to be recorded by cash registers interfaced with a weighing element for items that are weighed at a checkout stand. These systems are currently required to record the net weight, unit price, total price, and the product class, or in a system equipped with price look-up capability, the product name or code number. The change proposed would add ''tare weight'' to the list of sales information currently required. This change has been proposed as a nonretroactive requirement with an enforcement date of January 1, 2022. If the proposal is adopted, the additional information (*i.e.,* the tare weight) would be required to appear on the sales receipt for items weighed at a checkout stand (Point of Sale Systems) on equipment installed into commercial service as of January 1, 2022. This proposed change would not affect equipment already in service. The further development of this item was assigned to an NCWM Task Group in 2018 at the request of the S&T Committee. The Task Group is expected to provide an update on its development of this item at the 2019 NCWM Interim Meeting.

SCL–3 Sections Throughout the Code To Include Provisions for Commercial Weigh-In-Motion (WIM) Vehicle Scale Systems

The S&T Committee will consider a proposal to amend various sections of NIST Handbook 44, Scales Code to address WIM vehicle scale systems used for commercial applications. This ''Carry-Over'' item has appeared on the S&T Committee's agenda since 2016. An NCWM Task Group (TG) was formed in 2016 at the request of the S&T Committee to consider a proposal that would expand the NIST Handbook 44, Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code to also apply to legal-for-trade (commercial) and law enforcement applications. The TG, that is still active today, is made up of representatives of WIM equipment manufacturers, NIST Office of Weights and Measures, state weights and measures agencies, and others. Members of the TG agreed in 2016 to eliminate from the proposal any mention of a law enforcement application and focus solely on WIM vehicle scale systems intended for use in commercial applications. Members of the TG later agreed that commercial application of WIM vehicle scale systems should be addressed by the Scales Code of NIST Handbook 44, rather than the Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code. Recent activity by the TG has focused on providing evidence supporting the claims of WIM scale manufacturers regarding the performance capabilities of these devices. The TG has requested this evidence to indicate whether devices being manufactured at this time can comply with commercial device tolerance applied to comparable static weighing devices. The submitter of this proposal (a WIM manufacturer) has initiated a process where preliminary testing can be done to provide the TG with data to substantiate the claims regarding device performance.

An additional focus of the TG, since its formation in 2016, has been to concentrate on the development of official test procedures that can be used to verify the accuracy of a WIM vehicle scale system given the different axle and tandem axle configurations of vehicles that will typically be weighed by a system and a proposed maintenance and acceptance tolerance of 0.2 percent on gross (total) vehicle weight. The TG is

expected to provide an update on its development of this item at the 2019 NCWM Interim Meeting.

Item SCL–6 UR.3.11. Class II Scales

The S&T Committee will consider a proposal to add a new paragraph to the Scales Code of NIST Handbook 44 requiring users of Accuracy Class II scales equipped with a different verification scale division value (e) than the displayed division value (d) to base all commercial transactions on the verification scale division (e). When these two scale divisions (identified as ''e'' and ''d'') are different, a difference in scale's resolution is established. The variation in scale divisions within a scale's capacity range will produce either a reduced, or a greater resolution in the representation of values for loads applied to the scale. According to NIST Handbook 44, when these division values aren't equal on Class II scales, the value of ''e'' is required to be larger than the value of ''d.'' This proposal will require that all commercial transactions conducted using Class II scales will be based on ''e'' (the larger of the two divisions).

Item SCL–7 T.N.3.6. Coupled-In-Motion Railroad Weighing Systems; T.N.4.6. Time Dependence (Creep) for Load Cells During Type Evaluation; UR.5. Coupled-In-Motion Railroad Weighing Systems; and Appendix D—Definitions: Point-Based Railroad Weighing Systems

The S&T Committee will consider a new proposal (which replaces one from the same submitter that appeared on the Committee's agenda in 2018) to amend the Scales Code of NIST Handbook 44 to allow for the use of point-based, in-motion railroad weighing systems in commercial applications. The current proposal has eliminated many of the changes proposed in the previous proposal but has retained recommended changes listed below.

—Increase the tolerance allowed during official testing of these types of commercial devices used for dynamic weighments of unit trains.
—Provide an exemption for ''point-based'' in-motion railroad weighing systems from the performance of ''creep tests'' during official evaluations.
—Require the user of dynamic weighing systems for railway cars to provide a suitable static weighing scale, located in close proximity to the dynamic system to use as a reference scale during dynamic scale testing.

Provide a definition for ''point-based'' railroad weighing systems.

BCS—Belt-Conveyor Scales

Item BCS–1 S.1.3. Value of the Scale Division; S.1.9. Zero-Ready Indicator; S.4. Accuracy Class; S.5. Marking Requirements; N.1. General; N.2. Conditions of Test; T.1. Tolerance Values; T.2. Tolerance Values; and UR.3. Maintenance Requirements—Scale and Conveyor Maintenance

The S&T Committee will consider a proposal amending the Belt-Conveyor Scale Systems Code of NIST Handbook 44 in multiple sections of the code. This proposal has been submitted by the U.S. National Work Group on Belt-Conveyor Scales and recommends several changes to the existing code. Many of the recommended changes are intended to clarify the application of tolerances to material tests that are either performed under the same or under varying conditions. These changes specify that a less stringent application of tolerances is to be used when comparing results of totalization operations that are performed under different flow rates of material. Additional recommended changes would establish two different accuracy classes for these systems. In addition to the currently recognized systems, an accuracy class would be added to the code to encompass systems capable of complying with more stringent performance requirements (tolerance of 0.1%) as compared to the existing tolerance (0.25%).

ABW—Automatic Bulk Weighing Systems

Item ABW–3 A. Application; S. Specifications; N. Notes; UR. User Requirements; and Appendix D—Definitions: Automatic Bulk Weighing System

The S&T Committee will consider a proposal to amend the Automatic Bulk Weighing Systems Code that would broaden the scope of the code to encompass additional automated weighing systems. This proposal would eliminate language in the Application Section of the code that currently constrains the code's use to automatic weighing systems that operate only as specified. The proposal would also amend the definition of ''automatic bulk weighing system'' in Appendix D of NIST Handbook 44 by broadening its application to encompass additional automatic weighing systems that do not meet the current definition. Additionally, the proposal would update the code in recognition of more recent designs and technology that has evolved and is being used in automated weighing systems.

LMD—Liquid Measuring Devices

Item LMD–5 UR.3.4. Printed Ticket

The S&T Committee will consider a proposal that would provide an exemption to the requirement that the identification of liquid measuring devices (*e.g.,* dispenser #1) be included on a customer's receipt. This exemption would apply to establishments with a single dispenser having multiple meters or not more than one dispenser with a single meter for each product delivered.

LPG—Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices

Item LPG–2 S.2.5. Zero-Setback Interlock, Stationary and Vehicle Mounted Meters, Electronic

The S&T Committee will consider a proposal to add a new nonretroactive paragraph (effective date to be determined) that requires both stationary and vehicle mounted electronic LPG and anhydrous ammonia liquid-measuring devices be designed with an automatic interlock system that must engage following completion of a delivery. The proposal specifies that the interlock system must prevent a subsequent delivery from occurring until such time the indicating elements and recording elements, if so equipped, have been reset to zero. The proposal also requires the automatic interlock system to activate within three minutes of product flow cessation and this ''timeout'' feature be sealable at the indicator.

HGM—Hydrogen Gas-Measuring Devices

Item HGM–6 Tentative Code Status and Preamble; A.2.(c) Exceptions; N.2 Test Medium; N.3. Test Drafts; N.4.1. Master Meter (Transfer) Standard Test; N.4.2. Gravimetric Tests; N.4.3. PVT Pressure Volume Temperature Test; N.6.1.1. Repeatability Tests; T.3. Repeatability; T.6. Tolerance—Minimum Measured Quantity (MMQ) and Appendix D. Definitions Where Applicable

The S&T Committee will consider a proposal that would remove the tentative status of the existing code and make this a permanent code. With several amendments throughout this tentative code and in the Appendix D definitions relative to these devices, the proposal states this code has been sufficiently vetted and should now be made permanent.

GMA—Grain Moisture Meters

Item GMA–2 Table S.2.5. Categories of Devices and Methods of Sealing

The S&T Committee will consider a proposal that would require (on or after the effective date—TBD) grain moisture meters approved under the National Type Evaluation Program to comply with ''Category 3'' sealing methods. This electronic type of sealing would require an event logger and the ability to generate a printed copy of audit trail information that is available through the device or through another on-site device.

Item GMA–3 Table T.2.1. Acceptance and Maintenance Tolerances Air Oven Method for All Grains and Oil Seeds

The S&T Committee will consider a proposal that would reduce the tolerances applied to official grain samples used as reference standards established when using the Air Oven Reference Method.

MDM—Multiple Dimension Measuring Devices

Item MDM–2 S.1.7. Minimum Measurement

The S&T Committee will consider a proposal that would amend requirement S.1.7. Minimum Measurement to also provide an exemption from that requirement for ''mobile tape-based'' MDMD devices. This proposal would allow measurements of less than 12 divisions made using mobile tape-based devices to be used in the calculation of charges for shipping of parcels.

NCWM L&R Committee

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

NIST Handbook 130, Section on Uniform Method of Sale (MOS) of Commodities

Item MOS–7 Section 2.4. Firewood and Stove Wood

The L&R Committee will address the request to extend the effective date of Section 2.4.3.(a) Packaged natural wood sold in packaged form in quantities less than 0.45 m^3 (⅛ cord or 16 ft^3). This could change the effective date of enforcement from 2019 until 2021.

NIST Handbook 130—Section on Uniform Open Dating Regulation (ODR)

Item ODR 1 and ODR NEW Section on Uniform Open Dating Regulation

The L&R Committee will consider a proposal under Item ODR 1 to make changes to the language within the Open Dating Regulation. The Open Dating regulation provides requirements for standardized date formats found on perishable or semi perishable packaged foods. The proposed revisions replace ''Sell By'' with ''Use By'' which provides consumers with clearer guidance to avoid spoilage or loss of value for perishable or semi perishable foods.

Under Item ODR NEW, the L&R Committee will consider a recommended proposal to remove the Open Dating Regulation in its entirety from NIST Handbook 130.

NIST Handbook 130 and NIST Handbook 133

The following items are proposals to amend NIST Handbooks 130 and 133:

Block 1 (B1) Items NIST Handbook 133, ''Checking the Net Contents of Packaged Goods,'' and NIST Handbook 130, Section on Uniform Packaging and Labeling Regulation (PLR), 2.8. Multiunit Package

The L&R Committee will consider a proposal for to add a test procedure in NIST Handbook 133 for addressing the total quantity declaration on multiunit or variety packages. In addition, in NIST Handbook 130, it will clarify the definition of Section 2.8. multiunit package.

Authority: 15 U.S.C. 272(b).

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2018–27600 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Recreational Information Program Social Network In-Person Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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: Written comments must be submitted on or before February 19, 2019.

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 *pracomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Adam Rettig, (301) 427–8216, or *Adam.Rettig@NOAA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for new information collection. The title will be ''Marine Recreational Information Program Social Network Analysis In-Person Survey''.

In its 2017 review of NOAA Fisheries' Marine Recreational Information Program (MRIP), the National Academies of Sciences, Engineering, and Medicine recommended the program enhance its communications and outreach activities, particularly among the recreational fishing community. To address this recommendation, MRIP will administer two voluntary surveys; (1) the MRIP Social Network Survey (a mail survey, see 60d FRN published February 2, 1918 (83 FR 4909)) and (2) the MRIP Social Network Analysis In-Person Survey. This data collection will help identify relationships, networks, and channels through which information flows among the recreational fishing community. This survey will help MRIP more effectively engage with its audiences by identifying key influencers and information pathways, and the areas of greatest need and opportunity for relationship-building.

The MRIP Social Network Analysis In-Person Survey will interview saltwater anglers in three communities that are particularly representative as revealed by the MRIP Social Network Survey (mail survey). The identification of these communities can be based on the distribution of licensed anglers, level of angler fishing avidity, level of awareness of state and Federal recreational fisheries management activities, or other parameters measured in the MRIP Social Network Survey (mail survey) or other NOAA Fisheries surveys. In each fishing community to be evaluated, between ten and fifteen initial respondents shall be interviewed for the survey. The initial respondents will not be selected from the sample of individuals used in the mail survey. Rather, active recreational anglers will be asked to participate in the survey during visits to relevant businesses and

entities (marinas, bait and tackle shops, fishing clubs, state natural resource agencies, etc.,) within the community. The interviews will gather qualitative information on each respondent's information sharing network, including how information sources are connected. Respondents will be asked to provide names of additional contacts from their network that could provide meaningful information for the study. These named contacts will then be contacted and interviewed in the same manner as the initial respondents. The in-person survey will conclude once interviews have been completed for 60 respondents within each community.

Questions will explore demographics, fishing practices, specific names of individuals, key locations, media sources, and websites that anglers rely on for communication about fisheries data collection and management issues. The characteristics about the sources that make respondents perceive them as reliable or trustworthy sources will be determined by exploring attitudes toward Federal and state fishery management agencies (*e.g.,* why agencies are/are not perceived as trustworthy; how agencies can improve communication, etc.). Questions will also explore the personal level of engagement in the fisheries data collection and management process as well as the level of engagement of information sharing partners. These data will be used to identify key information sources for recreational anglers, evaluate regional differences in information sources, and evaluate recreational angler confidence in management and data collection efforts. The information obtained will allow MRIP to more effectively communicate with recreational anglers on data collection issues by focusing communications efforts on important network channels.

II. Method of Collection

Information will be collected via in-person surveys.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 180.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annual Cost to Public: $0.

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.

Dated: December 18, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–27629 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG671

U.S. Stakeholder Meetings on Pacific Bluefin Tuna Long-Term Management Framework; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is holding a meeting to discuss the future of the U.S. West Coast Pacific bluefin tuna fishery, including objectives and a management framework.

DATES: The meeting will be held January 9, 2019, from 9:00 a.m. to 4:00 p.m. PST, or until business concludes.

ADDRESSES: The meeting will be held concurrently in two locations: (1) In the Pacific Conference Room (Room 300) at NMFS, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, California 92037; and (2) Room 3400 at the Long Beach Federal Building, 501 W. Ocean Blvd., Long Beach, California 90802. Please notify Celia Barroso (see **FOR FURTHER INFORMATION CONTACT**) by December 27, 2018, if you plan to attend and whether you will be attending in person or remotely. The meetings will also be accessible by webinar. NMFS will email instructions and background materials for the webinar to meeting participants.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, West Coast Region, NMFS, at *Celia.Barroso@noaa.gov,* or at (562) 432–1850.

SUPPLEMENTARY INFORMATION: Domestic and international stakeholders share interest in developing management objectives and a long-term management framework for Pacific bluefin tuna. In September 2018, the Pacific Fishery Management Council (PFMC) recommended that its Highly Migratory Species Management Team develop a long-term management strategy for Pacific bluefin tuna (See the PFMC's ''September 2018 Summary Decision'' at *https://www.pcouncil.org/wp-content/uploads/2018/09/0918_Decision_Summary_DocumentV2.pdf*). Additionally, the International Scientific Committee on Tuna and Tuna-like Species in the North Pacific Ocean (ISC) is considering whether to proceed with a management strategy evaluation (MSE) for Pacific bluefin tuna. The development of a domestic management strategy and objectives could apply to the ISC's MSE. During this stakeholder meeting, NMFS will briefly review the current status of the stock and current management regime, and then intends to solicit input from participants on potential management objectives and strategies to achieve those objectives for the Pacific bluefin tuna fishery.

Pacific Bluefin Tuna U.S. Stakeholder Meeting Topics

The Pacific bluefin tuna U.S. stakeholder meeting topics will include, but are not limited to, the following:

(1) An overview of international management Pacific bluefin tuna and management of the U.S. Pacific bluefin tuna fishery;

(2) Potential management objectives; and,

(3) Potential management strategies.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Celia Barroso (see **FOR FURTHER INFORMATION CONTACT**) by December 23, 2018.

Authority: 16 U.S.C. 951 *et seq.,* 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 6901 *et seq.*

Dated: December 17, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–27645 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

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 (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Awareness and application of long-term monitoring data in the Pacific Islands.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 160.

Average Hours per Response: Surveys, 30 minutes; focus groups, 90 minutes.

Burden Hours: 170.

Needs and Uses: This request is for a new collection of information. The objective of the study is to understand the types of available socioeconomic data, types of data used and data gaps identified, regarding coastal conservation management, fisheries and other marine conservation management, and efforts (including opportunities and barriers) in integrating biophysical and socioeconomic data. The voluntary survey and interviews will assess the degree to which the available socioeconomic data are being used and have met the needs of the different natural resource management and conservation programs in the U.S. jurisdictions and affiliations in the Pacific island region. Results of the survey and interviews are expected to assist in guiding any future modifications of socioeconomic and biophysical indicators, data collecting tools, approaches, and communications of results.

Affected Public: Individuals or households; not for profit institutions; state, federal and tribal governments; Federal government.

Frequency: One time in three years.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *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.

Dated: December 18, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–27627 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG670

U.S. Stakeholder Meetings on North Pacific Albacore Management Strategy Evaluation; Meeting Announcement

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

ACTION: Notice of public meeting.

SUMMARY: NMFS is holding a meeting to present and solicit public input on preliminary results of the North Pacific albacore Management Strategy Evaluation (MSE) conducted by the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific. The meeting topics are described under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will be held February 6, 2019, from 9:00 a.m. to 5:00 p.m. PST, and February 7, 2019, from 8:30 a.m. to 12:30 p.m. PST.

ADDRESSES: The meeting will be held concurrently in two locations: (1) In the Pacific Conference Room (Room 300) at NMFS, Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla, California 92037; and (2) Room 3400 at the Long Beach Federal Building, 501 W. Ocean Blvd., Long Beach, California 90802. Please notify Celia Barroso (see **FOR FURTHER INFORMATION CONTACT**) by January 30, 2019, if you plan to attend and whether you will be attending in person or remotely. The meetings will also be accessible by webinar—instructions and background materials will be emailed to meeting participants.

FOR FURTHER INFORMATION CONTACT: Celia Barroso, West Coast Region, NMFS, at *Celia.Barroso@noaa.gov,* or at (562) 432–1850.

SUPPLEMENTARY INFORMATION: The International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean (ISC) is hosting the 4th North Pacific Albacore MSE Workshop on March 5–7, 2019, in Yokohama, Japan. MSE is a simulation that allows stakeholders (*e.g.,* industry, managers, scientists) to assess how well different management strategies, such as harvest control rules, meet the objectives of a fishery. The ISC will present the results of the initial North Pacific albacore MSE at the upcoming Workshop. NMFS is hosting a meeting in advance of the Workshop to present the preliminary results of the MSE to U.S. stakeholders. Because ISC meetings are often held abroad, NMFS seeks to engage in discussions on the MSE results with more stakeholders than could possibly travel to the ISC Workshop. NMFS is soliciting participants' input on the preliminary results of the MSE and NMFS representatives attending the ISC workshop can then convey information gathered at the U.S. stakeholder meeting to participants at the ISC Workshop. The manner of public comment during the NMFS-hosted meeting will be at the discretion of the presenters and NMFS staff.

North Pacific Albacore U.S. Stakeholder Meeting Topics

The North Pacific albacore MSE topics will include, but are not limited to, the following:

(1) An overview of the North Pacific albacore MSE; and

(2) Discussion of the results of testing the initial management strategies.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Celia Barroso (see **FOR FURTHER INFORMATION CONTACT**) by January 20, 2019.

Authority: 16 U.S.C. 951 *et seq.* and 16 U.S.C. 6901 *et seq.*

Dated: December 17, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–27644 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 181130999–8999–01]

RIN 0660–XC044

Developing a Sustainable Spectrum Strategy for America's Future

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: On behalf of the U.S. Secretary of Commerce, the National Telecommunications and Information Administration (NTIA) requests comments from interested parties with regard to development of a comprehensive, long-term national spectrum strategy. NTIA seeks broad input from interested stakeholders, including private industry, academia, civil society, and other experts.

DATES: Comments must be received by 11:59 p.m. Eastern Time on January 22, 2019.

ADDRESSES: Written comments identified by Docket No. 181130999–8999–01 may be submitted by email to *spectrum-strategy-comments@ntia.doc.gov.* Comments submitted by email should be machine-readable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4600, Attn: John Alden, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John Alden, Office of Spectrum Management, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4600, Washington, DC 20230; telephone: (202) 482–8046; email: *jalden@ntia.doc.gov.* For media inquiries: Anne Veigle, Director, Office of Public Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4897, Washington, DC 20230; telephone: (202) 482–7002; email: *press@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NTIA is requesting comments from interested parties with regard to development of a comprehensive, long-term national spectrum strategy as required by the Presidential Memorandum, *Developing a Sustainable Spectrum Strategy for America's Future* (Spectrum PM), issued on October 25, 2018.[1] Section 4 of the Spectrum PM requires the Secretary of Commerce, working through NTIA, and in consultation with Office of Management and Budget, the Office of Science and Technology Policy, the Federal Communications Commission (FCC), and other Federal entities to submit a long-term National Spectrum Strategy to the President, through the Director of the National Economic Council and the Assistant to the President for National Security Affairs, within 270 days.[2] The National Spectrum Strategy is to include legislative, regulatory, or other policy recommendations to:

(a) Increase spectrum access for all users, including on a shared basis, through transparency of spectrum use and improved cooperation and collaboration between Federal and non-Federal spectrum stakeholders;

(b) Create flexible models for spectrum management, including standards, incentives, and enforcement mechanisms that promote efficient and effective spectrum use, including flexible-use spectrum licenses, while accounting for critical safety and security concerns;

(c) Use ongoing research, development, testing, and evaluation [RDT&E] to develop advanced technologies, innovative spectrum-utilization methods, and spectrum-sharing tools and techniques that increase spectrum access, efficiency, and effectiveness;

(d) Build a secure, automated capability to facilitate assessments of spectrum use and expedite coordination of shared access among Federal and non-Federal spectrum stakeholders; and

(e) Improve the global competitiveness of United States terrestrial and space-related industries and augment the mission capabilities of Federal entities through spectrum policies, domestic regulations, and leadership in international forums.[3]

On June 18, 2018, the President issued Space Policy Directive-3, National Space Traffic Management Policy (SPD–3), which sets forth principles, goals, and guidelines for the National Space Traffic Management Policy.[4] NTIA believes SPD–3 shares many of the goals of the Spectrum PM with respect to the development of the administration's comprehensive and sustainable approach to our national spectrum policy. For example, one of the goals of SPD–3 is to:

> [p]revent unintentional radio frequency (RF) interference. Growing orbital congestion is increasing the risk to U.S. space assets from unintentional RF interference. The United States should continue to improve policies, processes, and technologies for spectrum use (including allocations and licensing) to address these challenges and ensure appropriate spectrum use for current and future operations.[5]

Furthermore, SPD–3 provides that U.S. Government efforts in Space Traffic Management (STM) should address the following spectrum management considerations:

- Where appropriate, verify consistency between policy and existing national and international regulations and goals regarding global access to, and operation in, the RF spectrum for space services;
- Investigate the advantages of addressing spectrum in conjunction with the development of STM systems, standards, and best practices;
- Promote flexible spectrum use and investigate emerging technologies for potential use by space systems; and
- Ensure spectrum-dependent STM components, such as inter-satellite safety communications and active debris removal systems, can successfully access the required spectrum necessary to their missions.[6]

II. Request for Comments

This Request for Comments (RFC) solicits input to assist the Secretary of Commerce, through NTIA, in developing a National Spectrum Strategy. We solicit recommended actions as well as information that can improve NTIA's understanding more generally in areas including expanding spectrum access, improving spectrum sharing, enhancing spectrum management, utilizing ongoing research and development activities, fostering global competitiveness, protecting U.S. space assets from RF interference, and augmenting the mission capability of Federal entities.

NTIA invites comment on the full range of issues raised in this RFC. NTIA also seeks comment on the following specific questions:

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[1] Memorandum for the Heads of Executive Departments and Agencies, *Developing a Sustainable Spectrum Strategy for America's Future,* 83 FR 54513 (Oct. 30, 2018), *available at https://www.gpo.gov/fdsys/pkg/FR-2018-10-30/pdf/2018-23839.pdf.*

[2] *Id.* at sec. 4.

[3] *Id.*

[4] Memorandum for Heads for the Vice President, Heads of Executive Departments and Agencies, Space Policy Directive-3, National Space Traffic Management Policy, 83 FR 28969 (Jun. 21, 2018), *available at https://www.gpo.gov/fdsys/pkg/FR-2018-06-21/pdf/2018-13521.pdf.*

[5] *Id.* at sec. 4(g).

[6] *Id.* at sec. 5(c)(2).

1. In what ways could the predictability of spectrum access for all users be improved?

2. To what extent would the introduction of automation facilitate assessments of spectrum use and expedite the coordination of shared access, especially among Federal and non-Federal spectrum stakeholders?

3. What is the practical extent of applying standards, incentives, and enforcement mechanisms to promote efficient and effective spectrum use?

4. How might investment in RDT&E improve spectrum-utilization methods, and spectrum-sharing tools and techniques?

5. What are the risks, if any, to the global competitiveness of U.S. industries associated with spectrum management and policy actions?

6. How could a spectrum management paradigm be structured such that it satisfies the needs of commercial interests while preserving the spectrum access necessary to satisfy the mission requirements and operations of Federal entities?

7. What are the likely future needs of spectrum users, both terrestrially and for space-based applications, within the next 15 years? In particular, are present allocations of spectrum sufficient to provide next generation services like Fifth Generation (5G) cellular services and emerging space-based applications? For commenters who assert that existing allocations are insufficient, NTIA is interested in understanding better the amount of spectrum presently available to provide particular services (or similar services) and estimates of the amount of additional spectrum in each frequency band that the commenter believes is needed.

Instructions for Commenters: Commenters are encouraged to address any or all of the questions in this RFC. Comments that contain references to studies, research, and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments. Comments submitted by email should be machine-readable and should not be copy-protected. Comments submitted by mail may be in hard copy (paper) or electronic (on CD–ROM or disk). Commenters should include the name of the person or organization filing the comment, as well as a page number on each page of their submissions. All comments received are a part of the public record and generally will be posted on the NTIA website, *https://www.ntia.doc.gov,* without change. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Dated: December 18, 2018.

David J. Redl,

Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.

[FR Doc. 2018–27690 Filed 12–20–18; 8:45 am]

BILLING CODE 3510–60–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 previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* January 20, 2019.

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 11/16/2018 (83 FR 222), 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 products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSNs—Product Names:
MR 10722—Sticker Book, Halloween, Includes Shipper 20722
MR 378—Christmas Sticker Book
MR 833—Onion Saver
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Defense Commissary Agency

Services

Service Type: Laundry Service
Mandatory for: USDA, National Animal Disease Center: 2300 Dayton Avenue, Ames, IA
Mandatory Source of Supply: Genesis Development, Jefferson, IA
Contracting Activity: ANIMAL AND PLANT HEALTH INSPECTION SERVICE, USDA APHIS MRPBS
Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: 1635 Berks Road, Norristown, PA
Mandatory Source of Supply: The Chimes, Inc., Baltimore, MD
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: Santa Rosa, Santa Rosa, CA
Mandatory Source of Supply: UNKNOWN
Contracting Activity: DEPT OF THE ARMY, W40M NORTHEREGION CONTRACT OFC
Service Type: Distribution Service
Mandatory for: Department of Transportation: 400 7th Street SW, Library and Distribution Services, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: Government Printing Office

Amy B. Jensen,

Director, Business Operations.

[FR Doc. 2018–27684 Filed 12–20–18; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes a service previously furnished by such agency.

DATES: *Comments must be received on or before:* January 20, 2019.

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.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

NSN(s)—Product Names:
- 6135–01–447–0950—Battery, Non-Rechargeable, AA, 1.5V, Alkaline, NEDA 15A, PG/4
- 6135–01–446–8307—Battery, Non-Rechargeable, C, 1.5V, Alkaline, NEDA 14A, PG/4
- 6135–01–446–8308—Battery, Non-Rechargeable, AAA, 1.5V, Alkaline, NEDA 24A, PG/4

Mandatory Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC

Mandatory for: Total Government Requirement

Contracting Activity: Federal Acquisition Service, GSA/FSS Greater Southwest Acquisition Ctr (7FCO)

Distribution: A-List

Deletion

The following service is proposed for deletion from the Procurement List:

Service

Service Type: Custodial and Grounds Maintenance Service

Mandatory for: FSS Depot, 400 Edwards Avenue, Harahan, LA

Mandatory Source of Supply: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA

Contracting Activity: Public Buildings Service, Building Services Team

Amy B. Jensen,

Director, Business Operations.

[FR Doc. 2018–27683 Filed 12–20–18; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0043]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is proposing to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Gramm-Leach-Bliley Act (Regulation P) 12 CFR 1016.''

DATES: Written comments are encouraged and must be received on or before January 22, 2019 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau of Consumer Financial Protection. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under review, use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Gramm-Leach-Bliley Act (Regulation P) 12 CFR 1016.

OMB Control Number: 3170–0010.

Type of Review: Extension without change of an existing information collection.

Affected Public: Businesses and other for-profit entities.

Estimated Number of Respondents: 462,760.

Estimated Total Annual Burden Hours: 312,916.

Abstract: Section 502 of the Gramm-Leach-Bliley Act (GLBA) (Public Law 106–102) generally prohibits a financial institution from sharing nonpublic personal information about a consumer with nonaffiliated third parties unless the institution satisfies various disclosure requirements (including provision of initial privacy notices, annual notices, notices of revisions to the institution's privacy policy, and opt-out notices) and the consumer has not elected to opt out of the information sharing. The Bureau promulgated Regulation P 12 CFR 1016 to implement the GLBA's notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request For Comments: The Bureau issued a 60-day **Federal Register** notice on October 1, 2018, (83 FR 49370), Docket Number: CFPB–2018–0027. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary

for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: December 18, 2018.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2018–27738 Filed 12–20–18; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2018–0034; OMB Control Number 0704–0231]

Information Collection Requirement; (DFARS) Part 237, Service Contracting, Associated DFARS Clauses at DFARS 252.237, DD Form 2062, and DD Form 2063; Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System 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 January 22, 2019.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 237, Service Contracting, associated DFARS Clauses at DFARS 252.237, DD Form 2062, and DD Form 2063; OMB Control Number 0704–0231.

Affected Public: Businesses and other for-profit and not-for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Extension of a currently approved collection.

Reporting Frequency: On occasion.

Number of Respondents: 2,737.

Responses per Respondent: 1.5, approximately.

Annual Responses: 4,019.

Average Burden per Response: 1.5, approximately.

Annual Response Burden Hours: 6,051.

Needs and Uses: The information collected under this clearance is used as follows:

a. The information collected pursuant to DFARS provision 252.237–7000(c) is used to verify that the offeror is properly licensed in the state or other political jurisdiction where the offeror operates its professional practice.

b. DFARS 252.237–7011, the DD Form 2062, Record of Preparation and Disposition of Remains (DoD Mortuary Facility), and the DD Form 2063, Record of Preparation and Disposition of Remains (Within CONUS), are used to verify that the deceased's remains have been properly cared for by the mortuary contractor.

c. The written plan required by DFARS provision 252.237–7024, submitted by offerors concurrently with the proposal or offer, allows the contracting officer to assess the offeror's capability to continue providing contractually required services to support the DoD component's mission essential functions in an emergency.

d. The information collected pursuant to DFARS clause 252.237–7023 allows the contracting officer to provide approval of updates to the contractor's plan provided under DFARS clause 252.237–7024, to ensure that the contractor can continue to provide services in support of the DoD component's required mission essential functions in an emergency.

OMB Desk Officer: Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

DoD Clearance Officer: Mr. Frederick C. Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at: WHS/ESD Directives Division, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2018–27688 Filed 12–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of The Great Lakes and Mississippi River Interbasin Study—Brandon Road Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Extension of public comment period.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Rock Island and Chicago Districts, are extending the comment period for the report ''The Great Lakes and Mississippi River Interbasin Study (GLMRIS)—Brandon Road Integrated Feasibility Study and Environmental Impact Statement (EIS)—Will County, Illinois,'' (Final GLMRIS-Brandon Road Report & EIS) for 14 days in response to stakeholder requests for an extension, from December 24, 2018 to January 7, 2019.

DATES: The comment period is extended for the Final GLMRIS-Brandon Road Report & EIS published in the **Federal Register** on November 23, 2018 (83 FR 59378).

ADDRESSES: The Final GLMRIS-Brandon Road Report & EIS are posted at *https://www.mvr.usace.army.mil/GLMRIS-BR.*

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Rock Island District, ATTN: GLMRIS-Brandon Road EIS, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61204–2004.; or contact online at *https://www.mvr.usace.army.mil/GLMRIS-BR.*

SUPPLEMENTARY INFORMATION: The USACE is issuing this notice pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4332 *et seq.*) and the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (43 CFR parts 1500 through 1508). This notice announces the availability of the final GLMRIS-Brandon Road EIS. The Final GLMRIS-Brandon Road Report & EIS, its appendices, and other supporting documents can be accessed

at: *https://www.mvr.usace.army.mil/GLMRIS-BR.*

Background Information

The Draft GLMRIS-Brandon Road EIS was released on August 18, 2017, and included a 112-day public comment period that ended on December 8, 2017. During that time, USACE held four meetings to solicit comments from the public. USACE analyzed the comments received from the public (Appendix K) and considered them in preparation of the Final GLMRIS-Brandon Road EIS. This EIS provided the necessary information for the public to fully evaluate a range of alternatives designed to meet the purpose and need of the Final GLMRIS-Brandon Road Report & EIS and to provide thoughtful and meaningful comment for the Agency's consideration.

The Final GLMRIS-Brandon Road Report & EIS identifies six alternatives including no new action (continuing current efforts); the nonstructural alternative; and three technology alternatives using an electric barrier and/or acoustic fish deterrent and lock closure. The effectiveness of these alternatives was considered against the three different modes of ANS transport, swimming, floating, and hitchhiking. Selection of a Recommended Plan required careful evaluation of each alternative's (1) reduction in the probability of establishment in the Great Lakes Basin, (2) relative life safety risk, (3) system performance robustness and (4) costs, which include construction; mitigation; operation and maintenance, repair, replacement and rehabilitation; and navigation impacts. Evaluation also included careful consideration of cost effectiveness and incremental cost analyses, significance of the Great Lakes Basin's ecosystem, acceptability, completeness, efficiency, and effectiveness. Based on the results of the evaluation and comparison of the alternatives, the Recommended Plan is the Technology Alternative—Acoustic Fish Deterrent with Electric Barrier, which includes the following measures: Nonstructural measures, acoustic fish deterrent, bubble curtain, engineered channel, electric barrier, flushing lock, and boat ramps. The Final GLMRIS-Brandon Road Report & EIS identifies potential significant adverse impacts that alternatives may have on existing uses and users of the waterways.

Dated: December 14, 2018.

Dennis W. Hamilton,

Chief, Programs and Project Management Division.

[FR Doc. 2018–27739 Filed 12–20–18; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the availability of the inventions listed below, assigned to the United States Government, as represented by the Secretary of the Navy, for domestic and foreign licensing by the Department of the Navy.

SUPPLEMENTARY INFORMATION: The inventions listed below are available for licensing: U.S. Patent Number 6,664,915 entitled ''Identification Friend or Foe System Including Short Range UV Shield'' issued on December 16, 2003; U.S. Patent Number 7,661,271 entitled ''Integrated Electric Gas Turbine'' issued on February 16, 2010; U.S. Patent Number 6,600,694 entitled ''Digital Signal Processor Based Torpedo Counter-measure'' issued on July 29, 2003; U.S. Patent Number 6,820,025 entitled ''Method and Apparatus for Motion Tracking of an Articulated Rigid Body'' issued on November 16, 2004; U.S. Patent Number 6,717,525 entitled ''Tactical Vectoring Equipment (TVE)'' issued on April 6, 2004; U.S. Patent Number 6,624,780 entitled ''False Target Radar Image Generator for Countering Wideband Imaging Radars'' issued on September 23, 2003; U.S. Patent Number 7,725,595 entitled ''Embedded Communications System and Method'' issued on May 25, 2010; U.S. Patent Number 8,443,101 entitled ''Method for Identifying and Blocking Embedded Communications'' issued on May 14, 2013; U.S. Patent Number 7,675,198 entitled ''Inductive Pulse Forming Network for High-current, High-power Applications'' issued on March 9, 2010; U.S. Patent Number 8,018,096 entitled ''Inductive Pulse Forming Network for High-current, High-power Applications'' issued September 13, 2011; U.S. Patent Number 7,089,148 entitled ''Method and Apparatus for Motion Tracking of an Articulated Rigid Body'' issued August 8, 2006; U.S. Patent Number 8,085,817 entitled ''Automatic Clock Synchronization and Distribution Circuit for Counter Clock Flow Pipelined Systems'' issued December 27, 2011; U.S. Patent Number 8,019,090 entitled ''Active Feedforward Noise Vibration Control System'' issued September 13, 2011; U.S. Patent Number 8,064,541 entitled ''Hyperphase Shift Keying'' issued November 22, 2011; U.S. Patent Number 8,050,849 entitled ''Method to Reduce Fuel Consumption by Naval Vessels that Operate in Mixed Propulsion Modes'' issued November 1,2011; U.S. Patent Number 8,006,937 entitled ''Spacecraft Docking Interface Mechanism'' issued August 30,2011; U.S. Patent Number 7,811,918 entitled ''Electric Current Induced Liquid Metal Flow and Metallic Conformal Coating of Conductive Templates'' issued on October 12, 2010; U.S. Patent Number 8,467,548 entitled ''Miniature Directional Sound Sensor Using Micro-Electro-Mechanical-System (MEMS)'' issued on June 18, 2013; U.S. Patent Number 8,579,535 entitled ''Micro-coupling Active Release Mechanism'' issued on November 12, 2013; U.S. Patent Number 9,003,627 entitled ''Micro-coupling Active Release Mechanism'' issued on April 14, 2015; U.S. Patent Number 8,654,672 entitled ''Method for Optimal Transmitter Placement in Wireless Mesh Networks'' issued on February 18, 2014; U.S. Patent Number 8,473,826 entitled ''Hybrid Soft Decision Hard Decision Reed-Solomon Decoding'' issued June 25, 2013; U.S. Patent Number 8,433,959 entitled ''Method for Determining Hard Drive Contents Through Statistical Drive Sampling'' issued on April 30, 2013; U.S. Patent Number 8,446,096 entitled ''Terahertz (THz) Reverse Micromagnetron'' issued on May 21, 2013; U.S. Patent Number 8,624,497 entitled ''Terahertz (THz) Reverse Micromagnetron'' issued on January 7, 2014; U.S. Patent Number 8,724,598 entitled ''Method for Energy-efficient, Traffic-adaptive, Flow-specific Medium Access For Wireless Networks'' issued on May 13, 2014; U.S. Patent Number 8,269,658 entitled ''Photonic Analog-to-Digital Conversion Using the Robust Symmetrical Number System'' issued on September 18, 2012; U.S. Patent Number 9,194,379 entitled ''Field Ionization Based Electrical Space Ion Thruster Using A Permeable Substrate'' issued on November 24, 2015; U.S. Patent Number 8,800,930 entitled ''Aerial Delivery System with High Accuracy Touchdown'' issued on August 12, 2014; U.S. Patent Number 8,730,098 entitled ''Method for Radar Detection of Persons Wearing Wires'' issued on May 20, 2014; U.S. Patent Number 8,525,393 entitled ''Bimaterial Microelectromechanical System (MEMS) Solar Power Generator'' issued on September 3, 2013; U.S. Patent Number 8,526,746 entitled ''Near Lossless Data Compression Method Using Nonuniform Sampling'' issued on September 3, 2013; U.S. Patent Number 8,489,256 entitled ''Automatic Parafoil

Turn Calculation Method and Apparatus'' issued on July 16, 2013; U.S. Patent Number 8,437,891 entitled ''Method And Apparatus for Parafoil Guidance That Accounts For Ground Winds'' issued on May 7, 2013; U.S. Patent Number 8,818,581 entitled ''Parafoil Electronic Control Unit Having Wireless Connectivity'' issued on August 26, 2014; U.S. Patent Number 9,331,773 entitled ''Instantaneous Wireless Network Established By Simultaneously Descending Parafoils'' issued on May 3, 2016; U.S. Patent Number 8,483,891 entitled ''Automatically Guided Parafoil Directed to Land on a Moving Target'' issued on July 9, 2013; U.S. Patent Number 8,693,365 entitled ''Method and Apparatus for State-Based Channel Selection Method in Multi-Channel Wireless Communications Networks'' issued on April 8, 2014; U.S. Patent Number 8,810,121 entitled ''Method and Device to Produce Hot, Dense, Long-lived Plasmas'' issued on August 19, 2014; U.S. Patent Number 8,746,120 entitled ''Boosted Electromagnetic Device and Method to Accelerate Solid Metal Slugs to High Speeds'' issued on June 10, 2014; U.S. Patent Number 8,878,742 entitled ''Dipole with an Unbalanced Microstrip Feed'' issued on November 4, 2014; U.S. Patent Number 9,038,958 entitled ''Method And Apparatus For Contingency Guidance Of A CMG-Actuated Spacecraft'' issued on May 26, 2015; U.S. Patent Number 8,880,246 entitled ''Method and Apparatus for Determining Spacecraft Maneuvers'' issued on November 4, 2014; U.S. Patent Number 9,248,501 entitled ''Method for Additive Manufacturing Using pH and Potential Controlled Powder Solidification'' issued on February 2, 2016; U.S. Patent Number 9,234,732 entitled ''Explosives Storage System'' issued on January 12, 2016; U.S. Patent Number 9,417,044 entitled ''Explosives Storage System'' issued on August 16, 2016; U.S. Patent Number 9,419,920 entitled ''Gateway Router and Method for Application-Aware Automatic Network Selection'' issued on August 16, 2016; U.S. Patent Number 9,321,529 entitled ''Hybrid Mobile Buoy for Persistent Surface and Underwater Exploration'' issued on April 26, 2016; U.S. Patent Number 9,418,080 entitled ''Method and System for Mobile Structured Collection of Data and Images'' issued on August 16, 2016; U.S. Patent Number 9,489,851 entitled ''Landing Signal Officer (LSO) Information Management and Trend Analysis (IMTA) Tool'' issued on November 8, 2016; U.S. Patent Number 9,534,863 entitled ''Electromagnetic Device and Method to Accelerate Solid Metal Slugs to High Speeds'' issued on January 3, 2017; U.S. Patent Number 9,552,391 entitled ''Apparatus and Method for Improvised Explosive Device (IED) Network Analysis'' issued on January 24, 2017; U.S. Patent Number 9,541,401 entitled ''Method and System for Determining Shortest Oceanic Routes'' issued on January 10, 2017; U.S. Patent Number 9,457,900 entitled ''Multirotor Mobile Buoy for Persistent Surface and Underwater Exploration'' issued on October 4, 2016; U.S. Patent Number 9,567,112 entitled ''Method and Apparatus for Singularity Avoidance for Control Moment Gyroscope (CMG) Systems Without Using Null Motion'' issued on February 14, 2017; U.S. Patent Number 9,594,172 entitled ''Solid-state Spark Chamber for Detection of Radiation'' issued on March 14, 2017; U.S. Patent Number 9,563,964 entitled ''Method for Computer Vision Analysis of Cannon-launched Artillery Video'' issued on February 7, 2017; U.S. Patent Number 9,721,352 entitled ''Method and Apparatus for Computer Vision Analysis of Cannon-launched Artillery Video'' issued on August 1, 2017; U.S. Patent Number 9,727,034 entitled ''Unscented Control for Uncertain Dynamical Systems'' issued on August 8, 2017; U.S. Patent Number 9,693,325 entitled ''Method and Apparatus for Hybrid Time Synchronization Based on Broadcast Sequencing for Wireless Ad Hoc Networks'' issued on June 27, 2017; U.S. Patent 9,590,740 entitled ''Method and System for Robust Symmetrical Number System (RSNS) Photonic Direction Finding (DF) System'' issued on March 7, 2017; U.S. Patent Number 9,530,574 entitled ''Super Dielectric Materials'' issued on December 27, 2016; U.S. Patent Number 9,788,213 entitled ''Method for Interference-Robust Transmitter Placement in Wireless Mesh Networks'' issued on October 10, 2017; U.S. Patent Number 9,711,293 entitled ''Capacitor with Ionic-solution-infused, Porous, Electrically Non-conductive Material'' issued on July 18, 2017; U.S. Patent Number 9,655,077 entitled ''Device and Method for Cellular Synchronization Assisted Location Estimation'' issued on May 16, 2017; U.S. Patent Number 9,656,733 entitled ''Life Preserver Location System'' issued on May 23, 2017; U.S. Patent Number 9,705,383 entitled ''Light Activated Generator'' issued on July 11, 2017; U.S. Patent Number 9,822,786 entitled ''Light Activated Rotor'' issued on November 21, 2017; U.S. Patent Number 9,843,858 entitled ''Direction Finding System Using Two MEMS Sound Sensors'' issued on December 12, 2017; U.S. Patent Number 9,849,785 entitled ''Method and Apparatus for State Space Trajectory Control of Uncertain Dynamical Systems'' issued on December 26, 2017; U.S. Patent Number 9,865,761 entitled ''Emitter-less, Back-surface Alternating Contact Solar Cell'' issued on January 9, 2018; U.S. Patent Number 9,870,875 entitled ''Super Dielectric Capacitor Using Scaffold Dielectric'' issued on January 16, 2018; U.S. Patent Number 9,909,843 entitled '' Front-Facing Fluoropolymer-Coated Armor Composite'' issued on March 6, 2018; U.S. Patent Number 9,911,046 entitled ''Method and Apparatus for Computer Vision Analysis of Spin Rate of Marked Projectiles'' issued on March 6, 2018; U.S. Patent Number 9,960,956 entitled ''Network Monitoring Method Using Phantom Nodes'' issued on May 1, 2018; U.S. Patent Number 9,960,715 entitled ''Light Activated Piezoelectric Converter'' issued on May 1, 2018; U.S. Patent Number 9,969,504 entitled ''Automated Multi-plane Propulsion System'' issued on May 15, 2018; U.S. Patent Number 9,978,832 entitled ''Wide Bandgap Semiconductor Device With Vertical Superjunction Edge Termination for the Drift Region'' issued on May 22, 2018; U.S. Patent Number 9,983,585 entitled ''Method and Apparatus for Operation of a Remote Sensing Platform'' issued on May 29, 2018; U.S. Patent Number 10,020,125 entitled ''Super Dielectric Capacitor'' issued on July 10, 2018; U.S. Patent Number 9,994,335 entitled ''Rapid Unmanned Aerial Vehicle Launcher (UAV) System'' issued on June 12, 2018; U.S. Patent Number 10,024,772 entitled ''Device and Method for Applying Internal Pressure to a Hollow Cylinder'' issued on July 17, 2018; U.S. Patent Number 10,050,731 entitled ''Apparatus and Method for Detecting a Multi-homed Device using Clock Skew'' issued on August 14, 2018; U.S. Patent Number 10,062,522 entitled ''Powder-Based Super Dielectric Material Capacitor'' issued on August 28, 2018; U.S. Patent Number 10,065,312 entitled ''Unscented Optimization and Control Allocation'' issued on September 4, 2018; U.S. Patent Number 10,095,198 entitled ''Closed-Loop Control System Using Unscented Optimization'' issued on October 9, 2018; U.S. Patent Number 10,107,891 entitled ''Wireless Signal Localization and Collection from an Airborne Symmetric Line Array Network'' issued on October 23, 2018; U.S. Patent Number 9,842,957 entitled ''AIGaAs/GaAs Solar Cell with Back-surface Alternating Contacts (GaAs BAC

Solar Cell)'' issued on December 12, 2017; U.S. Patent Number 10,147,543 entitled ''Super Dielectric Capacitor Using Scaffold Dielectric and Electrically and Ionically Conducting Electrodes'' issued on December 4, 2018; U.S. Patent Application Number 15/941,536 filed on March 30, 2018, entitled ''Method and Apparatus for Rapid Acoustic Analysis''; U.S. Patent Application Number 15/453,198 filed on March 8, 2017, entitled ''Apparatus and Method for Determining an Orientation of an Inertial/Magnetic Sensor''; U.S. Patent Application Number 15/251,766 filed on August 30, 2016, entitled ''High-Altitude Payload Retrieval (HAPR) Apparatus and Methods of Use''; U.S. Patent Application Number 15/375,279 filed on December 12, 2016, entitled ''Method of Electrochemically-Driven Coated Material Synthesis''; U.S. Patent Application Number 15/463,135 filed on March 20, 2017, entitled ''Energy Recovery Pulse Forming Network''; U.S. Patent Application Number 15/251,035 filed on August 30, 2016, entitled ''Chemical Method to Create Metal Films on Metal and Ceramic Substrates''; U.S. Patent Application Number 15/625,103 filed on June 16, 2017, entitled ''Chemical Method to Create High Stability Heterogeneous Carbon-bonded Materials''; U.S. Patent Application Number 15/593,931 filed on May 12, 2017, entitled ''Dynamically Tilting Flat Table to Impart a Time-varying Gravity-induced Acceleration on a Floating Spacecraft Simulator''; U.S. Patent Application Number 15/725,025 filed on October 4, 2017, entitled ''Systems and Methods for Evaluation of Potentially Irradiated Objects Using Oxygen-17 Detection''; U.S. Patent Application Number 12/460,923 filed on February 26, 2010, entitled ''Agile Attitude Control System for Small Spacecraft''; U.S. Patent Application Number 13/374,601 filed on June 22, 2012, entitled ''A Method for Amplifying Detonation Power Output By Circumferential Slapper Initiation''; U.S. Patent Application Number 15/857,972 filed on December 29, 2017, entitled ''Methane/Oxygen Rocket Engine with Specific Impulse Enhancement by Hot Helium Infusion''; U.S. Patent Application Number 15/830,560 filed on December 4, 2017, entitled ''Continuous Wave (CW) Radar System for Phase Coded Time Delayed Transmit-Receive Leakage Cancellation''; U.S. Patent Application Number 15/827,832 filed on November 30,2017, entitled ''Systems and Methods for Autonomous Operations of Ground Station Networks''; U.S. Patent Application Number 15/928,459 filed on March 22, 2018, entitled ''Systems and Methods for Low Temperature Metal Printing''; U.S. Patent Application Number 15/907,453 filed on February 28, 2018, entitled ''Image-Matching Navigation Method and Apparatus for Aerial Vehicle''; U.S. Patent Application Number 16/115,316 filed on August 28, 2018, entitled ''Apparatus and Method for Locating Camera Towers and Scheduling Surveillance''; U.S. Patent Application Number 15/827,050 filed on November 30, 2017, entitled ''Super Dielectric Capacitor Having Electrically and Ionically Conducting Electrodes''; U.S. Patent Application Number 62/637,863 filed on March 2, 2018, entitled ''Capacitors Employing Dielectric Material Outside the Volume Enclosed by the Electrodes''; U.S. Patent Application Number 15/909,590 filed on March 1, 2018, entitled ''Vertical Burial Containment System''; U.S. Patent Application Number 16/191,871 filed on November 15, 2018, entitled ''Photonic Compressed Sensing Nyquist Folding Receiver''; U.S. Patent Application Number 16/192,434 filed on November 15, 2018, entitled ''Method and Substrate for Easy Release of Parts Made by Cold Spray''; U.S. Patent Application Number 15/910,145 filed on March 2, 2018, entitled ''Robot Vision in Autonomous Underwater Vehicles Using the Color Shift in Underwater Imaging''; U.S. Patent Application Number 62/629,534 filed on February 12, 2018, entitled ''Unconventional Warfare (US) War Game''; U.S. Patent Application Number 62/629,217 filed on February 12, 2018, entitled ''Method and Apparatus for Interrupted Persistent Surveillance Using Aerial Multi-rotor Vehicle''; U.S. Patent Application Number 62/678,888 filed on May 31, 2018, entitled ''Automatic Gunshot Detection and Suppression Response System''; U.S. Patent Application Number 62/684,889 filed on June 14, 2018, entitled ''Method for Applying Fibrous Composite Failure Criteria with Material Degradation to Finite Element Solvers''; U.S. Patent Application Number 62/725,813 filed on August 31, 2018, entitled ''Method and Apparatus for a Life Support System''; U.S. Patent Application Number 62/736,302 filed on September 25, 2018, entitled ''Method and System for Automated Drone-based Foreign Object Debris Detection and Removal''; U.S. Patent Application Number 62/760,370 filed on November 13, 2018, entitled ''Clock-Skew-Based Covert Channel''.

ADDRESSES: Requests for copies of the inventions should be directed to Naval Postgraduate School, Research and Sponsored Programs Office, NPS Code 41, 699 Dyer Road, Bldg. HA, Room 226, Monterey, CA 93943.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Buettner, Director, Research and Sponsored Programs Office, NPS Code 41, 699 Dyer Road, Bldg. HA, Room 226, Monterey, CA 93943, telephone 831–656–7893. Due to U.S. Postal delays, please fax 831–656–2038, email: *dbuettne@nps.edu* or use courier delivery to expedite response.

Authority: 35 U.S.C. 207, 37 CFR Part 404.7.

Dated: December 18, 2018.

Meredith Steingold Werner,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2018–27661 Filed 12–20–18; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0104]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Recent Graduates Employment and Earnings Survey (RGEES) Standards and Survey Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 22, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0104. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Recent Graduates Employment and Earnings Survey (RGEES) Standards and Survey Form.

OMB Control Number: 1845–0138.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 22,123.

Total Estimated Number of Annual Burden Hours: 7,374.

Abstract: The National Center for Education Statistics (NCES) of the U.S. Department of Education (Department) is required by regulation to develop an earnings survey to support gainful employment (GE) program evaluations. The regulations specify that the Secretary of Education will publish in the **Federal Register** the survey and the standards required for its administration. NCES has developed the Recent Graduates Employment and Earnings Survey (RGEES) Standards and Survey Form. The RGEES can be used in a debt-to-earnings (D/E) ratio appeal under the GE regulations as an alternative to the Social Security administration earnings data.

Institutions that choose to submit alternate earnings appeal information will survey all Title IV funded students who graduated from GE programs during the same period that the Department used to calculate the D/E ratios, or a comparable period as defined in 668.406(b)(3) of the regulations. The survey will provide an additional source of earnings data for the Department to consider before determining final D/E ratios for programs subject to the gainful employment regulations. Programs with final D/E ratios that fail to meet the minimum threshold may face sanctions, including the possible loss of Title IV federal student financial aid program funds.

Dated: December 18, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–27662 Filed 12–20–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–186–000]

Notice of Schedule for Environmental Review of the Transcontinental Gas Pipe Line Company, LLC, Southeastern Trail Project

On April 11, 2018, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP18–186–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Southeastern Trail Project (Project), and would provide 296.4 million standard cubic feet of natural gas per day (MMcf/d) of additional firm transportation capacity from the Pleasant Valley Interconnect facility in Fairfax County, Virginia to the existing Station 65 pooling point in St. Helena Parish, Louisiana.

With this notice, this Commission is alerting agencies that issue federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—February 8, 2019
90-day Federal Authorization Decision Deadline—May 9, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would involve construction and operation of approximately 7.7 miles of new natural gas pipeline loop located along Transco's existing mainline (referred to as the Manassas Loop) in Fauquier and Prince William Counties, Virginia. The Project also includes approximately 60,720 horsepower of additional compression at three existing facilities in Virginia (Compressor Station 185, Compressor Station 175, and Compressor Station 165); reversal and/or deodorization modifications at eight existing mainline facilities in South Carolina, Georgia, and Louisiana; and modifications at 13 existing mainline valve sites in South Carolina and Georgia. In addition, Transco proposes to retire and abandon 10 compressor units and related buildings and ancillary equipment at existing Compressor Station 165 in Pittsylvania County, Virginia.

Background

On June 1, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Southeastern Trail Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Sessions* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Virginia Department of Conservation and Recreation, the Teamsters National Pipeline Labor Management Cooperation Trust, and four landowners. The primary issues raised by the commentors are noise, safety, land use, and sensitive habitats and species. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers

a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP18–186), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27640 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19–23–000]

Notice of Institution of Section 206 Proceeding and Refund Effective Date: Duke Energy Florida, LLC

On December 14, 2018, the Commission issued an order in Docket No. EL19–23–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into whether Duke Energy Florida, LLC's increased estimate to procure, install and construct the interconnection facilities and network upgrades for the Large Generator Interconnection Agreement with U.S. EcoGen Polk, LLC may be unjust and unreasonable. *Duke Energy Florida, LLC,* 165 FERC ¶ 61,230 (2018).

The refund effective date in Docket No. EL19–23–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL19–23–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, within 21 days of the date of issuance of the order.

Dated: December 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27729 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR19–26–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b),(e)/: Revised Statement of Operating Conditions to be effective 11/29/2018.

Filed Date: 12/14/18.

Accession Number: 201812145076.

Comments Due: 5 p.m. ET 1/4/19.

Docket Number: RP19–206–001.

Applicants: Mississippi Canyon Gas Pipeline, L.C.C.

Description: Tariff filing per 260,402:MCGP further extension request to be effective N/A.

Accession Number: 20181214–5201.

File Date: 12/14/18.

Comments Due: 5 p.m. ET 12/19/18.

Docket Numbers: RP19–460–000.

Applicants: Bear Creek Storage Company, L.L.C.

Description: Bear Creek Storage Company, L.L.C. submits tariff filing per 154.203: Annual Fuel Assessment 2018 to be effective N/A.

Filed Date: 12/13/2018.

Accession Number: 20181213–5032.

Comment Date: 5:00 p.m. ET 12/26/18.

Docket Numbers: RP19–461–000.

Applicants: UGI Mt. Bethel Pipeline, LLC.

Description: UGI Mt. Bethel Pipeline, LLC submits tariff filing per 260.402: 501–G Filing to be effective N/A.

Accession Number: 20181213–5128.

Comment Date: 5:00 p.m. ET 12/26/18.

Docket Numbers: RP19–462–000.

Applicants: UGI Sunbury, LLC.

Description: UGI Sunbury, LLC submits tariff filing per 260.402: 501–G Filing to be effective N/A.

Filed Date: 12/13/2018.

Accession Number: 20181213–5129.

Comment Date: 5:00 p.m. ET 12/2618.

Docket Numbers: RP19–463–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate—Yankee to Direct Energy 798335 eff 12–14–18 to be effective 12/14/2018.

Filed Date: 12/13/2018.

Accession Number: 20181213–5137.

Comment Date: 5:00 p.m. ET 12/26/18.

Docket Numbers: RP19–464–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Perm release from Dominion to Manchester to be effective 12/14/2018.

Filed Date: 12/14/18.

Accession Number: 20181214–5004.

Comments Due: 5 p.m. ET 12/26/18.

Docket Numbers: RP19–465–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: § 4(d) Rate Filing: Negotiated Rates—MarketLink Permt Rls—Dominion Fairless to be effective 12/14/2018.

Filed Date: 12/14/18.

Accession Number: 20181214–5064.

Comments Due: 5 p.m. ET 12/26/18.

Docket Numbers: RP19–466–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—Yankee to Direct Energy 798340 eff 12–15–18 to be effective 12/15/2018.

Filed Date: 12/14/18.

Accession Number: 20181214–5086.

Comments Due: 5 p.m. ET 12/26/18.

Docket Numbers: RP19–467–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 121418 Negotiated Rates—Consolidated Edison Energy H–2275–89 to be effective 12/15/2018.

Filed Date: 12/14/18.

Accession Number: 20181214–5164.

Comments Due: 5 p.m. ET 12/26/18.

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: December 17, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27733 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2839–015]

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions, Village of Lyndonville Electric Department

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2839–015.

c. *Date filed:* May 26, 2017.

d. *Applicant:* Village of Lyndonville Electric Department (Lyndonville).

e. *Name of Project:* Great Falls Hydroelectric Project.

f. *Location:* On the Passumpsic River, in the Town of Lyndon, Caledonia County, Vermont. There are no federal or tribal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bill Humphrey, Village of Lyndonville Electric Department, 119 Park Avenue, Lyndonville, VT 05851; (802) 626–3366.

i. *FERC Contact:* Bill Connelly, (202) 502–8587 or *william.connelly@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2839–015.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing Great Falls Project consists of: (1) A 160-foot-long, 32-foot-high curved, concrete dam with 2-foot-high flashboards; (2) an approximately 12-acre impoundment having a storage capacity of 135-acre-feet at a normal full pond water surface elevation of 668.38 feet above mean sea level; (3) a 6-foot-long, 15-foot-wide, 28-foot-high, concrete headworks structure with two 5-foot-wide, 8-foot-high wood and iron headgates; (4) an 8-foot-long, 8-foot-wide, 12-foot-high brick headworks gate house; (5) an approximately 282-foot-long, 22-foot-wide power canal that is covered for 70 feet; (6) one 4-foot-wide, 4-foot-high, wood and iron skimming sluice gate and one 4-foot-wide, 5-foot-high, wood and iron sand sluice gate; (7) a penstock intake with two 15-foot-wide, 22-foot-high trashracks with 1.5-inch clear bar spacing; (8) a 22.5-foot-long, 10-foot-diameter metal penstock that reduces to a 165-foot-long, 7.33-foot-diameter metal penstock that trifurcates to one 22-foot-long, 6-foot diameter, and two 9-foot-long, 3-foot-diameter penstocks; (9) a 47-foot-long, 25-foot-wide powerhouse containing a 1,350-kilowatt (kW) turbine-generator unit and a 40-foot-long, 40-foot-wide concrete powerhouse containing two 350-kW turbine-generator units, for a total capacity of 2,050-kW; (10) a 380-foot-long, 2.4-kilovolt (kV) above-ground transmission line that connects the turbine-generator leads to a substation step-up transformer where the project is interconnected with Lyndonville's distribution system; and (11) appurtenant facilities. Lyndonville operates the project in a run-of-river mode with an annual average energy production of approximately 3,960 megawatt-hours.

Lyndonville proposes to increase the existing year-round minimum flow to the bypassed reach from 10 cubic feet per second (cfs) to 62 cfs (or inflow, whichever is less) to maintain habitat for fish and aquatic organisms. In addition, Lyndonville proposes to continue to release a minimum flow of 75 cfs (or inflow, whichever is less) through the powerhouse during project shutdowns to protect fish and aquatic resources in the downstream reach. Lyndonville proposes to install an automatic pond level control system to improve control of impoundment levels and instantaneous run-of-river operation. Lyndonville also proposes to develop a minimum flow monitoring plan to ensure adequate flow is provided to the bypassed reach and downstream of the powerhouse.

Lyndonville also proposes several measures related to recreation resources, including: (1) Constructing and maintaining a new carry-in boat access trail downstream of the tailrace, on the west bank of the Passumpsic River; (2) designating a new bank fishing area; (3) installing a designated parking area outside of the project gates along the access road to the project; and (4) installing an informational kiosk identifying recreational amenities at the project. To evaluate the adequacy of project recreation facilities, Lyndonville proposes to conduct a recreation inventory, use and needs assessment within one year of completion of recreational improvements.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion

to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule:* The application will be processed according to the following revised schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions	February 2019.
Commission issues Environmental Assessment	August 2019.
Comments on Environmental Assessment	September 2019.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

p. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: December 17, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27650 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–480–000]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Annova LNG Brownsville Project: Annova LNG Common Infrastructure, LLC, Annova LNG Brownsville A, LLC, Annova LNG Brownsville B, LLC, Annova LNG Brownsville C, LLC

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Annova LNG Brownsville Project (referred to as the Annova LNG Project, or Project). Annova LNG Common Infrastructure LLC, Annova LNG Brownsville A LLC, Annova LNG Brownsville B LLC, and Annova LNG Brownsville C, LLC (collectively referred to as Annova LNG) request authorization to site, construct, and operate liquefied natural gas (LNG) export facilities on the Brownsville Ship Channel in Cameron County, Texas. The Project would include a new LNG export terminal capable of producing up to 6.95 million metric tons per year of LNG for export. The LNG terminal would receive natural gas to the export facilities from an as-yet undetermined third-party intrastate pipeline.

The draft EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Project would result in some adverse environmental impacts. However, with the mitigation measures recommended in the EIS and Annova's proposed mitigation measures, impacts in the Project area would be avoided or minimized, and would not be significant. In addition, the Annova LNG Project, combined with other projects in the geographic scope, including the Texas LNG and Rio Grande LNG Projects, would result in certain significant cumulative impacts. Construction and operation of the Project would result in mostly temporary or short-term environmental impacts; however, some long-term and permanent environmental impacts would occur.

The U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Department of Transportation; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; National Parks Service; the National Oceanic and Atmospheric Administration, National Marine Fisheries Service; Federal Aviation Administration; and U.S. Department of Energy participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision for the project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following Project facilities:

- Pipeline meter station;
- Liquefaction facilities;
- Two LNG storage tanks;
- Marine and LNG transfer facilities;
- Control room, administration/maintenance building;
- Site access road; and
- Utilities (power, water, and communication systems).

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the Project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the

FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP16–480). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on February 4, 2019.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP16–480–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public comment session its staff will conduct in the project area to receive comments on the draft EIS, scheduled as follows:

Date and time	Location
Thursday, January 10, 2019, 5:00–9:00 p.m. CST.	Port Isabel Convention Center, 309 E. Railroad Ave, Port Isabel, TX 78578, 956–433–7195.

The primary goal of the comment session is to have you identify the specific environmental issues and concerns with the draft EIS. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

The comment session is scheduled from 5:00 p.m. to 9:00 p.m. CST. You may arrive at any time after 5:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until the closing hour for the comment session. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session 30 minutes before the closing hour. Please see appendix 1 for additional information on the session format and conduct.[1]

Your verbal comments will be recorded by the court reporter (with FERC staff or representative present) and become part of the public record for this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see page 2 for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commenter.

It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to page 2 of this notice.

Dated: December 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27638 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–22–000]

Notice of Application: Greylock Pipeline, LLC; Greylock Shawville Pipeline, LLC

On November 30, 2018, Greylock Pipeline, LLC (Greylock Pipeline), and Greylock Shawville Pipeline, LLC (GSP), 500 Corporate Landing, Charleston, West Virginia 25311, filed a joint application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations requesting authorization for Greylock Pipeline to abandon its FERC Gas Tariff and services, and to abandon its facilities by transfer to GSP. Additionally, GSP requests authorization to acquire and operate all of Greylock's facilities and to adopt without substantive change Greylock Pipeline's FERC gas tariff and its jurisdictional services and agreement, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding Sendero's application should be directed to Benjamin M. Sullivan, Greylock Energy, LLC, 500 Corporate Landing, Charleston, West Virginia 25311, or phone (304) 925–6100, or fax (304) 925–3285, or by email *bsullivan@greylockenergy.com;* and Randall S. Rich, Pierce Atwood LLP, 1875 K Street NW, Suite 700, Washington, DC 20006, or phone (202) 530–6424, or by email *rrich@pierceatwood.com*.

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''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.

Comment Date: January 4, 2018.

Dated: December 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27643 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–487–000]

Notice of Schedule for Environmental Review of the Natural Gas Pipeline Company of America, LLC, Sabine Pass Compression Project

On May 18, 2018, Natural Gas Pipeline Company of America, LLC (Natural) filed an application in Docket No. CP18–487–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Sabine Pass Compression Project (Project) and involves the construction and operation of facilities in Cameron Parish, Louisiana. The Project would enable Natural to transport an additional 400,000 dekatherms per day of natural gas for delivery to Sabine Pass Liquefaction, LLC's (Sabine Pass) liquefaction export facility located in Cameron Parish.

On May 31, 2018, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to

reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—(March 8, 2019)
90-day Federal Authorization Decision Deadline—(June 6, 2019)

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Natural proposes to construct and operate the following facilities: A new 22,490 horsepower Compressor Station No. 348 (CS 348) adjacent to the Sabine Pass Terminal, a new tie-in facility connecting CS 348 to the existing Louisiana Line Nos. 1 and 2, a 36-inch tap on the existing Natural Lateral, and minor modifications at Natural's existing X–L8E South Valve to allow for remote operation of Natural's existing valve.

Background

On July 3, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Sabine Pass Compression Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local governmental representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. We received comment letters from the Department of Wildlife and Fisheries of the State of Louisiana and the National Marine Fisheries Service's Habitat Conservation Division. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp*.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP18–487), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: December 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–27641 Filed 12–20–18; 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: EC19–37–000.

Applicants: Duke Energy Renewables Solar, LLC, North Rosamond Solar, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Duke Energy Renewables Solar, LLC, et al.

Filed Date: 12/14/18.

Accession Number: 20181214–5254.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: EC19–38–000.

Applicants: Mankato Energy Center, LLC, Mankato Energy Center II, LLC, Northern States Power Company, a Minnesota corporation.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 12/14/18.

Accession Number: 20181214–5256.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: EC19–39–000.

Applicants: Coolidge Power LLC, SWG Coolidge Holdings, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Coolidge Power LLC, et al.

Filed Date: 12/17/18.

Accession Number: 20181217–5250.

Comments Due: 5 p.m. ET 1/7/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–34–000.

Applicants: Techren Solar V LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Techren Solar V LLC.

Filed Date: 12/17/18.

Accession Number: 20181217–5109.

Comments Due: 5 p.m. ET 1/7/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1790–016; ER10–2596–007; ER11–3325–005.

Applicants: BP Energy Company, Fowler Ridge II Wind Farm LLC, Whiting Clean Energy, Inc.

Description: Supplement to June 26, 2018 Updated Market Power Analysis for Central Region of BP Energy Company, et al.

Filed Date: 12/17/18.

Accession Number: 20181217–5024.

Comments Due: 5 p.m. ET 1/7/19

Docket Numbers: ER10–2405–006.

Applicants: High Prairie Wind Farm II, LLC.

Description: Supplement to June 29, 2018 Updated Market Power Analysis for Central Region of High Prairie Wind Farm II, LLC.

Filed Date: 12/14/18.

Accession Number: 20181214–5259.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER10–2407–005; ER10–2425–007; ER17–1316–002;ER10–2424–005; ER13–1816–009; ER18–1186–001.

Applicants: Lost Lakes Wind Farm LLC, Pioneer Prairie Wind Farm I, LLC, Quilt Block Wind Farm LLC, Rail Splitter Wind Farm, LLC, Sustaining Power Solutions LLC, Turtle Creek Wind Farm LLC.

Description: Supplement to June 26, 2018 Updated Market Power Analysis for Central Region of Lost Lakes Wind Farm LLC, et al.

Filed Date: 12/14/18.

Accession Number: 20181214–5260.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER10–3079–015.

Applicants: Tyr Energy, LLC.

Description: Updated Market Power Analysis for the Southwest Power Pool Region of Tyr Energy, LLC.

Filed Date: 12/17/18.

Accession Number: 20181217–5122.

Comments Due: 5 p.m. ET 2/15/19.

Docket Numbers: ER17–801–002.

Applicants: Constellation Power Source Generation, LLC.

Description: Compliance filing: Informational Filing Regarding

Riverside Unit 7 Deactivation, Request for Waiver to be effective N/A.
Filed Date: 12/14/18.
Accession Number: 20181214–5220.
Comments Due: 5 p.m. ET 1/4/19
Docket Numbers: ER19–8–000.
Applicants: Sweetwater Solar, LLC.
Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.
Filed Date: 12/14/18.
Accession Number: 20181214–5197.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–119–000.
Applicants: Techren Solar I LLC.
Description: Report Filing: Supplement to Market-Based Rate Application to be effective N/A.
Filed Date: 12/14/18.
Accession Number: 20181214–5205.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–250–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to ER19–250–000; WMPA SA No. 4919; Queue No. AC2–073 to be effective 1/30/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5240.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–562–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OA, Schedule 6, sec 1.5 re: Market Efficiency Process Enhancements to be effective 2/13/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5209.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–563–000.
Applicants: Consumers Energy Company.
Description: § 205(d) Rate Filing: Amendment No. 3 to Contract and Rate Schedule to be effective 2/12/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5210.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–564–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Attachment M ? OR Direct Access to be effective 2/14/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5212.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–565–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 32 9th Rev—NITSA with Talen Montana LLC (Colstrip Steam Electric Station) to be effective 3/1/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5242.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–566–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 591 7th Rev—NITSA with Benefis Health System to be effective 3/1/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5239.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–567–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 666 6th Rev—NITSA with Suiza Dairy to be effective 3/1/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5241.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–568–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 642 7th Rev—NITSA with General Mills to be effective 3/1/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5243.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–569–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 767 7th Rev NITSA with Basin Electric Power Coop to be effective 3/1/2019.
Filed Date: 12/14/18.
Accession Number: 20181214–5244.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–570–000.
Applicants: Vineyard Wind LLC.
Description: Petition for Waiver of Tariff Provisions, et al. of Vineyard Wind LLC.
Filed Date: 12/14/18.
Accession Number: 20181214–5267.
Comments Due: 5 p.m. ET 1/4/19.
Docket Numbers: ER19–571–000.
Applicants: ND Paper, Inc.
Description: § 205(d) Rate Filing: Notification of Change Amendment to be effective 12/18/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5025.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–572–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 35 6th Rev—NITSA with The Town of Philipsburg to be effective 3/1/2019.
Filed Date: 12/17/18.
Accession Number: 20181217–5035.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–573–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 245 9th Rev—NITSA with Ash Grove Cement to be effective 3/1/2019.
Filed Date: 12/17/18.
Accession Number: 20181217–5036.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–574–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Oncor IA Third Amended & Restated to be effective 12/3/2018.
Filed Date: 12/17/18.
Accession Number: 20181217–5084.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–575–000.
Applicants: Flat Ridge Wind Energy, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 2/16/2019.
Filed Date: 12/17/18.
Accession Number: 20181217–5254.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–576–000.
Applicants: Flat Ridge 2 Wind Energy LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 2/16/2019.
Filed Date: 12/17/18.
Accession Number: 20181217–5260.
Comments Due: 5 p.m. ET 1/7/19.
Docket Numbers: ER19–577–000.
Applicants: Rolling Thunder I Power Partners, LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 2/16/2019.
Filed Date: 12/17/18.
Accession Number: 20181217–5262.
Comments Due: 5 p.m. ET 1/7/19.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD19–2–000.
Applicants: North American Electric Reliability Corporation, Texas Reliability Entity, Inc.
Description: Joint Petition of the North American Electric Reliability Corporation and Texas Reliability Entity, Inc. for Approval of Retirement of Regional Reliability Standard IRO–006–TRE–1.
Filed Date: 12/14/18.
Accession Number: 20181214–5272.
Comments Due: 5 p.m. ET 1/16/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27732 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Birdsboro Power LLC	EG18–124–000
MC Project Company LLC	EG18–125–000
LMBE Project Company LLC	EG18–126–000
Latitude Solar Center, LLC	EG18–127–000
Cricket Valley Energy Center, LLC	EG18–128–000
Blue Summit II Wind, LLC	EG18–129–000
Mankato Energy Center II, LLC	EG18–130–000
Willow Springs Solar, LLC	EG18–131–000
Cypress Creek Fund 12 Tenant, LLC	EG18–132–000
Fox Creek Farm Solar, LLC	EG18–133–000

Take notice that during the month of November 2018, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2018).

Dated: December 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2018–27728 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–35–000.

Applicants: Bridgeport Energy LLC, Rumford Power Inc., Tiverton Power LLC, Revere Power, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Bridgeport Energy LLC, et al.

Filed Date: 12/14/18.

Accession Number: 20181214–5124.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: EC19–36–000.

Applicants: NextEra Energy Transmission, LLC, Trans Bay Cable LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of NextEra Energy Transmission, LLC, et al.

Filed Date: 12/14/18.

Accession Number: 20181214–5169.

Comments Due: 5 p.m. ET 1/4/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2762–001.

Applicants: Linde Energy Services, Inc.

Description: Supplement to November 9, 2018 Notice of Non-Material Change in Status of Linde Energy Services, Inc.

Filed Date: 12/14/18.

Accession Number: 20181214–5095.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER10–3254–003.

Applicants: Cooperative Energy Inc. (An Electric Membership Corporation).

Description: Amendment to December 22, 2017 Updated Market Power Analysis of Cooperative Energy Inc. (An Electric Membership Corporation).

Filed Date: 12/14/18.

Accession Number: 20181214–5202.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER18–1599–000.

Applicants: Ohio Valley Electric Corporation.

Description: Report Filing: Refund Report to be effective N/A.

Filed Date: 12/14/18.

Accession Number: 20181214–5126.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–168–001.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: Tariff Amendment: 2018–12–14_SA 3195 MP–GRE T–L IA Substitute (Shoal Lake) to be effective 10/24/2018.

Filed Date: 12/14/18.

Accession Number: 20181214–5059.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–555–000.

Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc.,PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: DEOK submits revisions to OATT, Attachment H–22A re: Depreciation Rates to be effective 5/1/2018.

Filed Date: 12/14/18.

Accession Number: 20181214–5040.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–556–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 31 19th Rev—NITSA with Phillips 66 Company to be effective 3/1/2019.

Filed Date: 12/14/18.

Accession Number: 20181214–5045.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–557–000.

Applicants: Louisville Gas and Electric Company.

Description: Tariff Cancellation: GSS Tariff Notice of Cancellation to be effective 2/12/2019.

Filed Date: 12/14/18.

Accession Number: 20181214–5061.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–558–000.

Applicants: San Diego Gas & Electric Company.

Description: § 205(d) Rate Filing: 2019 SDGE RS Annual Update to Transmission Owner Tariff to be effective 1/1/2019.

Filed Date: 12/14/18.

Accession Number: 20181214–5098.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–559–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 4451; Queue No. AA1–063A to be effective 4/5/2016.

Filed Date: 12/14/18.

Accession Number: 20181214–5150.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–560–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: SA 304 12th Rev—NITSA with Barretts Minerals to be effective 3/1/2019.

Filed Date: 12/14/18.

Accession Number: 20181214–5165.

Comments Due: 5 p.m. ET 1/4/19.

Docket Numbers: ER19–561–000.

Applicants: Meadow Creek Project Company LLC.

Description: § 205(d) Rate Filing: CFA Certificate of Concurrence to be effective 2/12/2019.

Filed Date: 12/14/18.

Accession Number: 20181214–5207.

Comments Due: 5 p.m. ET 1/4/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF19–579–000.

Applicants: UE–00209NJ.

Description: Form 556 of UE–00209NJ.

Filed Date: 12/13/18.

Accession Number: 20181213–5231.

Comments Due: None-Applicable.

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: December 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27730 Filed 12–20–18; 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: EC19–34–000.

Applicants: Peony Solar LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Peony Solar LLC.

Filed Date: 12/13/18.

Accession Number: 20181213–5176.

Comments Due: 5 p.m. ET 1/3/19.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–33–000.

Applicants: Valentine Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Valentine Solar, LLC.

Filed Date: 12/13/18.

Accession Number: 20181213–5102.

Comments Due: 5 p.m. ET 1/3/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1276–009; ER10–1287–008; ER10–1292–008; ER10–1303–008; ER10–1319–010; ER10–1353–010; ER18–1183–001; ER18–1184–001.

Applicants: Consumers Energy Company, CMS Energy Resource Management Company, Grayling Generation Station Limited Partnership, Genesee Power Station Limited Partnership, CMS Generation Michigan Power, LLC, Dearborn Industrial Generation, L.L.C., Delta Solar Power I, LLC, Delta Solar Power II, LLC.

Description: Supplement to September 11, 2108 Notice of Non-Material Change-In-Status of Consumer Energy Company, et al.

Filed Date: 12/13/18.

Accession Number: 20181213–5136.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER10–2877–002.

Applicants: Cobb Electric Membership Corporation.

Description: Supplement to December 29, 2017 Triennial Market Power Update for the Central Region of Cobb Electric Membership Corporation.

Filed Date: 12/13/18.

Accession Number: 20181213–5180.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER12–348–006; ER15–1378–002.

Applicants: Mercuria Energy America, Inc., Mercuria Commodities Canada Corporation.

Description: Supplement to December 20, 2017 Updated Triennial Market Analysis for the Southeast Region of the Mercuria Sellers.

Filed Date: 12/13/18.

Accession Number: 20181213–5179.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER12–543–004.

Applicants: CleanChoice Energy, Inc.

Description: Notice of change in status of CleanChoice Energy, Inc.

Filed Date: 12/12/18.

Accession Number: 20181212–5361.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER17–2415–002.

Applicants: Pilesgrove Solar, LLC.

Description: Report Filing: Refund Report of Pilesgrove to be effective N/A.

Filed Date: 12/13/18.

Accession Number: 20181213–5159.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER17–2515–003.

Applicants: Chambers Cogeneration, Limited Partnership.

Description: Report Filing: Refund Report to be effective N/A.

Filed Date: 12/12/18.

Accession Number: 20181212–5265.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER18–89–002.

Applicants: Frenchtown I Solar, LLC.

Description: Report Filing: Refund Report of Frenchtown I and II to be effective N/A.

Filed Date: 12/13/18.

Accession Number: 20181213–5142.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER18–90–002.

Applicants: Frenchtown II Solar, LLC.

Description: Report Filing: Refund Report of Frenchtown I and II to be effective N/A.

Filed Date: 12/13/18.

Accession Number: 20181213–5148.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER18–2401–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Response to Deficiency Notice re: Order No. 844 Compliance Filing to be effective 1/1/2019.

Filed Date: 12/13/18.

Accession Number: 20181213–5107.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–130–001.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: Tariff Amendment: 2018–12–13_SA 3182 MP–GRE T–L IA Substitute (Straight River) to be effective 10/18/2018.

Filed Date: 12/13/18.

Accession Number: 20181213–5114.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–302–001.

Applicants: NTE Southeast Electric Company, LLC.

Description: Supplement to December 12, 2018 NTE Southeast Electric Company, LLC tariff filing.

Filed Date: 12/12/18.

Accession Number: 20181212–5353.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–537–001; ER14–608 002; ER16–1644 002; ER17–1214 001.

Applicants: MRP San Joaquin Energy, LLC, High Desert Power Project, LLC,MRP Generation Holdings, LLC, Coso Geothermal Power Holdings, LLC.

Description: Notice of Change in Status of MRP San Joaquin Energy, LLC, et al.

Filed Date: 12/13/18.

Accession Number: 20181213–5222.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–545–000.

Applicants: Buena Vista Energy, LLC.

Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the SW Region to be effective 12/13/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5249.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–546–000.

Applicants: Kumeyaay Wind LLC.

Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the SW Region to be effective 12/13/2018.

Filed Date: 12/12/18..

Accession Number: 20181212–5252

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–547–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 4311 and CSA, SA No. 4218; Queue No. AA1–065 to be effective 11/9/2015.

Filed Date: 12/12/18.

Accession Number: 20181212–5254.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–548–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amended ISA, SA No. 5238; Queue No. AD1–084 to be effective 11/12/2018.

Filed Date: 12/12/18.

Accession Number: 20181212–5314.

Comments Due: 5 p.m. ET 1/2/19.

Docket Numbers: ER19–549–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits OIA SA No. 2852 & IA SA No. 5196 to be effective 12/14/2018.

Filed Date: 12/13/18.

Accession Number: 20181213–5000.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–550–000.

Applicants: Tucson Electric Power Company.

Description: Compliance filing: Compliance Filing Related to Tax Cuts and Jobs Act to be effective 3/21/2018.

Filed Date: 12/13/18.

Accession Number: 20181213–5083.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–551–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: NSP–CHAK–L-Bluff Ck-LV Bush Repl Ltr Agmt NOC–556 to be effective 12/14/2018.

Filed Date: 12/13/18.

Accession Number: 20181213–5092.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–552–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 5241, Non-queue NQ157 to be effective 11/13/2018.

Filed Date: 12/13/18.

Accession Number: 20181213–5124.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–553–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5242 Non-Queue NQ158 to be effective 11/13/2018.

Filed Date: 12/13/18.

Accession Number: 20181213–5138.

Comments Due: 5 p.m. ET 1/3/19.

Docket Numbers: ER19–554–000.

Applicants: GenOn Energy Management, LLC, NRG California South LP.

Description: Application to Recover Fuel Costs, et al. of GenOn Energy Management, LLC, et al.

Filed Date: 12/13/18.

Accession Number: 20181213–5184.

Comments Due: 5 p.m. ET 1/3/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF19–575–000.

Applicants: UE–00211NJ.

Description: Form 556 of UE–00211NJ.

Filed Date: 12/13/18.

Accession Number: 20181213–5175.

Comments Due: None-Applicable.

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: December 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27727 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–23–000]

Notice of Request Under Blanket Authorization: Kern River Gas Transmission Company

Take notice that on December 10, 2018, Kern River Gas Transmission Company (Kern River), 2755 East Cottonwood Parkway, Suite 300, Salt Lake City, Utah 84121, filed in Docket No. CP19–23–000 a prior notice request pursuant to Kern River's blanket authority granted on January 24, 1990, in Docket No. CP89–2048–000 and sections 157.205 and 157.211 of the Commission's regulations under the Natural Gas Act for authorization to construct and operate a new delivery point, the Eaglecrest meter station in Kern County, California, to serve E&B Natural Resources Management Corporation, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Michael T. Loeffler, Senior Director, Certificates for Kern River, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103.

Kern River states that, pursuant to Section 284.13(e) of the Commission's regulations, it is advising the Commission that it has provided the required notice to bypass to both Pacific Gas and Electric Company, the local distribution company that is currently providing service to E&B Natural Resources Management Corporation, and to California Public Utilities Commission, the appropriate regulatory agency, by sending copies of this application.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the

Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''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.

Dated: December 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–27731 Filed 12–20–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0087; FRL–9987–22–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Leather Finishing Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Leather Finishing Operations (EPA ICR No. 1985.08, OMB Control No. 2060–0478), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0083, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets*.

Abstract: The potential respondents for this collection of information are owners or operators of any affected source with leather finishing operations subject to 40 CFR part 63, subpart TTTT. Owners and operators of affected facilities are required to comply with reporting and recordkeeping requirements for the General Provisions of the NESHAP (40 CFR part 63, subpart A), as well as for the requirements in 40 CFR part 63, subpart TTTT. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by the EPA to determine compliance with these standards.

Form numbers: None.

Respondents/affected entities: Leather finishing operations.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTTT).

Estimated number of respondents: 4 (total).

Frequency of response: Initially, occasionally and annually.

Total estimated burden: 138 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $12,500 (per year), which includes $0 for capital/startup and/or operation & maintenance (O&M) costs.

Changes in the estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The change in the burden and cost estimates is due to more accurate estimates of existing sources based on the EPA's recent reevaluation of the source category inventory as part of a recently proposed risk and technology review (83 FR 11314, March 14, 2018), which indicated that several facilities have shut down since the last ICR renewal period. These changes result in an overall decrease in the labor hours, number of responses, and O&M costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27582 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2005–0008; FRL–9987–24–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emergency Planning and Release Notification Requirements Under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an

information collection request (ICR), Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (EPA ICR Number 1395.10, OMB Control Number 2050–0092), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** on July 18, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–SFUND–2005–0008, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8794; email address: *hoffman.wendy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The authority for the emergency planning and emergency release notification requirements is sections 302, 303, and 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) 1986 (42 U.S.C. 11002, 11003, and 11004). EPCRA established broad emergency planning and facility reporting requirements. Section 302 requires facilities to notify their state emergency response commission (SERC) and the local emergency planning committee (LEPC) that the facility is subject to emergency planning. This activity was completed soon after the law was passed. Only new facilities that may become subject to these requirements must notify the SERC and the LEPC. Currently covered facilities are required to notify the LEPC of any changes that occur at the facility which would be relevant to emergency planning. Section 303 requires the LEPC to prepare local emergency response plans for their planning district using the information provided by facilities under section 302. The LEPC may request any information from facilities necessary to develop emergency response plans. Emergency response plans were developed within a few months after the law was passed. LEPCs are required to review and update the plan at least annually or more frequently as changes occur in the community. Section 304 requires facilities to report to SERCs and LEPCs releases exceeding the reportable quantities listed for each extremely hazardous substance (EHS) and for each hazardous substance defined under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act. This ICR also covers the notification and the written follow-up required under section 304. The implementing regulations are codified in 40 CFR part 355.

Form numbers: None.

Respondents/affected entities: Entities that have a threshold planning quantity of an extremely hazardous substance (EHS) listed in 40 CFR part 355, Appendix A and those that have a release of any of the EHSs or CERCLA hazardous substances above a reportable quantity. Entities more likely to be affected by this action may include chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Respondent's obligation to respond: Mandatory under EPCRA sections 302, 303 and 304.

Estimated number of respondents: 108,556.

Frequency of response: EPCRA section 302 reporting is a one-time notification unless there are changes to the reported information; EPCRA section 304 notification is only when a release of an EHS or CERCLA hazardous substance occurs from a facility.

Total estimated burden: 259,456 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $10,784,934 (per year), including $68,867 annual operations and maintenance costs. There are no capital costs associated with this ICR.

Changes in estimates: The number of facilities subject to section 302 is 95,000, which is the same as in the previous ICR. There is an increase of 4,500 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an adjustment to the estimate, which corrected for a math error in the previous ICR renewal.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27583 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2014–0359; FRL–9986–56–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Underground Injection Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Underground Injection Control Program (EPA ICR No. 0370.26, OMB Control No. 2040–0042) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed renewal of the ICR, which is currently approved through December 31, 2018. The EPA previously requested public comments via the **Federal Register** on June 6, 2018, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it

displays a currently valid OMB control number.

DATES: Comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2014–0359, to (1) the EPA: Online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB: via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for the EPA.

The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kyle Carey, Office of Ground Water and Drinking Water/Drinking Water Protection Division, 4606M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2322; fax number: (202) 564–3756; email address: *carey.kyle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Underground Injection Control (UIC) Program, under authority of the Safe Drinking Water Act, established a federal-state regulatory system to protect underground sources of drinking water (USDWs) by ensuring that they are not endangered by the underground injection of fluids. Injected fluids include hazardous waste, oil field brines or produced water, mineral processing fluids, various types of industrial fluids, automotive, sanitary and other wastes, and carbon dioxide injected for geologic sequestration. Owners or operators of injection wells must obtain permits, conduct environmental monitoring, maintain records, and report results to the EPA or the state agency with UIC primary enforcement responsibility (primacy). States must report to the EPA on permittee compliance and related information. This required information is reported using the EPA's standardized forms (or state equivalents) and annual reports; the governing regulations are codified in the *Code of Federal Regulations* (CFR) at 40 CFR parts 144 through 148. The data are used by UIC authorities to ensure the protection of USDWs.

Form Numbers: 7520–1, 7520–2A, 7520–2B, 7520–3, 7520–4, 7520–6, 7520–7, 7520–8, 7520–11, 7520–16, 7520–17, 7520–18, and 7520–19.

Respondents/affected entities: Owners or operators of underground injection wells and state UIC Program primacy agencies.

Respondent's obligation to respond: Mandatory (40 CFR parts 144 through 148).

Estimated number of respondents: 40,168 (total).

Frequency of response: Annual, semi-annual, and quarterly.

Total estimated burden: 1,292,260 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $227,307,259 (per year), includes $168,345,558 annualized capital or operation and maintenance costs.

Changes in the Estimates: There is a decrease of 421,786 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to changes in the injection well inventory, primarily a significant reduction in the number of Class II and Class VI permit applications expected to be prepared and reviewed; a decrease in the number of Class V inventory forms that are anticipated to be submitted; and a decrease in the number of Class I and Class VI well operators that the EPA estimates will be submitting information. Furthermore, the EPA has revised the operator reporting forms, which has resulted in additional burden reductions for operators of all well classes. These decreases are partially offset by an increase in burden due to anticipated changes in the number of Class III permit applications.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27581 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0577; FRL–9985–67]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 22, 2019.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *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: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

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

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

III. Amended Tolerances for Non-Inerts

1. *PP 8E8686.* (EPA–HQ–OPP–2018–0561). Interregional Research Project No. 4 (IR–4), IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR 180.653 by removing the established tolerances for residues of indaziflam, N-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1H-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradants, in or on the raw agricultural commodity fruit, tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.01 ppm. *Contact:* RD.

2. *PP 8E8692.* (EPA–HQ–OPP–2018–0623). IR–4, IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR 180.499 by removing the established tolerances for the residues of propamocarb (propyl N-[3-(dimethylamino)propyl]carbamate in or on the following raw agricultural commodities: lettuce, head at 50 ppm; lettuce, leaf at 90 ppm; potato at 0.30 ppm; and vegetable, fruiting, group 8 at 2.0 ppm. *Contact:* RD.

IV. New Tolerance Exemptions From Non-Inters (Except PIPS)

1. *PP 7F8641.* (EPA–HQ–OPP–2018–0571). AgBiTech Pty Ltd., 8 Rocla Ct., Glenvale, Queensland 4350, Australia (c/o MacIntosh & Associates, Inc., 1203 Hartford Ave., St. Paul, MN 55116–1622), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the insecticide *Chrysodeixis includens* nucleopolyhedrovirus isolate #460 in or on all agricultural commodities. The petitioner believes no analytical method is needed because an analytical method for residues is not applicable since this petition requests an exemption from the requirement of a tolerance. Further, it is expected that, when used as proposed, *Chrysodeixis includens* nucleopolyhedrovirus isolate #460 would not result in residues that are of toxicological concern. *Contact:* BPPD.

2. *PP 7F8653.* (EPA–HQ–OPP–2018–0635). SePRO Corporation, 11550 North Meridian St., Suite 600, Carmel, IN 46032, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the plant activator and fungicide ningnanmycin in or on all food commodities. The petitioner believes no analytical method is needed because of the low toxicity demonstrated in the available toxicological data, and given that an exemption from the requirement for establishing a tolerance for residues is being proposed. *Contact:* BPPD.

3. *PP 8F8675.* (EPA–HQ–OPP–2018–0645). Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the herbicide florpyrauxifen-benzyl in or on all food commodities. The petitioner believes no analytical method is needed because

this petition eliminates the need for maximum permissible levels for residues of florpyrauxifen-benzyl and its metabolites in or on all food commodities when used as an herbicide. *Contact:* RD.

V. New Tolerance Exemptions for PIPS

1. *PP 8E8669.* (EPA–HQ–OPP–2018–0403). Hangzhou Ruifeng Biosciences Co., Ltd., 1500 Wenyi Rd., Building 1, Room 103, Hangzhou, China (c/o GA Bannon Consulting LLC, 13 Blue Flag Court, Dardenne Prairie, MO 63368), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) *Bacillus thuringiensis* fusion protein Cry1Ab/Cry2Aj in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as plant-incorporated protectant. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is being sought. *Contact:* BPPD.

VI. New Tolerances for Non-Inerts

1. *PP 7E8638.* (EPA–HQ–OPP–2018–0630). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish import tolerances in 40 CFR part 180.661 for residues of the fungicide fluopyram, in or on cranberry at 2.0 ppm, dry peas at 0.70 ppm, and lentils at 0.70 ppm. The analytical methods include solvent extraction, filtration and addition of an isotopically labeled internal standard followed by solid phase extraction. Quantitation is by high performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC/MS/MS). *Contact:* RD.

2. *PP 7F8634.* (EPA–HQ–OPP–2018–0038). Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide inpyrfluxam, S–2399, in or on apple at 0.01 parts per million (ppm), apple, wet pomace at 0.03 ppm, beet, sugar, roots at 0.01 ppm, beet, sugar, molasses at 0.03 ppm, beet, sugar, dried pulp at 0.05 ppm, corn, field, forage at 0.02 ppm, corn, field, grain at 0.01 ppm, corn, field, stover at 0.02 ppm, corn, pop, grain at 0.01 ppm, corn, pop, stover at 0.02 ppm, corn, sweet, kernel plus cob with husks removed at 0.01 ppm, peanut at 0.01 ppm, peanut, hay at 2.0 ppm, rice, grain at 0.01 ppm, rice, bran at 0.02 ppm, rice, hulls at 0.05 ppm, soybean, seed at 0.01 ppm. The HPLC–MS/MS method is used to measure and evaluate the chemical inpyrfluxam. *Contact:* RD.

3. *PP 7F8647.* (EPA–HQ–OPP–2018–0677). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio, 44077, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyriofenone, (5-chloro-2-methoxy-4-methyl-3-pyridinyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on fruiting vegetable crop group 8–10 at 0.30 ppm. The liquid chromatography-MS/MS is used to measure and evaluate the chemical pyriofenone. *Contact:* RD.

4. *PP 8E8686.* (EPA–HQ–OPP–2018–0561). IR–4, IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance for residues of indaziflam, N-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1H-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the raw agricultural commodities Fruit, tropical and subtropical, edible peel, group 23 at 0.01 ppm and fruit, tropical and subtropical, inedible peel, group 24 at 0.01 ppm. Indaziflam residues are quantified in raw agricultural commodities by high pressure (LC/MS/MS) using the stable isotopically labeled analytes as internal standards. The limit of quantification (LOQ) for each analyte is 0.005 ppm for all commodities. *Contact:* RD.

5. *PP 8E8692.* (EPA–HQ–OPP–2018–0623). IR–4, IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance for residues of propamocarb (propyl N-[3-(dimethylamino)propyl]carbamate in or on the following raw agricultural commodities: guava at 0.05 ppm; starfruit at 0.05 ppm; leafy greens subgroup 4–16A at 150 ppm; vegetable, tuberous and corm, subgroup 1C at 0.30 ppm; and vegetable, fruiting, group 8–10 at 4.0 ppm. A practical analytical method utilizing gas/liquid chromatography and N–FID or MSD is available and has been validated for detecting and measuring levels of propamocarb hydrochloride in or on food. The LOQ is 0.05 mg/kg ppm. *Contact:* RD.

6. *PP 8E8694.* (EPA–HQ–OPP–2018–0619). IR–4, IR–4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance for residues of the herbicide pendimethalin, including its metabolites and degradants, in or on the following raw agricultural commodities: Leaf petiole vegetables, subgroup 22B at 0.15 ppm; monarda, oil at 1.0 ppm; monarda, fresh leaves at 0.20 ppm; rosemary, oil at 1.0 ppm; and rosemary, fresh leaves at 0.20 ppm. Compliance with the tolerance levels specified is to be determined by measuring only pendimethalin, N-(1-ethylpropyl)-3,4-dimethyl-2,6 dinitrobenzenamine, and its metabolite, 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, calculated as the stoichiometric equivalent of pendimethalin. In plants, the method is aqueous organic solvent extraction, column clean up, and quantitation by GC. The method has a LOQ of 0.05 ppm for pendimethalin and the alcohol metabolite. *Contact:* RD.

7. *PP 8E8699.* (EPA–HQ–OPP–2018–0656). FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104, requests to establish a tolerance in 40 CFR part 180 for residues of the Insecticide, chlorantraniliprole, 3-bromo-N-[4-chloro-2-methyl-6-[(methylamino)-carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on palm, oil at 1.5 ppm. The liquid chromatography with tandem mass spectrometry is used to measure and evaluate the chemical chlorantraniliprole. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: December 10, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–27760 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0354; FRL–9986–71–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources (EPA ICR No. 2268.05, OMB Control No. 2060–0607), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December

31, 2018. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0354, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Paint Stripping and Miscellaneous Surface Coating at Area Sources (40 CFR part 63, subpart HHHHHH) are part of the EPA Integrated Urban Strategy to reduce cancer risk from area sources under Section 112(k)(3)(C) of the Clean Air Act (CAA). These standards apply to existing and new sources that conduct paint stripping operations using methylene chloride (MeCl)-containing paint strippers, motor vehicle and mobile equipment surface coating operations, and miscellaneous surface coating operations located at area sources. New facilities include those that commenced construction, modification or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with This information is being collected to assure compliance with 40 CFR part 63, subpart HHHHHH.

Form numbers: None.

Respondents/affected entities: Paint stripping and miscellaneous surface coating operations.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHHHH).

Estimated number of respondents: 39,812 (total).

Frequency of response: Initially and annually.

Total estimated burden: 169,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $18,500,000 (per year), which includes $117,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment increase in the labor hours in this ICR compared to the previous ICR. This is due to a change in assumption: This ICR assumes all existing sources will take time to re-familiarize with the regulations each year.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27586 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2017–0260; FRL–9988–42–OW]

Aquatic Life Ambient Water Quality Criteria for Aluminum in Freshwater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of Aquatic Life Ambient Water Quality Criteria for Aluminum in Freshwater. The EPA first released freshwater criteria for aluminum in 1988 to protect aquatic life from harmful effects of aluminum toxicity. The EPA updated its recommended aluminum criteria to reflect the latest science and to provide users the flexibility to develop criteria based on site-specific water chemistry. The document provides a scientific assessment of ecological effects and is not a regulation. The EPA submitted the draft document for external expert peer review and edited the document considering peer review comments. The EPA subsequently released the draft criteria document for a 90-day public comment period in July 2017. The EPA has considered the public comments and revised the document based on consideration of those comments. The final criteria document provides recommendations for states and authorized tribes to establish water quality standards under the Clean Water Act. The recommendations found in this document supersede the EPA's 1988 national recommended criteria for aluminum in ambient water.

FOR FURTHER INFORMATION CONTACT: Diana Eignor, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone: (202) 566–1143; or email: *eignor.diana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2017–0260. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document

electronically from the Government Printing Office under the **Federal Register** listings FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR*).

II. What is aluminum and how does it affect aquatic life?

Aluminum is found in most soils and rocks and is the third most abundant element and the most common metal in the earth's crust. Aluminum can enter the water via natural processes, like weathering of rocks and as a result of human based activities, such as drinking and waste water treatment and mining. Aluminum is considered a non-essential metal because fish and other aquatic life do not need it to function. Elevated levels of aluminum can affect some species' ability to regulate ions and inhibit respiratory functions. Aquatic plants are generally less sensitive than fish and other aquatic life to aluminum.

III. What are EPA's updated recommended criteria for aluminum in freshwater?

The recommended criteria concentrations for aluminum in freshwater to protect aquatic life depends on a site's water chemistry parameters. Bioavailability is the measure of whether a substance in the environment is available to affect living organisms like fish. The bioavailability of aluminum is dependent on specific water chemistry parameters. The more bioavailable the aluminum is, the more likely it is to cause a toxic effect. The water chemistry parameters that have the greatest impact on aluminum's bioavailability are pH, dissolved organic carbon (DOC) and total hardness.

The final 2018 recommended national criteria are based upon Multiple Linear Regression (MLR) models for fish and invertebrate species that use pH, DOC, and total hardness to quantify the effects of these water chemistry parameters on the bioavailability and associated toxicity of aluminum to aquatic organisms. The MLR models are used to normalize the available toxicity data to reflect the effects of the water chemistry (pH, hardness, DOC) on the toxicity of aluminum to tested species. These normalized toxicity test data are then used in a criteria calculator to generate criteria for specific water chemistry conditions, yielding the water chemistry specific acute and chronic criteria concentrations. This flexible approach is based on the latest science and allows users to develop site-specific aluminum criteria for freshwaters that appropriately reflect important water chemistry parameters. The recommended acute criteria (known as the criteria maximum concentration or CMC) duration is a one-hour average and the recommended chronic criteria (criteria chronic concentration or CCC) duration is a four-day average. The EPA recommends that the CMC and CCC not be exceeded more than once every three years.

These final 2018 recommended national aluminum criteria are expressed as total recoverable metal concentrations. The use of total recoverable aluminum includes monomeric (both organic and inorganic) forms, polymeric and colloidal forms, as well as particulate forms and aluminum sorbed to clays. However, toxicity data comparing toxicity of aluminum using total recoverable aluminum and dissolved aluminum demonstrated that toxic effects increased with increasing concentrations of total recoverable aluminum even though the concentration of dissolved aluminum was relatively constant. If aluminum criteria were based on dissolved concentrations, toxicity would likely be underestimated, as colloidal forms and hydroxide precipitates of the metal that can dissolve under natural conditions and become biologically available would not be measured. The criteria document contains more discussion of the studies that informed the choice to use total recoverable aluminum as the basis for the final 2018 recommended national criteria. The current EPA-approved Clean Water Act Test Methods [1] for aluminum in natural waters and waste waters measure total recoverable aluminum.

The numeric outputs of the 2018 recommended National Aluminum Criteria Calculator will depend on the specific pH, DOC, and total hardness concentrations entered into the models. The model outputs (CMC and CCC) are numeric values that are protective for the set of input conditions. Criteria can be determined in two ways: Use the provided Aluminum Criteria Calculator V.2.0 to enter the pH, DOC, and total hardness conditions at a specific site to calculate the numeric aluminum CMC and CCC corresponding to those local input water-quality conditions, or (2) use the look-up tables provided in the criteria document, developed using the calculator, to find the numeric aluminum CMC and CCC most closely corresponding to the local conditions for pH, DOC, and total hardness. In order to calculate numeric water quality criteria for aluminum that will protect the aquatic life designated uses of a site over the full range of ambient conditions and toxicity, multiple model outputs will need to be considered.

See Table 1 for a comparison of the EPA's 1988 criteria and the updated 2018 criteria for aluminum.

TABLE 1—SUMMARY OF THE EPA NATIONAL RECOMMENDED AQUATIC LIFE CRITERIA FOR ALUMINUM

EPA aquatic life criteria for aluminum	Freshwater acute [a] (1 hour, total recoverable aluminum)	Freshwater Chronic [a] (4-day, total recoverable aluminum)
2018 Updated Criteria (Vary as a function of a site's pH, total hardness, and DOC)	1–4,800 μg/L [b]	0.63–3,200 μg/L [b].
1988 Criteria (pH 6.5–9.0, across all total hardness and DOC ranges)	750 μg/L	87 μg/L.

[a] Values are recommended not to be exceeded more than once every three years on average.
[b] Values will be different under differing water chemistry conditions.

IV. What are recommended water quality criteria developed by the EPA?

Section 304(a)(1) of the Clean Water Act directs the EPA to develop and publish and, from time to time, revise criteria for water quality accurately reflecting the latest scientific knowledge. Water quality criteria developed under section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. Section 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

[1] 40 CFR part 136.3 and Appendix C

Section 304(a) criteria provide guidance to states and authorized tribes in adopting water quality standards that ultimately provide a basis for controlling discharges of pollutants. Under the Clean Water Act and its implementing regulations, states and authorized tribes are to adopt water quality criteria to protect designated uses (*e.g.,* aquatic life, recreational use). The EPA water quality criteria recommendations are not regulations. Thus, the EPA recommended criteria do not constitute legally binding requirements. States and authorized tribes may adopt other scientifically defensible water quality criteria that differ from these recommendations. As part of the water quality standards triennial review process defined in section 303(c)(1) of the Clean Water Act, the states and authorized tribes are responsible for maintaining and revising water quality standards. Standards consist of designated uses, water quality criteria to protect those uses, a policy for antidegradation, and may include general policies for application and implementation. Section 303(c)(1) requires states and authorized tribes to review and modify, if appropriate, their water quality standards at least once every three years. Consistent with the EPA regulations at 40 CFR 131.11(a), protective criteria must be based on a sound scientific rationale and contain sufficient parameters or constituents to protect the designated uses. Criteria may be expressed in either narrative or numeric form. States and authorized tribes have four options when adopting water quality criteria for which EPA has published section 304(a) criteria. They may: (1) Establish numerical values based on recommended section 304(a) criteria; (2) Adopt section 304(a) criteria modified to reflect site-specific conditions; (3) Adopt criteria derived using other scientifically defensible methods; or (4) Establish narrative criteria where numeric criteria cannot be established or to supplement numeric criteria (40 CFR 131.11(b)).

Dated: December 14, 2018.

Anna J. Wildeman,

Acting Assistant Administrator, Office of Water.

[FR Doc. 2018–27745 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0139; FRL–9988–13–OEI]

Agency Information Collection Activities; Submitted to OMB for Review and Approval; Comment Request; Labeling Requirements for Certain Minimum Risk Pesticides Under FIFRA Section 25(b) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): ''Labeling Requirements for Certain Minimum Risk Pesticides under FIFRA Section 25(b),'' identified by EPA ICR No. 2475.03 and OMB Control No. 2070–0187. This is a request to renew the approval of an existing ICR. 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 in this document. EPA received one comment in response to the previously provided public review opportunity issued in the **Federal Register** on May 30, 2018; however, the comment submitted to the docket did not pertain to this ICR. With this submission, EPA is providing an additional 30 days for public review and comment.

DATES: Comments must be received on or before January 22, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0139 and OMB Control No. 2070–0187, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Ryne Yarger, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 605–1193; email address: *yarger.ryne@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: This ICR is currently scheduled to expire on February 28, 2019. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. Under PRA, 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 currently valid OMB control number. The OMB control numbers 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 information collection request documents the PRA burden for the labeling requirements for certain minimum risk pesticide products exempt from Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registration under 40 CFR 152.25(f). Under 40 CFR 152.25(f), EPA has exempted from the requirement of FIFRA registration certain pesticide products if they are composed of specified ingredients and labeled accordingly. EPA created the exemption for minimum risk pesticides to eliminate the need for industry or business to expend significant resources to apply for and maintain regulated products that are deemed to be of minimum risk to human health and the environment. In addition, exempting

such products freed Agency resources to focus on evaluating formulations whose toxicity was less well characterized, or was of higher toxicity.

In a 2015 Final Rule (80 FR 80653; December 28, 2015), the Agency reorganized the ingredients lists and added specific chemical identifiers to clarify to manufacturers, the public, and Federal, state, and tribal inspectors the specific chemical substances that are permitted in minimum risk pesticide products. EPA also modified the label requirements to require the use of specific label display names of ingredients and to require producer contact information on the label. The primary goal of this rulemaking was to clarify the conditions of exemption for minimum risk pesticides by clarifying the specific ingredients that are permitted in minimum risk pesticide products and to provide company contact information on the label. The previous version of this ICR covered the paperwork burdens associated with existing products updating their labels to comply with the new requirements during the 2015 Final Rule's compliance period. EPA anticipates that those burdens have been realized, and is now accounting for the potential burden for new products coming into the market.

Respondents/Affected Entities: Individuals or entities engaged in activities related to the manufacturing of minimum risk pesticide products.

Respondent's obligation to respond: Required to obtain or retain a benefit (FIFRA sections 3 and 25; 40 CFR 152.25(f)).

Estimated total number of potential respondents: 49.

Frequency of response: On occasion.

Estimated total burden: 479 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Estimated total costs: $52,202 (per year), includes no annualized capital investment or maintenance and operational costs.

Changes in the estimates: There is a decrease of 4,933.5 hours in the total 3-year estimated respondent burden compared with the ICR currently approved by OMB. This decrease reflects a reduction in the number of labels that need to be updated per year from 386 to 87. This change is considered an adjustment.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27585 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0578; FRL–9985–69]

Pesticide Product Registration; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before January 22, 2019.

ADDRESSES: Submit your comments, identified by the Docket Identification (ID) Number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

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

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

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

III. New Active Ingredients

1. *File Symbol: 59639–EGE. Docket ID number:* EPA–HQ–OPP–2018–0038. *Applicant:* Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. *Product name:* V–10417 FS Fungicide. *Active ingredient:* Fungicide—Ethaboxam at 7.07%, metalaxyl 1.89%, Inpyrfluxam at 4.71%. *Proposed use:* Seed treatment use on legume vegetable crop group 6, except cowpea and field pea. *Contact:* RD.

2. *File Symbol: 59639–EGG. Docket ID number:* EPA–HQ–OPP–2018–0038. *Applicant:* Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. *Product name:* S–2399 Technical Fungicide. *Active ingredient:* Fungicide—Inpyrfluxam at 97.4%. *Proposed uses:* Apple, corn (field, pop and sweet), peanut, rice, soybean and sugar beet. Seed treatment uses on legume vegetable crop group 6, cereal grain crop group 15, rapeseed crop subgroup 20A and sugar beet. *Contact:* RD.

3. *File Symbol: 59639–EGN. Docket ID number:* EPA–HQ–OPP–2018–0038. *Applicant:* Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. *Product name:* S–2399 2.84 SC Fungicide. *Active ingredient:* Fungicide—Inpyrfluxam at 31.25%. *Proposed uses:* Apple, corn (field, pop and sweet), peanut, rice, soybean and sugar beet. *Contact:* RD.

4. *File Symbol: 59639–EGR. Docket ID number:* EPA–HQ–OPP–2018–0038. *Applicant:* Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. *Product name:* S–2399 3.2 FS Fungicide. *Active ingredient:* Fungicide—Inpyrfluxam at 34.05%. Proposed uses: Seed treatment uses on cereal grains crop group 15, legume vegetables crop group 6, rapeseed crop subgroup 20A, and sugar beet. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 4, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–27762 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–9987–40]

Access to Confidential Business Information by Syracuse Research Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Syracuse Research Corporation (SRC) of North Syracuse, New York, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than December 28, 2018.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Recie Reese, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8276; email address: *reese.recie@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@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 all who manufacture, process, or distribute industrial chemicals. 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. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

Under EPA contract number EP–C–17–015, contractor SRC of 7502 Round Pond Road, North Syracuse, NY will assist the Office of Pollution Prevention and Toxics (OPPT) by creating a database with key data from past biotechnology submissions; and creating a biotechnology literature database with documents provided or referenced in TSCA biotechnology submissions.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number EP–C–17–015, SRC will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. SRC will be given access to information submitted to EPA under all sections. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide SRC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and SRC's sites located in Arlington, VA and North Syracuse, NY in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until April 2, 2022. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SRC's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 29, 2018.

Pamela Myrick,

Director,

Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2018–27769 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0095; FRL–9987–67–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities (EPA ICR No. 2237.05, OMB Control No. 2060–0620), to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0095, to: (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov,* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities applies to owners or operators of any existing or new gasoline distribution facilities that are an area source of hazardous air pollutants (HAP) emissions. In addition to the initial notification and notification of compliance status required by the General Provisions (40 CFR part 63, subpart A), respondents are required to submit one-time reports of start of construction, anticipated and actual startup dates, and physical or operational changes to existing facilities. Reports of initial performance tests on control devices at gasoline distribution storage tanks, loading racks, and vapor balance systems are also required and are necessary to show that the installed control devices are meeting the emission limitations required by the NESHAP. Annual reports of storage tank inspections at all affected facilities are required. In addition, respondents must submit semiannual compliance and continuous monitoring system performance reports, and semiannual reports of equipment leaks not repaired within 15 days or loadings of cargo tanks for which vapor tightness documentation is not available.

Form Numbers: None.

Respondents/affected entities: Gasoline distribution bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts BBBBBB and CCCCCC).

Estimated number of respondents: 19,120 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 214,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $23,500,000 (per year), which also includes $110,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in the estimated respondent labor hours from the most-recently approved ICR is due to an adjustment. This ICR reflects addition of burden hours to account for the time spent by existing facilities to re-familiarize themselves annually with the rule requirements.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27587 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2018–0553; FRL–9988–05–OA]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; CEQ–EPA Presidential Innovation Award for Environmental Educators Application (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''CEQ–EPA Presidential Innovation Award for Environmental Educators Application (Renewal)'' (EPA ICR No. 2524.02, OMB Control No. 2090–0031) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 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.

DATES: Comments must be submitted on or before February 18, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OA–2018–0553, online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Javier Araujo, Office of the Administrator, Office of Environmental Education, MC–1704A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–2642; fax number: 202–564–2753; email address: *araujo.javier@epa.gov*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public

docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The purpose of this information collection request is to collect information from applicants to select recipients for the Presidential Innovation Award for Environmental Educators program. The U.S. Environmental Protection Agency (EPA or the Agency), in conjunction with the White House Council on Environmental Quality (CEQ), established the award program to meet the requirements of Section 8(e) of the National Environmental Education Act (20 U.S.C. 5507(e)).

Form Numbers: None.

Respondents/affected entities: K–12 teachers who teach on a full-time basis in a public school that is operated by a local education agency, including schools funded by the Bureau of Indian Affairs. For this program, a local education agency is one as defined by section 198 of the Elementary and Secondary Education Act of 1965 (now codified at 20 U.S.C. 7801(26)).

Respondent's obligation to respond: Required to obtain information from the applicants for Presidential Innovation Award for Environmental Educators and assess certain aspects of the PIAEE program as established under Section 8(e) of the National Environmental Education Act (20 U.S.C. 5507(e)).

Estimated number of respondents: 75 (total).

Frequency of response: Annually.

Total estimated burden: 10 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $32,250 (per year) for 75 applicants, includes $14,191 annualized capital or operation & maintenance costs.

Changes in the Estimates: We expect that after adjusting the burden numbers that the burden numbers will substantially stay the same. Program requirements are expected to stay the same and the estimates currently consider the use of technology to complete the application.

Dated: December 6, 2018.

Elizabeth (Tate) Bennett,

Associate Administrator, Office of Public Engagement and Environmental Education.

[FR Doc. 2018–27776 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0312; FRL–9985–92–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (EPA ICR No. 2385.07, OMB Control No. 2060–0664), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested via the **Federal Register** on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0312, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units apply to any air quality program in either a state or a United States protectorate with one or more existing CISWI units. The guidelines can be thought of as model regulations that States use in developing State plans to implement the emission guidelines. If a state does not develop, adopt, and submit an approvable state plan, the Environmental Protection Agency (EPA) must develop a Federal plan to implement the emission guidelines. These regulations apply to existing CISWI units (units that

commenced construction on or before the date of proposal).

In general, all Emissions Guidelines standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart DDDD.

Form numbers: None.

Respondents/affected entities: Owners and operators of commercial and industrial solid waste incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DDDD).

Estimated number of respondents: 78 (total).

Frequency of response: Initially, occasionally, semiannually, and annually.

Total estimated burden: 10,400 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $11,200,000 (per year), which includes $10,000,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment increase in the estimated burden cost and number of responses. The adjustment increase in burden from the most-recently approved ICR is due to an increase in the number of sources anticipated to remain subject to the provisions of Subpart DDDD since the last ICR renewal period, based on an inventory maintained by OAQPS. Specifically, the prior ICR assumed that a number of units in the incinerator subcategory would shut down based on amendments to the rule. However, a recent inventory of sources indicates that these incinerators remain in operation, and also identifies additional facilities with units in the small remote incinerators subcategory not previously included in the inventory. The adjustment increase in burden is due to more accurate estimates of existing sources. In addition, the burden hours were increased as a result of accounting for burden for each respondent to refamiliarize themselves with regulatory requirements each year.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27580 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9042–9]

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 12/10/2018 Through 12/14/2018 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. 20180312, Draft, USACE, CO, Cherry Creek Dam Safety Modification Study, Comment Period Ends: 02/04/2019, Contact: John Palensky 402–995–2719

EIS No. 20180313, Draft, USFS, ID, John Wood Forest Management Project, Comment Period Ends: 02/04/2019, Contact: Bryan Fuell 208–547–4356

EIS No. 20180314, Final, NPS, TN, Big South Fork National River and Recreation Area Final Contaminated Mine Drainage Mitigation and Treatment Programmatic and Site Specific Environmental Impact Statement, Review Period Ends: 01/22/2019, Contact: Michael Edwards 303–969–2694

EIS No. 20180316, Draft Supplement, USFS, SC, AP Loblolly Pine Removal and Restoration Project, Comment Period Ends: 02/04/2019, Contact: Victor Wyant 864–638–9568

EIS No. 20180317, Draft, FERC, TX, Annova LNG Brownville Project, Comment Period Ends: 02/04/2019, Contact: Office of External Affairs 866–208–3372

EIS No. 20180318, Final, NMFS, NAT, Amendment 11 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan, Review Period Ends: 01/22/2019, Contact: Guy DuBeck 301–427–8503

EIS No. 20180319, Draft, NMFS, AL, State Management Program for Recreational Red Snapper Amendment 50A to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, Comment Period Ends: 02/04/2019, Contact: Lauren Waters 727–824–5305

Amended Notices

EIS No. 20180282, Final, USACE, IL, The Great Lakes and Mississippi River Interbasin Study—Brandon Road Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois, Review Period Ends: 01/07/2019, Contact: Andrew Leichty 309–794–5399 Revision to FR Notice Published 11/23/2018; Extending the Comment Period from 12/24/2018 to 01/07/2019.

Dated: December 18, 2018.

Kelly Knight,

Acting Director, Office of Federal Activities.

[FR Doc. 2018–27711 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0093; FRL—9987–91–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Coal- and Oil-Fired Electric Utility Steam Generating Units (EPA ICR No. 2137.08, OMB Control No. 2060–0567), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0093, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental

Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets*.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired Electric Utility Steam Generating Units (40 CFR part 63, subpart UUUUU) apply to each individual or group of two or more new, reconstructed, or existing electric utility steam generating units (EGUs) within a contiguous area and under common control. An EGU is defined as a fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale, or a fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale. New facilities include those that commenced construction or reconstruction after the date of proposal.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart UUUUU.

Form numbers: None.

Respondents/affected entities: Owners and operators of coal- and oil-fired EGUs.

Respondent's obligation to respond: Mandatory (40 CFR 63, Subpart UUUUU).

Estimated number of respondents: 322 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 284,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $132,000,000 (per year), which includes $104,000,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This change is not due to any program changes. The overall decrease in the burden and cost estimates occurred due to more accurate estimates of existing and anticipated new sources. Additionally, there is an adjustment increase in the capital/start-up and O&M costs from the previous ICR. The prior ICR inadvertently removed O&M costs for existing sources, while this ICR reincorporates O&M costs for existing respondents.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–27588 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0045; FRL–9987–52–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Municipal Waste Combustors (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Municipal Waste Combustors (EPA ICR No. 1506.14, OMB Control No. 2060–0210), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through December 31, 2018. Public comments were previously requested, via the **Federal Register**, on June 27, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before January 22, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0045, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Municipal Waste Combustors apply to existing and new facilities with a

municipal waste combustor unit capacity greater than 225 megagrams per day of municipal solid waste. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subparts Ea and Eb.

Form numbers: None.

Respondents/affected entities: Owners and operators of municipal waste combustor (MWC) facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts Ea and Eb).

Estimated number of respondents: 23.

Frequency of response: Initially, quarterly and semiannually.

Total estimated burden: 34,900 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,440,000 (per year), which includes $226,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is an increase in the respondent burdens from the most recent ICR. The adjustments are due to a change in the number of sources subject to each Subpart, which was revised to reflect more recent information obtained through the Agency's research within the MWC sector.

Courtney Kerwin,

Director, Collection Strategies Division.

[FR Doc. 2018–27584 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0262; FRL–9987–45]

Pesticides; Petition Seeking Revised Testing Requirements of Pesticides Prior to Registration; Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is seeking public comment on a petition from the Center for Food Safety (CFS) requesting that the Agency revise testing requirements for pesticides prior to registration. The petitioner, CFS, requests that the Agency require testing for whole pesticide formulations to account for the toxicological effects of inert and adjuvant ingredients and the testing of tank mixes to assess the interaction between pesticide ingredients. CSF believes this change is needed to meet the applicable safety standards of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments must be received on or before March 21, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0262, 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: Connie Hernandez, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 305–5190; email address: *hernandez.connie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to Me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including pesticide registrants, environmental, human health, and agricultural advocates, pesticide users, and members of the public interested in the use of pesticides. This listing is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by his action. Because others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What action is the agency taking?

EPA requests public comment on a petition received from CFS requesting EPA take the following actions:

1. Revise pesticide registration regulations to take into account all pesticide ingredients (active, inert and adjuvant) and their effects on the environment.

2. Revise pesticide registration regulations to require whole pesticide formulation and tank mixture testing to take into account synergistic effects.

3. Revise pesticide registration regulations to require inert ingredients and whole pesticide formulations testing for chronic toxicological effects and degradation.

4. Revise pesticide registration regulations to require Endangered Species Act (ESA) consultation on the effects of whole pesticide formulations and tank mixtures on threatened and endangered species.

5. Comply with the above requirements in conducting statutorily mandated registration reviews of pesticides.

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

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

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

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 11, 2018,

Richard Keigwin,

Director, Office of Pesticide Programs.

[FR Doc. 2018–27757 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9988–31–OAR]

Clean Air Act Advisory Committee (CAAAC): Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the Clean Air Act Advisory Committee (CAAAC).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Clean Air Act Advisory Committee (CAAAC). Vacancies are anticipated to be filled by May 2019. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

Background

Clean Air Act Advisory Committee provides advice, information and recommendations on policy and technical issues associated with implementation of the Clean Air Act (CAA) as requested by EPA. These issues include the development, implementation, and enforcement of programs required by the Act. The CAAAC will provide advice and recommendations on approaches for new and expanded programs including those using innovative technologies and policy mechanisms to achieve environmental improvements; the potential health, environmental and economic effects of CAA programs on the public, the regulated community, State and local governments, and other Federal agencies; the policy and technical contents of proposed major EPA rulemaking and guidance required by the Act in order to help effectively incorporate appropriate outside advice and information; and the integration of existing policies, regulations, standards, guidelines, and procedures into programs for implementing requirements of the Act.

The programs falling under the purview of the committee include, but are not limited to, those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing air toxic emissions, permitting, carrying out compliance authorities, and CAA-related voluntary activities. Members are appointed by the EPA Administrator for two-year terms with the possibility of reappointment to additional term(s). The CAAAC usually meets approximately 2 times annually and the average workload for the members is approximately 5 to 10 hours per month.

Although EPA is unable to offer compensation or an honorarium for CAAAC members, they may receive travel and per diem allowances, according to applicable federal travel regulations. EPA is seeking nominations from academia, industry, non-governmental/environmental organizations, community organizations, state and local government agencies, tribal governments, unions, trade associations, utilities, and lawyers/consultants. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Evaluation Criteria

The following criteria will be used to evaluate nominees:

- The background and experiences that would help members contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational, and other considerations)
- Experience serving as an elected official;
- Experience serving as an appointed official for a state, county, city or tribe;
- Experience working on national level or on local government issues;
- Demonstrated experience with air quality policy issues;
- Executive management level experience with membership in broad-based networks;
- Excellent interpersonal, oral and written communication, and consensus-building skills.
- Ability to volunteer time to attend meetings 2–3 times a year, participate in teleconference meetings, attend listening sessions with the Administrator or other senior-level officials;
- Ability to work with others with varying perspectives to develop policy recommendations to the Administrator and prepare reports and advice letters.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business/home address, email address, and daytime telephone number. Interested candidates may self-nominate. Please note that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to two- year terms. To help the Agency in evaluating the effectiveness of our outreach efforts, please also tell us how you learned of this opportunity.

ADDRESSES: Submit nominations in writing to: Larry Weinstock, Designated Federal Officer, Office of Air and Radiation, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

For further information or to email nominations, include in the subject line CAAAC Membership 2019 and send to *caaac@epa.gov.*

Dated: December 13, 2018.

Larry Weinstock,

Designated Federal Officer, Clean Air Act Advisory Committee, Office of Air and Radiation.

[FR Doc. 2018–27744 Filed 12–20–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011666–005.

Agreement Name: West Coast North America/Pacific Islands Vessel Sharing Agreement.

Parties: Hamburg Sud and Polynesia Line Ltd.

Filing Party: Conte Cicala; Clyde & Co. US LLP.

Synopsis: The amendment deletes Polynesia Line and replaces it with The China Navigation Co. Pte. Ltd. The amendment also removes authority which authorizes the Parties to belong to a rate agreement in the Trade and deletes obsolete portions of the agreement. The parties have requested expedited review.

Proposed Effective Date: 1/3/2019.

Location: http://fmcinet/Fmc.Agreements.Web/Public/AgreementHistory/795.

Dated: December 17, 2018.

Rachel Dickon,

Secretary.

[FR Doc. 2018–27613 Filed 12–20–18; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 8, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Gary F. Stewart and Carrie L. Irish, as a group acting in concert to be added to the Hodgson family control group approved on October 10, 2013;* to retain voting shares of Charlevoix First Corporation and thereby indirectly retain shares of Charlevoix State Bank, both of Charlevoix, Michigan.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Lisa K. Haines Financial Services Trust and the Julee S. Thummel Financial Services Trust, both of Horseshoe Bay, Texas;* to retain voting shares of Bank7 Corp and thereby indirectly retain shares of Bank 7, both of Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, December 18, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–27667 Filed 12–20–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

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

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting for the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS). This meeting is open to the public.

DATES: The meeting will be held on January 22, 2019, 11:00 a.m. to 2:00 p.m., EDT.

ADDRESSES: Virtual—Summaries of meetings and a roster of Committee members are available on the NCHS BSC website: *https://www.cdc.gov/nchs/about/bsc.htm.*

FOR FURTHER INFORMATION CONTACT: Sayeedha Uddin, M.D., M.P.H., Executive Secretary, NCHS/CDC, Board of Scientific Counselors, 3311 Toledo Road, Room 2627, Hyattsville, Maryland 20782, telephone (301) 458–4303, email *isx9@cdc.gov.*

SUPPLEMENTARY INFORMATION: To join the session go to *https://roseliassociates.webex.com/roseliassociates/k2/j.php?MTID=tfdddad42079860e7fedf3935962fd22f.*

2. Enter your name and email address (or registration ID).

3. Enter the session password: Jan22.

4. Click ''Join Now''.

5. Follow the instructions that appear on your screen.

To join the session by phone only call the number below and enter the access code.

United States Toll Free: 1–844–621–3956.

United States Toll (San Jose): +1–240–454–0887.

Global call-in numbers: https://roseliassociates.webex.com/roseliassociates/globalcallin.php?serviceType=TC&ED=753000972&tollFree=1.

Show toll-free dialing restrictions: https://www.webex.com/pdf/tollfree_restrictions.pdf.

Access code: 647 874 925.

For assistance you can contact Michele Dillon at: *michele.dillon@roseliassociates.com,* 1–301–412–0987.

Can't join the training session? *https://collaborationhelp.cisco.com/article/qg8vzfb.*

To update this session to your calendar program (for example Microsoft Outlook), click this link: *https://roseliassociates.webex.com/roseliassociates/k2/j.php?MTID=t1946c9546eabdef918f44ebc6b656537.*

https://www.webex.com.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be considered: The agenda will include remarks by NCHS leadership; presentation and discussion of the Patient-Centered Outcomes Research Trust Fund Drug Workgroup report. Agenda items are subject to change as priorities dictate. The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–27719 Filed 12–20–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS); Correction

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS); December 4, 2018, 11:00 a.m.–5:30 p.m., EDT, and December 5, 2018, 8:30 a.m.–1:00 p.m., EDT which was published in the **Federal Register** on November 16, 2017 Volume 82, Number 220, pages 53500–53501.

The date should read as follows: December 4, 2018 10:00 a.m.–5:00 p.m. EST.

The *MATTERS TO BE CONSIDERED* should read as follows: The meeting agenda includes welcome remarks by NCHS leadership; an update on the National Health Interview Statistics Redesign Bridge Sample; an update on the Utilization of Electronic Health Records (EHR) Data in NCHS Data Systems update on National Study of Long-Term Care Providers; an update from the Patient-Centered Outcomes Research Trust Fund Drug Workgroup; an update on Indicator Selection for Healthy People 2030; and an update on Evaluation of Birth Outcomes Associated with Drug Use.

FOR FURTHER INFORMATION CONTACT: Sayeedha Uddin, M.D., M.P.H., Executive Secretary, NCHS/CDC, Board of Scientific Counselors, 3311 Toledo Road, Room 2627, Hyattsville, Maryland 20782, telephone (301) 458–4303, email *isx9@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–27718 Filed 12–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT); Notice of Charter Renewal

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

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 25, 2020.

FOR FURTHER INFORMATION CONTACT: Jonathan Mermin, M.D., M.P.H., Designated Federal Officer, CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT), CDC, HHS, 1600 Clifton Road, NE, Mailstop E07, Atlanta, Georgia 30329–4027, Telephone 404–639–8000, *jhm7@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–27717 Filed 12–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Name of Committee: Safety and Occupational Health Study Section (SOHSS); National Institute for Occupational Safety and Health (NIOSH).

Date: February 20–21, 2019.

Time: 8:00 a.m.–5:00 p.m., EST.

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA 22314.

Agenda: The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

For Further Information Contact: Nina Turner, Ph.D., Scienitific Review Officer, NIOSH, 1095 Willowdale Road, Morgantown, WV 26506, (304) 285–5976; *nturner@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–27721 Filed 12–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—PAR 13–129; NIOSH Member Conflict Special Emphasis Panel.

Date: February 26, 2019.

Time: 12:00 p.m.–4:00 p.m. EST.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Nina Turner, Ph.D., Scientific Review Officer, Office of Extramural Programs, 1095 Willowdale Road, Morgantown, West Virginia 26506, Telephone: (304) 285–5976; Email: *nxt2@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–27722 Filed 12–20–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/Mine Safety and Health Research Advisory Committee (MSHRAC); Notice of Charter Renewal

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

ACTION: Notice of charter renewal.

SUMMARY: This gives notice that under the Federal Advisory Committee Act of October 6, 1972, that the Mine Safety and Health Research Advisory Committee (MSHRAC), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through November 30, 2020.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Welsh, Designated Federal Officer, CDC/Mine Safety and Health Research Advisory Committee (MSHRAC), CDC, HHS, 626 Cochrans Mill Road, Pittsburgh, PA 15236, Telephone 412–386–4040, *juw5@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–27720 Filed 12–20–18; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3362–FN]

Medicare and Medicaid Programs: Approval of the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) Application for Continued Approval of Its Ambulatory Surgical Center Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the Accreditation Association for Ambulatory Health Care, Inc. for continued recognition as a national accrediting organization for ambulatory surgical centers that wish to participate in the Medicare or Medicaid programs.

DATES: *Applicable Date:* December 20, 2018 through December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Lillian Williams, (410) 786–8636, Monda Shaver, (410) 786–3410, or Renee Henry, (410) 786–7828.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an Ambulatory Surgical Center (ASC) provided certain requirements are met. Sections 1832(a)(2)(F)(i) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as an ASC. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 416, specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for ASCs.

Generally, to enter into an agreement, an ASC must first be certified as complying with the conditions set forth in part 416 and recommended to the Centers for Medicare & Medicaid Services (CMS) for participation by a state survey agency. Thereafter, the ASC is subject to periodic surveys by a state survey agency to determine whether it continues to meet these conditions. However, there is an alternative to certification surveys by state agencies. Accreditation by a nationally recognized Medicare accreditation program approved by CMS may substitute for both initial and ongoing state review.

Section 1865(a)(1) of the Act provides that, if the Secretary of the Department of Health and Human Services finds that accreditation of a provider entity by an approved national accrediting organization meets or exceeds all applicable Medicare conditions or requirements, we may deem the provider entity as having met those conditions or requirements. Accreditation by an accrediting organization is voluntary and is not required for Medicare participation.

A national accrediting organization applying for approval of its Medicare accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the accrediting organization requires its accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of accrediting organizations are set forth at § 488.4.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish a notice of approval or denial of the application.

III. Provisions of the Proposed Notice

On July 26, 2018, we published a proposed notice entitled ''Application from the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC) for Continued Approval of its Ambulatory Surgical Center Accreditation Program'' in the **Federal Register** (83 FR 35486) announcing AAAHC's request for continued approval of its Medicare ASC accreditation program. In the proposed notice, we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of AAAHC's Medicare ASC accreditation renewal application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An onsite administrative review of AAAHC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its ASC surveyors; (4) ability to investigate and respond appropriately to complaints against accredited ASCs; and, (5) survey review and decision-making process for accreditation.
- The comparison of AAAHC's Medicare ASC accreditation program standards to our current Medicare ASC conditions for coverage (CfCs).
- A documentation review of AAAHC's survey process to:

++ Determine the composition of the survey team, surveyor qualifications, and AAAHC's ability to provide continuing surveyor training.

++ Compare AAAHC's processes to those we require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited ASCs.

++ Evaluate AAAHC's procedures for monitoring ASCs it has found to be out of compliance with AAAHC's program requirements. (This pertains only to monitoring procedures when AAAHC identifies non-compliance. If noncompliance is identified by a state survey agency through a validation survey, the state survey agency monitors corrections as specified at § 488.9(c).)

++ Assess AAAHC's ability to report deficiencies to the surveyed ASC and respond to the ASCs plan of correction in a timely manner.

++ Establish AAAHC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of AAAHC's staff and other resources.

++ Confirm AAAHC's ability to provide adequate funding for performing required surveys.

++ Confirm AAAHC's policies with respect to surveys being unannounced.

++ Obtain AAAHC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

In accordance with section 1865(a)(3)(A) of the Act, the July 26, 2018 proposed notice also solicited public comments regarding whether AAAHC's requirements met or exceeded the Medicare CfCs for ASCs. We received no comments in response to our proposed notice.

IV. Provisions of the Final Notice

A. Differences Between AAAHC's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared AAAHC's ASC accreditation program requirements and survey process with the Medicare CfCs at part 416, and the survey and certification process requirements of parts 488 and 489. Our review and evaluation of AAAHC's ASC application, which were conducted as described in section III of this final notice, yielded the following areas where, as of the date of this notice, AAAHC has revised its standards and certification processes in order to meet the requirements at:

- § 416.44(b)(1), to ensure its standards appropriately reference Life Safety Code requirements;
- § 416.44(c), to ensure its standards appropriately reference Life Safety Code requirements;
- § 416.44(c)(1)(iv), to ensure its standards appropriately reference Life Safety Code requirements;
- § 488.5(a)(4)(ii), to ensure comparability of AAAHC's survey process and surveyor guidance to those required for state survey agencies conducting federal Medicare surveys for the same provider or supplier type;
- § 488.5(a)(4)(iv), to ensure all identified areas of non-compliance are clearly documented and cited appropriately in the final survey report.
- § 488.5(a)(7) through (9), to ensure its surveyors are appropriately qualified, trained and maintain competence during extended periods of time without conducting a survey;
- § 488.5(a)(11)(ii), to ensure accurate survey findings are reported to CMS;
- § 488.5(a)(12), to ensure complaints are triaged appropriately and surveyed within the required timeframes;
- § 488.18(a), to ensure that the findings are documented and written within the principles of documentation.
- § 488.26(b), to ensure deficiencies are cited at the appropriate level based on manner and degree of findings; and
- § 488.28(d), to ensure that its policies for correction of deficiencies in ASCs is comparable to CMS requirements, requiring that deficiencies normally must be corrected within 60 days.
- § 489.13(c), to ensure that all accreditation requirements have been met before granting accreditation and making a recommendation for participation or continued participation in the Medicare program comparable to CMS requirements, requiring that deficiencies normally must be corrected within 60 days.

B. Term of Approval

Based on our review and observations described in section III of this final notice, we approve AAAHC as a national accreditation organization for ASCs that request participation in the Medicare program, effective December 20, 2018 through December 20, 2024.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 14, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2018–27592 Filed 12–20–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Head Start Program Information Report.

OMB No.: 0970–0427.

Description: The Office of Head Start within the Administration for Children and Families, United States Department of Health and Human Services, is proposing to renew, with changes, authority to collect information using the Head Start Program Information Report (PIR), monthly enrollment, contacts, and center locations. All information is collected electronically through the Head Start Enterprise System (HSES). The PIR provides information about Head Start and Early Head Start services received by the children and families enrolled in Head Start programs. The information collected in the PIR is used to inform the public about these programs, to make periodic reports to Congress about the status of children in Head Start programs as required by the Head Start Act, and to assist the administration and training/technical assistance of Head Start programs. Other program data is used to track enrollment, contact the program, provide a locator for parents to find a nearby program, and for oversight.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Program Information Report	3,449	1	4	13,796
Grantee Monthly Enrollment Reporting	2,066	12	0.05	1,240
Contacts, Center Locations	3,449	1	0.25	862

Estimated Total Annual BurdenHours: 15,898.

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chap 35), the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–27687 Filed 12–20–18; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Head Start Eligibility Verification.

OMB No.: 0970–0374.

Description: The Office of Head Start (OHS) within the Administration for Children and Families, United States Department of Health and Human Services, proposes to renew, with changes, its authority for record keeping requirements associated with Head Start eligibility verification. OHS revised the Head Start Eligibility Verification form to reflect changes in the eligibility final rule published on February 10, 2015 (80 FR 7368). OHS initially developed the form to help programs determine eligibility. However, Head Start programs are not required to use this specific form. Programs may either adopt the form or design a new form to meet the eligibility requirements.

The Office of Head Start published a final rule on eligibility under the authority granted to the Secretary of Health and Human Services under the Head Start Act (Act) at sections 644(c), 645(a)(1)(A), and 645A(c). The final rule clarifies Head Start's eligibility procedures and enrollment requirements, and reinforces Head Start's overall mission to support low-income families and early learning. A program must maintain records as specified in sections 1305.4(d)(2), 1305.4(l), and 1305.4(h) through (j) of the final rule.

Respondents: Head Start and Early Head Start program grant recipients.

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
§ 1305.4(l) Eligibility determination records *(sample form)*	1,600	478	.10	76,480
§ 1305.4(d)(2)	20	1	2	40
§ 1305.4(h),(i), and (j)	1,600	1	15	24,000
§ 1305.4(l) Other Record Keeping	1,600	1	15	24,000

Estimated Total Annual Burden Hours: 124,520.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–27692 Filed 12–20–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for the Temporary Assistance for Needy Families (TANF).

OMB No.: 0970–0145.

Description: The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It

consists of an outline specifying how the state's TANF program will be administered and operated and certain required certifications by the State's Chief Executive Officer. It is used to provide the public with information about the program. Authority to require States to submit a State TANF plan is contained in section 402 of the Social Security Act, as amended by Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. States are required to submit new plans periodically (*i.e.,* within a 27-month period).

We are proposing to continue the information collection without change.

Respondents: The 50 States of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Title Amendments	18	1	3	54
State TANF plan	18	1	30	540

Estimated Total Annual Burden Hours: 594.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–27639 Filed 12–20–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Grant Application and Budget Instruments.

OMB No.: 0970–0207.

Description: The Office of Head Start is proposing to renew, without changes, the Head Start Grant Application and Budget Instrument, which grantees use to provide information that is requested from all Head Start and Early Head Start grantees applying for continuation grants. The application and budget forms are available in the Head Start Enterprise System (HSES), a secure web-based system, which transmits completed applications to Regional and Central Offices. The Administration for Children and Families believes that this application instrument has made the process of applying for a Head Start continuation grant more efficient for applicants.

Respondents: Head Start and Early Head Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
HS grant and budget instrument	2,000	1	33	66,000

Estimated Total Annual Burden Hours: 66,000.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–27686 Filed 12–20–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2017–E–3592 and FDA–2017–E–3616]

Determination of Regulatory Review Period for Purposes of Patent Extension; ABSORB GT1 BIORESORBABLE SCAFFOLD

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ABSORB GT1 Bioresorbable Scaffold and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (in the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by February 19, 2019. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 19, 2019. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

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 February 19, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 19, 2019. 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 Nos. FDA–2017–E–3592 and FDA–2017–E–3616 for Determination of Regulatory Review Period for Purposes of Patent Extension; ABSORB GT1 Bioresorbable Scaffold. Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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 numbers, 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: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count

toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device ABSORB GT1 BIORESORBABLE SCAFFOLD. ABSORB GT1 BIORESORBABLE SCAFFOLD is indicated for improving coronary luminal diameter in patients with ischemic heart disease due to de novo native coronary artery lesions ≥2.5 mm to ≤3.75 mm in diameter in lesions. Subsequent to this approval, the USPTO received a patent term restoration application for ABSORB GT1 BIORESORBABLE SCAFFOLD (U.S. Patent Nos. 7,971,333 and 8,323,329) from Abbott Cardiovascular Systems Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated August 1, 2017, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of ABSORB GT1 BIORESORBABLE SCAFFOLD represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ABSORB GT1 BIORESORBABLE SCAFFOLD is 1,303 days. Of this time, 932 days occurred during the testing phase of the regulatory review period, while 371 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)) involving this device became effective:* December 12, 2012. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the FD&C Act for human tests to begin became effective on March 19, 2009. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on December 12, 2012, which represents the IDE effective date.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* July 1, 2015. The applicant claims June 30, 2015, as the date the premarket approval application (PMA) for ABSORB GT1 BIORESORBABLE SCAFFOLD (PMA P150023) was initially submitted. However, FDA records indicate that PMA P150023 was submitted on July 1, 2015.

3. *The date the application was approved:* July 5, 2016. FDA has verified the applicant's claim that PMA P150023 was approved on July 5, 2016.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,100 or 841 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: Must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27678 Filed 12–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0520]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements regarding animal proteins prohibited in ruminant feed.

DATES: Submit either electronic or written comments on the collection of information by February 19, 2019.

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 February 19, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 19, 2019. 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–2013–N–0520 for '' Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—21 CFR 589.2000(e)(1)(iv) OMB Control Number 0910–0339—Extension

Section 701(a) (21 U.S.C. 371(a)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) gives us the authority to issue regulations for the efficient enforcement of the FD&C Act. Our regulation at 21 CFR 589.2000 provides that animal protein derived from mammalian tissue (with some exclusions) is not generally recognized as safe (GRAS) for use in ruminant feed and is a food additive subject to certain provisions of the act (62 FR 30936, June 5, 1997).

This information collection was established because epidemiological evidence gathered in the United Kingdom suggested that bovine spongiform encephalopathy (BSE), a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. This regulation places general requirements on persons that manufacture, blend, process, and distribute products that contain, or may contain, protein derived from mammalian tissue, and feeds made from such products.

Specifically, this regulation requires renderers, feed manufacturers, and others involved in feed and feed ingredient manufacturing and distribution to maintain written procedures specifying the cleanout procedures or other means and specifying the procedures for separating products that contain or may contain protein derived from mammalian tissue from all other protein products from the time of receipt until the time of shipment. These written procedures are intended to help the firm formalize their processes, and then to help inspection personnel confirm that the firm is operating in compliance with the regulation. Inspection personnel will evaluate the written procedure and confirm it is being followed when they are conducting an inspection.

These written procedures must be maintained as long as the facility is operating in a manner that necessitates the record, and if the facility makes changes to an applicable procedure or process the record must be updated. Written procedures required by this

section shall be made available for inspection and copying by FDA.

Description of Respondents: Respondents include renderers, feed manufacturers, and others involved in feed and feed ingredient manufacturing and distribution.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
589.2000(e)(1)(iv); written procedures ..	320	1	320	14	4,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimates on our experience with similar requirements to maintain written procedures. We base our estimate of the number of recordkeepers on inspectional data. Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: December 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27656 Filed 12–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4465]

Agency Information Collection Activities; Proposed Collection; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection for administrative detention and banned medical devices.

DATES: Submit either electronic or written comments on the collection of information by February 19, 2019.

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 February 19, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 19, 2019. 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–4465 for ''Administrative Detention and Banned Medical Devices.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Administrative Detention and Banned Medical Devices—21 CFR 800.55(g)(1) and (g)(2), 800.55(k), 895.21(d), and 895.229(a)

OMB Control Number 0910–0114—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 334(g)) to detain during established inspections devices that are believed to be adulterated or misbranded. Section 800.55 (21 CFR 800.55), on administrative detention, includes among other things certain reporting requirements (§ 800.55(g)(1) and (g)(2)) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an appellant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, in addition to records of distribution of the detained devices. These recordkeeping requirements for administrative detentions permit FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the FD&C Act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. Section 895.21 (21 CFR 895.21), on banned devices, contains certain reporting requirements. Section 895.21(d) describes the procedures for banning a device when the Commissioner of Food and Drugs (the Commissioner) decides to initiate such a proceeding. Under 21 CFR 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

During the past several years, there has been an average of less than one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Documentation of ownership—800.55(g)	1	1	1	25	25
Banned devices reporting requirements—895.21(d)(8) and 895.22(a)	26	1	26	16	416
Total					441

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Records regarding device adulteration or misbranding and records of distribution of detained devices—800.55(k)	1	1	1	20	20

[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.

Dated: December 17, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27655 Filed 12–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3552]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study of Cigarette Warnings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 January 22, 2019.

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–NEW and title ''Experimental Study of Cigarette Warnings.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *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.

Experimental Study of Cigarette Warnings

OMB Control Number 0910–NEW

The Tobacco Control Act (Pub. L. 111–31) amends the Federal Food, Drug, and Cosmetic Act to grant FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco use by minors. Section 201 of the Tobacco Control Act amends section 4 of the Federal Cigarette Labeling and Advertising Act (FCLAA) (15 U.S.C. 1333) to require FDA to issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection 4(a)(1) of the FCLAA. Section 202(b) of the Tobacco Control Act further amends section 4 of the FCLAA by adding that the Secretary of Health and Human Services (Secretary), through notice and comment rulemaking, may adjust the text of any of the label requirements if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.

In the **Federal Register** of June 22, 2011 (76 FR 36628), FDA issued a final rule entitled ''Required Warnings for Cigarette Packages and Advertisements,'' which specified nine images to accompany new textual warning statements for cigarettes. Although the rule was scheduled to become effective 15 months after it issued, a panel of the U.S. Court of Appeals of the District of Columbia held, on August 24, 2012, that the rule in its current form violated the First Amendment. In a letter to Congress on March 15, 2013, the Attorney General reported FDA's intention to undertake research to support a new rulemaking consistent with the Tobacco Control Act. Various phases of research have been underway since 2013. The next phase of the research includes the study proposed here, which is an effort by FDA to collect data concerning responses to health warnings placed on cigarette packages and advertisements for cigarettes.

The health risks associated with the use of cigarettes are significant and far-reaching. Cigarette smoking is the leading cause of preventable disease and death in the United States and is responsible for more than 480,000 deaths per year. Smoking causes more deaths each year than human immunodeficiency virus, illegal drug use, alcohol use, motor vehicle injuries, and firearm-related incidents combined (Ref. 1). In addition to lung cancer, heart disease, and chronic obstructive pulmonary disease, smoking also causes numerous other serious health conditions including several types of cancer, premature birth, low birth weight, respiratory illnesses, clogged arteries, reduced blood flow, diabetes, and vision conditions such as age-related macular degeneration and cataracts (Ref. 2).

Approximately 37.8 million U.S. adults smoke cigarettes (Ref. 3) and 8.6 million Americans have at least one serious illness caused by smoking cigarettes (Ref. 4). Results from the 2016 National Survey on Drug Use and Health demonstrate that, each day in the United States, more than 2,300 youth under age 18 smoke their first cigarette, and nearly 400 youth become daily cigarette smokers (Ref. 5). If the current trajectory of smoking rates continues, 5.6 million children alive today will die prematurely as a result of smoking (Ref. 2). Providing the public with accurate information regarding the health consequences of cigarette use is critical in achieving FDA's mission to protect the public health.

This Experimental Study of Cigarette Warnings is a voluntary online experiment. The purpose of the study is to assess whether new cigarette health warnings increase public understanding of the negative health consequences of cigarette smoking. The study will collect data from various groups of consumers, including adolescent current cigarette smokers aged 13 to 17 years, adolescent non-smokers who are susceptible to initiation of cigarette smoking aged 13 to 17 years, young adult current cigarette smokers and non-smokers aged 18 to 24 years, and older adult current cigarette smokers and non-smokers aged 25 years and older. The results will inform the Agency's efforts to implement the mandatory color graphics to accompany health warning label statements as required by section 4 of FCLAA.

Study Overview: In this study, adolescent current cigarette smokers, adolescent non-smokers who are susceptible to initiation of cigarette smoking, young adult current cigarette smokers and non-smokers, and older adult current cigarette smokers and non-smokers will be recruited from an existing internet panel of more than 1.2 million people and screened for inclusion into the study. Participants who meet the inclusion criteria will be randomized into 1 of 17 conditions. In each condition, respondents will view one cigarette warning. In the 16 treatment conditions, participants will view 1 cigarette health warning, containing a textual warning statement

accompanied by a concordant color graphic depicting the negative health consequences of smoking described in the statement. In the control condition, participants will be randomized to view one of the four current Surgeon General's warnings, representing the current state of cigarette warnings in the United States. In all conditions, participants will view their assigned warnings both on a mock cigarette package and in a mock cigarette advertisement, presented in a randomized order.

There will be three sessions. During Session 1, participants will complete a baseline assessment about their beliefs about the negative health consequences of cigarette smoking. Next, they will be exposed to the stimuli (*i.e.,* the warning based on condition assignment) and complete a set of items assessing (a) if the information presented in the warning was new; (b) self-reported learning from the warning; (c) if the warning was easy to understand; (d) if the warning was perceived to be a fact or an opinion; (e) if the warning was informative; (f) if the warning grabbed their attention; and (g) if the warning made them think about the health risks of cigarette smoking. During Session 2 (1 to 2 days after Session 1), participants will be exposed to the same stimuli again (*i.e.,* the warning based on condition assignment from Session 1) and complete a set of items assessing beliefs about the negative health consequences caused by cigarette smoking. During Session 3 (approximately 14 days after Session 2), participants will complete a delayed post-test on beliefs about the negative health consequences caused by cigarette smoking and items assessing recall of the warning.

Prior to the main data collection, 2 sequential pretests, each with 50 participants, will take place to ensure correct programming of Session 1 and to identify any issues with the study design and implementation.

Study outcomes include comparisons to assess the extent to which exposure to new cigarette health warnings, relative to the text-only Surgeon General's warnings, provide new information, increase self-reported learning, change beliefs about the negative health consequences of cigarette smoking, increase thinking about the risks of smoking, and the extent to which the warnings are informative, easy to understand, factual, attention grabbing, and recalled.

In the **Federal Register** of September 26, 2018 (83 FR 48625), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received six unique comment submissions. Four submissions were PRA related, and some included multiple comments.

(Comment) One commenter stated that it's important to educate and reinforce the facts surrounding the dangers of smoking.

(Response) FDA agrees that it is important to provide the public with accurate information about the risks associated with the use of tobacco products. The purpose of this study is to assess whether new cigarette warnings increase public understanding of the negative health consequences of smoking.

(Comment) One comment urged FDA to move forward to complete the proposed consumer research study as soon as possible to facilitate the prompt promulgation of a rule to require new warnings on cigarette packages and in cigarette advertisements. The comment also stated that FDA must take every available opportunity to minimize delays that may be attributable to the Paperwork Reduction Act.

(Response) FDA agrees that it is important to complete this study and promulgate a rule in accordance with the statutory mandate laid out by Congress. FDA is following the requirements of the Paperwork Reduction Act and its associated timelines.

(Comment) One comment stated that, as designed, the proposed study does not help FDA satisfy the requirements of the First Amendment because FDA has failed to consider less-burdensome alternatives and because FDA has not identified a ''substantial'' interest that this current iteration of a cigarette health warnings rule serves.

(Response) As stated previously, the purpose of the proposed study is to assess whether new cigarette health warnings increase public understanding of the negative health consequences of smoking. FDA further notes that this notice is respecting a proposed study, the results of which, if used in a future rulemaking, would be provided along with other evidence in a future notice of proposed rulemaking and subject to public comment at that time.

(Comment) FDA received two comments that asked FDA to provide more detail about the design of the proposed study to allow for meaningful public comments. One commenter also stated that FDA must provide additional information for public comment, including details of the protocol, inclusion criteria for screening study participants, questionnaire, and the text and color graphics the agency proposes to test.

(Response) FDA notes in response to this comment that the proposed study and copies of the instruments used to collect this information are described in detail as part of the overall information collection request submitted to OMB for review.

(Comment) One comment provided a published scientific study and suggested that focusing on the presence of certain features of the warnings might provide more robust evidence about the effectiveness of warning labels rather than a comparison of a single pictorial message to a text-only message.

(Response) FDA appreciates the submission of the published study; however, it focuses on outcomes not relevant to the study FDA proposes here. The proposed study examines how new cigarette health warnings provide new information, increase self-reported learning, change beliefs about the negative health consequences of cigarette smoking, and increase thinking about the risks of smoking.

(Comment) One comment stated that the cigarette health warnings should be compared relative to the new text-only warning statements rather than the current, familiar text-only Surgeon General's warnings.

(Response) FDA disagrees. First, Section 201 of the Tobacco Control Act amends section 4 of FCLAA to require FDA to issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the textual label statements. Second, FDA believes that the comparison to the current Surgeon General's warnings is the most appropriate comparison for the purposes of this proposed study. This comparison will allow for investigation of the potential effect of implementing new cigarette health warnings compared to the current state of warnings for cigarette packages and advertisements, which the commenter recognizes are ''familiar.''

(Comment) One comment recommended that certain demographic (*e.g.,* age, socioeconomic status) and other (*e.g.,* nicotine dependence among smokers) factors should be evaluated during the course of this study.

(Response) FDA disagrees. The purpose of this proposed study is to assess whether new cigarette health warnings increase public understanding of the negative health consequences of smoking, not the mechanisms for such changes. Some basic sub-group analyses will be performed by age group; however, the primary analyses will focus on whether new cigarette health warnings increase public understanding

of the negative health consequences of smoking in the sample overall.

(Comment) One comment urged FDA to consider previous research that has shown that use of ''graphical'' warnings can produce an opposite effect to the desired outcome.

(Response) In our research to develop, test, and revise the content of new cigarette health warnings, we considered communication best practices, including minimizing unintended consequences and potential reactance to the warnings. Additionally, given the purpose and design of the proposed study, unintended consequences would be evident if the control warnings showed greater gains on outcomes compared to the warnings in the treatment conditions.

(Comment) One comment recommended that the study design include pre/post measures of risk perceptions to evaluate whether the cigarette health warnings meaningfully increase likely pre-existing high levels of incoming risk perceptions.

(Response) FDA declines to make such a change. The purpose of this proposed study is to assess whether new cigarette warnings increase public understanding of the negative health consequences of smoking, not whether such warnings increase risk perceptions. The focus of the study is on the specific health conditions that are the focus of the warning statements and their accompanying color graphics depicting the negative health consequences of smoking, not on the perception of overall risks of smoking.

(Comment) One comment indicated that the sample size for each condition appears to be small.

(Response) FDA disagrees. The sample size for this study was determined by a comprehensive statistical power analysis, taking into account the study design, planned analyses to be conducted, and potential study attrition. Based on its statistical power analysis, FDA is confident that the study will have sufficient sample sizes to detect meaningful effects.

(Comment) One comment stated that the proposed study's methodology suffers from selection bias. Specifically, the commenter stated that the proposed study is a voluntary online experiment, uses sampling methodology that may limit generalizability of outcomes to the broader U.S. population, and appears to lack corrective measures such as the ability to identify factors that contribute to participant drop out.

(Response) Although the large sample for this study is not truly nationally representative, FDA has made efforts to ensure that the demographics of participants in the study population closely mirror those of national estimates to ensure a better representation. Additionally, the sample size calculation and study analysis account for the potential of attrition over the multiple time points (*i.e.,* study sessions).

(Comment) One comment asserted that the study questions create a serious risk of bias. Specifically, the commenter stated that FDA's broad description of the questions to be asked in the study suggests that they are deliberately crafted to support a ''pre-ordained'' result, namely, that the warnings would increase public understanding of the negative health consequences of cigarette smoking.

(Response) FDA disagrees. There is no pre-ordained result. The questions used in this study were selected from prior studies on similar topics, including cigarette warnings. Some questions have been slightly edited to fit the specific content of the warnings to be tested, but the question instructions and question stems have not changed. The study questions are face valid (*i.e.,* it is clear they measure what they are intended to measure). Additionally, the study questions have previously been shown to produce a range of responses, indicating that they do not produce demand characteristics (*i.e.,* study participants do not respond to the items with what they think the researchers want to hear).

(Comment) One comment stated that FDA will need to avoid question-order bias.

(Response) FDA agrees that it is important to avoid question-order bias in this proposed study. In many sections of the study instrument, the order of questions is randomized specifically to avoid question-order bias. In other sections of the study instrument, the order was determined by starting with more general and then moving on to more specific items to avoid bias. In designing the survey, FDA ensured that the item order follows established models of information processing and attention.

(Comment) One comment raised a number of concerns that the study protocols do not appear to adequately mimic real-world conditions because cigarette smokers would not be exposed to only a single warning (but rather they would be exposed to all of them over time); the study asks participants to specifically focus on the warnings, which will likely overestimate their effects; in the real world, consumers would rarely view both cigarette packaging and advertisements at the same time; the study does not measure whether consumers would get used to the warnings after viewing them repeatedly over a long period of time; and the study's 14-day gap between Sessions 2 and 3 gives participants time to do their own research about the risks of cigarettes, which could overstate any effects that cigarette health warnings might have.

(Response) FDA disagrees with these assertions. The procedures proposed for the current study provide a greater number of exposures (and thus closer to real-world conditions) and use a longer follow-up time than many similar studies (Ref. 6).

The Tobacco Control Act requires that the cigarette health warning label statements with accompanying color graphics be displayed both on cigarette packages and in cigarette advertisements; therefore, exposure to the warnings on both formats provides an appropriate assessment of the impact of the warnings.

Finally, if warnings in certain conditions prompt study participants to seek health information in the 14-day follow-up period, thus resulting in greater understanding of the negative health consequences of cigarette smoking, such an effect would only strengthen findings that the warnings are working as intended and provide further evidence that the study mimics real world conditions in which consumers could seek additional information about the negative health consequences of smoking. Participants' health beliefs will be assessed at all three study sessions, thus allowing for comparison of the effect both immediately after exposure as well as after a delay.

(Comment) One comment recommended that FDA consider assessing comprehension of the new warnings objectively (*i.e.,* evaluating recall of specific content, evaluating comprehension of disease risk) rather than participants indicating only that they learned (*i.e.,* ''self-reported learning from the warning'').

(Response) FDA agrees that it is important to assess comprehension of the new warnings objectively. The proposed study contains these items, in addition to other measures.

(Comment) One comment stated that FDA should prioritize measuring the impact of the warnings on behavior (*e.g.,* quit intentions among cigarette smokers, initiation intentions among non-users) over concepts such as whether the warning is informative or grabs attention.

(Response) The purpose of the proposed study is to assess whether new cigarette health warnings increase

public understanding of the negative health consequences of cigarette smoking. The study does not focus on behavior.

(Comment) One comment stated that the study does not appear to include meaningful pretesting.

(Response) FDA disagrees with this assertion. As explained previously, the items in this proposed study were selected from prior studies on similar topics, including cigarette warnings. Additionally, the specific language used in the warning statements has been extensively tested in multiple qualitative studies and a large quantitative study conducted by FDA. The findings from those studies informed the development of warning statements, revisions to those statements, and the questions used to assess participant reactions (*e.g.,* beliefs) about the warnings.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response [2]	Total hours
Adult—Screener for pretest	456	1	456	0.03 hours (2 minutes)	14
Adult—Pretest	68	1	68	0.20 hours (12 minutes)	14
Adult—Screener for main data collection.	51,054	1	51,054	0.03 hours (2 minutes)	1,532
Adult—Main data collection (3 sessions).	7,460	1	7,460	0.42 hours (25 minutes)	3,133
Total Adult Hours					4,693
Adolescent—Screener for pretest	410	1	410	0.03 hours (2 minutes)	12
Adolescent—Pretest	32	1	32	0.20 hours (12 minutes)	6
Adolescent—Screener for main data collection.	29,487	1	29,487	0.03 hours (2 minutes)	885
Adolescent—Main data collection (3 sessions)	2,300	1	2,300	0.42 hours (25 minutes)	966
Total Adolescent Hours					1,869
Total Burden Hours					6,562

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The hours per response are rounded to two decimal places.

FDA's burden estimate is based on prior experience with research that is similar to this proposed study (OMB control number 0910–0848). Screening potential participants for the 2 pretests will occur with 866 respondents (456 adults and 410 adolescents) identified and recruited through the internet panel. Participants will complete the screening questionnaire through an email invitation. This brief screening will take an average of 2 minutes (0.03 hours) per respondent. If, based on this screening, participants qualify for the study, they will be automatically directed to begin the pretest. As previously mentioned, each of the 2 pretests conducted will consist of 50 respondents (34 adults and 16 adolescents in each) (100 total) during a single session and, we estimate an average of 12 minutes (0.20 hours) per respondent.

Screening potential participants for the main data collection will occur with 80,541 respondents (51,054 adults and 29,487 adolescents) identified and recruited through the same internet panel as used for the pretests. Participants will complete the screener questionnaire through an email invitation. This brief screening will take an average of 2 minutes (0.03 hours) per respondent. If, based on this screening, participants qualify for the study, they will be directed to begin Session 1. Recent national estimates of the numbers of adolescent current cigarette smokers, adolescents who are susceptible to initiation of cigarette smoking, young adult current cigarette smokers, and older adult current cigarette smokers informed the estimates of 14.6 percent qualification rate for adults and 7.8 percent qualification rate for adolescents. Applying these estimates and other assumptions from previous experience conducting similar studies to the number of adolescents and adults to be screened results in the desired sample size for the main data collection of 9,760 participants, of which 7,460 will be adults and 2,300 will be adolescents. The three sessions of the main data collection will take an average of 12 minutes (0.20 hours) for Session 1, 8 minutes (0.13 hours) for Session 2, and 5 minutes (0.08 hours) for Session 3, for a total of an estimated 25 minutes (0.42 hours) per respondent. The total estimated burden for the data collection is 6,561 hours (4,692 hours for adults + 1,869 hours for adolescents).

I. 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. Murphy, S.L., J. Xu, K.D. Kochanek. ''Deaths: Final Data for 2010''. *National Vital Statistics Reports,* 61(4):37–41, 2013.

2. U.S. Department of Health and Human Services. ''The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.'' Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2014.

3. Jamal, A., E. Phillips, A.S. Gentzke, *et al.* ''Current Cigarette Smoking Among Adults—United States, 2016''. *MMWR Morbidity and Mortality Weekly Report,* 67:53–59, 2018.

4. Centers for Disease Control and Prevention. ''Cigarette Smoking-Attributable Morbidity—United States, 2000''. *MMWR Morbidity and Mortality Weekly Report,* 52(35):842–844, 2003

5. Substance Abuse and Mental Health Services Administration (SAMHSA). See Table 4.10A in ''2016 National Survey on Drug Use and Health: Detailed Tables.''

Rockville, MD: U.S. Department of Health and Human Services, SAMHSA, Center for Behavioral Health Statistics and Quality; 2017.

6. Noar, S.M., Hall, M.G., Francis, D.B., et al. ''Pictorial Cigarette Pack Warnings: A Meta-Analysis of Experimental Studies''. *Tobacco Control,* 25:341–354, 2016.

Dated: December 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27658 Filed 12–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–4308]

Labeling of Red Blood Cell Units With Historical Antigen Typing Results; Guidance for Industry; 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 a final guidance entitled ''Labeling of Red Blood Cell Units with Historical Antigen Typing Results; Guidance for Industry.'' The guidance document provides establishments that collect blood and blood components for transfusion with recommendations for labeling Red Blood Cell (RBC) units with non-ABO/Rh(D) antigen typing results obtained from previous donations (historical antigen typing results). The guidance provides recommendations to transfusion services for managing RBC units labeled with historical antigen typing results. The guidance also provides licensed blood establishments that choose to implement labeling of RBC units with historical antigen typing results instructions regarding how to report the manufacturing and labeling changes under the biologics regulations. The guidance does not apply to test results for ABO and Rh(D) antigens. The guidance announced in this notice finalizes the draft guidance of the same title dated January 2017.

DATES: The announcement of the guidance is published in the **Federal Register** on December 21, 2018.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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 2016–D–4308 for ''Labeling of Red Blood Cell Units with Historical Antigen Typing Results; Guidance for Industry.'' 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)).

Submit written requests for single copies of the guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), 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 the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Melissa Segal, 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

FDA is announcing the availability of a document entitled ''Labeling of Red Blood Cell Units with Historical Antigen Typing Results; Guidance for Industry.'' The guidance document provides establishments that collect blood and blood components for transfusion with recommendations for labeling RBC units with historical antigen typing results. The guidance provides recommendations to transfusion services for managing RBC units labeled with historical antigen typing results. This guidance also provides licensed blood establishments that choose to implement labeling of RBC units with historical antigen typing results instructions regarding how to report the manufacturing and labeling changes under 21 CFR 601.12. The guidance does not apply to test results for ABO and Rh(D) antigens. For ABO and Rh(D) antigens, establishments must follow FDA requirements in 21 CFR 640.5(b) and (c), and 606.121(c)(9) and (13), as well as all other applicable requirements.

FDA's Blood Products Advisory Committee discussed this topic on December 4, 2012, and supported the concept of using historical RBC antigen typing results to label RBC units. AABB has revised its standards to include accommodations for labeling RBC units with historical RBC typing results. According to the 30th edition of the AABB Standards for Blood Banks and Transfusion Services, RBC units may be labeled as RBC antigen negative without testing the current donation if two previous separate donations were tested by the collection facility and results of RBC typing were found to be concordant. The standards indicate that facilities have the option to put the non-ABO/Rh(D) historical antigen typing results on a tie-tag or directly on the container label.

In the **Federal Register** of January 3, 2017 (82 FR 130), FDA announced the availability of the draft guidance of the same title dated January 2017. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated January 2017.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on labeling of red blood cell units with historical antigen typing results. 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.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that 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 guidance refers to the collections of information for putting the non-ABO/Rh(D) historical antigen typing results on a tie-tag or directly on the container label. These collections of information have been approved under OMB control number 0910–0862. The guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 601 and Form FDA 356h have been approved under OMB control number 0910–0338; and the collections of information in 21 CFR part 606 have been approved under OMB control number 0910-*0*116.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: December 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27654 Filed 12–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4455]

Developing and Submitting Proposed Draft Guidance Relating to Patient Experience Data; Draft Guidance for Industry and Other Stakeholders; 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 a draft guidance for industry entitled ''Developing and Submitting Proposed Draft Guidance Relating to Patient Experience Data.'' This draft guidance is being developed under the 21st Century Cures Act (Cures Act), which directs FDA to issue guidance on how a person seeking to develop and submit a proposed draft guidance relating to patient experience data for consideration by FDA may submit such proposed draft guidance to the Agency.

DATES: Submit either electronic or written comments on the draft guidance by March 21, 2019 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–4455 for ''Developing and Submitting Proposed Draft Guidance

Relating to Patient Experience Data.'' 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)). Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), 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 requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Pujita Vaidya, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1144, Silver Spring, MD 20993–0002, 301–796–0684, Fax: 301–847–8443, *pujita.vaidya@fda.hhs.gov;* 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

FDA is announcing the availability of a draft guidance for industry and other stakeholders entitled ''Developing and Submitting Proposed Draft Guidance Relating to Patient Experience Data.'' This draft guidance in being developed under section 3002(c)(5) of the Cures Act, which directs FDA to issue guidance on how a person seeking to develop and submit a proposed draft guidance relating to patient experience data for consideration by FDA may submit such proposed draft guidance to the Agency (see the Cures Act, *https://www.congress.gov/114/plaws/publ255/PLAW-114publ255.pdf*

Patient experience data should be collected and analyzed in a methodologically sound and fit-for-purpose manner. There are several options for contributing patient experience data to the medical product development and regulatory decision-making process. One option is for stakeholders to submit proposed recommendations and considerations informed by patient experience data in the form of a proposed draft guidance. Proposed draft guidance relating to patient experience data that is developed and submitted by external stakeholders can be helpful in bringing the patient's perspective into medical product development and regulatory decision-making.

As stated previously, submitting proposed draft guidance for FDA's consideration is not the only option for contributing patient experience data. Patients, caregivers, patient and disease advocacy groups, and other stakeholders with knowledge of or access to the patient community, may be well-positioned to also make broader contributions to advance medical product development. Recognizing that stakeholders may be interested in pursuing other pathways to contribute patient experience data, this draft guidance addresses questions relating to both guidance development and other potential pathways for contributing patient experience data.

In FDA's ''Plan for Issuance of Patient-Focused Drug Development Guidance'' (Plan), available at *https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM563618.pdf,* the Agency proposed issuing a draft guidance addressing this topic described in section 3002 of the Cures Act during the second quarter of 2018. FDA recognized that, like the other patient-focused drug development guidances described in the Plan, developing this draft guidance would also benefit from public input from the wider community of patients, patient advocates, academic researchers, expert practitioners, drug developers, and other stakeholders before FDA's drafting of the guidance. On March 19, 2018, FDA conducted a public workshop to discuss this topic. After the public workshop, FDA considered stakeholder input from the workshop and the public docket and is now publishing this draft 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 ''Developing and Submitting Proposed Draft Guidance Relating to Patient Experience Data.'' 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.

II. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: December 18, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–27657 Filed 12–20–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for ''Shape of Health: An Obesity Prevention Game''

AGENCY: Office on Women's Health, Office of the Assistant Secretary for Health, Department of Health and Human Services.

Subject of Challenge Competition: The Office on Women's Health (OWH) is seeking new ways to get health messages out to women and girls. According to the CDC, two out of every three women in the United States are overweight or obese.[1] This extra weight can lead to many diseases, such as heart disease, diabetes, and many cancers. Obesity results from a combination of causes and contributing factors, including individual factors such as behavior and genetics. Some examples of behaviors that affect weight include diet, physical activity, inactivity, and stress. Improving behaviors in these areas can help women and girls maintain a healthy weight.

Furthermore, American children today are increasingly unhealthy at earlier ages. According to the 2014 National Health and Nutrition Examination Survey (NHANES), of girls ages 2–19, 16 percent were overweight and 17.1 percent were obese.[2] Many children and teens do not eat properly or exercise enough and as a result, childhood obesity and diabetes are increasingly prevalent. Children with obesity may experience immediate health consequences that can lead to weight-related health problems in adulthood. In addition to physical health problems, overweight and obese children can be targets of social discrimination that can lead to low self-esteem and hinder social and academic functioning.

Video games are a unique medium to boost knowledge and skills and can lead to behavior change through exploration of cause and effect in a virtual environment. According to a Robert Wood Johnson project called ''Health Games Research,'' it was found that digital games can be effective in improving children's health in multiple health topics including physical fitness, health promotion, and disease management.[3] Additional evidence suggests adult learning and behavior change is also possible through gaming. A study in *JMIR Serious Games* found that women with a higher baseline readiness to change experienced improvement in BMI and nutrition with game play.[4]

Your challenge with this competition is to create an interactive video game with focus on obesity prevention or weight control for women or girls. The game you create will be shared with the general public. The game must address an evidence-based obesity prevention or control strategy. You must show that the game is unlike currently available offerings. The game must be made publically available at no cost as either a web-based or mobile based game available on a widely accessible platform.

For more information about obesity prevention or control strategies and guidelines view the CDC's resource here: *https://www.cdc.gov/obesity/resources/strategies-guidelines.html.*

The competition has three phases. All eligible submissions will be evaluated and separate prizes will be awarded for each of the three phases.

Registration Process for Participants

Participants will be able to register and submit a submission on challenge.gov. Participants can find out more information at *https://www.challenge.gov.* All submissions will be made through the challenge.gov website.

Dates: Submissions will be accepted starting January 15, 2019. The submission period for Phase 1 will end on March 15, 2019. The Phase 2 (In-Person Presentation) submission period will be on a date TBD in 2019. The prize winners will be announced at the completion of each phase.

Entries not in compliance with the submission requirements outlined below will be ineligible for further review and prize award. During the open submission period, participants must submit the following information to enter the Shape of Health competition:

Phase 1 (Concept Development)

The first stage of the competition aims to attract a large range of ideas and game developers. The target submission of the first stage will be the conceptualization of the most promising and/or unique game to help support behavior change around physical activity and/or nutrition to prevent obesity in women or girls. The submissions should aim to demonstrate that the proposed game will be accessible to the general public, developed from evidence-based prevention or control techniques, and engaging for women or girls.

The Phase 1 Submission shall include a comprehensive description of the proposed game in 5 pages or less, including:

1. A one-paragraph executive summary that clearly states how the game will target obesity prevention or control determinants and be developed for a women or girls audience;
2. Link evidence to support the obesity determinant chosen and the theoretical basis for the game (will your game change behavior? improve knowledge? something novel? etc.);
3. A descriptive overview of how the participant arrived at their idea, and why the approach is unlike anything already available;
4. A draft storyboard of the game that describes the game components; and
5. An assessment describing the participant's ability to execute the proposed solution through Phase 2 and to completion.

Your Shape of Health competition concept submission must be uploaded in challenge.gov.

Participants may also choose to include additional determinants that contribute to obesity not discussed in the provided resources. If additional determinants are included, the participant should include a short description of how these determinants may contribute to obesity and how this game will addresses these determinants.

Up to 10 selections will be made in Phase 1 to continue on to Phase 2.

Phase 2 (In-Person Presentation)

Phase 2 of the competition builds upon the work of Phase 1 and is focused on prototyping the game, and providing an in-person presentation to a panel of judges. The participants should demonstrate both the evidence base for the intervention and its viability.

The in-person presentation must include a description of how the following components are incorporated into the game:

- Relates to women or girls;
- Targets a determinant of obesity; and
- Engages the player

Selected participants must build out the storyboard submitted in Phase 1 to become a visual presentation of game play. The visual presentation of game play must be recorded into a video and available through a private YouTube link. OWH expects that the participants provide an in-person presentation,

[1] *https://www.cdc.gov/nchs/fastats/obesity-overweight.htm*

[2] *https://www.niddk.nih.gov/health-information/health-statistics/overweight-obesity.*

[3] *http://healthgamesresearch.org/our-publications/research-briefs/Game-Changer.*

[4] Shiyko, M., Hallinan, S., Seif El-Nasr, M., Subramanian, S., & Castaneda-Sceppa, C. (2016). Effects of Playing a Serious Computer Game on Body Mass Index and Nutrition Knowledge in Women. JMIR Serious Games, 4(1), e8. *http://doi.org/10.2196/games.4977.*

which includes a demonstration of the recorded presentation of game play.

Submissions must be free of security threats and/or malware. Participants agree that HHS may conduct testing on the submission to determine whether malware or other security threats may be present. HHS may disqualify the submission if, in HHS' judgment, the software may damage government or others' equipment or operating environment or if the game, in HHS' judgment, is inconsistent with HHS' public health mission, utilizes software or other technologies without appropriate licenses, or any other reason deemed necessary.

The expectation is that each team will use the prize money from Phase 1 for at least one person to travel to Washington, DC to deliver the in-person presentation.

Up to 2 selections will be made in Phase 2 to continue on to Phase 3

Phase 3 (Final Development)

Phase 3 builds upon the work of Phase 2 and is focused on the final development of the proposed game and making it available to the general public. Entrants are required to ensure that proper obesity prevention or control determinants are included in the final game. Participants are encouraged to discuss the proper obesity prevention or control determinants with OWH in order to make sure that they are included in the final game.

Basis upon Which Winners Will Be Selected: A panel composed of subject-matter experts will judge eligible Shape of Health competition entries. The panel will make winner selections based upon the criteria outlined below and in compliance with the *HHS Competition Judging Guidelines.*

One winner may be selected from each category (1 women's health and 1 girls' health).

Phase 1 Scoring Criteria

All Criteria are scaled 1–5, with 1 being the lowest score on each dimension and 5 being the highest score on each dimension. Scores are weighted by the proportion of each dimension and then aggregated to create a final score.

1. Viability of storyboard (30%)
   1 = Storyboard is not likely to be developed into a working game/5= Storyboard is likely to be able to developed into a working game
2. Application of research (20%)
   1 = Storyboard does not address evidence-based obesity prevention or control determinants/5 = Storyboard addresses evidence-based obesity prevention or control determinants
3. Relevancy of storyboard (20%)
   1 = Storyboard does not address obesity from a women/girls' health perspective/5 = Storyboard addresses obesity from a women/girls' health perspective
4. Originality of storyboard (15%)
   1 = Storyboard does not take a novel approach/5 = Storyboard takes a novel approach
5. Likelihood of adoption (15%)
   1 = Proposed game is not likely to be used by women/girls/5 = Proposed game is likely to be used by women/girls.

Phase 2 Scoring Criteria

All Criteria are scaled 1–5, with 1 being the lowest score on each dimension and 5 being the highest score on each dimension. Scores are weighted by the proportion of each dimension and then aggregated to create a final score. Judging criteria for Phase 2 include:

1. Viability of game (30%)
   1 = Demo is not likely to be developed into a working game/5= Demo is likely to be developed into a working game
2. Application of research (20%)
   1 = Game does not address evidence-based obesity prevention or control determinants/5 = Game addresses evidence-based obesity prevention or control determinants
3. Relevancy of game (20%)
   1 = Game does not address obesity from an women/girls' health perspective/5 = Game addresses obesity from a women/girls' health perspective
4. Originality of game (15%)
   1 = Game does not take a novel approach/5 = Game takes a novel approach35. Likelihood of adoption (15%)
   1 = Game is not likely to be used by women/girls/5 = Game is likely to be used by women/girls

Phase 3 Scoring Criteria (Pass/Fail)

The final prize money will be provided when the game:

- Is complete;
- includes the proper obesity prevention or control determinants; and
- is available to the general public on a widely accessible platform.

Amount of the Prize

- In Phase 1 (Concept Development), participants will compete for a $20,000 prize pot from which up to 10 submissions may be selected to receive a $2,000 prize each.
- In Phase 2 (In-person Demo), the 10 participants from Phase 1 will compete for a $70,000 prize pot. The following prizes may be awarded:
  - Two First Place winners of $20,000 (one girls' health, one women's health)
  - Two Second Place winners of $10,000 (one girls' health, one women's health)
  - Two Third Place winners of $5,000 (one girls' health, one women's health)
- In Phase 3 the First Place winners from Phase 2 may each be awarded an additional $55,000.
- All winners will be notified via email.

Eligibility Rules for Participating in the Competition: To be eligible to win a prize under this competition, an individual, group, or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HHS;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States;

(4) May not be a Federal entity or Federal employee acting within the scope of their employment (all non-HHS Federal employees must consult with their agency Ethics Official to determine whether the Federal ethics rules will limit or prohibit the acceptance of a COMPETES Act prize);

(5) Shall not be a Federal employee working on their applications or submissions during assigned duty hours;

(6) May not be an HHS employee;

(7) May not be any other individual or entity associated with the development, evaluation, or administration of the Shape of Health competition or members of such persons' immediate families (spouses, children, siblings, parents), and persons living in the same household as such persons, whether or not related;

(8) A Federal grantee may not use Federal funds to develop submissions unless consistent with the purpose of their grant award;

(9) A Federal contractor may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission;

(10) Must be an individual or team comprised only of members 18 years of age or older;

(11) Shall not be deemed ineligible because the individual or entity used federal facilities or consulted with

federal employees during a competition if the facilities and employees are made equitably available to all individuals and entities participating in the competition;

(12) Must provide a statement agreeing to indemnify the federal government against third party claims for damages arising from or related to competition activities;

(13) Must provide a statement agreeing to assume all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise.

(14) HHS has hereby waived the requirement for participants to obtain liability insurance in a specified amount for this competition. Participants are advised to consult with appropriate advisors to determine what amounts of insurance may be necessary for their own liability protection.

(15) Shall not be currently on the Excluded Parties List (*https://www.epls.gov*).

Additional Requirements

Entrants shall not use the OWH or HHS logos or official seals in their submissions, and must not claim endorsement.

HHS reserves the right to cancel, suspend, and/or modify the Shape of Health competition, or any part of it, for any reason, at HHS' sole discretion.

Payment of the Prize: Prizes awarded under this competition will be paid by electronic funds transfer and may be subject to Federal income taxes. HHS will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Intellectual Property (IP)

- Each entrant retains full ownership and title in and to their submission. Entrants expressly reserve all intellectual property rights not expressly granted under this publication notice.
- By participating in the competition, each entrant hereby irrevocably grants to HHS a limited, non-exclusive, royalty-free, worldwide license and right to reproduce, publically perform, publically display, and use the submission for internal HHS business and to the extent necessary to administer the competition, and to publically perform and publically display the submission, including, without limitation, for advertising and promotional purposes relating to the competition.
- Record Retention and FOIA: All materials submitted to HHS as part of a submission become HHS records and cannot be returned. Any confidential commercial information contained in a submission should be designated at the time of submission. Participants will be notified of any Freedom of Information Act requests for their submissions in accordance with 45 CFR 5.65.

SUPPLEMENTARY INFORMATION: Information on obesity prevention and control in women and girls can be found at:

https://www.cdc.gov/obesity/resources/strategies-guidelines.html

https://www.womenshealth.gov/a-z-topics/overweight-obesity-and-weight-loss

https://www.girlshealth.gov/nutrition/healthyweight/

Details on the Shape of Health competition may be found at *challenge.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Abercrombie at *Ann.Abercrombie@hhs.gov.*

Dated: November 28, 2018.

Brett Giroir,

ADM, Assistant Secretary for Health.

[FR Doc. 2018–27653 Filed 12–20–18; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: "Multifunctional RNA Nanoparticles and Methods of Uses" and "RNA/DNA Hybrid Nanoparticles Modified With Single Stranded RNA Toeholds and Uses Thereof"

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 Patent Applications listed in the Supplementary Information section of this notice to Sixfold Biosciences Inc., (''Sixfold'') of Walnut, California.

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 January 7, 2019 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an Exclusive Patent License should be directed to: Jasmine Yang, Sr. Licensing and Patenting 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)–276–5530; Facsimile: (240)-276–5504 Email: *jasmine.yang@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

A. Multifunctional RNA Nanoparticles and Methods of Uses

1. U.S. Provisional Patent Application (Application No. 61/878,758) filed September 17, 2013, HHS Reference No.: E–765–2013–0–US–01
2. PCT Application (Application No. PCT/US2014/056007) filed September 17, 2014, HHS Reference No.: E–765–2013–0–US–02
3. European Patent Application (Application No. 14780963.6) filed September 17, 2014, HHS Reference No.: E–765–2013–0–EP–03
4. Australian Patent Application (Application No. 2014321443) filed September 17, 2014, HHS Reference No.: E–765–2013–0–AU–04
5. Canadian Patent Application (Application No. 2,924,509) filed September 17, 2014, HHS Reference No.: E–765–2013–0–CA–05
6. Japanese. Patent Application (Application No. 2016–543964) filed September 17, 2014, HHS Reference No.: E–765–2013–0–JP–05
7. US Patent Application (Application No. 15/022,530) filed March 16, 2016, HHS Reference No.: E–765–2013–0–US–07

B. RNA/DNA Hybrid Nanoparticles Modified with Single Stranded RNA Toeholds and Uses Thereof

1. U.S. Provisional Patent Application (Application No. 62/294,848) filed February 12, 2016, HHS Reference No.: E–078–2016–0–US–01
2. PCT Application (Application No. PCT/US2017/017661) filed February 13, 2017, HHS Reference No.: E–078–2016–0–US–02
3. US Patent Application (Application No. 16/076,878) filed August 9, 2018, HHS Reference No.: E–078–2016–0–US–03
4. European Patent Application (Application No. 17706653.7) filed September 12, 2018, HHS Reference No.: E–078–2016–0–EP–04

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 where patent applications are filed and the field of use may be limited to ''Multifunctional RNA nanoparticle functionalized by RNA toeholds as a drug delivery agent carrying gene therapeutic or gene-editing cargo and/or aptamers''. Additional licensable fields of use are available (*e.g.* functionalized with proteins or imaging agent).

The technologies disclose RNA and RNA/DNA (''R/DNA'') nanoparticles in the form of a hexameric ring that have arms attached off the sides of the ring in which the arms could be siRNAs, RNA aptamers, fluorescent dyes, imaging agents and/or proteins in various combinations and use of single-stranded RNA toeholds of lengths of 12 nucleotides or less contained in nucleic acid-based nanoparticles, such as the nanoring, which trigger the association of these nanoparticles and activates multiple functionalities such as gene silencing and/or cell-specific targeting. 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 in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated; December 11, 2018.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2018–27671 Filed 12–20–18; 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, Interagency Pain Research Coordinating Committee Call for Committee Membership Nominations

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) (Department) has created the Interagency Pain Research Coordinating Committee (IPRCC) and is seeking nominations for this committee.

DATES: Nominations are due by 5 p.m. on January 25, 2019.

ADDRESSES: Nominations must be submitted through the webform on the IPRCC website: *https://iprcc.nih.gov/About/Membership-Agency-Representation/Nomination-Form.*

FOR FURTHER INFORMATION CONTACT: Linda Porter at 301–451–4460 or email at *porterl@ninds.nih.gov.*

SUPPLEMENTARY INFORMATION: As specified in Public Law 111–148 (''Patient Protection and Affordable Care Act'') and amended in H.R. 6, (''Support for Patients and Communities Act'') the Committee will:

(A) Develop a summary of advances in pain care research supported or conducted by the Federal agencies relevant to the diagnosis, prevention, treatment, and management of pain and diseases and disorders associated with pain, including information on best practices for the utilization of non-pharmacologic treatments, non-addictive medical products, and other drugs or devices approved or cleared by the Food and Drug Administration;

(B) identify critical gaps in basic and clinical research on

(i) the symptoms and causes of pain, including the identification of relevant biomarkers and screening models and the epidemiology of acute and chronic pain;

(ii) the diagnosis, prevention, treatment, and management of acute and chronic pain, including with respect to non-pharmacologic treatments, non-addictive medical products, and other drugs or devices approved or cleared by the Food and Drug Administration; and

(iii) risk factors for, and early warning signs of, substance use disorders in populations with acute and chronic pain;

(C) make recommendations to the Director of NIH

(i) to ensure that the activities of the National Institutes of Health and other Federal agencies are free of unnecessary duplication of effort;

(ii) on how best to disseminate information on pain care and epidemiological data related to acute and chronic pain; and

(iii) on how to expand partnerships between public entities and private entities to expand collaborative, cross-cutting research.

Membership on the committee will include six (6) non-Federal members from among scientists, physicians, and other health professionals and six (6) non-Federal members of the general public who are representatives of leading research, advocacy, and service organizations for individuals with pain-related conditions. Members will serve overlapping three year terms. It is anticipated that the committee will meet at least once a year.

The Department strives to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that the views of diverse ethnic and racial groups and people with disabilities are represented on HHS Federal advisory committees, and the Department therefore, encourages nominations of qualified candidates from these groups. The Department also encourages geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

The Department is soliciting nominations for 5 non-federal members from among scientists, physicians, and other health professionals and for 3 non-federal members of the general public who represent a leading research, advocacy, or service organization for people with pain-related conditions. These candidates will be considered to fill positions opened through completion of current member terms. Nominations are due by 5 p.m. on January 25, 2019, using the IPRCC nomination webform: *https://iprcc.nih.gov/About/Membership-Agency-Representation/Nomination-Form.*

Dated: December 11, 2018.

Walter J. Koroshetz,

Director, National Institute of Neurological Disorders and Stroke, National Institutes of Health.

[FR Doc. 2018–27737 Filed 12–20–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Production of Live Respiratory Syncytial Virus and Parainfluenza Virus Vaccines

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Commercialization Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Summary Information section of this notice to Medigen Vaccines Biologics Corp. (Medigen), having a place of business in Zhubei, Taiwan.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before January 7, 2019 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Commercialization Patent License should be directed to: Peter Soukas, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Suite 6D, Rockville, MD 20852–9804; Email: *ps193c@nih.gov;* Telephone: (301) 496–2644; Facsimile: (240) 627–3117.

SUPPLEMENTARY INFORMATION:

Intellectual Property

U.S. Provisional Patent Application Number 62/661,320, filed April 23, 2018 and entitled ''Chimeric Vaccines,'' [HHS Reference No. E–018–2018–0]; and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in this invention have been assigned to the Government of the United States of America.

The prospective exclusive licensed territory may be worldwide, and the field of use may be limited to: ''Live Respiratory Syncytial Virus (RSV) and Parainfluenza Virus (PIV) vaccines.''

Human respiratory syncytial virus (RSV) continues to be the leading viral cause of severe acute lower respiratory tract disease in infants and children worldwide. A licensed vaccine or antiviral drug suitable for routine use remains unavailable. This invention relates to the use of murine pneumonia virus (MPV), a virus to which humans normally are not exposed and that is not cross-protected with RSV, as a vector to express the RSV fusion (F) glycoprotein as an RSV vaccine candidate. The RSV F ORF was codon optimized. The RSV F ORF was placed under the control of MPV transcription signals and inserted at the first (rMPV–F1), third (rMPV29 F3), or fourth (rMPV–F4) gene position of a version of the MPV genome that contained a codon pair optimized L polymerase gene. The recovered viruses replicated in vitro as efficiently as the empty vector, with stable expression of RSV F protein. Replication and immunogenicity of rMPV–F1 and rMPV–F3 were evaluated in rhesus macaques following administration by the combined intranasal and intratracheal routes. Both viruses replicated at low levels in the upper and lower respiratory tract, maintained stable RSV F expression, and induced similar high levels of RSV-neutralizing serum antibodies that reached peak titers by fourteen (14) days post-vaccination. rMPV provides a highly attenuated yet immunogenic vector for the expression of RSV F protein, with potential application in RSV-naïve and RSV experienced populations. The technology relates to live, chimeric non-human Mononegavirales vectors that allow a cell to express at least one protein from at least one human pathogen as well as compositions comprising the vectors, methods and kits for eliciting an immune response in a host, and methods of making the vectors.

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 Institute of Allergy and Infectious Diseases 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.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent commercialization license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available. License applications submitted in response to this Notice will be presumed to contain business confidential information, and any release of information in these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: December 11, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–27674 Filed 12–20–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive Patent License: Production of Monovalent Live Attenuated Zika Vaccines and Multivalent Live Attenuated Zika and Dengue Vaccines

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a Co-Exclusive Commercialization Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Summary Information section of this notice to Medigen Vaccines Biologics Corp. (Medigen), having a place of business in Zhubei, Taiwan, and Panacea Biotec Ltd., having a place of business in New Delhi, India.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before January 22, 2019 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Co-Exclusive Commercialization Patent License should be directed to: Peter Soukas, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Suite 6D, Rockville, MD 20852–9804; Email:

ps193c@nih.gov; Telephone: (301) 496–2644; Facsimile: (240) 627–3117.

SUPPLEMENTARY INFORMATION:

Intellectual Property

U.S. Provisional Patent Application Number 62/307,170, filed March 11, 2016 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–US–01]; PCT Patent Application Number PCT/US2017/0021989, filed March 11, 2017 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–PCT–02]; Indian Patent Application Number 201817036778 filed September 28, 2018 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–IN–09]; and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in this invention have been assigned to the Government of the United States of America.

The prospective co-exclusive licensed territory may be limited to India, and the field of use may be limited to: ''Monovalent live attenuated Zika vaccines and multivalent live attenuated flavivirus vaccines.''

Zika virus (ZIKV) is an emerging infectious disease that was first identified in 1947, and that has more recently become a major public health threat around the world. ZIKV has recently been shown to cause devastating neurological damage in infants and serious complications in adults in some cases, and may have other effects that have not yet been identified or definitively linked to the virus. There are no treatments or vaccines for this insidious virus. Recommendations that women who live in or travel to endemic areas avoid pregnancy for long periods of time are unrealistic, particularly in contexts where access to reproductive services is limited, and threaten to leave those most likely to suffer the devastating consequences of Zika without effective protection. There is therefore urgent need to develop biomedical interventions in parallel with ongoing public health efforts against ZIKV.

No vaccine exists today to prevent ZIKV infections. The methods and compositions of this invention provide a means for prevention of ZIKV infection by immunization with live attenuated, immunogenic viral vaccines against ZIKV and/or Dengue virus.

Many entities, governmental, academic, and commercial, are actively pursuing development of ZIKV vaccines each using a different approach to address this public health need. The U.S. Government is coordinating its vaccine development response to ZIKV and has published this plan at *https://www.phe.gov/Preparedness/planning/Pages/zika-white-paper.aspx.*

Vaccine development approaches for ZIKV include but are not limited to inactivated virus (dead virus), live attenuated virus (weakened virus), recombinant viral vectors (weakened virus with target genes added), and subunit (portion of a virus) as well as mRNA- and DNA-based (gene-targeted). These various strategies provide multiple redundancies, expanded choice, and ensure short and long term maximal benefits to the public.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective co-exclusive license will be royalty bearing, and the prospective co-exclusive license may be granted unless within thirty (30) days from the date of this published notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive patent commercialization license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available. License applications submitted in response to this Notice will be presumed to contain business confidential information, and any release of information in these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: December 11, 2018,

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–27672 Filed 12–20–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive Patent License: Production of Monovalent Live Attenuated Zika Vaccines and Multivalent Live Attenuated Zika and Dengue Vaccines

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Commercialization Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Summary Information section of this notice to Fundacao Butantan (Butantan), having a place of business in Sao Paulo, Brazil.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before January 22, 2019 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Commercialization Patent License should be directed to: Peter Soukas, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Suite 6D, Rockville, MD 20852–9804; Email: *ps193c@nih.gov;* Telephone: (301) 496–2644; Facsimile: (240) 627–3117.

SUPPLEMENTARY INFORMATION:

Intellectual Property

U.S. Provisional Patent Application Number 62/307,170, filed March 11, 2016 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–US–01]; PCT Patent Application Number PCT/US2017/0021989, filed March 11, 2017 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–PCT–02]; U.S. Patent Application Number 16/083,652 filed September 10, 2018 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–US–14]; Canadian Patent Application Number 3016697 filed March 11, 2017 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–

2016–0–CA–05]; Mexican Patent Application Number MX/A/2018/010958 filed March 11, 2017 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–MX–12]; Brazilian Patent Application Number 1120180683426 filed September 11, 2018 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–BR–04]; Colombian Patent Application Number NC2018/0010874 filed March 11, 2017 and entitled ''Live Attenuated Zika Virus Vaccines,'' [HHS Reference No. E–118–2016–0–CO–07]; and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in this invention have been assigned to the Government of the United States of America.

The prospective exclusive licensed territory may be limited to the United States of America, Canada, Mexico, Brazil and Colombia, and the field of use may be limited to: ''Monovalent live attenuated Zika vaccines and multivalent live attenuated flavivirus vaccines.''

Zika virus (ZIKV) is an emerging infectious disease that was first identified in 1947, and that has more recently become a major public health threat around the world. ZIKV has recently been shown to cause devastating neurological damage in infants and serious complications in adults in some cases, and may have other effects that have not yet been identified or definitively linked to the virus. There are no treatments or vaccines for this insidious virus. Recommendations that women who live in or travel to endemic areas avoid pregnancy for long periods of time are unrealistic, particularly in contexts where access to reproductive services is limited, and threaten to leave those most likely to suffer the devastating consequences of Zika without effective protection. There is therefore urgent need to develop biomedical interventions in parallel with ongoing public health efforts against ZIKV.

No vaccine exists today to prevent ZIKV infections. The methods and compositions of this invention provide a means for prevention of ZIKV infection by immunization with live attenuated, immunogenic viral vaccines against ZIKV and/or Dengue virus.

Many entities, governmental, academic, and commercial, are actively pursuing development of ZIKV vaccines each using a different approach to address this public health need. The U.S. Government is coordinating its vaccine development response to ZIKV and has published this plan at *https://www.phe.gov/Preparedness/planning/Pages/zika-white-paper.aspx.*

Vaccine development approaches for ZIKV include but are not limited to inactivated virus (dead virus), live attenuated virus (weakened virus), recombinant viral vectors (weakened virus with target genes added), and subunit (portion of a virus) as well as mRNA- and DNA-based (gene-targeted). These various strategies provide multiple redundancies, expanded choice, and ensure short and long term maximal benefits to the public.

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 thirty (30) days from the date of this published notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are timely filed in response to this notice will be treated as objections to the grant of the contemplated exclusive patent commercialization license. In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available. License applications submitted in response to this Notice will be presumed to contain business confidential information, and any release of information in these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: December 11, 2018.

Suzanne M. Frisbie,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2018–27673 Filed 12–20–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Technology Transfer Centers (TTC) Network Program Monitoring—NEW

The Substance Abuse and Mental Health Administration's (SAMHSA) will monitor program performance of its Technology Transfer Centers (TTCs). The TTCs disseminate current behavioral health and HIV services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Healthcare Research and Quality National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the TTCs develop and update state-of-the-art, research-based curricula and professional development training.

The TTCs hold a variety of events: technical assistance events, meetings, trainings, and learning collaboratives. A TTC technical assistance event is defined as a jointly planned consultation generally involving a series of contacts between the TTC and an outside organization/institution during which the TTC provides expertise and gives direction toward resolving a problem or improving conditions. Technical assistance events can be categorized into universal, targeted and intensive. Other TTC events such as meetings, training, strategic planning and learning collaboratives are utilized to support technical assistance. These events are TTC-sponsored or co-sponsored events in which a group of people representing one or more agencies other than the TTC work cooperatively on a project, problem, and/or policy.

SAMHSA intends to use five (5) instruments for program monitoring of TTC events as well as ongoing quality improvement, which are described below.

1. *Event Description Form (EDF):* The EDF collects event information. This instrument asks approximately 10 questions of TTC faculty/staff relating to the event focus and format. It allows the TTCs and SAMHSA to track the number of events held (See Attachment 1).

2. *TTC Post Event Form—Domestic:* The Post Event Form—Domestic will be administered immediately following the event. It asks approximately 11 questions of each individual that participated in the event (Attachment 2). The instrument asks the participants

to report on general demographic information (gender, race, level of education, primary profession), principal employment setting, employment zip code, satisfaction with the event, if they expect the event to benefit them professionally, if they expect the event to change their practice and if they would recommend the event to a colleague.

3. *TTC Post Event Form—International:* The Post Event Form—International will be administered immediately following the event. It asks 9 questions of each individual that participated in the event (Attachment 3). The instrument is very similar to the Post Event Form—Domestic and asks the participants to report gender, highest degree received, principal employment setting, employment postal code, satisfaction with the event, if they expect the event to benefit them professionally, if they expect the event to change their practice and if they would recommend the event to a colleague. The main difference between the international and domestic versions of the post event forms is the modification of the demographic questions to make the forms appropriate for distribution outside the U.S. context and relevant to existing PEPFAR indicators. For example, the race/ethnicity questions from the domestic form are not included in the international form. Also, the personal code offers more spaces for characters to provide flexibility in how the personal code is constructed in different countries. Making these change assists SAMHSA in being culturally appropriate (*e.g.,* participants of events of the South Africa HIV ATTC could be offended by being asked if they are ''African American''; the concept of ''mother's maiden name'' does not exist in Vietnam). The change also makes the information better match the needs of PEPFAR, which provides the funding for these centers.

4. *TTC Follow-up Form—Domestic:* The Follow-up Form—Domestic will be administered 30-days after all events that last a minimum of three (3) hours. The form will be administered to a minimum of 25% of participants who consent to participate in the follow-up process. The form asks about 10 questions (Attachment 3). The instrument asks the participants to report if the information provided in at the event benefited their professional development, will change their practice, if they will use the information in their future work, if information will be shared with colleagues, how the event supported their work responsibilities, how the TTC can improve the events, what other topics would participants like to see TTCs address and in what format.

5. *TTC Follow-up Form—International:* The Follow-up Form—International will be administered 30-days after all events that last a minimum of three (3) hours. The form will be administered to a minimum of 25% of participants who consent to participate in the follow-up process. The form asks about 10 questions (Attachment 5). The instrument asks the participants to report if the information provided at the event benefited their professional development, will change their practice, if they will use the information in their future work, if information will be shared with colleagues, how the event supported their work responsibilities, how the TTC can improve the events, what other topics would participants like to see TTCs address and in what format. The only difference between the domestic and international follow-up forms is that the international form offers more spaces for characters for the personal code to provide flexibility in how the personal code is constructed in different countries. While the instruments administered immediately at the end of each event are given to all participants, the instruments administered 30 days after each event are sent to a random sample of 25% of those participants who consented to follow-up. This sampling rule applies to all events that last a minimum of three (3) hours.

The information collected on the TTC forms will assist SAMHSA in documenting the numbers and types of participants in TTC events, describing the extent to which participants report improvement in their professional development, and which method is most effective in disseminating knowledge to various audiences. This type of information is crucial to support SAMHSA in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual burden hours
ATTC Faculty/Staff					
Event Description Form	250	1	250	.25	62.50
Meeting and Technical Assistance Participants					
Post-Event Form	5,000	1	5,000	.12	600
Follow-up Form	Covered under CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB # 0930–0197)				
Training Participants					
Post-Event Form	30,000	1	30,000	.16	4,800
Follow-up Form	7,500	1	7,500	.16	1,200
Total	42,750		42,750		6,662.50
MHTTC Faculty/Staff					
Event Description Form	250	1	250	.25	62.50
Meeting and Technical Assistance Participants					
Post-Event Form	5,000	1	5,000	.12	600

Follow-up Form	Covered under CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB # 0930–0197)				
Training Participants					
Post-Event Form	30,000	1	30,000	.16	4,800
Follow-up Form	7,500	1	7,500	.16	1,200
Total	42,750		42,750		6,662.50
PTTC Faculty/Staff					
Event Description Form	250	1	250	.25	62.50
Meeting and Technical Assistance Participants					
Post-Event Form	5,000	1	5,000	.12	600
Follow-up Form	Covered under CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB # 0930–0197)				
Training Participants					
Post-Event Form	30,000	1	30,000	.16	4,800
Follow-up Form	7,500	1	7,500	.16	1,200
Total	42,750		42,750		6,662.50

SUMMARY TABLE

Instruments	Number of respondents	Responses per respondents	Burden hours
TTC Event Description Form	750	1	187.50
TTC Post Event Form—Domestic and International	105,000	1	16,200
TTC Follow up Form—Domestic and International	22,500	1	3,600
Total	128,250	1	19,987.50

Written comments and recommendations concerning the proposed information collection should be sent by January 22, 2019 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2018–27634 Filed 12–20–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) National Advisory Council (NAC) will meet on February 27, 2019, 9:00 a.m.–5:00 p.m. (EDT).

The meeting is open and will include consideration of minutes from the SAMHSA CSAT NAC meeting of August 1, 2018; the Director's Report; updates from the Division Directors; a budget update; discussions on recovery housing; discussions with SAMHSA leadership; and discussions expanding access to Medication-Assisted Treatment.

The meeting will be held at SAMHSA, 5600 Fishers Lane, Room 5N54, Rockville, MD 20857. Attendance by the public will be limited to space available and will be limited to the open sessions of the meeting. Interested persons may present data, information, or views, orally or in writing, on issues pending before the Council. Written submissions should be forwarded to the contact person on or before February 1, 2019. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person on or before February 1, 2019. Five minutes will be allotted for each presentation.

The open meeting session may be accessed via telephone. To attend on site, or to obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Meeting information and a roster of Council members may be obtained by accessing the SAMHSA Committee website at *http://www.samhsa.gov/about-us/advisory-councils/csat-*

national-advisory-council, or by contacting the CSAT National Advisory Council Designated Federal Officer; Tracy Goss (see contact information below).

Council Name: SAMHSA's Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: February 27, 2019, 9:00 a.m.–5:00 p.m. EDT, Open.

Place: SAMHSA, 5600 Fishers Lane, 5N54, Rockville, Maryland 20857.

Contact: Tracy Goss, Designated Federal Officer, CSAT National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–0759, Fax: (240) 276–2252, Email: *tracy.goss@samhsa.hhs.gov*.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2018–27637 Filed 12–20–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2018–1058]

Port Access Route Study: Alaskan Arctic Coast

AGENCY: Coast Guard, DHS.

ACTION: Notice of study; request for comments.

SUMMARY: In order to provide safe access routes for the movement of vessel traffic along the Arctic Coast of the United States for vessels proceeding to or from ports or places of the United States and transiting within the United States Exclusive Economic Zone (EEZ), the Coast Guard is conducting an Alaskan Arctic Coast Port Access Route Study (AACPARS) to evaluate the need for establishing vessel routing measures. The information gathered during this AACPARS may result in the establishment of one or more vessel routing measures. The goal of the AACPARS is to enhance navigational safety by examining existing shipping routes and waterway uses, and, to the extent practicable, reconciling the paramount right of navigation with other reasonable waterway uses. The recommendations of the study may lead to future rulemaking action or appropriate international agreements.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before September 1, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2018–1058 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: For information about this document call or email LCDR Michael Newell, Seventeenth Coast Guard District (dpw); telephone (907) 463–2263; email *Michael.D.Newell@uscg.mil* or Mr. David Seris, Seventeenth Coast Guard District (dpw); telephone (907) 463–2267; email *David.M.Seris@uscg.mil* or LT Stephanie Bugyis, Seventeenth Coast Guard District (dpw); telephone (907) 463–2265; email *Stephanie.M.Bugyis@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Comments

We encourage you to submit comments (or related materials) on the AACPARS. We will consider all submissions and may adjust our final action based on your comments. If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Comments should be submitted 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. Documents mentioned in this notice, and all public comments, are 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.

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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Public Meeting(s)

If requested, we plan to hold public meetings to receive oral comments on this NPRM and would announce the dates, times, and locations in a separate document published in the **Federal Register**. To receive an email notice whenever a comment or notice—including the notice announcing when any meetings are to be held, are submitted or issued, go to the online docket and select the sign-up-for-email-alerts option. When it is published, we will place a copy of the announcement in the docket and you will receive an email alert from *www.regulations.gov.*

Definitions

The following definitions (except as noted by an asterisk) are from the International Maritime Organization's (IMO's) publication ''Ships' Routing'' Twelfth Edition 2017 and should help you review this notice:

Area to be avoided (ATBA): A routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Deep-water route: A route within defined limits which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on the chart.

Exclusive economic zone (EEZ):* The zone established by Presidential Proclamation 5030, dated March 10, 1983 and delineated in the August 23, 1995, issue of the **Federal Register** (60 FR 43825).

Inshore traffic zone: A routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provisions of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (Collision Regulations).

Mandatory routing system: A routing system adopted by the Organization, in accordance with the requirements of regulation V/10 of the International Convention for Safety of Life at Sea 1974, for mandatory use by all ships, certain categories of ships or ships carrying certain cargoes.

Obstruction:* Anything that restricts, endangers, or interferes with navigation (33 CFR 64.06).

Precautionary area: A routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Recommended route: A route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Recommended track: A route which has been specially examined to ensure so far as possible that it is free of dangers and along which vessels are advised to navigate.

Regulated Navigation Area (RNA):* A water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Roundabout: A routing measure comprising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic within the roundabout is separated by moving in a counterclockwise direction around the separation point or zone.

Routing system: Any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two way routes, recommended tracks, areas to be avoided, no anchoring areas, inshore traffic zones, roundabouts, precautionary areas and deep-water routes.

Separation zone or separation line: A zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of ship proceeding in the same direction.

Structure:* Any fixed or floating obstruction, intentionally placed in the water, which may interfere with or restrict marine navigation (33 CFR 64.06).

Traffic lane: An area within defined limits in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS): A routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Two-way route: A route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

Background and Purpose

Requirement for Port Access Route Studies

Under the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223(c)), the Commandant of the Coast Guard may designate necessary fairways and traffic separation schemes (TSSs) to provide safe access routes for vessels proceeding to and from U.S. ports.

Previous Port Access Route Studies

The Coast Guard conducted a PARS in 1981 which focused on localized approaches for some Alaskan ports and Unimak Pass in the Aleutian Island Chain. Another PARS was conducted for the Bering Sea and Bering Strait region of Alaska to analyze the need and suitability of a vessel routing system for that region. Neither of these studies focused on the United States Arctic coast to analyze vessel traffic proceeding to or from ports and places of the United States and transiting within the United States Exclusive Economic Zone (EEZ), which will be the focus of this study.

Necessity for a New Port Access Route Study

Sea ice extent in the Arctic Ocean, Chukchi Sea, and Beaufort Sea is declining. These changes in the arctic are affecting the people, wildlife and habitat of the region which in turn has resulted in increased levels of government attention, media attention, scientific research, natural resource exploration, eco and adventure tourism, and increasing commercial use of the Northwest Passage and the Northern Sea Route as alternative shipping routes.

As the federal agency most responsible for coastal and marine spatial planning, the Coast Guard, via the PARS process, is initiating the study to analyze current vessel patterns, predict future vessel needs and balance the needs of all waterway users by developing and recommending vessel routing measures for the arctic coast.

PARS Timeline, Study Area, and Process

The PARS will begin upon publication of this **Federal Register** notice. The study is expected to take in excess of 48 months to complete due to the size and remoteness of the study area, expected difficulty in accessing and communicating with regional stakeholders at times when discussions will be most productive, the proximity to Canada, difficulty in predicting expected future changes in international shipping and other waterway uses, and the highly technical nature of scientific data available on the Arctic.

The study will encompass the entire EEZ of the United States Arctic coast from the border between the United States and Canada to Cape Prince of Wales on Alaska's Seward Peninsula.

As part of the study, the Coast Guard may analyze commercial vessel traffic, fishing vessel traffic, subsistence hunting and fishing activities, recreational activities, military activities, existing and potential outer continental shelf activities, port activities, environmental factors, economic effects and impacts, as well as other topics that may arise during the study process.

Specific areas of interest for initial public comment: The lack of historical information about actual vessel traffic patterns in U.S. Arctic waters, and how those patterns have changed over time, makes this PARS study unique. There are few instances where actual vessel track and density information will be available to analyze as potential routing measures are considered. Generic comments on vessels operating in U.S. Arctic waters are welcome and will be given due consideration, but at this stage in the AACPARS study, the Coast Guard is particularly interested in identifying specific locations, times, or instances where future vessel activity could increase significantly in density or cause specific undesirable consequences. Specific areas of concern include, but are not limited to:

1. Times and/or locations where vessel operations could cause significant consequences to species of concern, subsistence activities, marine mammal migration routes, or other equities.

2. Areas of known biological importance, such as the area of the Hanna Shoal, and whether they are of importance year round or only during specific times.

3. Specific times and locations of current and expected future subsistence activity.

4. Areas identified or expected to have high potential for Outer Continental Shelf resource development, to include oil/gas development, development of renewable energy sources, and extraction of seabed resources.

5. Onshore areas of particular environmental concern.

6. Areas where extreme weather or ice conditions that could impact navigation are expected to be present, now or in the future.

7. Any information on prevailing wind/current patterns and how they might change in the future in varying scenarios of decreasing or increasing sea ice coverage.

8. Any information on specific habitat characteristics (for example, water depth, ocean currents, or distances to or from land or sea ice) that tend to attract higher concentrations of marine mammals.

The Coast Guard will publish the results of the PARS in the **Federal**

Register. It is possible that the study may validate the status quo (no routing measures) and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and the efficiency of vessel traffic management. The recommendations may lead to future rulemakings or appropriate international agreements.

This notice is published under the authority of 5 U.S.C. 552(a).

Dated: December 4, 2018.

Melissa L. Rivera,

Captain, U.S. Coast Guard, Chief of Staff, Seventeenth Coast Guard District.

[FR Doc. 2018–27604 Filed 12–20–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2018–0045]

Public Meeting: 21st Century Customs Framework

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice of public meeting and request for public comments.

SUMMARY: U.S. Customs and Border Protection (CBP) is cognizant of the need to stay modern in order to meet the challenges of an evolving trade landscape. New actors, industries, and modes of conducting business have emerged, disrupting the traditional global supply chain. To continue to effectively fulfill CBP's mission, CBP is pursuing an initiative titled ''The 21st Century Customs Framework.'' ''The 21st Century Customs Framework'' will seek to address and enhance numerous aspects of CBP's trade mission to better position CBP to operate in the 21st century trade environment. Through preliminary efforts, CBP has identified key themes for which CBP seeks public input: Emerging Roles in the Global Supply Chain, Intelligent Enforcement, Cutting-Edge Technology, Data Access and Sharing, 21st Century Processes, and Self-Funded Customs Infrastructure. To that end, CBP is announcing a public meeting to discuss these themes. CBP will use the public comments received in response to this notice to initiate discussion at the public meeting for CBP to consider possible policy, regulatory, and statutory improvements to further the trade mission. CBP is already pursuing related efforts through the Border Interagency Executive Council and the Commercial Customs Operations Advisory Committee and is ensuring coordination among these initiatives.

DATES: *Meeting:* The meeting to discuss ''The 21st Century Customs Framework'' will be held on Friday, March 1, 2019, from 9:00 a.m. to 5:00 p.m. EST.

Pre-registration: Members of the public wishing to attend the meeting whether in-person or via teleconference must register as indicated in the **ADDRESSES** section by 5:00 p.m. EST, February 4, 2019.

Cancellation of pre-registration: Members of the public who are pre-registered to attend in-person or via teleconference and later need to cancel, please do so by 5:00 p.m. EST, February 22, 2019.

Submission of comments: Members of the public wishing to submit comments must do so by 5:00 p.m. EST, February 4, 2019 by the methods described in the **ADDRESSES** section.

ADDRESSES: *Meeting:* The meeting will be conducted in-person and via teleconference. The in-person meeting will be held at the U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The teleconference number will be provided to all registrants by 5:00 p.m. EST on February 28, 2019. For information on services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Brandon Lord, Office of Trade, U.S. Customs & Border Protection, at (202) 325–6432 or email, *21CCF@cbp.dhs.gov* as soon as possible.

Pre-registration: Meeting participants may attend either in-person or via teleconference after pre-registering using one of the methods indicated below. All in-person attendees must pre-register by 5:00 p.m. EST, February 4, 2019; on-site registration is not permitted.

For members of the public who plan to attend the meeting in-person, please register online at *https://teregistration.cbp.gov/index.asp?w=145.*

For members of the public who plan to participate via teleconference, please register online at *https://teregistration.cbp.gov/index.asp?w=146* by 5:00 p.m. EST, February 4, 2019.

Please feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered to attend and later need to cancel, please do so by 5:00 p.m. EST, February 22, 2019, utilizing the following links: *https://teregistration.cbp.gov/cancel.asp?w=145* to cancel an in-person registration or *https://teregistration.cbp.gov/cancel.asp?w=146* to cancel a teleconference registration.

Submission of comments: To facilitate public participation, we are inviting public comment on the six themes described below. Comments must be submitted in writing no later than February 4, 2019, must be identified by Docket No. USCBP–2018–0045, and may be submitted by *one* (1) of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 21CCF@cbp.dhs.gov.* Include the docket number (USCBP–2018–0045) in the subject line of the message.
- *Mail:* Mr. Brandon Lord, Office of Trade, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 950N, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number (USCBP–2018–0045) for this action. If you wish to give a public statement in-person during the meeting, please do not send your comments through the Federal eRulemaking portal as certain identification information is required for CBP to contact you, and all comments sent to the portal will be posted without change. Please do not submit personal information to the Federal eRulemaking portal. For those who wish to give a public statement in-person during the meeting, please send your comments to the email or mail address above, indicate your interest in speaking and include the following information: First and last name; title/position; phone number; email address; name and type of organization; and identify the theme you will speak to (each individual will be limited to one public statement on one theme). CBP will then post your comment on the docket without the personal information.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2018–0045. To submit a comment, click the ''Comment Now!'' button located on the top-right hand side of the docket page.

FOR FURTHER INFORMATION CONTACT: Mr. Brandon Lord, Office of Trade, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 950N, Washington, DC 20229; telephone (202) 325–6432 or email *21CCF@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

21st Century Customs Framework Initiative Overview

CBP is cognizant of the need to stay modern in order to meet the challenges of an evolving trade landscape. New actors, industries, and modes of conducting business have emerged, disrupting the traditional global supply chain. To continue to effectively fulfill CBP's mission, CBP is pursuing an initiative titled ''The 21st Century Customs Framework.'' ''The 21st Century Customs Framework'' will seek to address and enhance numerous aspects of CBP's trade mission to better position the agency to operate in the 21st century trade environment. Through preliminary efforts, CBP has identified key themes for which CBP seeks public input: (1) Emerging Roles in the Global Supply Chain; (2) Intelligent Enforcement; (3) Cutting-Edge Technology; (4) Data Access and Sharing; (5) 21st Century Processes; and (6) Self-Funded Customs Infrastructure. Brief descriptions of each theme are provided in this document along with the request for public comments on questions posed by CBP related to each theme.

Members of the public who wish to provide a public statement should follow the instructions under the Addresses section. Due to time and content considerations, it is possible that not all persons who express an interest in making a public statement will be able to do so. Speakers will be selected based on time considerations and to ensure the panel receives diverse, individual perspectives. CBP will begin selecting and contacting individuals to deliver public statements starting no earlier than February 11, 2019. Members of the public may submit as many written comments as they wish; however, any commenter who is selected to provide a public statement will be limited to one timeslot addressing one theme.

Agenda

21st Century Customs Framework Public Meeting

9:00 a.m.–5:00 p.m.—Public Statements and Open Public Comment on Themes

As described above, members of the public may submit as many written comments as they wish; however, any one individual will be selected for only one public statement theme and timeslot.

(1) Emerging Roles in the Global Supply Chain

Due to technological advances and new modes of conducting business, the modern international trade environment is marked by emerging actors and dynamic supply chains. CBP's traditional legal frameworks were developed to primarily reflect containerized shipments and the supply chain to support such shipments, as opposed to small packages and business models built around e-commerce. CBP is seeking to ensure that all parties in the modern supply chain are aware of their responsibilities to promote safety and compliance, while still enabling legitimate trade and economic prosperity.

Public Comment Questions

- What new roles in the global supply chain are unaccounted for in CBP's current legal framework? How should the agency account for these roles?
- How can CBP work with e-commerce platforms and carriers to identify and deter illicit shipments?
- How can new actors in the global supply chain work with CBP to improve trade security?

(2) Intelligent Enforcement

CBP's efforts on intelligent enforcement are anchored on further improving risk management and the impact of efforts to detect high-risk activity, deter non-compliance and disrupt fraudulent behavior—all in the interest of enforcing U.S. trade laws to protect America's economic security. CBP's intelligent enforcement efforts include exploring how to better utilize technology, big data, and predictive analytics to drive decision-making.

Public Comment Questions

- What technologies are useful in predicting violative activities and an entity's potential for violations?
- What tools or sources of information regarding CBP's compliance requirements have you found the most useful? What other resources can CBP provide to ensure that trade stakeholders understand CBP requirements?
- How can CBP improve violation referral systems and allegation processing?

(3) Cutting-Edge Technology

One of the defining features of the modern trade environment is the rapid emergence of new technology. CBP is exploring the use of new technologies to improve trade facilitation and trade enforcement activities.

Public Comment Questions

- What emerging technologies are most important for CBP to monitor or adopt?
- What technologies are being adopted by the private sector that are incompatible with CBP's current legal or policy frameworks?
- What technologies on the horizon have the potential to be a disruptive force (enabling or challenging) within the trade ecosystem?

(4) Data Access and Sharing

The volume and types of data and the speed at which the data can be transmitted create a valuable opportunity for CBP and trade stakeholders. CBP is examining how more efficient data sharing can improve trade facilitation and trade enforcement. At the same time, CBP is looking at ways to reduce the duplication or unnecessary capture of data.

Public Comment Questions

- What data would you like CBP to share with importers, and vice versa, to improve trade facilitation and enforcement?
- How can CBP's overall data sharing with trade stakeholders be improved?

(5) 21st Century Trade Processes

CBP will be refining certain import processes to reflect the modern trade environment, improve the experience of importers, brokers, and other important actors in the supply chain, and increase overall efficiency. CBP is placing a focus on processes that may be overly burdensome or outdated.

Public Comment Questions

- What specific import procedures or requirements can be improved or refined, and how?
- What are some international best practices (*i.e.,* processes used by other customs agencies) that CBP should examine?

*(6) Self-Funded Customs Infrastructure **

* There will be no in-person statements related to this theme.

New requirements affecting CBP, Partner Government Agencies (PGA), and trade industry will necessitate updates to the Automated Commercial Environment (ACE) outside of reoccurring maintenance. CBP is examining avenues to ensure that the ACE has a consistent stream of funding for enhancements and new functionalities.

Public Comment Questions

- Outside of the annual Congressional appropriations cycle, what mechanisms should CBP explore for consistent and timely funding for ACE enhancements?
- How could the fee collection process be streamlined, improved, or

redesigned to more directly fund ACE enhancements?

Dated: December 18, 2018.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2018–27716 Filed 12–20–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2018–0067]

Privacy Act of 1974; System of Records.

AGENCY: Department of Homeland Security.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) proposes to modify a current DHS system of records titled ''DHS/ALL–007 Accounts Payable System of Records.'' This system of records allows DHS to collect and maintain payment records. DHS is updating this system of records notice (SORN) to change the system location and clarify the authorities for which the records are collected. DHS is also expanding the categories of records collected by including invoices, receipts, and bank account numbers. DHS is modifying routine use E and adding routine use F to this SORN to comply with Office of Management and Budget (OMB) Memorandum M–17–12. Routine use L is also being modified to account for sharing payment information with the Department of Treasury to determine an individual's eligibility to receive federal payments. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

DATES: Submit comments on or before January 22, 2019. This modified system will be effective upon publication. New or modified routine uses will be effective January 22, 2019.

ADDRESSES: You may submit comments, identified by docket number DHS–2018–0067 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Philip S. Kaplan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2018–0067. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and for privacy issues, please contact: Philip S. Kaplan, *Privacy@hq.dhs.gov,* (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

DHS is modifying and reissuing DHS/ALL–007 Accounts Payable SORN. DHS uses records covered by this SORN to meet its obligation to manage Departmental funds and ensure that DHS pays its creditors, including DHS employees for travel related reimbursements, and ensures that DHS has an accurate accounting of money it owes. DHS is updating this SORN to provide notice that the location of financial management activities for all DHS Components will be housed at DHS facilities and on DHS information systems, instead of the Department of Interior as was stated in the previous SORN. DHS is also clarifying its authorities to collect accounts payable information.

The Department is expanding the categories of records contained in this SORN to include bank account information, invoices, and receipts, to more accurately reflect the financial records needed by DHS to verify monies owed and track payments to individuals. Further, routine use E is being modified and routine use F is being added to be in conformity with OMB Memorandum M–17–12. Routine Use L is being modified to incorporate information sharing with the Department of Treasury's ''Do Not Pay'' program, which determines federal eligibility for dispersment of payments by checking death records, federal debt records, and lists of sanctioned individuals. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

This system of records does not include information to enable travel service providers under contract to the Federal Government to authorize, issue, or account for travel and travel reimbursements provided to individuals on official Federal Government business, which are covered under GSA/GOVT–4 Contracted Travel Services Program, 74 FR 26700 (June 3, 2009), and GSA/GOVT–4 Contracted Travel Services Program, 74 FR 28048 (June 12, 2009).

Consistent with DHS's information sharing mission, information stored in the DHS/ALL–007 Accounts Payable system of records may be shared with other DHS Components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS may share information with appropriate federal, state, local, tribal, territorial, foreign, and international government agencies, members of the public, and other entities consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides covered persons with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is a description of the DHS/ALL–007 Accounts Payable System of Records. In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this revised system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER

Department of Homeland Security (DHS)/ALL–007 Accounts Payable.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at several Headquarters locations and in Component offices of DHS, in both Washington, DC and field offices.

SYSTEM MANAGER(S):

The Chief Financial Officer, Financial Management Division, *ocfo-fmd@hq.dhs.gov,* Department of Homeland Security, Washington, DC 20528.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701 *et seq.,* Travel, Transportation, and Subsistence; 44 U.S.C. 3101; 19 U.S.C. 1451; 31 U.S.C. 7701(c); the Chief Financial Officers Act of 1990, Public Law 101–576; Digital Accountability and Transparency Act (DATA Act) of 2014, Public Law 113–101, sec. 5; Debt Collection Improvement Act of 1996, Public Law 104–134; and 6 CFR part 11, subpart A—Debt Collection.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain information from individuals in connection with reimbursable services provided to DHS to ensure the Department properly pays these individuals. This system will allow DHS to maintain payment records and record monies owed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals include any individual or organization that serves as a creditor to DHS, including parties in interest for which reimbursable services are performed and employees for travel related reimbursements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system includes:

- Individual's name;
- Date of birth;
- Employee identification number;
- Tax identification number, which may be a Social Security number in certain instances;
- Addresses and other general contact information, such as phone numbers, facsimile numbers, or email addresses;
- Importer of record number;
- Records of expenses (bills, refund checks, receipts, out-of-pocket travel expenses);
- Records of payments;
- Disbursement schedules;
- Bank account information;
- Invoices
- Monies owed; and
- Electronic financial institution data.

RECORD SOURCE CATEGORIES:

Records are obtained from DHS, its Components and offices, and individuals submitting supporting documentation for reimbursement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any Component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when (1) DHS suspects or has confirmed that there has been a breach of the system of records; (2) DHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DHS (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

F. To another Federal agency or Federal entity, when DHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

I. To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114.

J. To the Merit Systems Protection Board, arbitrators, the Federal Labors Relations Authority, Equal Employment Opportunity Commission, and other parties responsible for the administration of the Federal Labor-Management Program for the purpose of processing any corrective actions, grievances, or conducting administrative hearings or appeals, or if needed in the performance of other similar authorized duties.

K. To federal agencies that provide financial management services for DHS Components under a cross-servicing agreement for purposes such as budgeting, purchasing, procurement, reimbursement, reporting, and collection functions.

L. To the Department of the Treasury to verify eligibility for payment and to effect disbursement of authorized payments.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public

interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

DHS stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name, tax identification number/Social Security number, employee identification number, or other personal identifier referenced in the categories of records in the system.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

DHS destroys records six years after final payment or cancellation, or longer if required for a business use, in accordance with National Archives and Records Administration (NARA) General Records Schedule 1.1, Financial Management and Reporting Records, item 010, and DAA–GRS–2013–0003–0001.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DHS safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and Headquarters or Component's Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contact Information.'' If an individual believes more than one Component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, Washington, DC 20528–0655. Even if neither the Privacy Act nor the Judicial Redress Act provide a right of access, certain records about you may be available under the Freedom of Information Act.

When an individual is seeking records about himself or herself from this system of records or any other Departmental system of records, the individual's request must conform with the Privacy Act regulations set forth in 6 CFR part 5. The individual must first verify his or her identity, meaning that the individual must provide his or her full name, current address, and date and place of birth. The individual must sign the request, and the individual's signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, an individual may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, the individual should:

- Explain why he or she believes the Department would have information on him or her;
- Identify which Component(s) of the Department the individual believes may have the information about him or her;
- Specify when the individual believes the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS Component agency may have responsive records.

If an individual's request is seeking records pertaining to another living individual, the person seeking the records must include a statement from the subject individual certifying his or her agreement for the requestor to access his or her records.

Without the above information, the Component(s) may not be able to conduct an effective search, and the individual's request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

For records covered by the Privacy Act or covered JRA records, individuals may make a request for amendment or correction of a record of the Department about the individual by writing directly to the Department component that maintains the record, unless the record is not subject to amendment or correction. The request should identify each particular record in question, state the amendment or correction desired, and state why the individual believes that the record is not accurate, relevant, timely, or complete. The individual may submit any documentation that would be helpful. If the individual believes that the same record is in more than one system of records, the request should state that and be addressed to each component that maintains a system of records containing the record.

NOTIFICATION PROCEDURES:

See ''Record Access Procedures.''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 58289 (September 28, 2015); 73 FR 61885 (October 17, 2008).

Philip S. Kaplan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2018–27606 Filed 12–20–18; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0028]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Petition To Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent To Disclose Information

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 22, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0028 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on July 17, 2018, at 83 FR 33248, allowing for a 60-day public comment period. USCIS did receive six comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0020 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition to Classify Orphan as an Immediate Relative; Application for Advance Processing of an Orphan Petition; Supplement 1, Listing of an Adult Member of the Household; Supplement 2, Consent to Disclose Information.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–600, Form I–600A, Form I–600A Supplement 1, Form I–600A Supplement 2; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. A U.S. prospective adoptive parent may file Form I–600A in advance of the Form I–600 filing and USCIS will make a determination regarding the prospective adoptive parent's eligibility to file Form I–600A and their suitability and eligibility to properly parent an orphan. A U.S. adoptive parent may file a petition to classify an orphan as an immediate relative through Form I–600 under section 101(b)(1)(F) of the INA. If a U.S. prospective/adoptive parent has an adult member of his or her household, as defined at 8 CFR 204.301, the prospective/adoptive parent must include the Supplement 1 when filing both Form I–600A and Form I–600. The U.S. prospective/adoptive parent files Supplement 2 to authorize USCIS to disclose case-related information to adoption service providers that would otherwise be protected under the Privacy Act, 5 U.S.C. 552a. Authorized disclosures will assist USCIS in the adjudication of Forms I–600A and I–600.

(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 Form I–600 is 1,200 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A is 2,000 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 1 is 301 and the estimated hour burden per response is 1 hour; the estimated total number of respondents for the information collection Form I–600A Supplement 2 is 1,260 and the estimated hour burden per response is 0.25 hours; the estimated total number of respondents for the Home Study information collection is 2,500 and the estimated hour burden per response is 25 hours; the estimated total number of respondents for the Biometrics information collection is 2,520 and the estimated hour burden per response is 1.17 hours; and the estimated total number of respondents for the Biometrics—DNA information collection is 2 and the estimated hour burden per response is 6 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 69,276 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 $7,679,232.

Dated: December 17, 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. 2018–27603 Filed 12–20–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0035]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Application To Adjust Status From Temporary to Permanent Resident

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 22, 2019.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0035 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on October 3, 2018, at 83 FR 49939, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0019 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–698; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. The data collected on Form I–698 is used by USCIS to determine the eligibility to adjust an applicant's residence status.

(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 Form I–698 is 100 and the estimated hour burden per response is 1.25 hours; the estimated total number of respondents for biometrics processing is 100 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 242 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 $49,000.

Dated: December 17, 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. 2018–27602 Filed 12–20–18; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–61]

30-Day Notice of Proposed Information Collection: Public Housing Reform Act: Changes to Admission and Occupancy Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* January 22, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Colette.Pollard@hud.gov,* or telephone 202–402–3400. This is not a toll-free

number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 11, 2018 at 83 FR 45954.

A. Overview of Information Collection

Title of Information Collection: Public Housing Reform Act: Changes to Admission and Occupancy Requirements.

OMB Approved Number: 2577–0230.

Type of Request: Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: This collection of information implements changes to the admission and occupancy requirements for the Public Housing program made by the Quality Housing and Work Responsibility (QHWRA) Act of 1998 (Title V of the FY 1999 HUD appropriations Act, Public Law 105–276, 112 Stat. 2518, approved October 21, 1998), and the Housing Opportunity Through Modernization Act of 2016 (HOTMA), section 103, which amends the United States Housing Act of 1937. Both QHWRA and HOTMA made comprehensive changes to HUD's Public Housing program. These changes include defining an 'over-income family' as one having an annual income 120 percent above the median income for the area for two consecutive years and includes new mandatory annual reporting requirements on the number of over-income families residing in Public Housing and the total number of families on the Public Housing waiting lists at the end of each reporting year. The purpose of the admission and occupancy policy requirement is to ensure that Public Housing Agencies (PHA) have written documentation of their respective admission and occupancy policies for both the public and the Department of Housing and Urban Development (HUD). Public Housing Authorities must have on hand and available for inspection, policies related to admission and occupancy, to respond to inquiries from tenants, legal-aid services, HUD, and other interested parties informally or through the Freedom of Information Act of policies relating to eligibility for admission and continued occupancy, local preferences, income limitations, and rent determination. HOTMA now requires PHAs to make a one-time update to their admission and occupancy policy to apply local over-income limits, and annually report on the number of over-incomes families living in their Public Housing units as well as the number of families on the Public Housing's waiting list. Revisions are made to this collection to reflect adjustments in calculations based on the total number of current, active Public Housing agencies (PHAs) to date. The number of active Public Housing agencies has changed from 3,946 to 2,897 since the last approved information collection which inadvertently also included voucher only PHAs. In general, the number of PHAs can fluctuate due to many factors, including but not limited to the merging of two or more PHAs or the termination of the Public Housing programs due to the Rental Assistance Demonstration.

Respondents (i.e. affected public): State, Local or Tribal Government.

Estimated Number of Respondents: 2,897.

Estimated Number of Responses: 2,897.

Frequency of Response: 1.

Average Hours per Response: 24.

Total Estimated Burdens: 69,528.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 11, 2018.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–27771 Filed 12–20–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7004–N–04]

60-Day Notice of Proposed Information Semi-Annual Labor Standards Enforcement Report Local Contracting Agencies (HUD Programs)

AGENCY: Field Policy and Management, Office of Davis Bacon and Labor Standards, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval for the proposed information collection requirement described below, and will be submitting to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 19, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Suzette Agans, Office of Field Policy and Management, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 7116 or the number (202) 402–5089, this is not a toll free number or email at *Suzette.M.Agans@hud.gov* or a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number though TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollards, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 402–3400 (this is not a toll free number) or email Colette Pollard at *Colette.Pollard@hud.gov* for copies of the proposed forms and other available information. Persons with hearing or speech impairments may access this number though TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for

review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Semi-Annual Labor Standards Enforcement Report Local Contracting agencies (HUD Programs).

OMB Control Number, if applicable: 2501–0019.

Description of the need for the information and proposed use: The Department of Labor (DOL) Regulations 29 CFR 5.7(b), requires Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. Some HUD programs are administered by state and local agencies for the labor standards compliance. HUD must collect information from such agencies in order to capture enforcement activities for all HUD programs in its reports to DOL.

Agency form numbers, if applicable: HUD FORM 4710, 4710i.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of annual burden hours is 18,400. Estimated number of respondents is 4,600, the frequency of response is semi-annually, and the burden hour per response is 2 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD 4710 Semi-annual Labor Standards Enforcement Report—Local Contracting Agencies	4,600	2	9,200	2	18,400	$36.24	$666,816.00
HUD 4710i Instruction to fill out the above form	0	0	0	0	0	0	0
Total	4,600	2	9,200	2	18,400	36.24	666,816.00

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 4, 2018.

Pamela Glekas Spring,

National Director, Office of Field Policy and Management/Davis Bacon Labor Standard and Enforcement.

[FR Doc. 2018–27770 Filed 12–20–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7003–N–02]

Notice of Proposed Information Collection; Comment Request: Section 3 Summary Report for Economic Opportunities for Low and Very Low-Income Persons (Form HUD 60002) and Section 3 Complaint Register (Form HUD 958)

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below is being submitted to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995, HUD is soliciting public comments from all interested parties on the subject proposal. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 19, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 4186 or email at *Colette.Pollard@hud.gov* for a copy the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

FOR FURTHER INFORMATION CONTACT: Stephanie Waller Thomas, Economic Opportunity Division, Office of Programs, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, Room 5236, telephone (202) 402–6938 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Proposal: (1) Section 3 Summary Report for Economic Opportunities for Low- and Very Low-Income Persons and (2) Section 3 Complaint Register.

OMB Control Number, if applicable: 2529–0043.

Form Number: Form HUD 60002 and Form HUD 958.

Description of the need for the information and proposed use: This is a revision to the previously approved information collection to correct the 2015 calculation of burden hours. Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) mandates recipients of covered HUD financial assistance to provide employment, training and contracting opportunities, to the greatest extent feasible, to low- and very low-income persons, particularly those who are recipients of government assistance for housing residing in the community where the funds are expended, and to the businesses that substantially employ these persons. The implementing

regulations are found at 24 CFR part 135.

The Section 3 Summary Report (Form HUD 60002) is used by recipients of HUD financial assistance (*i.e.,* public housing agencies, municipalities, and property owners) to report the number of jobs, training opportunities for eligible residents and the dollar amount contracting opportunities that have been generated from the expenditure of covered HUD financial assistance, as required at 24 CFR 135.90. Data collected on this form is used to assess the overall effectiveness of Section 3 and to make determinations of compliance with regulatory requirements.

The Section 3 Complaint Register (Form HUD 958) is used by individuals and business owners that meet the definition of a Section 3 resident or business concerns as set forth at 24 CFR part 135.5, or their representatives, to file complaints alleging noncompliance with the regulatory requirements of Section 3 against recipients of covered HUD financial assistance or their contractors. Information collected on this form is used to inform the Department about recipients that potentially are not complying with 24 CFR part 135, and to initiate subsequent complaint investigations and compliance reviews.

Members of the Affected Public

A. *Section 3 Summary Report—Form HUD 60002:* Staff at public housing agencies, municipalities and HUD multi-family property owners.

B. *Section 3 Complaint Register—Form HUD 958:* Low and very low-income residents and business concerns as defined in 24 CFR part 135.5.

Usage of Information

A. *Section 3 Summary Report—Form HUD 60002:* The information will be used by the Department to monitor program recipients' compliance with Section 3 requirements. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the regulatory objectives; make compliance determinations; influence enforcement actions; and formulate policy decisions.

B. *Section 3 Complaint Register—Form HUD 958:* Information collected on this form will be used to inform the Department about recipients who may not be in compliance with 24 CFR part 135, and to initiate subsequent complaint investigations and compliance reviews.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–60002	5,000	2	10,000	8	80,000	$22.71	$1,816,800
HUD–958	20	1	20	1	20	10.00	200

The 2015 Burden had a total of 90,180 hours of burden by adding 10,000 responses per annum for Form HUD 60002 to 20 hours for Form HUD 958 and then multiplying by 9 hours of burden. This calculation is incorrect. For 2015 the burden should have been 80,020 hours total. The above calculation corrects the number of burden hours and reduces the annual burden.

Status of the proposed information collection: Revision of a currently approved collection.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: December 11, 2018.

Anna Maria Farías,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2018–27765 Filed 12–20–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19EE000101000; OMB Control Number 1028–0115]

Agency Information Collection Activities; Request for Comments

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 19, 2019.

ADDRESSES: Send your comments on the information collection request (ICR) by mail to the U.S. Geological Survey, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0115 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Rich Frazier, Federal Geographic Data Committee Office of the Secretariat, by email at *fgdc@fgdc.gov,* or by telephone at 703–648–5733.

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 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 USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS 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 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 may 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 Doug D. Nebert NSDI Champion of the Year Award honors a respected colleague, technical visionary, and recognized national leader in the establishment of spatial data infrastructures that significantly enhance the understanding of our physical and cultural world. The award is sponsored by the Federal Geographic Data Committee (FGDC) and its purpose is to recognize an individual or a team representing Federal, State, Tribal, regional, and (or) local government, academia, or non-profit and professional organization that has developed an outstanding, innovative, and operational tool, application, or service capability used by multiple organizations that furthers the vision of the National Spatial Data Infrastructure (NSDI).

National nominations are accepted from the public and private sector individuals, teams, organizations, and professional societies. Nomination packages include three sections: (A) Cover Sheet, (B) Summary Statement, and (C) Supplemental Materials. The cover sheet includes professional contact information. The Summary Statement is limited to two pages and describes the nominee's achievements in the development of an outstanding, innovative, and operational tool, application, or service capability that directly supports the spatial data infrastructures. Nominations may include up to 10 pages of supplemental information such as resume, publications list, and/or letters of endorsement. The award consists of a citation and plaque, which are presented to the recipient at an appropriate public forum by the FGDC Chair. The name of the recipient is also inscribed on a permanent plaque, which are displayed by the FGDC.

Title of Collection: Doug D. Nebert NSDI Champion of the Year Award.

OMB Control Number: 1028–0115.

Form Number: None.

Type of Review: Extension without change of a previously approved collection.

Respondents/Affected Public: Personnel from Federal, State, Local, and Tribal governments; Private Sector; Academia; and Non-profit organizations.

Total Estimated Number of Annual Respondents: 10.

Total Estimated Number of Annual Responses: 10.

Estimated Completion Time per Response: 10 Hours.

Total Estimated Number of Annual Burden Hours: 100 Hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annual.

Total Estimated Annual Non-hour Burden Cost: None.

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 authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2018–27734 Filed 12–20–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0184]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Bureau of Indian Affairs Housing Improvement Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 22, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Mr. Les Jensen, Bureau of Indian Affairs, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240; or by email to *Leslie.Jensen@bia.gov.* Please reference OMB Control Number 1076–0184 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Les Jensen by email at *Leslie.Jensen@bia.gov,* or by telephone: (907) 586–7397.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 28, 2018 (83 FR 43892). No comments were received in response to this notice.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to 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: Submission of this information allows BIA to determine applicant eligibility for housing services based upon the criteria referenced in 25 CFR 256.9 (repairs and renovation assistance) and 256.10 (replacement housing assistance). Enrolled members of federally recognized tribes, who live within a tribe's designated and approved service area, submit information on an application form. The information is collected on a BIA Form 6407, ''Housing Assistance Application,'' and includes: Applicant information; family information including; income information; housing information including; land information; general information; and an applicant certification. The program also seeks OMB approval for two additional collections. The Tribal Annual Performance Report (TAPR) Excel workbook file, is a tool created to simplify the process for the tribal servicing housing office to verify eligibility, rank, and rate each application received. The Government Performance Results Act (GPRA) Reporting Form is a tool created to simplify the process for the tribal servicing housing office to report the amount of administrative and construction funds spent each quarter of the first fiscal year after receipt of HIP funding.

Title of Collection: Bureau of Indian Affairs Housing Improvement Program.

OMB Control Number: 1076–0184.

Form Number: BIA–6407, Tribal Annual Performance Report (TAPR) Excel workbook, and the Government Performance Results Act (GPRA) Reporting Form.

Type of Review: Revision of currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 12,292 per year, on average.

Total Estimated Number of Annual Responses: 12,523 per year, on average.

Estimated Completion Time per Response: Varies between 15 and 30 minutes.

Total Estimated Number of Annual Burden Hours: 5,185 hours.

Respondent's Obligation: A response is required to obtain a benefit.

Frequency of Collection: Once per year for the HIP Application, HIP Addendum, and TAPR workbook. Quarterly for the GPRA Reporting form.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2018–27693 Filed 12–20–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G]

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) owns or has an interest in irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We request your comments on the proposed rate adjustments.

DATES: Interested parties may submit comments on the proposed rate adjustments on or before *February 19, 2019.*

ADDRESSES: All comments on the proposed rate adjustments must be in writing and addressed to: Ms. Yulan Jin, Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4637–MIB, 1849 C Street NW, Washington, DC 20240, Telephone (202) 219–0941.

FOR FURTHER INFORMATION CONTACT: For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

SUPPLEMENTARY INFORMATION: The first table in this notice provides contact information for individuals who can give further information about the irrigation projects covered by this notice. The second table provides the proposed rates for calendar year (CY) 2019 for Fort Hall Irrigation Project and Colorado River Indian Irrigation Project and proposed rates for CY 2020 for all irrigation projects.

What is the meaning of the key terms used in this notice?

In this notice:

Administrative costs mean all costs we incur to administer our irrigation projects at the local project level and are a cost factor included in calculating your operation and maintenance assessment. Costs incurred at the local project level do not normally include agency, region, or central office costs unless we state otherwise in writing.

Assessable acre means lands designated by us to be served by one of our irrigation projects, for which we collect assessments in order to recover costs for the provision of irrigation service. (*See total assessable acres.*)

BIA means the Bureau of Indian Affairs.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand-deliver your bill will be stated on it.

Costs mean the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility. (*See* administrative costs, operation costs, maintenance costs, and rehabilitation costs).

Customer means any person or entity to whom or to which we provide irrigation service.

Due date is the date on which your bill is due and payable. This date will be stated on your bill.

I, me, my, you and *your* mean all persons or entities that are affected by this notice.

Irrigation project means a facility or portion thereof for the delivery, diversion, and storage of irrigation water that we own or have an interest in, including all appurtenant works. The term ''irrigation project'' is used interchangeably with irrigation facility, irrigation system, and irrigation area.

Irrigation service means the full range of services we provide customers of our irrigation projects. This includes our activities to administer, operate, maintain, and rehabilitate our projects in order to deliver water.

Maintenance costs means costs we incur to maintain and repair our irrigation projects and associated equipment and is a cost factor included

in calculating your operation and maintenance assessment.

Operation and maintenance (O&M) assessment means the periodic charge you must pay us to reimburse costs of administering, operating, maintaining, and rehabilitating irrigation projects consistent with this notice and our supporting policies, manuals, and handbooks.

Operation or operating costs means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

Past due bill means a bill that has not been paid by the close of business on the 30th day after the due date as stated on the bill. Beginning on the 31st day after the due date, we begin assessing additional charges accruing from the due date.

Rehabilitation costs means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and is a cost factor included in calculating your O&M assessment.

Responsible party means an individual or entity that owns or leases land within the assessable acreage of one of our irrigation projects and is responsible for providing accurate information to our billing office and paying a bill for an annual irrigation rate assessment.

Total assessable acres means the total acres served by one of our irrigation projects.

Water delivery is an activity that is part of the irrigation service we provide our customers when water is available.

We, us, and *our* mean the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this notice.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the internet site for the Government Printing Office at *http://www.gpo.gov.*

Why are you publishing this notice?

We are publishing this notice to inform you that we propose to adjust our irrigation assessment rates. This notice is published in accordance with the BIA's regulations governing its operation and maintenance of irrigation projects, found at 25 CFR part 171. This regulation provides for the establishment and publication of the proposed rates for annual irrigation assessments as well as related information about our irrigation projects.

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

When will you put the rate adjustments into effect?

We will put the rate adjustments into effect for CY 2019 and CY 2020.

How do you calculate irrigation rates?

We calculate annual irrigation assessment rates in accordance with 25 CFR part 171.500 by estimating the annual costs of operation and maintenance at each of our irrigation projects and then dividing by the total assessable acres for that particular irrigation project. The result of this calculation for each project is stated in the rate table in this notice.

What kinds of expenses do you consider in determining the estimated annual costs of operation and maintenance?

Consistent with 25 CFR part 171.500, these expenses include the following:

(a) Personnel salary and benefits for the project engineer/manager and project employees under the project engineer/manager's management or control;

(b) Materials and supplies;

(c) Vehicle and equipment repairs;

(d) Equipment costs, including lease fees;

(e) Depreciation;

(f) Acquisition costs;

(g) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(h) Maintenance of a vehicle and heavy equipment replacement fund;

(i) Systematic rehabilitation and replacement of project facilities;

(j) Contingencies for unknown costs and omitted budget items; and

(k) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project.

When should I pay my irrigation assessment?

We will mail or hand-deliver your bill notifying you (a) the amount you owe to the United States and (b) when such amount is due. If we mail your bill, we will consider it as being delivered no later than five business days after the day we mail it. You should pay your bill by the due date stated on the bill.

What information must I provide for billing purposes?

All responsible parties are required to provide the following information to the billing office associated with the irrigation project where you own or lease land within the project's assessable acreage or to the billing office associated with the irrigation project with which you have a carriage agreement:

(1) The full legal name of person or entity responsible for paying the bill;

(2) An adequate and correct address for mailing or hand delivering our bill; and

(3) The taxpayer identification number or social security number of the person or entity responsible for paying the bill.

Why are you collecting my taxpayer identification number or social security number?

Public Law 104–134, the Debt Collection Improvement Act of 1996, requires that we collect the taxpayer identification number or social security number before billing a responsible party and as a condition to servicing the account.

What happens if I am a responsible party but I fail to furnish the information required to the billing office responsible for the irrigation project within which I own or lease assessable land or for which I have a carriage agreement?

If you are late paying your bill because of your failure to furnish the required information listed above, you will be assessed interest and penalties as provided below, and your failure to provide the required information will not provide grounds for you to appeal your bill or any penalties assessed.

What can happen if I do not provide the information required for billing purposes?

We can refuse to provide you irrigation service.

If I allow my bill to become past due, could this affect my water delivery?

Yes. 25 CFR 171.545(a) states: ''We will not provide you irrigation service until: (1) Your bill is paid; or (2) You make arrangement for payment pursuant to § 171.550 of this part.'' If we do not receive your payment before the close of business on the 30th day after the due date stated on your bill, we will send you a past due notice. This past due notice will have additional information concerning your rights. We will consider your past due notice as delivered no later than five business days after the day we mail it. We follow the procedures provided in 31 CFR 901.2, ''Demand for Payment,'' when demanding payment of your past due bill.

Are there any additional charges if I am late paying my bill?

Yes. We will assess you interest on the amount owed, using the rate of interest established annually by the Secretary of the United States Treasury (Treasury) to calculate what you will be assessed. You will not be assessed this charge until your bill is past due. However, if you allow your bill to become past due, interest will accrue from the original due date, not the past due date. Also, you will be charged an administrative fee of $12.50 for each time we try to collect your past due bill. If your bill becomes more than 90 days past due, you will be assessed a penalty charge of six percent per year, which will accrue from the date your bill initially became past due. Pursuant to 31 CFR 901.9, ''Interest, penalties and administrative costs,'' as a Federal agency, we are required to charge interest, penalties, and administrative costs in accordance with 31 U.S.C. 3717.

What else will happen to my past due bill?

If you do not pay your bill or make payment arrangements to which we agree, we are required to send your past due bill to the Treasury for further action. Under the provisions of 31 CFR 901.1, ''Aggressive agency collection activity,'' Federal agencies should consider referring debts that are less than 180 days delinquent, and we must send any unpaid annual irrigation assessment bill to Treasury no later than 180 days after the original due date of the bill.

Who can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project name	Project/agency contacts
Northwest Region Contacts	
Bryan Mercier, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6702.	
Flathead Irrigation Project	Peter Plant, Acting Superintendent, Peter Plant, Irrigation Project Manager, P.O. Box 40, Pablo, MT 59855, Telephone: (406) 675–0207 ext. 1, Superintendent, (406) 745–2661 ext. 2, Project Manager.
Fort Hall Irrigation Project	David Bollinger, Irrigation Project Manager, Building #2 Bannock Ave., Fort Hall, ID 83203–0220, Telephone: (208) 238–6264.
Wapato Irrigation Project	David Shaw, Superintendent, Larry Nelson, Acting Project Administrator, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 865–2421, Superintendent, (509) 877–3155, Acting Project Administrator.
Rocky Mountain Region Contacts	
Robert 'Gabe' Morgan, Acting Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 2021 4th Ave. North, Billings, MT 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Thedis Crowe, Superintendent, Greg Tatsey, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Michael Addy, Acting Superintendent, Jim Gappa, Acting Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent, (406) 247–7998, Acting Irrigation Project Manager.
Fort Belknap Irrigation Project	Dave Hopkins, Acting Superintendent, Jim Gappa, Acting Irrigation Project Manager (BIA), (Project operations & maintenance contracted to Tribes), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–8466, Irrigation Project Manager (Tribal Office).
Fort Peck Irrigation Project	Howard Beemer, Superintendent, Huber Wright, Acting Irrigation Project Manager, P.O. Box 637, Poplar, MT 59255, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation Project Manager.
Wind River Irrigation Project	Norma Gourneau, Superintendent, Jim Gappa, Acting Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (406) 247–7998, Acting Irrigation Project Manager.
Southwest Region Contacts	
John D. Halliday, Acting Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, NM 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	Priscilla Bancroft, Superintendent, Vickie Begay, Irrigation Project Manager, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Project Manager.
Western Region Contacts	
Bryan Bowker, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N Central Ave., 4th Floor Mailroom, Phoenix, AZ 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Kellie Youngbear, Superintendent, Gary Colvin, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.

Project name	Project/agency contacts
Duck Valley Irrigation Project	Joseph McDade, Superintendent, (Project operations & management compacted to Tribes), 2719 Argent Avenue, Suite 4, Gateway Plaza, Elko, NV 89801, Telephone: (775) 738–5165, (208) 759–3100, Tribal Office.
Yuma Project, Indian Unit	Denni Shields, Superintendent, 256 South Second Avenue, Suite D, Yuma, AZ 85364, Telephone: (928) 782–1202.
San Carlos Irrigation Project Indian Works and Joint Works.	Ferris Begay, Project Manager, Clarence Begay, Irrigation Manager, 13805 N Arizona Boulevard, Coolidge, AZ 85128, Telephone: (520) 723–6225.
Uintah Irrigation Project	Antonio Pingree, Acting Superintendent, Ken Asay, Irrigation System Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Acting Superintendent, (435) 722–4344, Irrigation System Manager.
Walker River Irrigation Project	Robert Eben, Superintendent, 311 E Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are proposed for adjustment by this notice?

The rate table below contains: (1) Current rates for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them; (2) proposed rates for CY 2019 for Fort Hall Irrigation Project and Colorado River Irrigation Project, where after further review BIA proposes to revise the CY 2019 rates; and (3) proposed rates for CY 2020 for all Irrigation Projects. An asterisk immediately following the rate category notes the irrigation projects where rates are proposed for adjustment.

Project name	Rate category	Final 2018 rate	Final 2019 rate	Proposed 2020 rate
Northwest Region Rate Table				
Flathead Irrigation Project	Basic per acre—A	$29.00	$33.50	$33.50.
	Basic per acre—B	14.50	16.75	16.75.
	Minimum Charge per tract	75.00	75.00	75.00.
Fort Hall Irrigation Project (See Note #1).	Basic per acre*	56.00	57.00	58.50.
	Minimum Charge per tract	39.00	39.00	39.00.
Fort Hall Irrigation Project—Minor Units (See Note #1).	Basic per acre*	35.00	37.00	38.00.
	Minimum Charge per tract	39.00	39.00	39.00.
Fort Hall Irrigation Project—Michaud Unit (See Note #1).	Basic per acre*	59.50	62.00	63.50.
	Pressure per acre*	92.50	98.50	39.00.
	Minimum Charge per tract	96.00	39.00	
Wapato Irrigation Project—Toppenish/Simcoe Units.	Minimum Charge per bill	25.00	25.00	25.00.
	Basic per acre	25.00	25.00	25.00.
Wapato Irrigation Project—Ahtanum Units.	Minimum Charge per bill	30.00	30.00	30.00.
	Basic per acre	30.00	30.00	30.00.
Wapato Irrigation Project—Satus Unit.	Minimum Charge per bill	79.00	79.00	79.00.
	''A'' Basic per acre	79.00	79.00	79.00
	''B'' Basic per acre	85.00	85.00	85.00.
Wapato Irrigation Project—Additional Works.	Minimum Charge per bill	80.00	80.00	80.00.
	Basic per acre	80.00	80.00	80.00.
Wapato Irrigation Project—Water Rental.	Minimum Charge per bill	86.00	86.00	86.00.
	Basic per acre	86.00	86.00	86.00.
Rocky Mountain Region Rate Table				
Blackfeet Irrigation Project	Basic-per acre	20.00	20.00	20.00.
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic-per acre	28.00	28.00	28.00.
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic-per acre	28.00	28.00	28.00.
Crow Irrigation Project—Two Leggins Unit.	Basic-per acre	14.00	14.00	14.00.
Crow Irrigation Two Leggins Drainage District.	Basic-per acre	2.00	2.00	2.00.
Fort Belknap Irrigation Project.	Basic-per acre*	16.00	16.00	17.00.
Fort Peck Irrigation Project	Basic-per acre	26.50	27.00	27.00.

Project name	Rate category	Final 2018 rate	Final 2019 rate	Proposed 2020 rate
Wind River Irrigation Project—Units 2, 3 and 4.	Basic-per acre *	24.00	24.50	25.00.
Wind River Irrigation Project—Unit 6.	Basic-per acre	22.00	22.00	22.00.
Wind River Irrigation Project—LeClair District (See Note #2).	Basic-per acre	47.00	47.00	47.00.
Wind River Irrigation Project—Crow Heart Unit.	Basic-per acre	16.50	16.50	16.50.
Wind River Irrigation Project—A Canal Unit.	Basic-per acre	16.50	16.50	16.50.
Wind River Irrigation Project—Riverton Valley Irrigation District (See Note #2).	Basic-per acre	30.65	30.65	30.65.
Southwest Region Rate Table				
Pine River Irrigation Project.	Minimum Charge per tract	50.00	50.00	50.00
	Basic-per acre *	21.50	21.00	20.00
Northwest Region Rate Table				
Colorado River Irrigation Project (See Note #1).	Basic per acre up to 5.75 acre-feet *.	54.00	56.50	59.00
	Excess Water per acre-foot over 5.75 acre-feet *.	17.00	18.00	18.00
Duck Valley Irrigation Project (See Note #3).	Basic per acre *	5.30	(+)	(+)
Yuma Project, Indian Unit (See Note #4).	Basic per acre up to 5.0 acre-feet.	147.00	(+)	(+)
	Excess Water per acre-foot over 5.0 acre-feet.	30.00	(+)	(+)
	Basic per acre up to 5.0 acre-feet (Ranch 5).	147.00	(+)	(+)
San Carlos Irrigation Project (Joint Works) (See Note #5).	Basic per acre *	27.90	31.25	20.00
	Proposed 2020 Construction Water Rate Schedule:			
	Off Project Construction	On Project Construction—Gravity Water.	On Project Construction—Pump Water	
	Administrative Fee	300.00	300.00	300.00.
	Usage Fee	250.00 per month	No Charge	100.00 per acre foot.
	Excess Water Rate †	5.00 per 1,000 gal.	No Charge	No Charge.
	† The excess water rate applies to all water used in excess of 50,000 gallons in any one month.			
San Carlos Irrigation Project (Indian Works) (See Note #6).	Basic per acre *	87.60	95.40	86.00
Uintah Irrigation Project	Basic per acre *	20.00	21.00	23.00.
	Minimum Bill	25.00	25.00	25.00.
Walker River Irrigation Project.	Basic per acre	31.00	31.00	31.00.

+ These rates have not yet been determined. BIA will publish a separate notice for these rates at a later date.

* Notes irrigation projects where rates are proposed for adjustment.

Note #1—BIA will not implement the CY 2019 rates published on August 17, 2018 (**Federal Register** Notice 83 FR 41102) for the Fort Hall Irrigation Project and the Colorado River Irrigation Project. After further review, BIA proposes these CY 2019 O&M rates for both projects.

Note #2—O&M rates for LeClair and Riverton Valley Irrigation Districts apply to Trust lands that are serviced by each irrigation district. The annual O&M rates are based on budgets submitted by LeClair and Riverton Valley Irrigation Districts, respectively.

Note #3—The annual O&M rate is established by the Shoshone-Paiute Tribes who perform O&M under a self-governance compact.

Note #4—The O&M rate for the Yuma Project, Indian Unit has two components. The first component of the O&M rate is established by the Bureau of Reclamation (BOR), the owner and operator of the Project. BOR's rate, which is based upon the annual budget submitted by BOR, has not been established for 2019 and 2020. The second component of the O&M rate is established by BIA to cover administrative costs, which includes billing and collections for the Project. The proposed 2019 and 2020 BIA rate component is 3.50/acre.

Note #5—The construction water rate schedule proposes the fees assessed for use of irrigation water for non-irrigation purposes.

Note #6—The proposed 2020 O&M rates for the San Carlos Irrigation Project—Indian Works has three components. The first component is the O&M rate established by the San Carlos Irrigation Project—Indian Works, the owner and operator of the Project; this rate is proposed to be 50.00 per acre. The second component is for the O&M rate established by the San Carlos Irrigation Project—Joint Works and is determined to be 20.00 per acre for 2020. The third component is the O&M rate established by the San Carlos Irrigation Project Joint Control Board and is proposed to be 16.00 per acre for 2020.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

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 notice under the Department's consultation policy and under the criteria of Executive Order 13175 and have determined there to be substantial direct effects on federally recognized Tribes because the irrigation projects are located on or associated with Indian reservations. To fulfill its consultation responsibility to Tribes and Tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to, and request comments from, these entities when we adjust irrigation assessment rates.

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

The proposed rate adjustments are not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Regulatory Planning and Review (Executive Order 12866)

These proposed rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These proposed rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These proposed rate adjustments do not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or on the private sector, of more than $130 million per year. They do not have a significant or unique effect on State, local, or Tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

These proposed rate adjustments do not effect a taking of private property or otherwise have ''takings'' implications under Executive Order 12630. The proposed rate adjustments do not deprive the public, State, or local governments of rights or property.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, these proposed rate adjustments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This notice complies with the requirements of Executive Order 12988. Specifically, in issuing this notice, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These proposed rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires June 30, 2019.

National Environmental Policy Act

The Department has determined that these proposed rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(d), pursuant to 43 CFR 46.210(i). In addition, the proposed rate adjustments do not present any of the 12 extraordinary circumstances listed at 43 CFR 46.215.

Dated: December 6, 2018.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2018–27726 Filed 12–20–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS08000.L71220000.FR0000.LVTFC 1300040–18X]

Notice of Realty Action: Proposed Conveyance of Public Lands for Airport Purposes in Mesa County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined certain public lands in Mesa County, Colorado totaling 188.04 acres, and found them suitable for conveyance to the Grand Junction Regional Airport Authority (Airport Sponsor) under the provisions of Sec. 516 of the Airport and Airway Improvement Act of 1982.

DATES: Written comments must be received no later than February 4, 2019.

ADDRESSES: Mail written comments to Wayne Werkmeister, Acting Field Manager, BLM Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Written comments may also be submitted electronically at *BLM_CO_GJ_Public_Comments@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Robin Lacy, Realty Specialist, BLM Grand Junction Field Office, by email at *rlacy@blm.gov* or by telephone at 970–244–3028. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is

available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Airport Sponsor has requested the conveyance for a runway improvement project at the Grand Junction Regional Airport (Airport). The subject lands are adjacent to the northern boundary of the Airport. The proposal aligns with the Administration's priority to restore trust and be a good neighbor by engaging with the Airport Sponsor to provide ongoing, safe operations at the Airport that helps to modernize America's infrastructure. The proposal also aligns with the Administration's priority to increase revenues to support the Department and national interests through creating over 1,700 jobs for the local community over seven to ten years.

The BLM proposes to convey the following described lands:

Parcel A

Ute Principal Meridian

T. 1 N, R. 1 W,
Sec. 23, S½NE¼.

Parcel B

Ute Principal Meridian

T. 1 N, R. 1 E,
Sec. 19, lot 6;
Sec. 30, lots 6, 8, 9, and 11.
T. 1 N, R. 1 W,
Sec. 24, lots 2 and 3.

The area aggregates 188.04 acres.

The proposed conveyance conforms to the BLM Grand Junction Resource Management Plan (RMP), approved August 2015. The parcels are identified as appropriate for land tenure for airport purposes in the RMP Record of Decision (L&R–AU–07). The BLM used the land tenure criteria found in Sec. 203(a)(3) of the Federal Land Policy and Management Act (FLPMA), which states ''disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.''

The Airport Sponsor, through the U.S. Department of Transportation (DOT), and the Federal Aviation Administration (FAA), has requested conveyance of the parcels in connection with the Airport Runway Improvement Project. The FAA determined that the public lands are necessary for the runway improvement project. The project involves correcting several non-standard airfield components to meet FAA design standards and enhance public safety, which includes replacing and relocating the primary commercial service runway, to meet FAA design standards and enhance public safety. The existing runway will remain in use until the new runway is constructed. The FAA has determined that the identified public lands are necessary for airport purposes.

The BLM proposes to convey title to the Airport Sponsor under Sec. 516 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 47125), and processed in accordance with regulations at 43 CFR part 2640. In accordance with the DOT Act Sec. 4(f) (49 U.S.C. 303), the Airport Sponsor will provide up to $250,000 to construct a parking/staging area on public land for recreation users visiting the Grand Valley Off-Highway Vehicle Open Area. The Grand Valley Open Area is adjacent to the airport and the parking/staging will mitigate removing the proposed conveyance lands from public recreational use. In conformance with the National Environmental Policy Act, the BLM prepared a site-specific Environmental Assessment (EA) document (DOI–BLM–CO–130–2013–0020–EA) for this Notice of Realty Action. A copy of the EA is available online at *https://go.usa.gov/xPrMW.* Based on the EA, the BLM approved a Finding of No Significant Impact and a Decision Record on March 15, 2018, to implement the conveyance of the lands.

By publishing this notice in the **Federal Register**, the above-described lands will segregate from all forms of appropriation under the public land laws, including the mining laws, except for conveyance under the Airport and Airway Improvement Act of 1982. The segregation will terminate automatically upon issuance of a patent or on December 21, 2019, whichever occurs first.

The patent, if issued, will contain the following reservations to the United States:

1. A right-of-way for ditches or canals constructed under the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals in the lands, together with the right to access, mine and remove the same under applicable laws and regulations. The Secretary of the Interior reserves the right to determine whether such mining and removal of minerals will interfere with the development, operation and maintenance of the airport.

Conveyance of the lands will be subject to valid existing rights of record, including those rights for power transmission line purposes granted by right-of-way No. COC–061164, pursuant to the Act of February 15, 1901 (43 U.S.C. 959).

Conveyance of the public lands will contain the following covenants:

1. The Airport Sponsor will use the conveyed property for airport purposes and will develop that property for airport purposes within five years or as set forth in the conveyance instrument, deed or quitclaim instrument. Any interim use will be subject to terms and conditions as set by the FAA.

2. The Airport Sponsor will operate the Airport, together with its appurtenant areas, buildings, and facilities, regardless of whether they are on the land being conveyed, as a public use airport on fair and reasonable terms and without unjust discrimination.

3. The Airport Sponsor will not grant or permit any exclusive right in the operation and use of the Airport, together with its appurtenant areas, buildings, and facilities, regardless of whether they are on the land being conveyed, as required by Sec. 303 of the Federal Aviation Act of 1938, as amended, and Sec. 308(a) of the Federal Aviation Act of 1958, as amended.

4. Any subsequent transfer of the conveyed property interest to another non-federal public entity will be subject to the terms, conditions and covenants set forth in the original instrument of conveyance. If the land conveyed is no longer needed for airport purposes, the land may revert to the U.S. Government.

5. In the event of a breach of any term, condition or covenant contained in the conveyance instrument, the Airport Sponsor will, on demand, take such action as required to transfer ownership of the conveyed premises to the U.S. Government.

6. The terms, conditions, covenants and other federally obligating provisions in conveyance instruments remain in force and effect as long as the land is held by the Airport Sponsor, its successors or assignees.

The EA, maps, terms and conditions, and Environmental Site Assessment are available for review. Interested parties may submit, in writing, any comments concerning the conveyance, including notifications of any encumbrances or other claims relating to these parcels, to the address above (see **ADDRESSES** section).

The BLM Colorado State Director or other authorized official of the Department of the Interior (DOI) will review adverse comments regarding the parcels and may sustain, vacate or

modify this realty action, in-whole or in-part. In the absence of timely objections, this realty action will become the DOI's final determination.

In addition to publication in the **Federal Register**, the BLM will also publish this notice in the *Grand Junction Daily Sentinel* newspaper once a week for three consecutive weeks.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that the BLM may make your entire comment—including your personal identifying information—publicly available at any time.

While you can ask us, in your comment, to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR part 2640)

Jamie Connell,

BLM Colorado State Director.

[FR Doc. 2018–27848 Filed 12–20–18; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027075]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to TVA at the address in this notice by January 22, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of TVA, Knoxville, TN. The human remains and associated funerary objects were removed from Franklin County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by TVA professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

From June–August, 1976, human remains representing, at minimum, 122 individuals were removed from the Hester site, 1FR311, in Franklin County, AL. This site was excavated as part of TVA's Cedar Creek Reservoir project by the Alabama Museum of Natural History (AMNH) at the University of Alabama. Excavation commenced after TVA acquired the land encompassing 1FR311 on May 5, 1976, for the Cedar Creek project. Material culture recovered from this site indicates it was primarily occupied during the Middle Woodland Copena phase (AD 100—500). The human remains are of children, juveniles and adults. Most of the human remains were too fragmentary to determine sex. The 105 associated funerary objects are 59 copper beads, 17 pieces of galena, 23 conch shell vessel fragments, three greenstone celts/spades, and three Hillabee schist spades.

From July–August, 1973, human remains representing, at minimum, 81 individuals were removed from the Massey Mound, 1FR520, in Franklin County, AL. This site was excavated as part of TVA's Little Bear Creek reservoir project by the AMNH at the University of Alabama. TVA purchased the land encompassing this site on October 28, 1968.

Site 1FR520 is a mortuary stone mound approximately 30 feet in diameter and two to three feet high situated on a ridge overlooking the confluence of Little Bear Creek and Trace Branch. It was used primarily during the Middle Woodland Lick Creek phase (AD 1—300). The human remains represent infants, juveniles and adults. Most of the human remains were too fragmentary to determine sex. The 26 associated funerary objects are one chert biface, 24 fragments of turtle shell, and one bag of mussel shell fragments.

From August–September, 1977, human remains representing, at minimum, 26 individuals were excavated from the Hendrix site, 1FR562, in Franklin County, AL. This site was excavated as part of TVA's Cedar Creek reservoir project by the AMNH at the University of Alabama. TVA purchased the land encompassing this site on July 28, 1976.

Site 1FR562 is a village site that was occupied primarily during the Late Archaic (4000–1000 B.C.) and Middle Woodland Lost Creek phase (A.D. 500–700). The human remains represent adults, juveniles, children and infants. Most of the human remains were too fragmentary to determine sex. The 45 associated funerary objects are two chert cores, one soil sample, 20 red ochre fragments, 10 bone fragments, two bone billets, four antler tine tools, one bone fid, one bone awl, one piece of ground sandstone, two sandstone bowls and one turtle shell fragment.

From November–December, 1972, human remains representing, at minimum, 178 individuals were removed from the Carpenter Mound, 1FR594, in Franklin County, AL. This site was excavated as part of TVA's Little Bear Creek reservoir project by the AMNH at the University of Alabama.

TVA purchased the land encompassing this site on June 12, 1968.

Site 1FR594 is a mortuary stone mound that was primarily used during the Middle Woodland Lick Creek phase (A.D. 1–300). Its ''donut shape'' is the result of looting. When excavators systematically disassembled this stone mound, they found human remains interspersed among the stone slabs. Some burials appear to have been primary inhumations topped by stone, while others appeared to contain human remains that had been cremated or defleshed elsewhere and then placed among the stones. The excavators did not note any prehistoric habitation adjacent to this stone mound. The human remains represent infants, juveniles and adults. Most of the remains were too fragmentary to determine sex. There are no associated funerary objects.

Determinations Made by the Tennessee Valley Authority

Officials of Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent are Native American, based on their presence in prehistoric archeological sites and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 407 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 176 funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma.
- The Treaty of September 20, 1816, indicates that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma. The Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma have declined to accept transfer of control of the human remains.
- Pursuant to 43 CFR 10.11(c)(4), TVA has decided to transfer control of the funerary objects associated with the culturally unidentifiable human remains to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Chickasaw Nation may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27708 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027071; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UTK. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UTK at the address in this notice by January 22, 2019.

ADDRESSES: Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Tennessee, Department of Anthropology, Knoxville, TN. The human remains and associated funerary objects were removed from Bedford County, Lincoln County, and Stewart County TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by UTK professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

Circa 1969, human remains representing, at minimum, nine individuals were removed from 40BD1, the Garrett site in Bedford County, TN, under the auspices of the Tennessee Archaeological Society and the Middle Tennessee State University Archaeology Club. At an unknown date, likely between 1969 and 1976, the human remains were transferred to UTK. The project was described as a salvage excavation by avocational archaeologists

before highway construction began in 1969. Burial 01 is a possible female, middle age adult (35–50 years). Burial 01A is a possible male, middle to old age adult (35–50+ years). Burial 1 is an infant, sex unknown, approximately 9 to 12 months old. Burial 02 is a female, middle age adult (30–50 years). Burial 2 is an adult individual, sex indeterminate. Burial 3 is a probable female, middle age (35–50?). Burial 4 is a probable female, age 45–49 years old. Burial 4A is an infant, sex unknown, 36–40 weeks. Burial F4 is a middle age adult, sex indeterminate. No known individuals were identified. The 4779 associated funerary objects include: 2114 chert waste flakes, 27 bifacially worked tools or tool fragments, one core fragment, two gravers, one projectile point base, one piece of ochre, 130 pieces of burned clay, one ceramic sherd, 1981 faunal bones and teeth (of which 53 show evidence of polishing), 518 fragments of gastropod and mussel shell, two pieces of charcoal and one bag of sediment. The projectile point base is identified as a Morrow Mountain Straight Base type, which dates to the Middle Archaic Period (circa 5200 to 5000 B.C.). According to an unpublished report on this site (McMahan 1976), the presence of a large quantity of chipped and ground stone tools date this site to the Middle Archaic Period (~5200 to 4000 B.C.). Upon reading this report, it is clear that additional lithic artifacts (potentially funerary objects) were never transferred to UTK.

Between 1968 and 1970, human remains representing, at minimum, one individual were removed from 40BD48, the Garrett site in Bedford County, TN, under the auspices of the Rutherford Chapter of the Tennessee Archaeological Society. At an unknown date post 1970, the human remains were transferred to UTK. Burial 1 is an infant, sex unknown, approximately 38 weeks old. No known individuals were identified. The 88 associated funerary objects are all small fragments of faunal bone. The site is thought to date to the Early Archaic and Woodland periods based on analysis of projectile points found at the site (which were never transferred to UTK).

Circa 1971, human remains representing, at minimum, two individuals were removed from 40LN10, possibly also known as the Mulberry site, in Lincoln County, TN. The human remains were removed by the landowner when he was digging to create a pond. Members of the Tennessee Archaeological Society (TAS), Coffee-Franklin County Chapter, recorded the site in 1971, noting that the northern portion of the site had been destroyed. At an unknown date post 1971, the human remains were transferred to UTK. One individual is an adult female, age 45 to 50 years. The other individual is an adult, possibly a young adult (20–35 years?), possibly female. No known individuals were identified. The 1295 associated funerary objects include: 630 lithic waste flakes, 132 pieces of shatter, 46 bifacially worked tools or tool fragments, 11 scrapers, 47 projectile point fragments, 27 pieces of limestone, 38 non-culturally modified rocks, two pieces of burned limestone, 15 fossils, three pieces of sandstone, five pieces of ochre, 123 pieces of burned clay, 159 ceramic sherds, 28 faunal bones, two faunal teeth, four pieces of burned wood charcoal, five burnt nut shell pieces, two possible seeds, two pieces of charcoal and 14 bags of sediment. The projectile points and knives include stemmed and notched types, such as New Market, Frazier, Elora, Buzzard Roost Creek, Hardin, Kirk, Pickwick, Little Bear, and Hopewell and indicate a temporal affiliation for this site ranging from the Early Archaic throughout the Woodland time periods. One projectile point appears to be a Plainview type, and may represent a Transitional Paleo Period point. Upon reading the TAS report, it is clear that additional lithic artifacts (potentially funerary objects) were found but were never transferred to UTK.

At an unknown date, likely post 1965, human remains representing, at minimum, one individual, were removed from 40LNxx, the Danny Good site in Lincoln County, TN. At an unknown date, likely post 1965, this individual was transferred to UTK. A note accompanying the human remains (source and date unknown) states that Danny Good encountered a skeletal individual while plowing his field, and this individual was excavated by Jerry Dickey of Lynchburg, TN, a member of the Tennessee Archaeological Society. This skeletal individual is an adult male, age 35 to 39. No known individuals were identified. The 108 associated funerary objects include: 14 waste flakes, 28 bifacially worked tools including a preform, graver, and drill fragment, 24 fragmentary projectile points, 33 ceramic vessel sherds, seven faunal bones, and two pieces of shell. The projectile points include Ledbetter, Elk River, Mulberry Creek, Eva, Maples, Rice, Kirk, King, and Benton types, which range in age from the Early Archaic and into the Woodland time periods, roughly from B.C. 8,000 to A.D. 900 (Justice 1987). The 33 ceramic vessel sherds are all limestone tempered; 31 are plain or have a cordmarked surface treatment. One check stamped sherd and one complicated stamped sherd are also present. Check stamping appears in the McFarland phase in the early Middle Woodland Period in this region, 200 B.C. to A.D. 200 (Faulkner 2002:189, 199).

At an unknown date, human remains representing, at minimum, two individuals were removed from an unknown site in Stewart County, TN. In 1972, John Dowd sent these individuals to UTK. One is a middle aged adult, probable female. The other is a young adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

In July of 1962, human remains representing, at minimum, two individuals were removed from 40SW47, the Allen site in Stewart County, TN. Both burials were poorly preserved and the few remains that were recovered were sent in 1962 to Dr. E. Carl Sensenig, Chair of the Department of Anatomy at University of Alabama Medical Center, for analysis, but no report has been found with his findings (Morse 1963:48–52). These skeletal remains were missing until 1997 when they were located at the University of Alabama at Birmingham and subsequently returned to UTK. Burial 1 is an adult, possibly male. Burial 2 is a subadult, age 13 to 16, of indeterminate sex. No known individuals were identified. The 19 associated funerary objects include: One chert biface fragment, one chert core fragment, one chert drill fragment, one flint blade or knife, one granite nutting stone or bipolar anvil, seven chert projectile points, two chert uniface scrapers, four chert unutilized flakes (one primary; one secondary; two tertiary/thinning), and one chert flake or angular shatter. The flint blade or knife is potentially a Benton knife, which dates to the Middle Archaic period (6000 to 4000 B.C.E.). The seven projectile points all date to the Early Archaic period: One is a Kirk Corner Notched (7500 to 6900 B.C.E.); one is a Kirk cluster (7500 to 6000 B.C.E.); three are Kirk Serrated and two are Kirk Stemmed (both 6900 to 6000 B.C.E.).

The Allen site (40SW47) is situated on a high knoll overlooking the Cumberland River. It was recorded by UTK in 1959. In 1962, UTK directed archeological excavations at the Allen site. Artifacts and associated documents from the Allen site were originally labeled as 62SW47, with ''62'' designating the area or unit of the site that was excavated. Until 2017, 40SW47

was considered to be one of several sites excavated by UTK as part of the U.S. Army Corps of Engineers' (USACE) Lake Barkley Project, with funds provided by the National Park Service under the River Basins Archaeological Salvage Program. On 19 July 2017, the USACE Nashville District published a Notice of Inventory Completion (82 FR 33156) for all sites investigated in Tennessee during the Lake Barkley project. While preparing this notice, the USACE determined that 40SW47 lay outside the project right-of-way and on private property and they concluded that UTK's investigation of the Allen site was independent from the Lake Barkley project. Consequently, the USACE relinquished the materials recovered from the Allen site to UTK.

Determinations Made by the University of Tennessee, Department of Anthropology

Officials of the University of Tennessee, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their archeological context and an osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 17 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 6,289 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

UTK is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27648 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027077; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by January 22, 2019.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from DeSoto County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

Sometime prior to 1887, human remains representing, at minimum, one individual were removed from the mound at the Lake Cormorant Site (22Ds501), in DeSoto County, MS, by F. H. Bierbower. The Peabody Museum of Archaeology and Ethnology purchased these human remains from Mr. Bierbower in 1887. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context, museum records, and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Chickasaw Nation may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27700 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027005; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beneski Museum of Natural History, Amherst College, Amherst, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Beneski Museum of Natural History, Amherst College (formerly the Pratt Museum of Natural History) has corrected an inventory of human remains, published in a Notice of Inventory Completion in the **Federal Register** on May 15, 2014. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Beneski Museum of Natural History, Amherst College. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Beneski Museum of Natural History, Amherst College at the address in this notice by January 22, 2019.

ADDRESSES: Tekla A. Harms, NAGPRA Coordinator, Beneski Museum of Natural History, Amherst College, Amherst, MA 01002, telephone (413) 542–2711, email *taharms@amherst.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains under the control of the Beneski Museum of Natural History, Amherst College, Amherst, MA. The human remains were removed from the town of Deerfield in Franklin County, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (79 FR 27929–27931, May 15, 2014). Human remains from the town of Deerfield, Franklin County, MA, were omitted from this Notice of Inventory Completion because they were not in the possession of the Beneski Museum at the time that inventory was completed. The human remains had been stolen from the College, probably in the 1970's, and were anonymously returned to the College subsequent to publication of the original Notice of Inventory Completion. These human remains are now in the possession of the Beneski Museum. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (79 FR 27930, May 15, 2014), column 3, paragraph 1, under the heading ''History and Description of the Remains,'' is corrected by inserting the following paragraph:

At some time in the mid-nineteenth century, human remains representing, at minimum, one individual were removed from a site in Deerfield, Franklin County, MA. No records exist to determine precisely where or by whom the human remains were excavated. These human remains were in the possession of Amherst College until sometime, probably in 1971 or 1972, when they were stolen. The human remains were anonymously returned to the College in 2017. The human remains consist of a complete cranium and mandible with many teeth intact. The human remains are best identified as an adult. Contemporaneous catalog entries indicate the human remains were understood at the time of excavation to be Native American and to represent a burial of the indigenous population. These remains are identified as Pocumtuck. No known individual was identified. No associated funerary objects are present.

In the **Federal Register** (79 FR 27930, May 15, 2014), column 3, paragraph 2, sentence 1 under the heading ''Determinations Made by the Beneski Museum of Natural History, Amherst College,'' is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice

that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Tekla A. Harms, NAGPRA Coordinator, Beneski Museum of Natural History, Amherst College, Amherst, MA 01002, telephone (413) 542–2711, email *taharms@amherst.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Narragansett Indian Tribe; Stockbridge Munsee Community, Wisconsin; and Wampanoag Tribe of Gay Head (Aquinnah) may proceed.

The Beneski Museum of Natural History, Amherst College is responsible for notifying the Narragansett Indian Tribe; Stockbridge Munsee Community, Wisconsin; Wampanoag Tribe of Gay Head (Aquinnah); and the following non-Federally recognized Indian groups: Abenaki Nation of Missisquoi, St. Francis/Sokoki Band, VT; Abenaki Nation of New Hampshire; Cowasuck Band of the Pennacook—Abenaki People, NH; Elnu Tribe of the Abenaki, VT; Koasek (Cowasuck) Traditional Band of the Koas Abenaki Nation, VT; Koasek Traditional Band of the Sovereign Abenaki Nation, VT; Nulhegan Band of the Coosuk-Abenaki Nation, VT; and Chaubunagungamaug Nipmuck and Nipmuc Nation, MA, that this notice has been published.

Dated: November 19, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27707 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027084; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Museum of Archaeology, Andover, MA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Robert S. Peabody Institute of Archaeology (formerly the Robert S. Peabody Museum of Archaeology) has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on September 13, 2005. This notice corrects the minimum number of individuals and the number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Robert S. Peabody Institute of Archaeology. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Robert S. Peabody Institute of Archaeology at the address in this notice by January 22, 2019.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Robert S. Peabody Institute of Archaeology, Andover, MA. The human remains and associated funerary objects were removed from the Etowah site, Bartow County, GA and Little Egypt site, Murray County, GA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of human remains and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (70 FR 54075–54076, September 13, 2005). During a re-inventory inconsistencies in the original count of both the minimum number of individuals and associated funerary objects were identified. One individual had been counted twice; an additional individual was identified; and objects associated with the additional individual, which had previously been identified as unassociated funerary objects, were now designated associated funerary objects. Confusion regarding which individuals were from Etowah versus Little Egypt also was resolved with the re-inventory. Additionally, the re-inventory correlated original ledger book entries with cataloged and re-cataloged objects, thus identifying previously unknown burial associations. Finally, many associated funerary objects that were misidentified or miscounted in the original inventory (likely due to attempts to count the large numbers of shell beads) were corrected, identified and counted. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (70 FR 54075, September 13, 2005), column 2, paragraph 4, sentence 1 is corrected by substituting the following sentence:

Between 1925 and 1928, human remains representing a minimum of 94 individuals were removed from the Etowah site, Bartow County, GA, by Warren King Moorehead of the Robert S. Peabody Museum of Archaeology.

In the **Federal Register** (70 FR 54075, September 13, 2005), column 2, paragraph 4, sentence 3 is corrected by substituting the following sentence:

The 21,638 associated funerary objects are 34 animal bone fragments and fragment lots; one basketry fragment with clay matrix lot; three burnt clay, ceramic sherds, and animal bones in lot; one ceramic bead; two ceramic elbow pipes, one ceramic basket- or canoe-shaped pipe; one ceramic handle; 21 ceramic sherds; eight ceramic vessels; one lot of charcoal and soil; one concretion; two fragments of a copper axe with wooden handle; one copper covered wooden top knot, serpent shaped; two copper disks; 680 copper fragments, including wood fragments, copper bilobed arrow ornament, mica, adhered shell beads, textile and matting fragments, animal bone; 90 copper headdress, hair ornaments and fragments; 69 copper repousse plates and fragments; three fragments of daub and fire-hardened soil; 175 freshwater pearl beads; 56 freshwater periwinkle shells; seven freshwater shells and fragments; one fur fragment with copper staining; four galena crystals; one bear canine; one kaolin core with copper; one lot of kaolin, bark, animal bone fragments, mica, soil, and ceramic sherds; four large flint bifaces or swords; 11 chipped stone projectile points; one ground stone tool fragment; three leather fragments; one limestone spatulate celt; one lump of mineral ore; 108 matting fragments, including copper stained matting, textiles, and adhered shell beads; 83 mica fragments, some with copper stained matrix; 405 miscellaneous shells and small shells; 11 modified animal bone fragments; one quartz preform; 19,352 shell beads, including diverse sizes and shapes (round, ovoid, tubular, disc, barrel, elongated, irregular), as well as mixed lots of shell beads, freshwater pearl beads, Olivella and Marginella shell

beads, soil matrix, ceramic sherds, as well as copper stained shell beads, and fragments and deteriorated beads; two rough shell disks; 12 shell gorgets and gorget fragments; 166 small stones; three soil samples; 10 pieces of wood and animal bone mixed with soil in lot; five stone celts and fragments; one stone discoidal; 10 textile fragments, including some mixed lots with wood, copper fragments, and shell beads; nine tortoise shell strips or bands; one unmodified horse conch shell; six whelk shell cup fragments; 22 whelk shell fragments; two whelk shell columella ornaments and fragments; 237 wood fragments, and mixed lots of wood with copper staining, mica, and soil; one worked stone fragment; two large Atlantic cockle shells; and one ''puffball'' fungus.

In the **Federal Register** (70 FR 54076, September 13, 2005), column 1, paragraph 1, sentence 1 is corrected by substituting the following sentence:

Between 1927 and 1928, human remains representing a minimum of 10 individuals were removed from the Little Egypt site in Murray County, GA, by Warren King Moorehead of the Robert S. Peabody Museum of Archaeology.

In the **Federal Register** (70 FR 54076, September 13, 2005), column 1, paragraph 1, sentence 4 is corrected by substituting the following sentence:

The 43 associated funerary objects are six miscellaneous shells and small shells; 18 shell beads; two shell gorgets; five ceramic vessels; two whelk shell ornaments; and 10 shell ornaments and fragments.

In the **Federal Register** (70 FR 54076, September 13, 2005), column 2, paragraph 1, sentence 2 is corrected by substituting the following sentence:

Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 21,681 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Ryan Wheeler, Robert S. Peabody Institute of Archaeology, Phillips Academy, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Alabama-Quassarte Tribal Town; Kialegee Tribal Town; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Muscogee (Creek) Nation; and the Thlopthlocco Tribal Town (hereafter referred to as ''The Tribes'') may proceed.

The Robert S. Peabody Institute of Archaeology is responsible for notifying The Tribes that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27709 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027082; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by January 22, 2019.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Stewart County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1879, human remains representing, at minimum, three individuals were removed from a ''Mound on Mr. Banister's Place,'' located near Dover in Stewart County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

In 1879, human remains representing, at minimum, three individuals were removed from a cemetery on ''James C. Green's Place,'' located near Dover in Stewart County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

In 1879, human remains representing, at minimum, three individuals were removed from a mound on ''Mr. Perkin's Farm,'' located 100 miles below Nashville on the Cumberland River in Stewart County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

In 1879, human remains representing, at minimum, one individual were

removed from a mound on ''Mrs. Williams Farm,'' located near Fort Donelson on the Cumberland River in Stewart County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and/or archeological contexts, and museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018,

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27704 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027072; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The State Center Community College District—Fresno City College, Fresno, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State Center Community College District—Fresno City College has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the State Center Community College District—Fresno City College. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the State Center Community College District—Fresno City College at the address in this notice by January 22, 2019.

ADDRESSES: Mary Beth Miller, Interim Dean of Social Sciences, in care of Jill Minar, Ph.D., Fresno City College of The State Center Community College District, 1101 E University Avenue, Fresno, CA 93741, telephone (559) 442–8210, email *jill.minar@fresnocitycollege.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the State Center Community College District—Fresno City College, Fresno, CA. The human remains and associated funerary objects were removed from the Sihugatic site, Madera County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the State Center Community College District—Fresno City College professional staff in consultation with representatives of the Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California); Buena Vista Rancheria of Me-Wuk Indians of California; Cold Springs Rancheria of Mono Indians of California; Middletown Rancheria of Pomo Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria (previously listed as the Table Mountain Rancheria of California) Tejon Indian Tribe; Tule River Indian Tribe of the Tule River Reservation, California; and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

An invitation to consult was extended to the California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Ione

Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California); Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada. For a variety of reasons, they did not engage in consultation.

Two non-federally recognized groups, the Dunlap Band of Mono Indians and Traditional Choinumni Tribe, participated in consultation. One non-federally recognized group, the Wukchumni Tribe, was invited to consult, but did not respond.

Hereafter, all the Indian tribes and non-federally recognized Indian groups listed in this section are referred to as ''The Consulted and Notified Tribes and Groups.''

History and Description of the Remains

In 1974 and 1975, human remains representing, at minimum, three individuals were removed from the Sihugatic site, which is located on private property along Whiskey Creek, between the town of South Fork and Redinger Lake in Madera County, CA. Fresno City College Anthropology instructor Don Wren led a field class that excavated the site. In January 2017, funded by a 2016 NAGPRA Consultation/Documentation grant awarded to the State Center Community College District, an osteological examination of the faunal collections was conducted to determine if human remains were present. That examination resulted in the identification of the human remains described in this notice. The human remains belong to one adult and two sub-adults of indeterminate sex. These individuals are represented by 317 bone and tooth fragments, and six teeth. No known individuals were identified. The nine associated funerary objects are three steatite beads, one lot bone bead fragments, one lot shell bead fragments, one glass bead, and three steatite fragments.

Determinations Made by the State Center Community College District—Fresno City College

Officials of the State Center Community College District—Fresno City College have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry based on archeological context.
- Pursuant to 25 U.S.C. 3001(3)(A), the nine objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Northfork Rancheria of Mono Indians of California, based on geographic information and oral tradition.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Mary Beth Miller, Interim Dean of Social Sciences, in care of Jill Minar, Ph.D., Fresno City College of The State Center Community College District, 1101 E University Avenue, Fresno, CA 93741, telephone (559) 442–8210, email *jill.minar@fresnocitycollege.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Northfork Rancheria of Mono Indians of California may proceed.

The State Center Community College District—Fresno City College is responsible for notifying The Consulted and Notified Tribes and Groups that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27642 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027002; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes and Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to TVA at the address in this notice by January 22, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of TVA. The human remains and associated funerary objects were removed from multiple archeological sites in Lauderdale, Limestone, and Madison Counties, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by TVA professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of

Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In March 1934, human remains representing, at minimum, 123 individuals were removed from site 1LU86 in Lauderdale County, AL, by the Alabama Museum of Natural History at the University of Alabama (AMNH). TVA acquired this site on October 9, 1934, for the Wheeler Reservoir project. This site was 350 feet long and 200 feet wide. Although described as a mound, it appears to have been an accumulation of shell, midden debris and natural floodplain soils, rather than intentionally constructed earthen works. No structures were identified, but there were multiple hearths, midden-filled pits and human burials. There are no radiocarbon dates for this site. Recovered artifacts suggest multiple occupations including Late Archaic (4000–1000 B.C.), Early Woodland (1000–500 B.C.), Middle Woodland Copena Phase (A.D. 100–500), Late Woodland (A.D. 500–1000) and Mississippian (A.D. 1200–1500) periods.

The human remains include adults, juveniles, children, and infants of both sexes. No known individuals were identified. The 35 associated funerary objects include one Bell Plain effigy bowl; 11 bone beads; two bone ornaments; one copper earring; two copper ornaments; one copper pendant; nine copper tubular beads; one cordage; one deer antler figurine; one limestone pipe; one McKee Island Brushed jar; one Mississippi Plain bowl; one Mississippi Plain jar; one piece of red ocher; and one shell cup.

At some time during the 1950s, human remains representing, at minimum, two individuals were removed from site 1LI22 in Limestone County, AL, by James Cambron. TVA acquired this site on December 17, 1935, for the Wheeler Reservoir project, but no formal excavations were conducted. Ceramics associated with the Woodland period have been collected from the site. The human remains represent one 30–40 year old male. No known individuals were identified. There are no associated funerary objects.

At some time during the 1950s, human remains representing, at minimum, two individuals were removed from site 1LI27 in Limestone County, AL, by James Cambron. TVA acquired this site on August 7, 1934, for the Wheeler Reservoir project, but no formal excavations were conducted. The site was approximately one acre in size, but nothing is known about it. Projectile points from the Late Archaic and Early Woodland have been collected from the surface of this site. The human remains represent one 13–16 year old and one 5–7 year old. Sex is indeterminate. No known individuals were identified. There are no associated funerary objects.

At some time during the 1950s, human remains representing, at minimum, one individual were removed from site 1LI28 in Limestone County, AL, by James Cambron. TVA acquired this site on April 30, 1935, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI28 was a shell midden. Ceramics recovered from this site suggest a Late Woodland occupation. The human remains are of a 40–50 year old male. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, one individual were removed from site 1LI29 in Limestone County, AL, by James Cambron. TVA acquired this site on March 2, 1936, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI29 was a village two acres in size. There is no information regarding the chronological components of this site. The human remains are of an adult of undetermined sex. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, two individuals were removed from site 1LI30 in Limestone County, AL, by James Cambron. TVA acquired this site on October 4, 1934, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI30 was a cave in the bluff. There is no information regarding the chronological components of this site. The human remains are of a 17–20 and a 13–15 year old of undetermined sex. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, three individuals were removed from site 1LI33 in Limestone County, AL, by James Cambron. TVA acquired this site on March 2, 1936, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI33 was described as a mound 10 feet high and 300 feet in diameter. There is no information regarding the chronological components of this site. The human remains are of a 50+ year old male; a 10–15 year old of undetermined sex; and an adult of unknown sex. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, six individuals were removed from site 1LI34 in Limestone County, AL, by James Cambron. TVA acquired this site on July 25, 1935, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI34 was described as a village extending 800 feet along the river bank. Artifacts typical of the Archaic and Woodland period have been found at this site. The human remains are fragmentary. Two of the individuals are male, but the sex of the other four could not be determined. Ages ranged from 4 to 45. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, two individuals were removed from site 1LI35 in Limestone County, AL, by James Cambron. TVA acquired this site on July 25, 1935, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI35 was described as a mound three feet high, 50 feet wide and 50 feet long. There is no information regarding the chronological components of this site. The human remains include one male 50+ years old and one 10–12 years old of unknown sex. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, one 30–40 year old male were removed from site 1LI45 in Limestone County, AL, by James Cambron. TVA acquired this site on December 11, 1934, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI45 was described as a shell midden along the original levee of the Tennessee River. Artifacts from this site indicate occupation from the Late Archaic to the Late Woodland. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, three individuals were removed from site 1LI46 in Limestone County, AL, by James Cambron. TVA acquired this site on December 11, 1934, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI46 was described as an artifact scatter along the original levee of the Tennessee River. Artifacts from this site indicate occupation from the Late Archaic to the Mississippian period.

The human remains include two 30–40 years old males and one 20–30 year old of unknown sex. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, two individuals were removed from site 1LI50 in Limestone County, AL, by James Cambron. TVA acquired this site on July 25, 1935, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI50 was described as a shell midden. Artifacts suggest a Late Archaic to Early Woodland occupation. The human remains include one 17–19 year old female and an adult female. No known individuals were identified. No associated funerary objects are present.

At some time during the 1950s, human remains representing, at minimum, seven individuals were removed from site 1LI51 in Limestone County, AL, by James Cambron. TVA acquired this site on December 20, 1934, for the Wheeler Reservoir project, but no formal excavations were conducted. Site 1LI51 was described as a shell midden. Artifacts suggest occupations during the Late Archaic, Middle Woodland and Late Woodland. The human remains include three 30–50 year old males; one 40–50 year old female, and three juveniles of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

From February through March 1934, human remains representing, at minimum, 25 individuals were removed from site 1MA4, in Madison County, AL, by AMNH. TVA acquired a strip of land around the periphery of Hobbs Island encompassing this site on May 23, 1939 as part of the Wheeler Reservoir project, but the excavation was conducted with Federal funds in anticipation of the inundation of this site. The site was a shell midden 300 x 125 feet and adjacent to the island's shoreline. There are no radiocarbon dates available for this site, but artifacts from a non-mortuary context suggest Langston (A.D. 900–1200) and Hobbs Island (A.D. 1200–1450) phase occupations. The human remains include infants, adolescents, and adults of both sexes. No known individuals were identified. There are no associated funerary objects.

From March 1940 to July 1941, human remains representing, at minimum, nine individuals were removed from site 1MA31/1MA32 in Madison County, AL. TVA acquired this site on July 6, 1936, for the Wheeler Reservoir project. 1MA31 and 1MA32 are now considered one multi-mound and village site. The site was composed of one small conical mound; a 200 x 1000 foot village area and a large mound 10 feet in height and 75 x 105 feet at the base. These mounds were domiciliary, rather than mortuary, in nature. Unfortunately, both mounds had suffered from looting prior to excavation. Recent radiocarbon dates of animal bone from a non-mortuary context have a calibrated two-sigma range of A.D. 1050–1275, indicating an occupation from the early to middle Mississippian period. The human remains are in a fragmentary state, making it impossible to determine sex, but most of the individuals appear to be adults over the age of eighteen. No known individuals were identified. There are no associated funerary objects.

Determinations Made by the Tennessee Valley Authority

Officials of Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their presence in prehistoric archeological sites and an osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 189 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 35 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- The Treaty of September 20, 1816, indicates that the land from which the Native American human remains were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects will be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: November 19, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27710 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027067; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Tennessee, Department of Anthropology (UTK), has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UTK. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UTK at the address in this notice by January 22, 2019.

ADDRESSES: Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edupaa@utk.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Tennessee, Department of Anthropology, Knoxville, TN. The human remains and associated funerary objects were removed from Williamson County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the UTK professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

At a date likely between 1960 and 1969, human remains representing, at minimum, one individual, were removed from 40WM4, the DeGraffenreid site in Williamson County, TN. At a date likely after 1969, this individual was transferred to UTK. UTK believes these human remains were removed by the Southeastern Indian Antiquities Survey (SIAS) during excavations conducted in the 1960s at the DeGraffenreid site after it had been destroyed by potash (phosphate) mining. The UTK curation repository holds a number of collections excavated by the SIAS. Burial 1 belongs to a young child, aged 2–4 years old. No known individuals were identified. The two associated funerary objects are fragments of burned wood. The DeGraffenreid site dates to circa 1300–1450 C.E., based on the identification by Jones (1876) and Smith (1994) of artifacts not under the control of UTK.

At a date possibly between 1965 and 1967, human remains representing, at minimum, six individuals were removed from 40WM5, the Arnold site in Williamson County, TN. At a date perhaps between 1965 and 1980, these individuals were transferred to UTK. Between 1965 and 1967, members of the SIAS excavated the Arnold site when it became threatened by subdivision development. It is unclear if these six individuals were uncovered as part of SIAS excavations or were excavated prior to or after the SIAS project as they cannot be correlated with any of the individuals described in the report on this site (Ferguson 1972). Burial A belongs to a young adult female (20–35 years old). Burial B belongs to an adult male, likely middle aged (35–50 years old). Burial C belongs to a juvenile of indeterminate sex (12–15 years old). Burial D belongs to a young adult, probably female (20–35 years old). Burial E belongs to a middle aged adult of indeterminate sex (35–50 years old). The sixth individual, without a burial designation, is a young adult male (25–34 years old). No known individuals were identified. The one associated funerary object is a limestone-tempered ceramic sherd. The Arnold site dates to circa C.E. 1150–1350, based on a radiocarbon date, placing it within the Middle Cumberland Culture of the Mississippian period. Other funerary objects reported by Ferguson and not under the control of UTK also date to this time period.

Between 1971 and 1972, human remains representing, at minimum, two individuals were removed from 40WM6, the Harpeth Meadows site in Williamson County, TN. During construction activities in 1971, the landowner encountered two stone box graves, and contacted a local historical society, which ultimately led to the involvement of amateur archeologists from the SIAS of Nashville later that year. Excavations at this small village and cemetery site, including the contents of two excavated pits and the presence of stone box graves, indicate that this site dates to the Late Mississippian Period. At a date sometime after 1972, the human remains were transferred to UTK by John Dowd. Burial 1 belongs to an adult male, aged 50 or older. Burial 5 belongs to an adult male, aged 35–39. (Burials 2 through 4 were never transferred to UTK. According to burial records, only the outlines of the stone box grave surrounding Burial 2 were intact when the SIAS investigated it; no human skeletal remains were present. However, burial records state that human remains were present in Burials 3 and 4. The current location of these individuals is unknown). No known individuals were identified. The three associated funerary objects are two ceramic sherds and one faunal bone sherd, both of which are associated with Burial 1. Additional funerary objects are noted in the site records, but were never transferred to UTK.

Between 1980 and 1982, upon the urging of the private landowner, human remains representing, at minimum, 81 individuals were removed from 40WM9, the Anderson site in Williamson County, TN, by a group from the Middle Cumberland Archaeological Society that included John Dowd, Tom Kinney, Bruce Lindstrom, and Ken Steverson. Sometime between 1980 and 1983, the human remains were transferred to UTK. These individuals include: 22 females or probable females, 17 males or probable males, five adults of indeterminate sex, and 37 subadults. No known individuals were identified. The 341 associated funerary objects include: 62 waste flakes, one core fragment, one piece of shatter, one uniface scraper, one drill fragment, two bifacially worked tools, one fragment of a lanceolate type projectile point, two small groundstone fragments, possibly part of a bannerstone, 79 pieces of fire cracked rock, two pieces of limestone (one is burned), four pieces of sandstone, 96 non-culturally altered rocks associated with burials, two pieces of burned clay, 72 faunal bones and teeth (including a turtle carapace fragment, a carnivore tooth, and 15 fragments of gastropod and mussel shell), and 15 bags of sediment from burial areas of the site. Based on Dowd's report (1989), the majority of the funerary objects (and particularly those with photographs), as well as all ceramics and most faunal remains, were never transferred to UTK. Based on the lithic points listed by Dowd (1989), which are not under the control of UTK, and include Eva, Morrow Mountain, and Big Sandy types and radiocarbon dates obtained from wood and nutshell, the main occupation of the Anderson site appears to be during the Middle Archaic period, 6720 +/− 220 B.P. to 6495 +/− 205 B.P. (Dowd 1989:179).

Determinations Made by the University of Tennessee, Department of Anthropology

Officials of the University of Tennessee, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 90 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 347 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

UTK is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27649 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027080; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by January 22, 2019.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Marion County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1871, human remains representing, at minimum, five individuals were removed from a cave near Jasper in Marion County, TN, by Rev. E. O. Dunning as part of a Peabody Museum of Archaeology and Ethnology expedition. No known individuals were identified.

In 1890 and 1892, human remains representing, at minimum, six individuals were removed from the Holloway Mounds, located in the Sequatchie Valley in Marion County, TN, by John W. Emmert as part of a Peabody Museum of Archaeology and Ethnology expedition. No known individuals were identified.

In 1891, human remains representing, at minimum, 11 individuals were removed from mounds in the Sequatchie Valley in Marion County, TN, by John W. Emmert as part of a Peabody Museum of Archaeology and Ethnology expedition. No known individuals were identified.

At an unknown date, human remains representing, at minimum, one individual were removed from an island in the Tennessee River located 18 miles below Chattanooga, in Marion County, TN, by F. A. Stratton. They were purchased by the Museum from an unknown individual, most likely in 1876. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and/or archeological contexts, and museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 23 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27703 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027003; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana State Museum and Historic Sites Corporation, State of Indiana, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Indiana State Museum and Historic Sites Corporation, State of Indiana (ISMHS) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the ISMHS. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the ISMHS at the address in this notice by January 22, 2019.

ADDRESSES: Michele Greenan, Indiana State Museum and Historic Sites Corporation, 650 West Washington Street, Indianapolis, IN 46214, telephone (317) 473–0836, email *mgreenan@indianamuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the ISMHS, Indianapolis, IN. The human remains were removed from the southern shore of Hamilton Lake, Steuben County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by staff at the University of Indianapolis, for the Indiana State Museum and Historic Sites Corporation. Following identification of the human remains as Native American, consultation proceeded with representatives of the Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, hereafter referred to as ''The Tribes.''

History and Description of the Remains

On August 16, 2014, human remains were observed by members of the public at the shoreline of Hamilton Lake, Steuben County, Indiana. The local police department was immediately contacted, and transported the human remains to the Angola Fire Department for assessment by the coroner. Following notice of the discovery to Indiana Conservation officers, scuba divers from S.C.U.R.R.T. and the Steuben County Sherriff's Department were dispatched to search for additional human remains; none were found. Indiana Conservation officers, in turn, contacted forensic specialists from the University of Indianapolis, who advised that the remains were human and possibly Native American.

As the human remains were not a part of a recent crime scene and following consultation with the Indiana

Department of Historic Preservation and Archaeology, the human remains were transported by Indiana Conservation officers to the Indiana State Museum and Historic Sites (ISMHS) on August 18, 2014. Subsequently, staff from the University of Indianapolis further assessed the human remains, and identified them as Native American.

The human remains were inventoried, and an osteological analysis was conducted by staff at the University of Indianapolis. They identified the human remains, which consist of a portion of the skull, as belonging to a single adult female. Given the incomplete nature of the skeletal material little information was possible with regard to pathology, cause of death, or specific age.

Based on witness interviews conducted by Indiana Conservation officers, the human remains were found directly adjacent to areas frequented by recreational water implements and vehicles. As divers recovered no additional human remains, these human remains likely originated from a disturbed context elsewhere in the lake or adjacent areas. No other materials were recovered. No associated funerary objects are present.

Determinations Made by the Indiana State Museum and Historic Sites Corporation

Officials of the ISMHS have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on analysis of the physical remains and the archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.
- Other authoritative governmental sources identify the location where the human remains were removed as the aboriginal land of Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Michele Greenan, Indiana State Museum and Historic Sites, 650 West Washington Street, Indianapolis, IN 46214, telephone (317) 473–0836, email *mgreenan@indianamuseum.org,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The ISMHS is responsible for notifying The Tribes that this notice has been published.

Dated: November 19, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27706 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027073: PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Tennessee Valley Authority, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to TVA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to TVA at the address in this notice by January 22, 2019.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of TVA, Knoxville, TN. The human remains and associated funerary objects were removed from archeological sites in Colbert and Lauderdale Counties, AL, and Hardin County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has

control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by TVA professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

From December 27, 1938 to June 27, 1939, human remains representing, at minimum, 365 individuals were removed from the Little Bear Creek site, 1CT8, in Colbert County, AL, by the Alabama Museum of Natural History (AMNH) at the University of Alabama. TVA acquired this site on August 20, 1936, for the Pickwick Reservoir project. This shell midden site was at the confluence of Little Bear Creek and the Tennessee River. While there are no radiocarbon dates from this site, the excavated artifacts indicate that the major occupations took place during the Late Archaic (4000–1000 B.C.). Ceramics, while not abundant, were found in the upper 2–3 feet. Some of the ceramics suggest minor occupations during the Colbert (300 B.C.–A.D. 100) and McKelvey (A.D. 500–1000) phases. Distinctive shell-tempered vessels associated with some burials indicate a Mississippian Kogers Island phase (A.D. 1200–1500) occupation.

The human remains removed from 1CT8 include adults, juveniles, and infants of both sexes. No known individuals were identified. The 5,244 associated funerary objects include two ground stone abraders; one ground stone adz; one antler billet; 10 antler billet fragments; six antler tools; one carved and ground antler; three atlatl weights; two Bell Plain bottles; two Bell Plain bowls; 11 Bell Plain bowl sherds; 20 Bell Plain jar sherds; one Bell Plain ladle; one bifurcated bone; two animal bones; seven bone awls; two beaver incisors; five bone fids; one bone fishhook; one bone handle; three bone needles; two bone pendants; 13 bone pins; three bone projectile points; two bone punches; 28 unidentified bones; four chert bifaces; one ground stone celt; one ceramic ear spool; 13 crinoid stems; five crinoid stem beads; one polished stone discoidal; one drumfish tooth bead; 4068 gastropod shell beads; one ground stone fragment; one ground stone bowl; one hammerstone; three hematite fragments; one Long Branch Fabric Marked sherd; three McKee Island Brushed jars; four McKee Island Brushed sherds; one Mississippi Plain vessel; 38 Mississippi Plain bowl sherds; 28 Mississippi Plain jars; 17 Mississippi Plain jar sherds; 29 Mississippi Plain sherds; one Kirk Serrated PP/K; one Ledbetter PP/K; one Morrow Mountain PP/K; one polished stone pendant; one polished stone; five unidentified PP/K; 594 shell beads; two shell gorgets; five shell pendants; four unidentified shells; one polished stone bead; one turtle shell; three turtle shell rattles; 25 turtle shell rattle fragments; five unidentified bones; one piece of ground coal; one piece of unidentified ground stone; 240 unmodified chert pebbles; and one unmodified shell.

From January 25 to February 22, 1934, human remains representing, at minimum, 20 individuals were removed from 1CT17 in Colbert County, AL, by AMNH. TVA acquired this site on June 19, 1936, for the Pickwick Reservoir project, and the excavation was conducted with Federal funds in anticipation of reservoir construction. This shell mound and village site was located on the left descending bank of the Tennessee River, and consisted of an accumulation of mussel shell and village midden, rather than an intentionally constructed earthwork. There are no radiocarbon dates from this site. Projectile points from 1CT17 resemble those found in Late Archaic (4000–1000 B.C.) occupations at nearby sites. Stratification of the ceramics recovered from the excavations is not clear, but the ceramics exhibit temper and surface modifications characteristic of the Early and Middle Woodland period (300 B.C.–A.D. 500). A few shell-tempered ceramics from the Mississippian period are found in the upper portion of this shell midden. The human remains include infants, adolescents, and adults of both sexes. No known individuals were identified. There are no associated funerary objects from this site.

From January to February, 1938, human remains representing, at minimum, nine individuals were removed from the Georgetown Landing site, 1CT34, in Colbert County, AL, by AMNH. TVA acquired this site on March 28, 1936, for the Pickwick Reservoir project. The site was a shell midden extending 140 by 280 feet on the left descending bank of the Tennessee River. There are no radiocarbon dates for this site. It is not possible to place the NAGPRA cultural items from 1CT34 in a temporal context as temporally sensitive artifacts were rare. Some fiber-tempered ceramics considered typical of the Wheeler culture (approximately 1300–1000 B.C.) were recovered, as well as some shell-tempered ceramics, suggesting a Mississippian period occupation.

The human remains removed from 1CT34 include adults, juveniles, and children of both sexes. No known individuals were identified. The two associated funerary objects are one unidentified broken projectile point and one damaged siltstone tubular bead.

From February 6 to March 6 and April 17–22, 1939, human remains representing, at minimum, 93 individuals were removed from site 1CT65/1CT117 in Colbert County, AL, by the AMNH. The site was originally designated 1CT65, but this number was inadvertently used for another site outside TVA boundaries. Consequently, this site is currently designated 1CT117 in the Alabama site files. TVA acquired this site on August 20, 1936, for the Pickwick Reservoir project. This rock shelter or cave was located on the left descending bank of Little Bear Creek.

Although most of 1CT117 had been disturbed by looting, 20 features were tentatively identified. Most are designated as fire basins or rock hearths. There are no radiocarbon dates from this site. Both limestone-tempered and shell-tempered ceramics were recovered, suggesting both a Woodland and Mississippian occupation. There are, however, projectile points that indicate an Archaic occupation. The fragmented human remains include adults, children and infants of both sexes. No known individuals were identified. The 1,486 associated funerary objects include 19 Eva projectile points/knives (PP/K); 1461 gastropod shell beads; one beaver incisor; two unidentified PP/K; two shell gorgets; and one turtle shell.

Sometime during 1984, human remains representing, at minimum, three individuals were removed from Bell Cave, 1CT229, during paleontological investigations by the McWane Science Center. TVA purchased the land encompassing this cave on October 23, 1936. The site is located on the left descending bank of the Tennessee River in Colbert County, AL. The age of these human remains is not known. The human remains all belong to adults, but are too fragmentary

to determine sex. No known individuals were identified. There are no associated funerary objects.

In 1962, human remains representing, at minimum, 42 individuals were removed from site 1LU12 in Lauderdale County, AL, by the Muscle Shoals chapter of the Alabama Archaeological Society. TVA acquired this land on November 23, 1936, for the Pickwick Reservoir project. There is no reliable information regarding the context within which these human remains were found and there are no radiocarbon dates for this site. The artifacts recovered suggest occupations during the Late Archaic and Mississippian periods. The human remains include infants, juveniles and adults of both sexes. No known individuals were identified. There are no associated funerary objects.

From April 29, 1938 to November 8, 1940 human remains representing, at minimum, 2,459 individuals were removed from the Perry site, 1LU25, in Lauderdale County, AL, by the AMNH. TVA acquired this site on February 19, 1937, for the Pickwick Reservoir project. Perry site was the largest excavation on TVA land in Alabama. The site, located on an island in the Tennessee River, was an extensive shell midden, village and burial ground. There were two major occupations at 1LU25. The first during the terminal Middle through Late Archaic periods, (4000–1000 B.C.), and the second during the Kogers Island phase (A.D. 1200–1450) of the Mississippian period.

The human remains from 1LU25 include both sexes of every age category from neonate to senior (60+). The 17,105 associated funerary objects include 16 stone abraders; 16 adzes; nine Alexander Incised sherds; one Alexander Incised var. Smithsonia sherd; one Alexander Pinched sherd; one Alexander Punctated, var. Columbus sherd; one Alexander Punctated, var. Tibbee sherd; 15 animal bones and teeth; one antler atlatl hook; six antler billets; five antler flakers; 57 antler fragments; one antler headdress; six antler projectile points; three antler punches; two antler tines; one antler tool; two antler ornaments; two antler tubes; one polished stone atlatl weight; one Baldwin Plain bottle; one Baldwin Plain jar; five Baldwin Plain sherds; one Baldwin Plain, var. O'Neal sherd; 15 Barton Incised sherds; one Barton Incised, var. Demopolis jar; eight Barton Incised, var. Unspecified sherds; two Baytown Plain, var. McKelvey sherds; one bear canine; two beaver teeth/bone; one Bell Plain ladle; five Bell Plain bottles; nine Bell Plain bowls; 28 Bell Plain bowl sherds; one Bell Plain effigy bottle; three Bell Plain effigy bowls; six Bell Plain jars; five Bell Plain jar sherds; 26 Bell Plain sherds; three Benjamin PP/K; two Benson Simple Stamped sherds; one Benton Broad Stemmed PP/K; one Benton Stemmed PP/K; 47 chert bifaces; 25 bird bones and fragments; one Bluff Creek Simple Stamped sherd; 53 bone awls; five bone awl fragments; one alligator gar jaw; 78 bone beads; one bone beamer; two bifurcated bones; three bone billets; nine bone drifts; five bone fids; 17 bone fishhooks; four bone flakers; one bone fragment; one bone implement; four bone needles; two bone pendant/ornaments; 22 bone pins; nine bone pin fragments; two bone pressure flakers; 42 bone projectile points; two bone punches; 60 bone rattles; one bone shaft wrench; 20 bone tools; 20 unidentified bones; five mammal bones; 23 modified bones; 39 canid teeth and turtle shell pendants; one unmodified animal canine tooth; 46 Carthage Incised, var. Summerville jar sherds; 15 chert, limestone, schist, and sandstone celts; one ceramic elbow pipe; one chert tool; three stone chisels; one conch shell; seven conch shell columella; one conch shell cup; one Coosa Notched PP/K; one Copena Triangular PP/K; four copper and wood ear spool fragments; 71 copper beads; 42 copper ornament fragments; one chert core; one crinoid bead; one unmodified crinoid stem; 19 Crow Creek Noded sherds; two modified deer antlers; 31 deer bones; one deer jaw; one deer skull headdress fragment; one deer ulna with drilled hole; three dentate stamped, limestone tempered sherds; three stone discoidals; one dog burial; two drills; one Elk River PP/K; one engraved bone; one Evans PP/K; two Evansville Punctated sherds; 21 fish bone fragments; one fish jaw; one fishhook preform; four Flint Creek PP/K; two Flint River Cord Marked sherds; 10 fresh water pearl beads; one Furrs Cord Marked jar; four grooved abraders; eight pieces of ground stone; one ground stone bead; 23 ground stone vessel sherds; one Guntersville PP/K; one hafted drill; three Hamilton PP/K; 19 hammerstones; three pieces of hematite; one Henry Island Punctated jar; three Jacks Reef Pentagonal PP/K; four Kays PP/K; one Keith Incised sherd; one Kirk Corner Notched PP/K; one Kirk Serrated PP/K; three stone knives; one Ledbetter PP/K; 43 Little Bear Creek PP/K; 16 Long Branch Fabric Marked sherds; one Lost Lake PP/K; six Madison PP/K; two mammal bones; five Maples PP/K; one Matthews Incised, var. Manley jar; 28 McIntire PP/K; one McKee Island Brushed double bowl; two McKee Island Brushed sherds; one ground stone metate; four Mississippi Plain bowls; five Mississippi Plain bowl sherds; one Mississippi Plain double bowl; 14 Mississippi Plain double bowl sherds; one Mississippi Plain effigy rim sherd; 27 Mississippi Plain jars; 60 Mississippi Plain jar sherds; 337 Mississippi Plain sherds; one Mississippi Plain vessel; one Mississippi Plain sherd discoidal; four Motley PP/K; one Moundville Engraved var. Hemphill bottle; one Moundville Engraved, var. Tuscaloosa bottle; four Moundville Incised, var. Bottle Creek sherds; one Moundville Incised, var. Carrollton jar; seven Moundville Incised, var. Carrollton sherds; one Moundville Incised, var. Snows Bend jar; one Moundville Incised, var. Unspecified jar; one Moundville Incised, var. Unspecified sherd; two Mud Creek PP/K; one Mulberry Creek Cordmarked sherd; 25 Mulberry Creek Plain sherds; one Mulberry Creek PP/K; five mussel shells; one ovoid carbon object; one sandstone pestle; two chert picks; seven Pickwick PP/K; five stone pipes; 85 PP/K; one PP/K imbedded in bone; 59 chert preforms; one Saltillo Fabric Marked sherd; 116 sandstone bowl fragments; one chert scrapper; five shark teeth pendants; 71 shell and bone beads; 1,592 shell and stone beads; 12,447 shell beads; one incised shell bead; three shell cups; one shell ear plug; 13 shell fragments; five shell gorgets; seven shell ornaments; 28 shell pendants; one shell pin; eight shell spoons; 20 unidentified shells; 26 shell, ceramic and stone beads; 18 modified shells; one Smithsonia PP/K; 106 unmodified snail shells; one St. Andrews Complicated Stamped sherd; one Stanfield PP/K; one steatite bowl; 14 stemmed PP/K; 41 stone beads; four stone gorgets; one stone pendant; one Sublet Ferry PP/K; 93 terrapin shells and drum teeth; 383 turtle shell fragments; one unidentified bone; 128 unmodified stones/pebbles/cobbles; one utilized flake; five Wade PP/K; six Wheeler Check Stamped sherds; three Wheeler Plain sherds; four Wheeler Punctated sherds; one Wheeler Simple Stamped sherd; and eight wolf jaws.

From June to November 1937, human remains representing, at minimum, 12 individuals were removed from the McKelvey Mound, 40HN1/40HR30, in Hardin County, TN, by the AMNH. TVA acquired this site on July 29, 1936, for the Pickwick Reservoir project. The McKelvey Mound was located just north of the Alabama border on the right descending bank of the Tennessee River. The mound was 100 feet in diameter and, at the time of excavation, was eight feet above the level of the river. The

mound was primarily domiciliary rather than mortuary in nature. There are no radiocarbon dates from this site. The artifacts recovered indicate multiple occupations during the Late Archaic, Middle Woodland, Late Woodland, and Mississippian, Kogers Island phase (A.D. 1200–1500). Most of the burials are from the Kogers Island phase.

The human remains removed from the McKelvey Mound are primarily adults, but sex could not be determined for most individuals. No known individuals were identified. There are 79 associated funerary objects including one Bell Plain bottle; one biface; one burnishing stone; one celt; one cobble; two cortical flakes; one Flint Creek PP/K; five pieces of galena; three Guntersville PP/K; five Hamilton PP/K; two hammerstones; one McKee Island Complicated Stamped sherd; four Mississippi Plain jars; 44 Mississippi Plain sherds; one polished stone palette; one pebble; two unidentified PP/K; and three utilized flakes.

From January 16 to April 26, 1937, human remains representing, at minimum, 24 individuals were excavated from the Fisher Mound, 40HN4/40HR54, in Hardin County, TN, by the AMNH. TVA acquired this site on July 25, 1936, as part of the Pickwick Reservoir project. The site was approximately 400 feet north of the border with Alabama on the right descending side of the Tennessee River. The site's most noticeable surface feature was a conical mound 70 feet in diameter and 11 feet high. Using WPA labor and funds, the AMNH excavated the mound and three adjacent areas. There are no radiocarbon dates from this site, and very little pottery was recovered in the village area. The mound is generally identified as a mortuary structure from the Copena phase (A.D. 100–500).

The fragmentary nature of the human remains from the Fisher Mound made it difficult to identify gender, but infants, juveniles and adults are represented. No known individuals were identified. The 52 associated funerary objects include one chert biface; one stone celt; one coal fragment; 12 copper beads; 32 pieces of galena; four pieces of mica; and one Nolichucky PP/K.

Determinations Made by the Tennessee Valley Authority

Officials of Tennessee Valley Authority have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American, based on their presence in prehistoric archeological sites and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 3,027 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 23,968 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- The Treaty of September 20, 1816, indicates that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Chickasaw Nation.
- Pursuant to 43 CFR 10.11(c)(1)(ii), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma. The Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma have declined to accept transfer of control of the human remains.
- Pursuant to 43 CFR 10.11(c)(4), TVA has decided to transfer control of the funerary objects associated with the culturally unidentifiable human remains to The Chickasaw Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT11C, Knoxville, TN 37902–1401, telephone (865) 632–7458, email *tomaher@tva.gov,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Chickasaw Nation may proceed.

The Tennessee Valley Authority is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27647 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027068; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Tennessee, Department of Anthropology (UTK) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to UTK. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to UTK at the address in this notice by January 22, 2019.

ADDRESSES: Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Tennessee, Department of Anthropology, Knoxville, TN. The human remains and associated funerary objects were removed from Site 40MU260, the Brown site, in Maury County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d).

The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Tennessee, Department of Anthropology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

Between 1978 and 1979, upon the urging of the private landowner, human remains representing, at minimum, 47 individuals were removed from 40MU260, the Brown site in Maury County, TN, by Ken Steverson and members of the Duck River Chapter of the Tennessee Archaeological Society, after home construction and earth-moving equipment caused the exposure of several stone box graves. At an unknown date, likely in 1979 or soon thereafter, the human remains were transferred to the University of Tennessee (UTK) Department of Anthropology. These individuals include 12 females or probable females, 17 males or probable males, five adults of indeterminate sex, and 13 subadults. No known individuals were identified. The 6,075 associated funerary objects include: Three tools worked into awls; 10 bifacially worked tools or tool fragments; 54 scrapers or blades, most made out of retouched flakes; 29 partial projectile points and knives; one chert core; 43 pieces of lithic shatter; 358 chert waste flakes; five celt fragments; one extremely large celt, 28 cm long by 15 cm wide; one fragmentary groundstone tool; one grinding stone; four hammerstones; four pieces of hematite with evidence of grinding, perhaps used for pigment; one polished fossiliferous stone; 12 pieces of sandstone, of which six show usewear as abraders; one sandstone discoidal; four pieces of limestone, of which two are burned; 62 nonculturally altered rocks associated with burials, including crinoid fossils, pieces of fossil shell conglomerate limestone and sandstone; 5003 ceramic sherds recovered directly from burial contexts, described as the sherd ''floor'' of the stone box grave; 60 pieces of burned clay; 360 faunal bones and teeth, with identified species including box turtle, domesticated dog, turkey, bear, cotton rat and deer; nine samples of charcoaled botanical remains; and four bags of sediment from burial areas of the site. Included as part of the 6075 associated funerary objects are 45 artifacts temporally affiliated with the historic period: 26 Ceramic vessel sherds, one ceramic marble, six pieces of glass, seven nails, two pieces of metal strap, one horseshoe fragment, one pocket knife, and one piece of slate that may be from a writing tablet.

The Brown site is a multi-component site, though the majority of artifacts consist of pottery vessel sherds which date to the Mississippian period. Most of these artifacts were recovered directly from burial contexts, as the stone box burials at the site were lined with broken vessel sherds, creating a ''floor'' for the burial. The Middle Cumberland Culture of central Tennessee, which dates from the Middle Mississippian period to well into the late Mississippian period (A.D. 1100–1500), is known for this type of mortuary complex, and particularly the use of stone box graves (Ferguson 1972). Stone box graves are pit graves that have been lined and covered with stone (typically limestone, but sometimes slate or shale). These graves sometimes have prepared floors of pebbles or pottery sherds, as in the case of 40MU260 (Dowd 1972). These floor sherds came from a variety of vessels, but the vast majority are plain, shell-tempered sherds typical of the Mississippian period. Identifiable vessel types include jars, bowls with crenulated rims, a hexagonal bowl, effigy vessels, and bottles. Some jars have strap handles and some have lug or notched lug handles. Some sherds have surface incising in an angular guilloche pattern. However, the majority of the sherds appear to be from large, plain, shell-tempered jars. A few sherds in this collection, 37 in total, have grog, limestone, or quartz tempering and textile or cordmarked impressed surfaces. These ceramics may represent an earlier Woodland occupation of the site, particularly since most were found in midden context or during surface collection. Diagnostic lithics, such as projectile points and blades, include Elk River, Morrow Mountain, Benton, Bakers Creek, Kanawha, Hardin Barbed, Guntersville, Lowe, and Swan Lake types and date from the Early Archaic through the Late Mississippian temporal periods. The majority are from Middle Archaic (roughly 5,500–3,000 B.C.) indicating earlier prehistoric occupations in addition to the primary Mississippian period occupation. This site likely has a historic component as well, and artifacts from the historic era might possibly have gotten mixed into the prehistoric features during construction activities. As these historic artifacts were associated and collected with the prehistoric artifacts during excavation, they have been included in this inventory. The ceramics include transfer-printed whiteware and saltglazed stoneware dating from roughly the mid-1800s into the early 1900s. One crown-cap style bottle fragment dates from 1892 or later.

Determinations Made by the University of Tennessee, Department of Anthropology

Officials of the University of Tennessee, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on archeological context and osteological analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 47 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 6,075 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Pursuant to 25 U.S.C. 3001(15), the land from which the Native American human remains and associated funerary objects were removed was not the tribal land of any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not

identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Robert Hinde, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2445, email *rhinde@utk.edu* and *vpaa@utk.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The University of Tennessee, Department of Anthropology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27646 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027078; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by January 22, 2019.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Dickson County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1879, human remains representing, at minimum, three individuals were removed from a mound at the site of Anderson's Farm (40DS44), in Dickson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

During 1886–1887, human remains representing, at minimum, one individual were removed from near Nashville in Dickson County, TN, by George T. Halley, and donated by him to the Peabody Museum of Archaeology and Ethnology in 1887. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and/or archeological contexts, and museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation; Eastern

Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27701 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027079; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by January 22, 2019.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Humphreys County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1878, human remains representing, at minimum, four individuals were removed from a mound at the site of Link Farm (40HS6), in Humphreys County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

Determinations made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and/or archeological contexts, and museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27702 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027083; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Archaeology and Ethnology has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Peabody Museum of Archaeology and Ethnology. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Peabody Museum of Archaeology and Ethnology at the address in this notice by January 22, 2019.

ADDRESSES: Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Williamson County, TN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1878, human remains representing, at minimum, 43 individuals were removed from the site of Gray's Farm (40WM11), in Williamson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

In 1879, human remains representing, at minimum, 26 individuals were removed from the Arnold Site (40WM5), in Williamson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

In 1879, human remains representing, at minimum, one individual were removed from the Glass Mounds Site (40WM3), in Williamson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

In 1880, human remains representing, at minimum, three individuals were removed from Williamson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. The museum received these human remains in 1882, after the death of Mr. Curtiss. No known individuals were identified.

In 1882, human remains representing, at minimum, 130 individuals were removed from the Brentwood Library Site (40WM210), also known as Dr. Jarman's Site, in Williamson County, TN, by F. W. Putnam as part of a Peabody Museum of Archaeology and Ethnology expedition. No known individuals were identified.

In 1883, human remains representing, at minimum, 11 individuals were removed from the Brentwood Library Site (40WM210), also known as Dr. Jarman's Site, in Williamson County, TN, by George Woods as part of a Peabody Museum of Archaeology and Ethnology expedition led by F. W. Putnam. No known individuals were identified.

Sometime prior to 1892, human remains representing, at minimum, one individual were removed from Brentwood in Williamson County, TN, by F. W. Putnam, and donated by him to the Peabody Museum of Archaeology and Ethnology in 1892. No known individuals were identified.

Determinations Made by the Peabody Museum of Archaeology and Ethnology

Officials of the Peabody Museum of Archaeology and Ethnology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and/or archeological contexts, and museum records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 215 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, Treaties, Acts of Congress, or Executive Orders, the land from which the Native American human remains were removed is the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Patricia Capone, Museum Curator and Director of Research and Repatriation, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu*, by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: November 28, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27705 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027003; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Indiana State Museum and Historic Sites Corporation, State of Indiana, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Indiana State Museum and Historic Sites Corporation, State of Indiana (ISMHS) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the ISMHS. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the ISMHS at the address in this notice by January 22, 2019.

ADDRESSES: Michele Greenan, Indiana State Museum and Historic Sites Corporation, 650 West Washington Street, Indianapolis, IN 46214, telephone (317) 473–0836, email *mgreenan@indianamuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the ISMHS, Indianapolis, IN. The human remains were removed from the southern shore of Hamilton Lake, Steuben County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by staff at the University of Indianapolis, for the Indiana State Museum and Historic Sites Corporation. Following identification of the human remains as Native American, consultation proceeded with representatives of the Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, hereafter referred to as ''The Tribes.''

History and Description of the Remains

On August 16, 2014, human remains were observed by members of the public at the shoreline of Hamilton Lake, Steuben County, Indiana. The local police department was immediately contacted, and transported the human remains to the Angola Fire Department for assessment by the coroner. Following notice of the discovery to Indiana Conservation officers, scuba divers from S.C.U.R.R.T. and the Steuben County Sherriff's Department were dispatched to search for additional human remains; none were found. Indiana Conservation officers, in turn, contacted forensic specialists from the University of Indianapolis, who advised that the remains were human and possibly Native American.

As the human remains were not a part of a recent crime scene and following consultation with the Indiana Department of Historic Preservation and Archaeology, the human remains were transported by Indiana Conservation officers to the Indiana State Museum and Historic Sites (ISMHS) on August 18, 2014. Subsequently, staff from the University of Indianapolis further assessed the human remains, and identified them as Native American.

The human remains were inventoried, and an osteological analysis was conducted by staff at the University of Indianapolis. They identified the human remains, which consist of a portion of the skull, as belonging to a single adult female. Given the incomplete nature of the skeletal material little information was possible with regard to pathology, cause of death, or specific age.

Based on witness interviews conducted by Indiana Conservation officers, the human remains were found directly adjacent to areas frequented by recreational water implements and vehicles. As divers recovered no additional human remains, these human remains likely originated from a disturbed context elsewhere in the lake or adjacent areas. No other materials were recovered. No associated funerary objects are present.

Determinations Made by the Indiana State Museum and Historic Sites Corporation

Officials of the ISMHS have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on analysis of the physical remains and the archeological context.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Citizen Potawatomi Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the

Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

• Other authoritative governmental sources identify the location where the human remains were removed as the aboriginal land of Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Michele Greenan, Indiana State Museum and Historic Sites, 650 West Washington Street, Indianapolis, IN 46214, telephone (317) 473–0836, email *mgreenan@indianamuseum.org,* by January 22, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The ISMHS is responsible for notifying The Tribes that this notice has been published.

Dated: November 19, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–27706 Filed 12–20–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR01115000, 19XR0680A1, RX.R0336900.0019100]

Public Meeting of the Yakima River Basin Conservation Advisory Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Yakima River Basin Conservation Advisory Group (CAG) will take place.

DATES: The meeting will be held on Monday, February 25, 2019, from 9 a.m. to approximately 12 p.m. (PT).

ADDRESSES: The meeting will be held at the Bureau of Reclamation, Columbia-Cascades Area Office Conference Room, 1917 Marsh Road, Yakima, Washington 98901.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Christensen, Bureau of Reclamation, telephone (509) 575–5848 x203; email at *gchristensen@usbr.gov;* facsimile (509) 454–5611.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 2, as amended.

Purpose of the Meeting: The CAG is a Federal advisory committee that provides technical advice and counsel to the Secretary of the Interior and Washington State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program, consistent with Title XII Public Law 103–434, October 31, 1994; Yakima River Basin Water Enhancement Project (YRBWEP) as amended by Public Law 105–62, October 13, 1997, and Public Law 106–372, October 27, 2000. Additionally, under Title XII the CAG is tasked to provide recommendations on rules, regulations, and administration to facilitate the voluntary sale and lease of water. The CAG provides oversight to the Yakima River Basin Conservation Plan and provides an annual review of the implementation of the Water Conservation Program, including the applicable water conservation guidelines of the Secretary used by participating entities in preparing their individual water conservation plan. The primary purpose of the meeting is to update CAG members of the status of ongoing and future projects being funded with YRBWEP funds.

Agenda: The CAG will meet to review completed water projects, consideration of projects proposed for the future, and projects currently under construction. The members will receive updates on: (1) Current basin hydrology and operations; (2) native fish issues; (3) Riverware modeling updates, and (4) Department of Ecology projects and funding.

Meeting Accessibility/Special Accommodations: The meeting is open to the public and seating is on a first-come basis. The meeting facility is physically accessible to people with disabilities. If you have special needs or require an accommodation to participate in this meeting, please direct your requests to Gwendolyn Christensen at (509) 573–8050, or via email at *gchristensen@usbr.gov,* by November 21, 2018, so appropriate arrangements can be made.

Public Disclosure of Comments: Time will be allowed at the meeting for any individual or organization wishing to make oral comments. To allow for full consideration of information by the CAG members, written comments must be provided to Ms. Gwendolyn Christensen, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, Washington 98901; email at *gchristensen@usbr.gov;* or facsimile (509) 454–5611, at least five (5) business days prior to the meeting. Any written comments received will be provided to the CAG members.

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.

Dated: December 14, 2018.

Dawn Wiedmeier,

Area Manager, Columbia-Cascades Area Office.

[FR Doc. 2018–27664 Filed 12–20–18; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1092]

Certain Self-Anchoring Beverage Containers; Commission Final Determination of Violation of Section 337; Issuance of a General Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission has issued a general exclusion order (''GEO'') barring entry of certain self-anchoring beverage containers that infringe the patent asserted in this investigation. The Commission has terminated this investigation.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General

Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 8, 2018, based on a complaint, as amended, filed by Complainants Alfay Designs, Inc., of Rahway, New Jersey; Mighty Mug, Inc., of Rahway, New Jersey; and Harry Zimmerman of Los Angeles, California (collectively, ''Complainants''). 83 FR 835–36 (Jan. 8, 2018). The amended complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain self-anchoring beverage containers by reason of infringement of certain claims of U.S. Patent Nos. 8,028,850 (''the '850 patent'') and 8,757,418 (''the '418 patent''), as well as U.S. Trademark Registration No. 4,191,803 (''the '803 trademark''). *Id.* The amended complaint further alleged that a domestic industry in the United States exists or is in the process of being established.

The notice of investigation named eight respondents: Telebrands, Corp. of Fairfield, New Jersey (''Telebrands''); HIRALIY of Guangzhou, Chin; Chekue, Shenzen Chekue Trading Co. Ltd. of Shenzhen, China; Tapcet, Guangzhou Tinghui Trade Co., Ltd. of Guangzhou, China; OTELAS, MB of Klaipeda, Lithuania; and Artiart Limited of Taipei, Taiwan (collectively, the ''Unserved Respondents''); and OUOH, Zhejiang OUOH Houseware Co., Ltd., of Wenzhou, China (''OUOH''), and DevBattles of Ternopil, Ukraine (''DevBattles''). *Id.* The notice of investigation also named the Office of Unfair Import Investigations (''OUII'') as a party to the investigation. *Id.* The Commission subsequently terminated the investigation with respect to Telebrands and the Unserved Respondents. *See* Order No. 8 (Feb. 16, 2018) (unreviewed Notice (Mar. 15, 2018)); Order No. 10 (Apr. 10, 2018) (unreviewed Notice (May 8, 2018)).

On May 3, 2018, the ALJ issued an initial determination (''ID'') (Order No. 11) finding in default the last two remaining respondents, OUOH and DevBattles (collectively, ''the defaulting respondents''). The Commission determined not to review the ID. Comm'n Notice (June 1, 2018).

On May 25, 2018, Complainants filed a motion for summary determination that the defaulting respondents have sold for importation into the United States, imported into the United States, or sold after importation certain self-anchoring beverage containers that infringe certain claims of the '850 patent in violation of section 337. The motion also requested a recommendation for entry of a GEO; but the motion did not request cease and desist orders directed against either defaulting respondent.

On June 6, 2018, the ALJ issued an ID (Order No. 12), granting Complainants' motion to withdraw all allegations based on the '803 trademark and the '418 patent. The Commission determined not to review the ID. Comm'n Notice (June 25, 2018).

On June 14, 2018, Complainants filed a supplement to their May 25, 2018, motion for summary determination. On the same day, OUII filed a response in support of Complainants' motion.

On August 27, 2018, the ALJ issued an ID (Order No. 15) granting Complainants' motion for summary determination. The ALJ found that the importation requirement is satisfied as to each defaulting respondent, that the accused products of each defaulting respondent infringe claim 1 of the '850 patent, and that Complainants satisfied the domestic industry requirement. No petitions for review of the ID were filed. The ALJ recommended issuance of a GEO and the imposition of a bond in the amount of 100 percent of the entered value of subject products during the period of Presidential review.

On October 5, 2018, the Commission determined to review in part the ID granting summary determination of a section 337 violation. 83 FR 51703 (Oct. 12, 2018) (''Notice''). Specifically, the Commission determined to review: (1) The ID's findings on infringement to correct typographical errors, namely to modify a cross-reference ''[f]or the foregoing reasons'' at page 11 of the ID to ''[f]or the following reasons'' and to modify a citation to ''Mot. Ex. 3 at Attachments 1 (OUOH) and 6 (DevBattles)'' at page 11 of the ID to ''Mot. Ex. 3 at Attachments 3 (OUOH) and 6 (DevBattles)'', and to strike the sentence at page 11 of the ID that refers to claim charts attached to the Amended Complaint (''Complainants also attached claim charts to the Amended Complaint . . . of the patent. (Compl Exh. 38 at 13–15 (OUOH), 16–18 (DevBattles).)''); (2) the ID's findings on importation, and on review, (a) affirm the ID's finding on importation as to defaulting respondent OUOH on the modified ground that Complainants have established by substantial, reliable, and probative evidence that the importation requirement of section 337 is satisfied with respect to defaulting respondent OUOH and (b) take no position on whether Complainants have established by substantial, reliable, and probative evidence the importation requirement as to defaulting respondent DevBattles; and (3) the ID's findings on the economic prong of the domestic industry, and on review, affirm the ID's finding of the existence of a domestic industry under subsection 337(a)(3)(B), and to take no position on whether a domestic industry exists under subsections 337(a)(3)(A) or (C). Accordingly, the Commission found a violation of section 337 as to defaulting respondent OUOH by substantial, reliable, and probative evidence.

In its Notice, the Commission requested written submissions on the issues of remedy, the public interest, and bonding. 83 FR 51703 (Oct. 12, 2018). Complainants and OUII timely filed initial written submissions, and OUII also filed a reply to Complainants' submission. No other submissions were filed in response to the Commission Notice.

Having reviewed the submissions filed in response to the Commission Notice and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is a GEO prohibiting the unlicensed importation of certain self-anchoring beverage containers that infringe claim 1 of the asserted patent. The Commission has further determined that the public interest factors enumerated in section 337(d) (19 U.S.C. 1337(d)) do not preclude issuance of the GEO. Finally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The investigation is terminated.

The Commission's order and opinion were delivered to the President and to

the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury and Customs and Border Protection of the order.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.
Issued: December 18, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–27712 Filed 12–20–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0339]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; Comments Requested: Generic Clearance for Cognitive, Pilot and Field Studies for Bureau of Justice Statistics Data Collection Activities

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS) intends to request approval from the Office of Management and Budget (OMB) for a generic information collection clearance that will allow BJS to conduct a variety of cognitive, pilot, and field test studies. BJS will submit the request for review and approval in accordance with the Paperwork Reduction Act of 1995.

Over the next three years, BJS anticipates undertaking a variety of new surveys and data collections, as well as reassessing ongoing statistical projects, across a number of areas of criminal justice, including law enforcement, courts, corrections, and victimization. This work will entail development of new survey instruments, redesigning and/or modifying existing surveys, procuring administrative data from state and local government entities, and creating or modifying establishment surveys. In order to inform BJS data collection protocols, to develop accurate estimates of respondent burden, and to minimize respondent burden associated with each new or modified data collection, BJS will engage in cognitive, pilot and field test activities to refine instrumentation and data collection methodologies. BJS envisions using a variety of techniques, including but not limited to tests of different types of survey and data collection operations, focus groups, cognitive testing, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Following standard Office of Management and Budget (OMB) requirements, BJS will submit a change request to OMB individually for every group of data collection activities undertaken under this generic clearance. BJS will provide OMB with a copy of the individual instruments or questionnaires (if one is used), as well as other materials describing the project.

DATES: Comments are encouraged and will be accepted for 60 days until February 19, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Devon Adams, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Devon.Adams@usdoj.gov*; telephone: 202–307–0765).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* Generic Clearance for cognitive, pilot and field studies for Bureau of Justice Statistics data collection Activities.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers not available for generic clearance. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Administrators or staff of state and local agencies or programs in the relevant fields; administrators or staff of non-government agencies or programs in the relevant fields; individuals; policymakers at various levels of government.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* We estimate that approximately 30,000 respondents will be involved in exploratory, field test, pilot, cognitive, and focus group work conducted under this clearance over the requested 3-year clearance period. The average response time per respondent will be specific to each project covered under the clearance. Specific estimates of the number of respondents and the average response time are not known for each pilot study or development project covered under a generic clearance at this time. Project specific estimates will be submitted to OMB separately for each project conducted under this clearance. An estimate of the overall number of burden hours for activities under this generic

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden for identified and future projects covered under this generic clearance over the 3-year clearance period is approximately 20,000 hours.

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: December 17, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–27578 Filed 12–20–18; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustment for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of fee adjustment.

SUMMARY: The Mine Safety and Health Administration (MSHA) announces a revised hourly rate for the fees charged to applicants and approval holders for testing, evaluating, and approving products for use in mines. MSHA charges a fee to cover the full cost (direct and indirect costs) of its services associated with the approval program. The new hourly rate is $137.

DATES: MSHA will charge the new hourly rate for new approval services starting January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Dennis L. Ferlich, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Under the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, MSHA's mission is to prevent death, disease, and injury from mining and promote safe and healthy workplaces for the Nation's miners. MSHA approves equipment, materials, and explosives for use in mines to assure that the products are designed, constructed, and maintained so as not to cause a fire, explosion, or other accident. MSHA's regulation under 30 CFR part 5, Fees for Testing, Evaluation, and Approval of Mining Products, establishes the method the Agency uses to calculate the fees needed to recover costs for approval services.

Under 30 U.S.C. 966, MSHA may collect and retain up to $2,499,000 of fees collected for the approval and certification of equipment, materials, and explosives for use in mines.

On July 29, 2015, MSHA published a final rule in the **Federal Register** (80 FR 45051) that revised the Agency's regulation for administering fees for testing, evaluation, and approval of products manufactured for use in mines. Under the final rule, MSHA revised the hourly rate by dividing the total of a prior fiscal year's approval program costs (direct and indirect costs) by the number of total direct hours spent on approval program activities for that year. The hourly rate was increased from $97 to $121.

MSHA began charging the existing hourly rate on October 1, 2015, for new approval applications.

II. Applicable Fee

Under 30 CFR 5.50, an hourly rate will remain in effect for at least one year and be subject to revision at least once every three years. MSHA calculates the FY 2019 hourly rate using FY 2017 costs for baseline data. MSHA has determined that as of January 1, 2019, the hourly rate will be $137 per hour for services on new applications and post-approval activities (changes to approvals and post-approval product audits).

- MSHA will process applications and post-approval activities postmarked before January 1, 2019, under the existing FY 2018 hourly rate of $121.
- MSHA will process applications and post-approval activities postmarked on or after January 1, 2019, under the revised FY 2019 hourly rate of $137. This information is available on MSHA's web page at *http://www.msha.gov.*

David G. Zatezalo,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2018–27633 Filed 12–20–18; 8:45 am]

BILLING CODE 4510–43–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2018–11]

Request for Information on Designation of Mechanical Licensing Collective and Digital Licensee Coordinator

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The U.S. Copyright Office is issuing a notice of inquiry regarding the Musical Works Modernization Act, title I of the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA''), enacted on October 11, 2018. The MMA made significant modifications to the compulsory license in section 115 of title 17 for making and distributing phonorecords of musical works (the ''mechanical license''). Among the many changes to the section 115 compulsory license, the MMA calls for establishing a collective to manage a new blanket licensing system governing licensed uses of musical works by digital music providers. The Register of Copyrights is directed to designate the mechanical licensing collective and the digital licensee coordinator that will carry out key functions under the new blanket license.

The Office now solicits information to identify the appropriate entities to be designated. The information received in response to this notice of inquiry will be publicly posted, and interested members of the public may publicly comment on the submissions. After consideration of the record material, the Register will publish a notice in the **Federal Register** setting forth the identity of and contact information for the mechanical licensing collective and digital licensee coordinator, and the reasons for the designations.

DATES: Initial written proposals must be received no later than 11:59 p.m. Eastern Time on March 21, 2019. Written reply comments must be received no later than 11:59 p.m. Eastern Time on April 22, 2019. Following submission of these written comments, the Office may provide for proponents of written proposals to supplement or amend their initial submission, in accordance with specific instructions established by the Office at *https://www.copyright.gov/rulemaking/mma-designations/*. The Office reserves the option to seek additional public input prior to making a designation, to be announced by separate notice in the future. Rather than reserving time for potential extensions of time to file comments, commenting parties should be aware that the Office has already established what it believes to be the most reasonable deadlines consistent with the statutory deadlines by which it must promulgate the regulations described in this notice of inquiry.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments in response to this notice are therefore to be submitted electronically through *regulations.gov*. Specific instructions for submitting comments are available on the Copyright Office's website at *https://www.copyright.gov/rulemaking/mma-designations/*. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at *regans@copyright.gov,* Steve Ruwe Assistant General Counsel, by email at *sruwe@copyright.gov,* or Jason E. Sloan, Assistant General Counsel, by email at *jslo@copyright.gov*. Each can be contacted by telephone by calling (202) 707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

On October 11, 2018, the president signed into law the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (''MMA'').[1] Title I of the MMA addresses the efficiency and fairness of the section 115 mechanical license for the reproduction and distribution of musical works embodied in digital phonorecord deliveries by establishing a blanket licensing system governing such uses by digital music providers.[2] Prior to passage of the MMA, a digital music provider seeking to use a protected musical work was required to either obtain a voluntary license from the copyright owner to use the work or obtain a compulsory license by filing a notice of intention to obtain a compulsory license on a song-by-song basis. A notice of intention could be filed with the copyright owner or, under certain circumstances in which the owner could not be identified, with the U.S. Copyright Office.[3]

The MMA creates a new blanket license for the reproduction and distribution of musical works by digital music providers in the form of digital phonorecord deliveries, including permanent downloads, limited downloads, and interactive streams, and eliminates the song-by-song notice of intention process for such uses.[4] Instead of obtaining compulsory licenses on an individual song-by-song basis, the MMA directs the Office to designate a nonprofit entity, the mechanical licensing collective (''MLC'') to administer this new blanket-licensing system starting in January 2021.[5] As set forth in more detail below, the MLC, through its board of directors and task-specific committees, will be responsible for a variety of duties, including collecting and distributing royalties from digital music providers, establishing a musical works database relevant to the new blanket license, and administering a process by which copyright owners can claim ownership of musical works (and shares of such works).[6]

Licensees will bear the reasonable costs of establishing and operating the new MLC. The Copyright Royalty Judges will conduct a proceeding to determine the amount of an administrative assessment fee to be paid by blanket and significant nonblanket licensees for the reasonable costs of starting up and continuing to operate the new MLC.[7] A digital licensee coordinator (''DLC'') may be designated to represent digital music providers in the administration of the license, including by serving as a nonvoting board member of the MLC, and participating in proceedings before the Copyright Royalty Judges to determine the administrative assessment fee.[8] To facilitate public comment, this notice sets forth a brief explanation of the designation process and key functions and responsibilities of the MLC, its board and committees, and the DLC.

A. Designation Process

The statute directs the Register of Copyrights to designate the MLC within 270 days of enactment of the MMA.[9] To aid in this process, the statute requires the Register to publish notice in the **Federal Register** soliciting information to assist in identifying the appropriate entity to serve as the MLC within 90 days of enactment. The notice must solicit information regarding potential board members of the MLC, the operations advisory committee, the unclaimed royalties oversight committee and the dispute resolution committee.[10]

By law, in order to be designated as the MLC, the entity should be:

- A single nonprofit entity that is created by copyright owners to carry out its statutory responsibilities;
- Endorsed by and enjoying substantial support from musical work copyright owners that represent the greatest percentage of the licensor market for uses of such works in covered activities over the preceding 3 years;
- Able to demonstrate to the Copyright Office that, by the license availability date, it will have the administrative and technological capabilities to perform the required functions; and
- Governed by a board of directors that is composed of a mix of voting and non-voting members as directed by the statute.[11]

If no entity meets all of these statutory criteria, the Register must designate as the MLC the entity that most nearly fits these qualifications.[12] After 5 years, the Register will commence a periodic review of this designation.[13]

The Register is also directed to designate the DLC not later than 270 days after the enactment date, following substantially the same procedure described for designation of the MLC.[14] Unlike the MLC, in the event the Register is unable to identify an entity that fulfills the criteria for the DLC, the Register may decline to designate a DLC.[15]

Under the statutory selection criteria, the name and affiliation of each board member and each committee established by the MLC must be solicited by the Register as part of the designation

[1] Public Law 115–264, 132 Stat. 3676 (2018).

[2] *See* S. Rep. No. 115–339, at 1–2 (2018) (''The current statutory scheme applies inconsistent rules that place certain technologies at a disadvantage and result in inequitable compensation variances for music creators. These inconsistencies have drawn criticism that music copyright and licensing laws are too difficult to comply with and do not adequately reward the artists and professionals responsible for creating American music.''); Report and Section-by-Section Analysis of H.R. 1551 by the Chairmen and Ranking Members of Senate and House Judiciary Committees, at 1 (2018), *https://judiciary.house.gov/wp-content/uploads/2018/04/Music-Modernization-Act.pdf* (''Conf. Rep.''); *see also* H.R. Rep. No. 115–651, at 2 (2018) (detailing the House Judiciary Committee's efforts to review music copyright laws).

[3] *See* 17 U.S.C. 115(b)(1), (c)(5) (2017); S. Rep. No. 115–339, at 3; U.S. Copyright Office, Copyright and the Music Marketplace 28–31 (2015), *https://www.copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf* (describing operation of prior section 115 license).

[4] The MMA retains the ability of record companies to obtain an individual download license on a song-by-song basis. 17 U.S.C. 115(b)(3) (2018).

[5] *Id.* at 115(d)(3)(B); *see also id.* at 115(e)(15). The MLC will begin to administer the blanket license on the ''license availability date,'' envisioned by the statute as January 1, 2021.

[6] *Id.* at 115(d)(3)(C). The Copyright Office is provided with ''broad regulatory authority'' to conduct proceedings as necessary to effectuate the statute; in addition to a number of regulations that the Register is specifically directed to promulgate, the legislative history contemplates that the Register will ''thoroughly review'' policies and procedures established by the MLC. H.R. Rep. No. 115–651, at 5–6; S. Rep. No. 115–339, at 5; *see* 17 U.S.C. 115(d)(12). The legislative history further suggests that the Register promulgate the necessary regulations in a way that ''balances the need to protect the public's interest with the need to let the new collective operate without over-regulation.'' H.R. Rep. No. 115–651, at 14; S. Rep. No. 115–339, at 15.

[7] 17 U.S.C. 115(d)(7)(D).

[8] *Id.* at 115(d)(3)(D)(i)(IV), (d)(5).

[9] *Id.* at 115(d)(3)(B)(i).

[10] *Id.* at 115(d)(3)(B), (d)(3)(D)(iv)–(vi).

[11] *Id.* at 115(d)(3)(A), (d)(3)(D)(i).

[12] *Id.* at 115(d)(3)(B)(iii).

[13] *Id.* at 115(d)(3)(B)(ii); *see also* H.R. Rep. No. 115–651, at 6 (noting that continuity is expected to be beneficial so long as the designated entity has ''regularly demonstrated its efficient and fair administration,'' whereas evidence of ''fraud, waste, or abuse,'' or failure to adhere to relevant regulations should ''raise serious concerns'' regarding whether re-designation is appropriate), S. Rep. No. 115–339, at 5–6 (same).

[14] 17 U.S.C. 115(d)(5)(B).

[15] *Id.* at 115(d)(5)(B)(iii).

process.[16] The legislative history states ''the Register is expected to allow the public to submit comments on whether the individuals and their affiliations meet the criteria specified in the legislation; make some effort of its own as it deems appropriate to verify that the individuals and their affiliations actually meet the criteria specified in the legislation; and allow the public to submit comments on whether they support such individuals being appointed for these positions.''[17] Accordingly, as addressed below, the Copyright Office expects interested members of the public to comment upon the proposed governance board in response to this inquiry.

Similar to the endorsement criteria discussed below, the statute does not preclude prospective board members, vendors, or other affiliates of a prospective MLC from being included in submissions from multiple competing entities. Indeed, based on the statutory criteria requiring representative of certain publisher or songwriter associations to serve as non-voting board members, there may be some representatives that might logically serve on the board of any proposed MLC.[18] Similarly, while the statutory language authorizes the MLC to arrange for services of outside vendors, nothing suggests that such a vendor must offer exclusive services to that MLC candidate (let alone one that is yet-to-be designated).

B. MLC Duties and Functions

The MMA enumerates a number of functions for the MLC.[19] The MLC must be a single nonprofit entity created by copyright owners and endorsed by musical work copyright owners, and it must possess the administrative and technological capabilities necessary to carry out a wide array of responsibilities in administering blanket licenses.[20] This administrative role includes accepting or rejecting notices of license, and exercising authority to terminate licenses when the licensee is in default.[21] The MLC has 30 days to reject a notice in writing, listing with specificity why such notice was rejected, either because it does meet the statutory requirements or applicable regulations,[22] or if the digital music provider has had a blanket license terminated by the collective within the past three years.[23] The MLC will also accept notices of nonblanket activity; that is, a notice that the licensee has been engaging in making digital phonorecord deliveries of musical works without using the blanket license, from significant nonblanket licensees.[24]

For digital music providers that are blanket licensees, the MLC will receive reports of usage, and collect and distribute royalties for covered activities.[25] A key aspect of the MLC's collection and distribution responsibilities includes identifying musical works and copyright owners, matching them to sound recordings (and addressing disputes), and ensuring that a copyright owner gets paid as he or she should. To that end, the MLC will create and maintain a free, public database of musical work and sound recording ownership information. The MLC will administer processes by which copyright owners can claim ownership of musical works (and shares of such works), and by which royalties for works for which the owner is not identified or located are equitably distributed to known copyright owners on a market share basis after a required holding period. The MLC unclaimed royalties oversight committee is tasked with establishing policies and procedures for such distributions, subject to the approval of the MLC board of directors.

To fulfill its responsibilities, the MLC is statutorily authorized to invest in relevant resources, and arrange for services of outside vendors and others, to support the activities of the MLC.[26] It may engage in legal and other efforts to enforce rights and obligations set forth under the license, including by filing bankruptcy proofs of claims for amounts owed under licenses, and by acting in coordination with the digital licensee coordinator.[27] The MLC may be audited by copyright owners due royalties from the MLC, and so must maintain records of its activities and engage in and respond to audits.[28] And, the MLC may audit licensees.[29]

The MLC may also administer voluntary licenses issued by, or individual download licenses obtained from, copyright owners only for reproduction or distribution rights in musical works for covered activities and the MLC shall charge reasonable fees for such services.[30] But the MLC may only issue blanket licenses for digital uses pursuant to section 115(d)(1), and administer blanket licenses for reproduction or distribution rights in musical works for covered activities.[31]

The MLC is authorized to initiate and participate in proceedings before the Copyright Royalty Judges to establish the administrative assessment that will fund the MLC activities. The MLC may gather and provide documentation for use in proceedings before the Copyright Royalty Judges to set rates and terms for the section 115 license. And, finally, the MLC may initiate and participate in proceedings before the Copyright Office with respect to the foregoing activities.[32]

C. MLC Board

The board of the MLC shall consist of 14 voting members and 3 nonvoting members.[33] Ten voting members shall be representatives of music publishers to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities, and none of which may be owned by, or under common control with, any other board member. Four voting members shall be professional songwriters who have retained and exercise exclusive rights of reproduction and distribution with respect to covered activities with respect to musical works they have authored. One nonvoting member shall be a representative of the nonprofit trade association of music publishers that represents the greatest percentage of the licensor market for uses of musical works in covered activities, as measured for the 3-year period preceding the date on which the member is appointed. One nonvoting member shall be the digital licensing coordinator, if one has been designated, or otherwise, the nonprofit trade association of digital licensees that represents the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 full calendar years. One nonvoting member shall be a representative of a nationally recognized nonprofit trade association whose

[16] *Id.* at 115(d)(3)(B)(i).

[17] H.R. Rep. No. 115–651, at 5; S. Rep. No. 115–339, at 5; Conf. Rep. at 4; *see* H.R. Rep. No. 115–651, at 26 (''This requirement is not waivable by the Register and is not subject to the alternate designation language.''); S. Rep. No. 115–339, at 23 (same).

[18] *See* 17 U.S.C. 115(d)(3)(D)(i).

[19] *Id.* at 115(d)(3)(C)(i)–(iii) (enumerating thirteen functions, in addition to permission to administer voluntary licenses).

[20] *Id.* at 115(d)(3)(A)(i)–(iii); *see also id.* at 115(d)(3)(B)(iii).

[21] *Id.* at 115(d)(3)(F).

[22] *Id.* at 115(d)(2)(A)(iii)(I).

[23] *Id.* at 115(d)(2)(A)(iii)(II), and (d)(3)(F).

[24] *Id.* at 115(d)(3)(F), (e)(23).

[25] *See generally id.* at 115(d)(3)(C)(i).

[26] *Id.*

[27] *Id.*

[28] *Id.; see also id.* at 115(d)(3)(L).

[29] *Id.* at 115(d)(4)(D).

[30] *Id.* at 115(d)(3)(C)(iii).

[31] *Id.* at 115(d)(3)(C)(ii).

[32] *Id.* at 115(d)(3)(C)(i).

[33] For the statutory requirements regarding the board described in this paragraph, *see* 17 U.S.C. 115(d)(3)(D)(i).

primary mission is advocacy on behalf of songwriters in the United States.[34]

As the legislative history notes, ''[s]ervice on the Board or its committees is not a reward for past actions, but is instead a serious responsibility that must not be underestimated . . . . It has been agreed to by all parties that songwriters should be responsible for identifying and choosing representatives that faithfully reflect the entire songwriting community on the Board.'' [35]

The MLC board is authorized to adopt bylaws for the selection of new directors subsequent to the initial designation of the MLC.[36] The Presidential Signing Statement accompanying enactment of the MMA states that directors of the MLC are inferior officers under the Appointments Clause of the Constitution, and that the Librarian of Congress must approve each subsequent selection of a new director.[37] It also suggests that the Register work with the MLC, once designated, to address issues related to board succession.[38]

An individual serving as an officer of the MLC may not, at the same time, also be an employee or agent of any member of the board of directors of the collective or any entity represented by a member of the board of directors.[39]

Not later than one year after the date on which the MLC is initially designated, the MLC shall establish publicly available bylaws to determine issues relating to the governance of the collective. The MLC bylaws shall address the length of the term for each MLC board member, the staggering of the terms of the board members, a process for filling a seat on the board that is vacated before the end of the set term, a process for electing a board member, and a management structure for daily operation of the collective.[40]

D. MLC Committees

The MMA requires the board to establish three committees, and the Office to solicit names of prospective committee members in this notice. The statute does not address whether members may serve on multiple committees or whether members of the board may also serve on a committee.

Operations Advisory Committee. The MLC board of directors is required to establish an operations advisory committee consisting of not fewer than six members to make recommendations to the board concerning the operations of the collective, including the efficient investment in and deployment of information technology and data resources.[41] This committee is required to have an equal number of members who are musical work copyright owners, to be appointed by the MLC board, and representatives of digital music providers, to be appointed by the DLC.[42]

Unclaimed Royalties Oversight Committee. The MLC board is required to establish and appoint an unclaimed royalties oversight committee consisting of ten members, five of which shall be musical work copyright owners and five of which shall be professional songwriters whose works are used in covered activities.[43] This committee is responsible for establishing policies necessary to undertake a fair distribution of unclaimed royalties.[44]

Dispute Resolution Committee. The MLC board of directors is required to establish and appoint a dispute resolution committee consisting of not fewer than 6 members, which shall include an equal number of representatives of musical work copyright owners and professional songwriters.[45] This committee is responsible for establishing policies and procedures for copyright owners to address disputes relating to ownership interests in musical works, which shall include a mechanism to hold disputed funds pending the resolution of the dispute.[46]

E. The DLC

The MMA also calls for the establishment of a digital licensee coordinator (''DLC'') to carry out key functions under the new blanket license.[47] The DLC is tasked with coordinating the activities of the licensees. The DLC shall make reasonable, good faith efforts to assist the MLC in its efforts to locate and identify copyright owners of unmatched musical works (and shares of such works) by encouraging digital music providers to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties, including by posting contact information for the collective at reasonably prominent locations on digital music provider websites and applications and conducting in-person outreach activities with songwriters. The DLC is authorized to gather and provide documentation for, and participate in proceedings before, the Copyright Royalty Judges to determine the administrative assessment to be paid by digital music providers. Further, the DLC may initiate and participate in proceedings before the Copyright Office with respect to the blanket mechanical license.

II. Request for Proposals and Related Information

At this time, the Copyright Office solicits information to assist in identifying the appropriate entities to serve as the MLC and DLC. The MMA also directs the Register to promulgate multiple other regulations with respect to the operation of the revamped blanket mechanical license and operation of the MLC, regarding, *inter alia,* the form of the notices of license and notice of nonblanket activity,[48] usage reports and adjustments,[49] information to be included in the musical works database,[50] requirements for the usability, interoperability, and usage restrictions of that database,[51] and the disclosure and use of confidential information.[52] The Office will solicit public comment regarding those subjects through future notice(s) and therefore present commenters should focus their statements on information relevant to the designation processes.[53]

A. Mechanical Licensing Collective

The Office hereby requests proposals for designation as the MLC that include the identities of all members of a proposed board of directors and the various committees, along with contact information for the collective. Such proposals should identify the proposed board members' relevant background and affiliations so that interested parties can submit comments to the Register addressing whether the parties meet the statutory requirements set forth in 17 U.S.C. 115(d)(3)(D).

[34] *Id.*

[35] S. Rep. No. 115–339, at 5.

[36] 17 U.S.C. 115(d)(3)(D)(ii).

[37] Statement on Signing the Orrin G. Hatch–Bob Goodlatte Music Modernization Act, 2018 Daily Comp. Pres. Doc. 692 (Oct. 11, 2018), *https://www.gpo.gov/fdsys/pkg/DCPD-201800692/pdf/DCPD-201800692.pdf (''MMA Signing Statement'').*

[38] *Id.*

[39] 17 U.S.C. 115(d)(3)(D)(viii).

[40] *Id.* at 115(d)(3)(D)(ii).

[41] *Id.* at 115(d)(3)(D)(iv).

[42] *Id.*

[43] *Id.* at 115(d)(3)(D)(v).

[44] *Id.* at 115(d)(3)(J)(ii).

[45] *Id.* at 115(d)(3)(D)(vi).

[46] *Id.* at 115(d)(3)(K).

[47] *See generally id.* at 115(d)(5)(C).

[48] *Id.* at 115(d)(2)(A)(i), (d)(6)(A)(i).

[49] *Id.* at 115(d)(4)(A)(iv).

[50] *Id.* at 115(d)(3)(E)(ii)–(iii).

[51] *Id.* at 115(d)(3)(E)(vi).

[52] *Id.* at 115(d)(12)(C).

[53] The Office is contemplating whether it may aid the process to solicit initial public comments on some of these issues in advance of the final designation. The Office notes, however, that the MMA explicitly contemplates that the MLC and DLC may participate in such proceedings, and would not expect to conclude any proceeding(s) without affording that opportunity. *See id.* at 115(d)(3)(C)(i)(X), (d)(5)(C)(i)(IV). The Office welcomes comment on this question of timing.

The Office requests that proposals for the MLC designations include the following information, organized by the categories below.

1. Administrative and Technological Capabilities

The following questions are directed at identifying an entity that can best perform the duties outlined in section 115(d)(3)(C) of the MMA.

a. General. The Office requests a business plan, including a statement of purpose or principles, proposed schedule, and available budgetary projections, for the establishment and operation of the proposed MLC for the first five years of its existence. In response to the more granular information requested below, this plan should include a description of the intended technological and/or business methods for: Establishing and maintaining the required musical works database; administering the blanket license and collecting relevant notices, usage reports, and administrative assessments from digital music providers; administering a process by which copyright owners can claim ownership of musical works (and shares of such works); distributing royalties generated from unidentified works equitably; collecting and processing royalty payments to musical work copyright owners; and otherwise fulfilling the MLC's statutory obligations.

b. Ownership Identification, Matching, and Claiming Process. The Office solicits information tailored to the proposed MLC's ability to identify musical works (and shares of such works) embodied in particular sound recordings, and to locate the copyright owners of such musical works, including but not limited to:

- The proposed MLC's plan for matching sound recordings and musical works, including plans for developing or acquiring initial sets of data;
- An explanation of how ownership information may be populated, corrected or updated by various stakeholders and how the proposed MLC will accommodate submission of information that may vary by scale and scope depending upon the technical or business sophistication of the submitter;
- Best practices, methodologies or expertise (including manual processes), that the proposed MLC may employ for identification of copyright owners and matching of copyrighted works;
- Intended approaches to prioritization of matching efforts (including whether and how factors such as usage, royalty amounts, genre, and vintage of usage of works may guide prioritization choices);
- The proposed MLC's target goals or estimates for matching works in each of the first five years, and in the aggregate, expressed both in terms of a percentage of the market share of musical works in covered activities, and in terms of a percentage of the works licensed for use in covered activity;
- With consideration of the statutory timeframes regarding distribution of unclaimed royalties that accrued before the license availability date, an explanation how the proposed MLC will provide adequate opportunity to engage in requisite identification and matching efforts and for copyright owners to search and claim ownership of musical works (or shares thereof); [54]
- Intended approaches to address fraudulent claims, including any planned policies or procedures of the dispute resolution committee noted below, relevant institutional knowledge of its board members or prospective vendors, and intended documentation regarding claims of ownership of works or intended technological processes; and
- Any views regarding how the proposed MLC intends to interact with and address ownership information with collective management organizations that represent owners of comparable and/or associated rights.

c. Maintenance of Musical Works Database. While a well-functioning musical works database is presumed to be integral to administering the matching and claiming process described above,[55] the Office solicits additional information related to the creation and operation of this historic unified music database, specifically:

- How the proposed MLC will approach interoperability of existing or future external databases, systems and applications, including the extent to which it may adopt or engage with existing and future frameworks, standards or formats (including open standards);
- The proposed MLC's plans to utilize and interact with existing and emerging methods or standards for identification of parties and works (including hashes and fingerprint technologies);
- An explanation of how the proposed MLC will have the capability to accept, maintain, and otherwise handle large data sets, including consideration of the scale of data that the MLC will be responsible for managing;
- An explanation of how the proposed MLC intends to approach access and usage restrictions regarding the musical works database, including with respect to digital music providers, significant nonblanket licensees, authorized vendors, and other parties' timely access to data; [56]
- An explanation of how the proposed MLC will approach other information technology issues, including security, redundancy, privacy, and transparency.

d. Collection and Distribution of Royalties, Including Unclaimed Accrued Royalties. The Office seeks information related to the proposed MLC's royalty distribution methods and capabilities. As the legislative history notes, the MLC is required to collect and distribute royalties using the information provided in usage reports on a specific schedule mandated by statute.[57] As the history further notes, there is an expectation that ''[a]ll copyright owners shall have their royalties distributed fairly and no copyright owner may receive special treatment as a result of their position on the Board, its committees, or for any other reason without a reasonable basis.'' [58] Specifically, the Office requests:

- The proposed MLC's expected competence with efficient and effective payment methods, including addressing tax and other regulatory documentation for various payees and entities;
- Any planned approaches with respect to the collection and distribution of royalties collected through bankruptcy proceedings; [59]
- Information about the proposed MLC's approach to scheduling royalty payments to identified copyright owners, including whether the entirety of unclaimed royalties is intended to be distributed simultaneously;
- Views regarding whether the proposed MLC may consider holding reserve funds to address claims that may only reasonably be identified after the statutory holding period, and what if any criteria might be used to implement any such reserve practices; [60]
- Any policies that the proposed MLC intends to implement with respect to undertaking a fair distribution of unclaimed royalties; [61] and

[54] *Id.* at 115(d)(3)(J).

[55] *See* Conf. Rep. at 6–7.

[56] *See* 17 U.S.C. 115(d)(3)(E)(v).

[57] H.R. Rep. No. 115–651, at 12; S. Rep. No. 115–339, at 13.

[58] H.R. Rep. No. 115–651, at 12; S. Rep. No. 115–339, at 13.

[59] *See* Conf. Rep. at 11.

[60] 17 U.S.C. 115(d)(3)(H).

[61] H.R. Rep. No. 115–651, at 13 (describing required policies, and noting ''[i]t is the intent of Congress to ensure that songwriters receive their

Continued

• Any other considerations that may be relevant with respect to the distribution of claimed and unclaimed accrued royalties.

e. Investment in Resources and Vendor Engagement. The Office understands that proposals for designation as the MLC may rely on one or more vendors to ''demonstrate to the Register of Copyrights that the entity has, or will have prior to the license availability date, the administrative and technological capabilities to perform the required functions of the mechanical licensing collective.'' [62] To the extent not already provided, the Office therefore seeks information about actual or potential vendors, including the specific functions to be addressed by a given vendor, the vendors' relevant experience with clients and projects involving similar scale and type, or industry-specific knowledge. The Office requests, to the extent practicable:

• The estimated number of employees the proposed MLC intends to hire and/or engage through vendors in each of the first five years;

• The names and resumes of any key employees that the proposed MLC may have engaged to design and operate the statutorily required functions of the MLC;

• The contracts the proposed MLC has engaged in, or any funds or other items of value the proposed MLC has exchanged in anticipation of being designated as the MLC;

• Information regarding any conflicts of interests, including but not limited to disclosure of common ownership or other direct or indirect economic relationships, or prospective relationships, between board members of the MLC, their associated publishers and/or catalogs, and actual or potential vendors;

• To the extent unaddressed elsewhere, information regarding any relevant ''request for information'' or ''request for proposals'' issued by the proposed MLC and responsive submissions to the extent this information is relevant to the entity's ability to perform the statutory functions of the MLC.

f. Funding. While the Register's process of designating an MLC is separate from the establishment of an administrative assessment by the Copyright Royalty Judges, understanding the proposed funding for the MLC (in advance of the establishment of the administrative assessment) is important to confirming that the MLC will be ready to adequately perform its required functions by the license availability date and beyond. Further, the statute separately directs the MLC to establish procedures to guard against ''abuse, waste, and the unreasonable use of funds.'' [63] Accordingly the Office requests, for the purposes of this designation process only, and without prejudice to the future administrative assessment proceeding, to the extent available:

• The anticipated annual costs of the proposed MLC in each of the first five years (or the anticipated range of costs), itemized to the extent possible;

• Information related to the planned funding of the MLC operations prior to receipt of administrative assessment funds, including information that may relate to voluntary contributions; [64]

• Information related to whether and to what extent the proposed MLC may take on debt obligations to fund its operations, and what collateral may be used to secure such debt; and

• Information regarding whether and how the proposed MLC may apply unclaimed accrued royalties on an interim basis to defray operating costs, as well as any accompanying plans for future reimbursement of such royalties from future collections of the administrative assessment, including relevant legal considerations and guidelines in the event the proposed MLC does intend to apply unclaimed accrued royalties.[65]

g. Education and Outreach. The Office welcomes information regarding how a proposed MLC intends to pursue its education and outreach efforts, including how it intends to reach diverse audiences to ''engage in diligent, good-faith efforts to publicize the collective and ability to claim unclaimed accrued royalties for unmatched musical works (and shares of such works).'' [66] Please reference any relevant experience of proposed board members, personnel, and potential vendors.

2. Governance

The following questions are directed at identifying an entity that can best adhere to the required governance criteria outlined in section 115(d)(3)(D) of the MMA.

a. Composition. As directed by statute, the Office requests:

• The name and affiliation of each member of the board of directors described above and in 17 U.S.C. 115(d)(3)(D)(i);

• The name and affiliation of each member of the operations advisory committee described above and in 17 U.S.C. 115(d)(3)(D)(iv);

• The name and affiliation of each member of the unclaimed royalties oversight committee described above and in 17 U.S.C. 115(d)(3)(D)(v);

• The name and affiliation of each member of the dispute resolution committee described above and in 17 U.S.C. 115(d)(3)(D)(vi); and

• Proof that the proposed MLC is a nonprofit entity, not owned by any other entity that is created by copyright owners to carry out responsibilities set forth in the statute.

In responding, please also address the following topics to explain how these individuals, and the respective board or committees, meet the statutory criteria:

• The process and criteria used for selection of board and committee members;

• How the proposed songwriter board members individually and together faithfully reflect the entire songwriting community; [67]

• How the proposed music publisher board members individually and together faithfully reflect the entire music publisher community;

• Whether the proposed MLC believes that the board members who are ''representatives of music publishers . . . to which songwriters have assigned exclusive rights of reproduction and distribution of musical works with respect to covered activities'' [68] could include representatives of music publishing administrators, where copyright ownership interests are not transferred to the publisher, but remain with the songwriter(s);

• Whether board members, who are either representatives of music publishers or professional songwriters, intend to license covered activity through the proposed MLC, or whether, and to what extent, they intend to license covered activity directly with licensees; and

• With respect to the unclaimed royalties oversight committee, how the proposed members possess specific insight and knowledge about the types of owners and songwriters whose works

fair share of monies distributed to copyright owners under subsection (d)(3)(J), while at the same time respecting contractual relationships. To that end, payments and credits to songwriters shall be allocated in proportion to the reported usage of individual musical works by digital music providers during the relevant reporting periods. The 50% payment or credit to a songwriter referenced in subsection (d)(3)(J)(iv)(II) is intended to be treated as a floor, not a ceiling''); S. Rep. No. 115–339, at 14 (same).

[62] 17 U.S.C. 115(d)(3)(A)(iii).

[63] *Id.* at 115(d)(3)(D)(ix)(II)(bb)(BB).

[64] *See id.* at 115(d)(7)(B).

[65] *See id.* at 115(d)(7)(C):

[66] S. Rep. No. 115–339, at 14.

[67] *Id.* at 5.

[68] 17 U.S.C. 115(d)(3)(D)(i)(I).

may be susceptible to being unmatched and unclaimed.

The Office notes the Presidential Signing Statement accompanying enactment of the law indicates an expectation that the Register work with the MLC, once it has been designated, to ensure that the Librarian retains the ultimate authority to appoint and remove all directors.[69] The Office invites comment regarding how the proposed MLC intends to address issues relating to succession of board and committee members, and any other obligations that may be impacted by this statement.

b. Governance Issues. The Office further requests that prospective MLCs provide:

- Draft bylaws or other documentation regarding how the MLC will ensure that the operations of the MLC and its board are transparent and accountable; [70]
- Information regarding how the proposed MLC board may identify and approach perceived or actual conflicts of interest, including with respect to applicable law and/or rules of professional responsibility, and the selection of board and committee members and individual vendors; and
- Information regarding how the MLC may approach confidential information, including board and committee member's access to sensitive information regarding marketplace rivals.

3. Indicia of Endorsement and Support

As noted, the MLC must be ''endorsed by, and enjoy[] substantial support from, musical work copyright owners that together represent the greatest percentage of the licensor market for uses of such works in covered activities, as measured over the preceding 3 full calendar years.'' [71] The Office understands that there may be conflicting views regarding how the ''greatest percentage of the licensor market'' should be measured—*i.e.,* in market value, or in number of licenses. That said, the Office has made a few preliminary interpretations regarding this clause. For example, because the section 115 license applies to uses of phonorecords in the United States, the relevant market is the United States market for making and distributing phonorecords of musical works. Endorsement may be shown by including musical work copyright owners located outside the United States so long as they control the relevant rights to works played or otherwise distributed in the United States. Similarly, because the statute seeks support from ''musical work copyright owners,'' the relevant support should come from the parties who have a relevant ownership interest in the copyright to musical works (or shares of such works), in contrast to parties who do not possess any ownership interest in the musical work but rather the ability to administer the works.[72] Further, the Office does not read this clause as prohibiting a musical work copyright owner from endorsing multiple prospective MLCs.

The Office requests that a proposed MLC address how it interprets and satisfies this endorsement criteria, including an explanation of how the proposed MLC has calculated and documented the endorsement and substantial support of the requisite number of copyright owners.

B. DLC and Its Board Members

The Office hereby requests proposals for designation as the DLC that includes articles of incorporation, along with contact information for the collective. The Office requests that proposals include a list of proposed board members and their relevant background and affiliations. The Office further requests that proposals for the DLC designation include the following information:

- A business plan, including any statement of purpose or principles and proposed schedule for establishment and operation of the proposed DLC in the first five years of its existence;
- A detailed description outlining how the proposed DLC has or will have the administrative capabilities to perform the required functions; [73]
- To the extent available, information regarding proposed governance structure, criteria for membership, and any anticipated dues; [74]
- Information regarding how the proposed DLC intends to address issues of confidentiality as it relates to the DLC representative on the MLC board;
- Views whether a single vendor may simultaneously provide services fulfilling the statutory obligations of the DLC and the MLC;
- Information regarding how the proposed DLC intends to pursue its outreach efforts, including ''reasonable, good-faith efforts to assist the mechanical licensing collective . . . by encouraging digital music providers to publicize the existence of the collective and the ability of copyright owners to claim unclaimed accrued royalties.'' [75] Please reference any relevant experience of proposed board members, personnel and potential vendors; and
- Any other information that proposed DLC believes is relevant to demonstrate it best meets the selection criteria.

Finally, the Office requests that the proposed DLC address how it interprets and satisfies the criteria that it must be ''endorsed by and enjoy[] substantial support from digital music providers and significant nonblanket licensees that together represent the greatest percentage of the licensee market for uses of musical works in covered activities, as measured over the preceding 3 calendar years.'' [76] Please include an explanation of how the proposed DLC has verified, calculated, and documented such endorsement and substantial support, including how the licensee market was calculated.

III. Additional Opportunity for Public Participation

Depending on the feedback received, the Office may request additional information in the form of a public notice, directed letters inviting prospective MLCs to supplement or respond to certain information, or a public meeting or hearing.

The Office will also consider whether to utilize informal meetings to address discrete issues prior to issuing a designation by establishing guidelines for ex parte communications. The Office's proceedings typically do not include discussions about the substance of a proceeding apart from the noticed phases of written comments and public hearings (although the Office does provide procedural guidance to participants). But for certain proceedings, the Office has determined that informal communications with participants can be beneficial in limited circumstances where the Office seeks specific information or follow-up

[69] MMA Signing Statement.

[70] *See* H.R. Rep. No. 115–651, at 5 (stressing importance of transparency ''to avoid unnecessary litigation as well as to gain the trust of the entire music community''); S. Rep. No. 115–339, at 5 (same).

[71] 17 U.S.C. 115(d)(3)(A).

[72] Al Kohn & Bob Kohn, Kohn on Music Licensing 170 (4th ed. 2010) (''An *administration agreement* is an agreement between two or more people that provides one of the parties, called the *administrator,* the right to administer the music publishing activities . . . relating to the musical compositions covered by the agreement, in exchange for the payment of an administration fee. Unlike an exclusive administrator under a co-publishing agreement, the administrator under an administration agreement generally does not acquire any ownership interest in the compositions covered by the agreement.'').

[73] *See* 17 U.S.C. 115(d)(5)(B)–(C).

[74] *See id.* at 115(d)(5)(C)(i)(I).

[75] *See id.* at 115(d)(5)(C)(iii).

[76] *Id.* at 115(d)(5)(A)(ii).

regarding the public record.[77] Following that precedent, in this proceeding, any such communication will be so limited. The primary means to communicate views in the course of the designation process will be through the submission of written comments. In other words, informal communication will supplement, not substitute for, the written record. While exact guidelines governing ex parte communications with the Office regarding the designation process may be issued at a later date on *https://www.copyright.gov/rulemaking/mma-designations/,* they would be similar to those imposed by the Office for the recently concluded section 1201 proceeding.[78] For example, the participating party or parties will be responsible for submitting a list of attendees and written summary of any oral communication to the Office, which will be made publicly available on the Office's website. In sum, the Office will require that all such communications be on the record to ensure the greatest possible transparency.

Dated: December 18, 2018.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2018–27743 Filed 12–20–18; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[18–098]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Gatrie Johnson, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email *Gatrie.Johnson@NASA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost based budgeting system. Respondents are reimbursed for associated cost to provide the information, per their negotiated contract price and associated terms of the contract. There are no ''total capital and start-up'' or ''total operation and maintenance and purchase of services'' costs associated since NASA policy requires that data reported is generated from the contractors' existing system. The contractors' internal management system shall be relied upon to the maximum extent possible. Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

II. Methods of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail or fax.

III. Data

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of Review: Renewal of a previously approved collection.

Affected Public: Business or other for profit, not-for-profit institutions.

Average Expected Annual Number of Activities: 500.

Average Number of Responses per Activity: 12.

Annual Responses: 6000.

Frequency of Responses: Monthly.

Average Minutes per Response: 540.

Burden Hours: 54,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collection has practical utility; (2) the accuracy of NSA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2018–27595 Filed 12–20–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[18–100]

Notice of Information Collection

SUMMARY: The Office of Chief Health and Medical Officer (OCHMO), within the National Aeronautics and Space Administration (NASA) as part of its continuing effort to reduce public burden and maximize the utility of government information, provides the general public and other Federal agencies the opportunity to comment on an information collection project, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an information collection project titled, ''Electronic Medical Record for Implementation of TREAT Astronaut Act.'' The TREAT Astronaut Act is subsection 441 within the National Aeronautics and Space Administration Transition Authorization Act of 2017 (115th Congress, *https://www.congress.gov/115/plaws/publ10/PLAW-115publ10.pdf*).

The goal is to maintain digital medical records of routine health care, emergency treatment, and scheduled examinations for active or retired astronauts in order to develop a knowledge base and address gaps in services in support of medical monitoring, diagnosis and treatment of conditions associated with human space flight as stated in Public Law 115–10.

[77] *See, e.g.,* 82 FR 49550, 49563 (Oct. 26, 2017) (identifying guidelines for *ex parte* communications in section 1201 rulemaking); 82 FR 58153, 58154 (Dec. 11, 2017) (identifying guidelines for *ex parte* communications in rulemaking regarding cable, satellite, and DART license reporting practices).

[78] *See* U.S. Copyright Office, Ex Parte *Communications, https://www.copyright.gov/1201/2018/ex-parte-communications.html.*

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

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

- *Federal eRulemaking Portal: http://www.Regulations.gov*. Follow the instructions on-line for submitting comments.
- *Mail:* Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

Instructions: All submissions received must include the agency name. NASA will post, without change, all relevant comments to *Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the information collection plan and instruments, contact Gatrie Johnson, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

I. Abstract

The project includes standard use of Electronic Medical Records (EMR) under NASA 10 HIMS regulations at Johnson Space Center (JSC) Occupational Health Branch (OHB) by authorized healthcare providers assigned to, employed by, contracted to, or under partnership agreement with the JSC, OHB. This EMR will be used in support of the TREAT Astronaut Act to generate medical records of medical care, diagnosis, treatment, surveillance examinations (*e.g.,* flight certification, special purpose and health maintenance), and exposure records (*e.g.,* hazardous materials and ionizing radiation).

Background and Brief Description

Management and utilization of the EMR at JSC, OHB clinics will be carried out in support of the TREAT Astronaut Act. The approved Public Law 115–10 states:

This law authorizes the National Aeronautics and Space Administration (NASA) to provide for:

- *The medical monitoring and diagnosis of a former United States government astronaut or a former payload specialist for conditions that the Administrator considers potentially associated with human space flight; and*
- *the treatment of a former United States government astronaut or a former payload specialist for conditions that the Administrator considers associated with human space flight, including scientific and medical tests for psychological and medical conditions.*

In order to implement the necessary supportive clinical services, accurate digital medical records will be established in the EMR for each visit to the OHB clinics. The legal medical record is the documentation of health care services provided to an individual; it is used for clinical decision making, following accurate recording of observations, actions and analysis of diagnostic tests. The legal medical record in this instance is digital recorded data collected and used for providing healthcare at the OHB Clinics. Additionally, the medical record is used as a tool for evaluating the adequacy, appropriateness and quality of care.

The OHB clinics at JSC will create, maintain and securely archive digital medical records and physical examination records of Astronauts and payload specialists. Such records shall contain standard clinical information resulting from physical examinations, laboratory and other relevant diagnostic tests, and medical history surveys; screening examination results; immunization records; administration of medications prescribed by private/personal or NASA flight surgeon physicians; consultation records; and hazardous exposure as well as other health hazard/abatement data.

NASA collects, archives, and secures information from individuals visiting the OHB clinics requiring routine medical examination in compliance with the following regulations:

- 2015 Joint Commission (JC) Standards for Ambulatory Care IM.01.01.01, IM.02.01.03, IM.02.02.01, IM.02.02.03
- NASA Procedural Requirements, NPR 1800.1C.
- NASA Records Retention Schedules NRRS 1441.1
- 5 U.S.C. 552a, Privacy Act, 1974
- 42 U.S.C. 2472; 44 U.S.C. 3101; Public Law 92–255
- NIST SP 800–53 revision 4, Recommended Security Controls for Federal Information Systems
- NIST SP 800–53A, Techniques and Procedures for Verifying the Effectiveness of Security Controls in Federal Information Systems
- NPR 2810.1, Security of Information Technology

II. Method of Collection

Electronic and paper.

III. Data

Title: Electronic Medical Record for Implementation of TREAT Astronaut Act. (Pub. L. 115–10).

OMB Number: 2700–xxxx.

Type of Review: New Clearance.

Affected Public: Astronauts and payload specialists.

Average Expected Annual Number of Activities: 36,840.

Average Number of Respondents per Activity: 36,840.

Annual Responses: 36,840.

Frequency of Responses: 1.

Average Minutes per Response: 0.5 hours.

Burden Hours: 18,420.

	Number of respondents	Number of responses per respondent	Number of total responses	Response time	Respondent burden hours
Burden Calculation—Estimation of Respondent Burden Hours					
Survey 1	36,840	1	36,840	0.50	18,420

	Number of total responses	Response time	Respondent hourly wage	Labor burden per response	Total labor burden
Burden Calculation—Labor Cost of Respondent Burden					
Survey 1	36,840	0.50	25.9	12.95	47,7078

IV. Requests for Comments

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information will have practical utility;

2. Evaluate the accuracy of NASA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including automated, electronic collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gatrie Johnson,

NASA PRA Clearance Officer.

[FR Doc. 2018–27594 Filed 12–20–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection Request: Proposed Research Project: The Social Well-Being Impact (SWI) of Libraries and Museums Study

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning a plan to conduct a research study entitled ''The Social Well-being Impact (SWI) of Libraries and Museums Study''. The study will be designed to demonstrate the impact of libraries and museums on community well-being.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before January 17, 2019.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

ADDRESSES: Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Webb, Director of Grant Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

The Institute of Museum and Library Services (IMLS) is proposing a research project that looks beyond economic impact, to the community relationships that are generated by museums and libraries, and how the impact of those organizations affects a community's well-being. Since 2016, IMLS has engaged in a project entitled ''Community Catalyst'' which has shown that libraries and museums use community activities and strategic partnerships to address community concerns along a social well-being spectrum. Stakeholders from the library and museum fields have expressed a need for a national study that looks beyond economic impact of their institutions to the impact on employment, health and welfare, environment, crime, civic engagement, etc. all parts of social well-being. Previous research has focused on the economic impact of a single library or a subset of museums. The research study will use publicly available data bases at the county level to develop a sampling plan for in-depth targeted case studies of the relationship between the presence of museums and libraries and the indices of the social well-being indicators.

Agency: Institute of Museum and Library Services.

Title: Proposed Research Project: The Social Well-being Impact (SWI) of Libraries and Museums Study.

OMB Number: 3137–TBD.

Frequency: One-time collection anticipated.

Affected Public: Community stakeholders at the county level, museum and library staff, local government officials.

Number of Respondents: 520.

Estimated Average Burden per Response: 52.5 minutes.

Estimated Total Annual Burden: 484 hours.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: $13,421.

Dated: December 18, 2018.

Kim Miller,

Grants Management Specialist, Office of Grants Policy and Management.

[FR Doc. 2018–27625 Filed 12–20–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

RIN 3145–AA58

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: National Science Foundation.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2019.

SUMMARY: The National Science Foundation (NSF or Foundation) is providing notice of its adjusted maximum civil monetary penalties, effective January 15, 2019. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act).

FOR FURTHER INFORMATION CONTACT: Bijan Gilanshah, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Telephone: 703.292.5055.

SUPPLEMENTARY INFORMATION: On June 27, 2016, NSF published an interim final rule amending its regulations to adjust, for inflation, the maximum civil monetary penalties that may be imposed for violations of the Antarctic Conservation Act of 1978 (ACA), as amended, 16 U.S.C. 2401 *et seq.,* and the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801, *et seq.* These adjustments are required by the 2015 Act (Sec. 701 of Pub. L. 114–74). The 2015 Act also requires agencies to make subsequent annual adjustments for inflation. Pursuant to OMB guidance dated December 14, 2018, the cost-of-living adjustment multiplier for 2019 is 1.02522. Accordingly, the 2019 annual inflation adjustments for the maximum penalties under the ACA are $17,278 ($16,853 × 1.02522) for violations and $29,239 ($28,520 × 1.02522) for knowing violations of the ACA. Finally, the 2019 annual inflation adjustment for the maximum penalty for violations under PFCRA is $11,463 ($11,181 × 1.02522).

Dated: December 18, 2018.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–27659 Filed 12–20–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement of the Paperwork Reduction Act of 1995, the National Science Foundation (NSF) is providing opportunity for public comment on the NSF Major Facilities Guide (MFG) and the accompanying NSF Financial Data Collection Tool for Major Facilities. The Major Facilities Guide was previously cleared under the title Large Facilities Manual. The primary purpose of this revision is to update the roles and responsibilities for NSF staff for oversight of Major Facilities, provide requirements for mid-scale projects, and provide content in previously reserved Sections as well as clarify existing content. The draft versions of the NSF MFG and the accompanying NSF Financial Data Collection Tool for Major Facilities are available on the NSF website at: *http://www.nsf.gov/bfa/lfo/lfo_documents.jsp.*

To facilitate review, a Change Log with brief comment explanations of the changes is provided in the guide. NSF is particularly interested in public comment on the new content provided in Section 5 Guidance for Mid-Scale Research Infrastructure Projects and the previously reserved sections.

DATES: Written comments should be received by February 19, 2019 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: In addition to the type of comments identified above, comments are also invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Title of Collection: Major Facilities Guide.

OMB Approval Number: 3145–0239.

Expiration Date of Approval: 6/30/2020.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The National Science Foundation Act of 1950 (Pub. L. 81–507) set forth NSF's mission and purpose:

''To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense. * * *

The Act authorized and directed NSF to initiate and support:

☐ Basic scientific research and research fundamental to the engineering process;

☐ Programs to strengthen scientific and engineering research potential;

☐ Science and engineering education programs at all levels and in all the various fields of science and engineering;

☐ Programs that provide a source of information for policy formulation; and

□ Other activities to promote these ends.

Among Federal agencies, NSF is a leader in providing the academic community with advanced instrumentation needed to conduct state-of-the-art research and to educate the next generation of scientists, engineers and technical workers. The knowledge generated by these tools sustains U.S. leadership in science and engineering (S&E) to drive the U.S. economy and secure the future. NSF's responsibility is to ensure that the research and education communities have access to these resources, and to provide the support needed to utilize them optimally, and implement timely upgrades.

The scale of advanced instrumentation ranges from small research instruments to shared resources or facilities that can be used by entire communities. The demand for such instrumentation is very high, and is growing rapidly, along with the pace of discovery. For major facilities and shared infrastructure, the need is particularly high. This trend is expected to accelerate in the future as increasing numbers of researchers and educators rely on such large facilities, instruments, and databases to provide the reach to make the next intellectual leaps.

NSF currently provides support for facility construction from two accounts: The Major Research Equipment and Facility Construction (MREFC) account, and the Research and Related Activities (R&RA) account. The MREFC account, established in FY 1995, is a separate budget line item that provides an agency-wide mechanism, permitting directorates to undertake large facility projects that exceed 10% of the Directorate's annual budget; or roughly $70M or greater. Smaller projects continue to be supported from the R&RA Account.

Facilities are defined as shared-use infrastructure, instrumentation and equipment that are accessible to a broad community of researchers and/or educators. Facilities may be centralized or may consist of distributed installations. They may incorporate large-scale networking or computational infrastructure, multi-user instruments or networks of such instruments, or other infrastructure, instrumentation and equipment having a major impact on a broad segment of a scientific or engineering discipline. Historically, awards have been made for such diverse projects as accelerators, telescopes, research vessels and aircraft, and geographically distributed but networked sensors and instrumentation.

The growth and diversification of large facility projects require that NSF remain attentive to the ever-changing issues and challenges inherent in their planning, construction, operation, management and oversight. Most importantly, dedicated, competent NSF and awardee staff are needed to manage and oversee these projects; giving the attention and oversight that good practice dictates and that proper accountability to taxpayers and Congress demands. To this end, there is also a need for consistent, documented requirements and procedures to be understood and used by NSF program managers and awardees for all such major projects.

Use of the Information: Facilities are an essential part of the science and engineering enterprise, and supporting them is one major responsibility of the National Science Foundation (NSF).

NSF makes awards to external entities—primarily universities, consortia of universities or non-profit organizations—to undertake construction, management and operation of facilities. Such awards frequently take the form of cooperative agreements. NSF does not directly construct or operate the facilities it supports. However, NSF retains responsibility for overseeing their development, management and successful performance. The Major Facilities Guide is intended to:

- Provide guidance for NSF staff and awardees to carry out effective project planning, management and oversight of major facilities while considering the varying requirements of a diverse portfolio;
- Clearly state the policies, processes and procedures pertinent at each stage of a facility's life cycle from development through design, construction, operations, and divestment; and
- Document and disseminate ''best practices'' identified over time so that NSF and awardees can carry out their responsibilities more effectively.

This version of the Major Facilities Guide adds a section for guidance on mid-scale research infrastructure projects; updates sections related to NSF policy on research infrastructure, roles and responsibilities for NSF staff, divestment stage, earned value management, cybersecurity, and property management; and clarifies cost estimating requirements, the construction stage total project costs including NSF policy on contingency and reporting requirements. As part of the implementation of incurred cost reporting, a NSF Financial Data Collection Tool for Major Facilities is referenced in the Guide and included in the request for comment. This version also reflects revisions to improve readability and facilitate period revision. The Guide does not replace existing formal procedures required for all NSF awards, which are described in the *Grant Proposal Guide* and *The Award and Administration Guide*. Instead, it draws upon and supplements them for the purpose of providing detailed guidance regarding NSF management and oversight of facilities projects. All facilities projects require merit and technical review, as well as approval of certain deliverables. The level of review and approval varies substantially from standard grants, as does the level of oversight needed to ensure appropriate and proper accountability for federal funds. The requirements, recommended procedures and best practices presented in the Guide apply to any facility significant enough to require close and substantial interaction with the Foundation and the National Science Board.

This Guide will be updated periodically to reflect changes in requirements, policies and/or procedures. Award Recipients are expected to monitor and adopt the requirements and best practices included in the Guide which are aimed at improving management and oversight of major facilities projects and at enabling the most efficient and cost-effective delivery of tools to the research and education communities.

The submission of proposals and subsequent project documentation to the Foundation related to the design, construction and operations of Major Facilities is part of the collection of information. This information is used to help NSF fulfill this responsibility in supporting merit-based research and education projects in all the scientific and engineering disciplines. The Foundation also has a continuing commitment to provide oversight on facilities design and construction which must be balanced against monitoring its information collection so as to identify and address any excessive reporting burdens.

NSF has approximately twenty-four (24) Major Facilities in various stages of design, construction, operations and divestment. Facilities undergoing a major upgrade may be classified in both design or construction and operations at the same time. Two to four (2 to 4) new construction awards are made approximately every five (5) years based on science community infrastructure needs and availability of funding. Among the twenty-four major facilities, there are approximately seven (7)

facilities that are either in design or construction. These stages require the highest level of reporting and management documentation per the Major Facilities Guide. NSF estimates there will be four (4) mid-scale projects in progress at a given time.

Burden to the Public: The Foundation estimates that approximately five (5) Full Time Equivalents (FTE's) are necessary for each major facility project in design or construction to respond to NSF performance and financial reporting and project management documentation requirements on an annual basis; or 10,400 hours per year. The Foundation estimates approximately one and half (1.5) FTE for a major facility in operations to respond to NSF performance and financial reporting on an annual basis; or 3,120 hours per year. For mid-scale projects, the Foundation estimates approximately one (1) Full Time Equivalent (FTE's) is necessary for each mid-scale project to respond to NSF project management documentation requirements on an annual basis; or 2,080 hours per year. With seven (7) major facilities in design or construction and twenty-one (21) in operations and four (4) mid-scale projects, this equates to roughly 150,000 public burden hours annually.

Dated: December 17, 2018.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–27622 Filed 12–20–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0155]

Instructions for Completing NRC's Uniform Low-Level Radioactive Waste Manifest

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; extension of comment period.

SUMMARY: On October 30, 2018, the U.S. Nuclear Regulatory Commission (NRC) solicited comments on its draft guidance document, NUREG/BR–0204, Rev. 3, ''Instructions for Completing NRC's Uniform Low-Level Radioactive Waste Manifest,'' in the **Federal Register**. The public comment period was originally scheduled to close on December 31, 2018. The NRC has decided to extend the public comment period until January 31, 2019, to allow more time for stakeholders to develop and submit their comments.

DATES: The due date for comments requested in the document published on October 30, 2018 (83 FR 54620), is extended. Comments should be filed no later than January 31, 2019. 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–2018–0155. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@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: Lloyd Desotell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5969, email: *Lloyd.Desotell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0155 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–2018–0155.
- *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.* The draft NUREG is available in ADAMS under Accession No. ML18261A002.
- *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–2018–0155 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. Discussion

On October 30, 2018, the NRC solicited comments on its draft guidance document, NUREG/BR–0204, Rev. 3, ''Instructions for Completing NRC's Uniform Low-Level Radioactive Waste Manifest.'' This document provides instructions to prepare NRC Form 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)), NRC Form 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)), and NRC Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). Pursuant to the requirements of part 20 of title 10 of the Code of Federal Regulations (10 CFR part 20), ''Standards for Protection Against Radiation,'' Appendix G, ''Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal At Licensed Land Disposal Facilities and Manifests,'' NRC Forms 540 and 541 must be prepared for low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility. NRC Form 542 is required only if processors and collectors of low-level

radioactive waste are shipping low-level radioactive waste attributed to others for disposal at a licensed low-level radioactive waste land disposal facility. The public comment period was originally scheduled to close on December 31, 2018. The NRC has decided to extend the public comment period on this document until January 31, 2019, to allow more time for stakeholders to submit their comments.

Dated at Rockville, Maryland, this 18th day of December 2018.

For the Nuclear Regulatory Commission.

John R. Tappert,

Director, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–27630 Filed 12–20–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293; NRC–2018–0286]

Entergy Nuclear Operations, Inc.; Pilgrim Nuclear Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt; public meeting; and request for comment.

SUMMARY: On November 16, 2018, the U.S. Nuclear Regulatory Commission (NRC) received the Post-Shutdown Decommissioning Activities Report (PSDAR) for the Pilgrim Nuclear Power Station (Pilgrim). The PSDAR, which includes the Site-Specific Decommissioning Cost Estimate (DCE), provides an overview of the Entergy Nuclear Operations, Inc. (Entergy, the licensee) planned decommissioning activities, schedule, projected costs, and environmental impacts for Pilgrim. The NRC will hold a public meeting to discuss the PSDAR and the DCE and receive comments.

DATES: Submit comments by March 21, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received 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–2018–0286. Address questions about Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@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: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0286 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–2018–0286.
- *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 ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that document is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0286 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 posts all comment submissions at *http://www.regulations.gov* as well as entering 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 submissions into ADAMS.

II. Discussion

Entergy is the holder of Renewed Facility Operating License No. DPR–35 for Pilgrim. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of one boiling-water reactor located in Plymouth, Massachusetts. By letter dated November 10, 2015 (ADAMS Accession No. ML15328A053), the licensee submitted Notification of Permanent Cessation of Power Operations for Pilgrim. In this letter, Entergy notified the NRC of its intent to permanently cease operations at Pilgrim no later than June 1, 2019.

On November 16, 2018, Entergy submitted the PSDAR including and the DCE for Pilgrim in accordance with § 50.82(a)(4)(i) of Title 10 of the *Code of Federal Regulations* (ADAMS Accession No. ML18320A034). The PSDAR includes a description of the planned decommissioning activities, a proposed schedule for their accomplishment, the DCE, and a discussion that provides the basis for concluding that the environmental impacts associated with the site-specific decommissioning activities will be bounded by appropriate, previously issued generic and plant-specific environmental impact statements.

III. Request for Comment and Public Meeting

The NRC is requesting public comments on the PSDAR including the DCE for Pilgrim. The NRC will conduct a public meeting to discuss the PSDAR including the DCE and receive comments on Tuesday, January 15, 2019, from 6 p.m. until 9 p.m., at the Hotel 1620, 180 Water Street, Plymouth, Massachusetts 02360. The NRC requests that comments that are not provided during the meeting be submitted as noted in section I, ''Obtaining

Information and Submitting Comments'' of this document in writing by March 21, 2019.

Dated at Rockville, Maryland, this 18th day of December 2018.

For the Nuclear Regulatory Commission.

Douglas A. Broaddus,

Chief, Special Projects and Process Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–27724 Filed 12–20–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–50; MC2019–47 and CP2019–51; MC2019–48 and CP2019–52; MC2019–49 and CP2019–53; MC2019–50 and CP2019–54; MC2019–51 and CP2019–55; MC2019–52 and CP2019–56]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 26, 2018 and December 27, 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: The December 26, 2018 comment due date applies to Docket Nos. CP2019–50; MC2019–47 and CP2019–51; MC2019–48 and CP2019–52; MC2019–49 and CP2019–53; MC2019–50 and CP2019–54.

The December 27, 2018 comment due date applies to Docket Nos. MC2019–51 and CP2019–55; MC2019–52 and CP2019–56.

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–50; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Plus 4 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 26, 2018.

2. *Docket No(s).:* MC2019–47 and CP2019–51; *Filing Title:* USPS Request to Add Priority Mail Contract 495 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 26, 2018.

3. *Docket No(s).:* MC2019–48 and CP2019–52; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 78 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* December 26, 2018.

4. *Docket No(s).:* MC2019–49 and CP2019–53; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 79 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* December 26, 2018.

5. *Docket No(s).:* MC2019–50 and CP2019–54; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 80 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* December 26, 2018.

6. *Docket No(s).:* MC2019–51 and CP2019–55; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 92 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 27, 2018.

7. *Docket No(s).:* MC2019–52 and CP2019–56; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 93 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 14, 2018; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 27, 2018.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–27620 Filed 12–20–18; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84831; SR–CboeBZX–2018–018]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To List and Trade Shares of the Principal Morley Short Duration Index ETF Under Rule 14.11(c)(4)

December 17, 2018.

On April 23, 2018, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Principal Morley Short Duration Index ETF. The proposed rule change was published for comment in the **Federal Register** on May 8, 2018.[3] On June 20, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 6, 2018.[4] On August 3, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On November 1, 2018, the Commission designated a longer period for Commission action.[7] The Commission received one comment letter on the proposed rule change.[8]

On December 7, 2018, the Exchange withdrew the proposed rule change (SR–CboeBZX–2018–018).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27616 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33327; 812–14912]

Ai Funds, Inc. and Deep A.I. ETF Trust

December 18, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

APPLICANTS: Ai Funds, Inc. (the ''Initial Adviser''), incorporated under the laws of the state of Delaware, has its principal office in San Francisco, California, and Deep A.I. ETF Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company that is expected to have multiple series.

FILING DATES: The application was filed on June 5, 2018, and amended on September 20, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 11, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: W. John McGuire, Esq., Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2541.

FOR FURTHER INFORMATION CONTACT: Thankam A. Varghese, Attorney-Adviser, at (202) 551–6646, or Parisa Haghshenas, Branch Chief, at (202) 551–6723 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (''ETFs'').[1] Fund shares will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83152 (May 2, 2018), 83 FR 20892.

[4] *See* Securities Exchange Act Release No. 83479, 83 FR 29838 (June 26, 2018).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 83775, 83 FR 39486 (August 9, 2018).

[7] *See* Securities Exchange Act Release No. 84523, 83 FR 55780 (November 7, 2018).

[8] *See* letter from Kyle Murray, Assistant General Counsel, Cboe Global Markets (September 13, 2018), *available at: https://www.sec.gov/comments/sr-cboebzx-2018-018/srcboebzx2018018.htm.*

[9] 17 CFR 200.30–3(a)(12).

[1] Applicants request that the order apply to the new series of the Trust as well as to additional series of the Trust and any other open-end management investment company or series thereof that currently exist or that may be created in the future (each, included in the term ''Fund''), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, the term ''successor'' is limited to

purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (''Portfolio Instruments''). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second-tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[2] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27628 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84834; File No. SR–ICEEU–2018–020]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the Business Continuity Procedures (the ''Business Continuity Procedures'')

December 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2018, ICE Clear Europe Limited (''ICE Clear Europe'' or ''The Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] so that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe proposes to make certain amendments to its Business Continuity Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Europe proposes to modify certain details of its Business Continuity Procedures. The amendments update Clearing House contact information, internet addresses and links. The amendments also eliminate a reference to fax communications to Clearing Members, which are no longer to be used.

(b) Statutory Basis

ICE Clear Europe believes that the changes described herein are consistent with the requirements of Section 17A of the Act[6] and the regulations thereunder applicable to it. Section 17A(b)(3)(F) of the Act[7] in particular requires, among other things, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions, to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and the protection of investors, and, in general, protect investors and the public interest. The proposed amendments are designed to update details regarding contact information and notices relating to Business Continuity Events to ensure that Clearing Members are provided with clear and up to date information in the event of a Business Continuity Event. As a result, in ICE Clear Europe's view, the amendments are consistent with the prompt and accurate clearance and settlement of transactions and the protection of investors and the public interest (and will not affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible).

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed rule changes would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act. The proposed changes to the Business Continuity Procedures are intended to provide updates to contact details and similar information. The change will apply uniformly across all Clearing Members and market participants. ICE Clear Europe does not believe the amendments will adversely affect competition among Clearing Members, the cost of clearing, or the ability of market participants to clear contracts generally.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received. ICE Clear Europe will notify the Commission of any written comments received by ICE Clear Europe.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of its filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. ICE Clear Europe has requested that the Commission waive the 30-day operative delay so that ICE Clear Europe may implement the proposed rule change immediately. ICE Clear Europe believes that doing so is appropriate because delaying the proposed rule change would not benefit Clearing Members, their customers or any other market participants. The Commission notes that the proposed rule change is limited to updating Clearing House contact information, internet addresses and links. The proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) effect the safeguarding of funds or securities in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Rules.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. ICE Clear Europe has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

the custody or control of ICE Clear Europe or for which it is responsible. Waiver of the 30-day operative delay would allow ICE Clear Europe to immediately update the Business Continuity Procedures to reflect the current and correct contact information, thereby ensuring that Clearing Members are able to contact ICE Clear Europe during a Business Continuity Event. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICEEU–2018–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICEEU–2018–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/clear-europe/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICEEU–2018–020 and should be submitted on or before January 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

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[12] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84837; File No. SR–MSRB–2018–09]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the MSRB's Facility for the Electronic Municipal Market Access System (EMMA)

December 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2018 the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change (''proposed rule change'') to the MSRB's facility for the Electronic Municipal Market Access system (EMMA®) to modernize and consolidate the information facility for the EMMA system, which consists of the EMMA Primary Market Disclosure Service, the EMMA Continuing Disclosure Service, the EMMA Trade Price Transparency Service and the EMMA Short-Term Obligation Rate Transparency Service (''EMMA IF''). The MSRB has filed the proposed rule change under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder, as a noncontroversial rule change that renders the proposal effective upon filing. The proposed rule change would be made operative on January 10, 2019.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2018-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 proposed rule change consists of amendments to the EMMA IF.[5] The EMMA IF sets forth the material aspects of the operation of the EMMA system by describing the basic functionality of, and the high-level parameters by which

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The EMMA IF is currently available on the MSRB's website at *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/Facilities/EMMA-Facility.aspx.*

the MSRB operates, the EMMA system. The EMMA system is an information system for the collection and dissemination of municipal securities disclosure documents and related information. Issuers, obligated persons, brokers, dealers, municipal securities dealers, and the general public routinely interact with the EMMA system, as it is the information system that receives, displays and disseminates information under certain MSRB rules and Exchange Act Rule 15c2–12 (''Rule 15c2–12''),[6] as promulgated by the SEC.

For example, MSRB Rule G–32 (''Rule G–32''), on the disclosure obligations of brokers, dealers, and municipal securities dealers (collectively, ''dealers'') in primary offerings, generally requires underwriters of a primary offering of municipal securities to submit the official statement for such offering to the EMMA system within one business day after receipt of the official statement from the issuer or its designee, but by no later than the closing date.[7] Rule G–32 also requires that dealers acting as underwriters in the primary offering of municipal securities to submit information in accordance with MSRB Form G–32, such as the name of the managing underwriter and security type for each issue in the offering.[8] Rule 15c2–12 specifies a list of events that certain dealers acting as a participating underwriter in an offering of municipal securities must reasonably determine that an issuer or an obligated person has undertaken, in a written agreement or contract for the benefit of the holders of the municipal securities, to provide to the MSRB by submission to the EMMA system.

Background

The EMMA system includes a public website, the EMMA Portal, which provides free public access to disclosures and transparency information for municipal securities. The EMMA system also includes certain paid subscription feeds, which provide access to certain documents and information for a commercially reasonable fee in accordance with the terms of a subscription agreement between the MSRB and a subscribing counterparty.

The EMMA system began operation on March 31, 2008 as a pilot facility of the MSRB's existing Official Statement and Advance Refunding Document system of the Municipal Securities Information Library system.[9] On December 8, 2008, the MSRB received approval from the SEC to establish the continuing disclosure service of the EMMA system effective as of July 1, 2009.[10] The MSRB's most recent amendment to the EMMA IF was in August 2015, which added descriptions regarding the core operational hours for the EMMA system and the general availability of the system.[11]

The MSRB launched the EMMA Portal (*emma.msrb.org*) in March 2008 as an online source of key municipal market information. The EMMA Portal continues to serve as the venue for public access to variable rate security information, transaction data, primary market disclosures and continuing disclosures. The MSRB makes available its set of official statements and advance refunding documents for free on the EMMA Portal. The EMMA system has been the centralized repository of all continuing disclosures in the municipal market pursuant to Rule 15c2–12 since July 2009. In addition to those disclosures specifically identified in Rule 15c2–12, the MSRB also provides issuers and obligated persons with the ability to post additional disclosures about their securities to the EMMA Portal.

The purpose of the proposed rule change is to revise the EMMA IF to harmonize its language with the recently revised Real-Time Transaction Reporting System (RTRS) information facility (''RTRS IF''),[12] as well as to modernize and consolidate the EMMA IF. Given the revisions to the RTRS IF and the SEC's recent amendments to Rule 15c2–12,[13] the MSRB performed a comprehensive review of the EMMA IF to evaluate whether it sufficiently and clearly describes the basic functionality and operation of the EMMA system. The MSRB believes that issuers, obligated persons, dealers, other submitters[14] and subscribers[15] benefit from this information being provided in a concise and organized manner.

Proposed Amendments to the RTRS Information Facility

(i) Consolidating Format and Streamlining Redundancies

The EMMA IF is currently structured such that there are separate segmented topics within the information facility, including separate sections for the EMMA Primary Market Disclosure Service, EMMA Continuing Disclosure Service, EMMA Trade Transparency Service, EMMA Short-Term Obligation Rate Transparency Service, and EMMA subscription services. Many of these segmented topics were initially designed to stand alone and consequently include redundant information included elsewhere in the EMMA IF.

The proposed rule change would reorganize the EMMA IF by streamlining this information repeated in each topic section and incorporating it into a general introductory section. In this way, the proposed amendments would consolidate repetitive references in the EMMA IF and ensure overall consistency within the document. For example, the proposed rule change would consolidate the descriptions of the EMMA Portal, currently repeated under multiple topic segments, into a distinct description in the information facility with its own section. Similarly, the proposed amendments would consolidate information regarding the core operational hours into a single description included in the introductory section. The proposed rule change also consolidates several other repetitive references under the various topic segments in the EMMA IF.

The proposed rule change would also eliminate certain descriptions regarding the EMMA Trade Price Transparency Service and the EMMA Short-Term Obligation Rate Transparency Service that repeat technical descriptions already provided in the RTRS IF and the Short-Term Obligation Rate Transparency (SHORT) information facility (''SHORT IF''). The proposed rule change would eliminate this redundant information and replace it

[6] 17 CFR 240.15c2–12.

[7] *See* MSRB Rule G–32, available at: *http://www.msrb.org/Rules-and-Interpretations/MSRB-Rules/General/Rule-G-32.aspx.*

[8] *See* MSRB Form G–32, available at: *http://www.msrb.org/Rules-and-Interpretations/Form-G-32.aspx.*

[9] *See* Securities Exchange Act Release No. 57577 (March 28, 2008), 73 FR 18022 (April 2, 2008) (File No. SR–MSRB–2007–06) (approving operation of the EMMA pilot to provide free public access to the MSIL system collection of official statements and advance refunding documents and to the MSRB's Real-Time Transaction Reporting System historical and real-time transaction price data).

[10] *See* Securities Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05) (approving the continuing disclosure service of the EMMA system with an effective date of July 1, 2009).

[11] *See* Securities Exchange Act Release No. 75602 (August 4, 2015), 80 FR 47976 (August 10, 2015) (File No. MSRB–2015–06).

[12] *See* Securities Exchange Act Release No. 83038 (April 12, 2018), 83 FR 17200 (April 18, 2018) (File No. MSRB–2018–02).

[13] *See* Securities Exchange Act Release No. 83885 (August 20, 2018), 83 FR 44700 (August 31, 2018) (File No. MSRB–S7–01–17).

[14] As further described in the EMMA IF, a submitter means an issuer, obligated person, dealer, or agent acting on behalf of an issuer, obligated person, or dealer, that has been authorized to interface with the EMMA system for the purposes of submitting documents and other related information into the system.

[15] Subscriber refers to an individual or entity that receives the dissemination of data from the EMMA system through an MSRB subscription service.

with shorter cross-references to the RTRS IF and SHORT IF. This amendment would promote consistent language across each of the MSRB's information facilities and reduce the potential for conflicting descriptions of services that overlap among the EMMA IF, SHORT IF, and RTRS IF.

(ii) Consistency of Rule References

As the EMMA system is the MSRB's facility for the collection of information about primary offering and continuing disclosures occurring in the municipal securities market, the EMMA IF includes references to obligations under Rule 15c2–12 and Form G–32. The proposed rule change would ensure that, if regulatory language is referenced, the most current language is used in the EMMA IF. Similarly, the proposed amendments attempt to limit the need for filing future amendments to the EMMA IF by utilizing language that would remain applicable absent a material change to an existing regulatory obligation. To that end, the proposed rule change would eliminate some of the narrow detail regarding the categories and types of Rule 15c2–12 disclosure documents that the EMMA IF receives. It replaces this language with a more general statement, which accounts for the new amendments to Rule 15c2–12 related to the incurrence of a financial obligation and events related to financial obligations which reflect financial difficulties.

(iii) Improved Descriptions of EMMA Functionality

As part of its comprehensive review, the MSRB analyzed whether aspects of the EMMA IF could be enhanced to more precisely or concisely describe the EMMA system's functionality and operation, while ensuring that the EMMA IF continues to appropriately describe the basic functionality of and the high-level parameters by which the MSRB operates the EMMA system.

One area where the MSRB determined that an enhanced description of EMMA system functionality would be beneficial is in reference to the process for posting documents and information on display on the EMMA Portal and dissemination through the EMMA subscription services. The EMMA IF frequently references that the EMMA system displays and disseminates documents and information within certain timeframes upon the EMMA system's ''acceptance.'' The term ''acceptance'' could be interpreted to suggest that the MSRB formally approves or otherwise reviews the substantive content of a submission prior to its display or dissemination through the EMMA Portal or that the documents and information submitted are directly displayed or disseminated without further processing. The proposed amendments would uniformly revise this language to clarify that documents and information are posted on the EMMA Portal promptly following the processing of a submission through the EMMA system. For purposes of the EMMA IF, promptly shall mean within 15 minutes following the successful intake of the data by the EMMA system, transformation of such data for operational usability, and storage for effective retrieval for display or dissemination to users of the EMMA Portal and, as applicable, to licensed subscribers of EMMA subscription services (''processing''). This clarification better describes the EMMA system's ministerial function of intaking, displaying and disseminating documents and information. This description also reflects the fact that, prior to display and dissemination, the EMMA system, among other things, conducts routine format checks, validates the submitter, and may timestamp the data, but does not conduct a more formal review accepting the substantive content of the documents and information submitted. Notably, this change is consistent with the recent amendments to the RTRS IF, which now states that real-time dissemination for RTRS functionality occurs ''promptly following processing in RTRS.''

(iv) Removal of Certain Technical and Ancillary Information

Given that the purpose of the EMMA IF is to set forth the material aspects of the EMMA system's operation, highly technical and ancillary information regarding the EMMA system is more appropriately provided in the EMMA User Guide and similar documents that the MSRB maintains on its publicly available website (*msrb.org*).

The MSRB maintains several specification documents for the EMMA system, including the EMMA User Guide, Primary Market Submission Manual, Primary Market Submission Specifications, Preliminary Official Statement Submission Specifications, Continuing Disclosure Submission Manual, Continuing Disclosure Submission Specifications, and others (collectively, the ''EMMA Reporting Specifications''). The EMMA Reporting Specifications documents are available on the MSRB's publicly available website.[16] The EMMA Reporting Specifications provide detailed information regarding, among other things, user guides for website submission interfaces and input specifications for computer-to-computer submission. Similarly, the Specifications for EMMA Primary Market Disclosure Subscription Service, the Specifications for the MSRB Continuing Disclosure Subscription Service, and other EMMA subscription specifications (collectively, the ''EMMA Subscription Service Specifications'') provide specifications and requirements to access, retrieve and understand EMMA subscription services.[17] The MSRB also maintains an MSRB Subscription Services Price List on its website to inform interested individuals about the pricing for EMMA subscription services.

The proposed rule change would remove certain technical and ancillary information from the EMMA IF that is presented in the EMMA Reporting Specifications, EMMA Subscription Services Specifications, and MSRB Subscription Services Price List. The removal of such information will streamline the EMMA IF by only presenting the information that is necessary to describe the material aspects of the operation of the EMMA system.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C) of the Act,[18] which provides that the MSRB's rules shall:

> . . . be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change would contribute to the MSRB's continuing efforts to improve market transparency by providing greater transparency

[16] The EMMA Reporting Specifications are currently available on the MSRB's website, including at: *http://www.msrb.org/Market-Transparency/Manuals.aspx.*

[17] The EMMA Subscription Service Specifications are currently available on the MSRB's website at: *http://www.msrb.org/Market-Transparency/Subscription-Services-and-Products/MSRB-Continuing-Disclosure-Subscription.aspx and http://www.msrb.org/Market-Transparency/Subscription-Services-and-Products/MSRB-Primary-Market-Subscriptions.aspx.*

[18] 15 U.S.C. 78*o*–4(b)(2)(C).

regarding the material functionality and operations of the EMMA system. As the EMMA system disseminates information about transactions occurring in the municipal securities market, any improvement with respect to the understanding of how the EMMA system operates will further perfect the mechanism of a free and open market in municipal securities. In addition, the clarifying amendments to the EMMA IF serve to foster the cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, by making it more likely that the market is promptly provided with the latest information.

Specifically, the proposed amendments would increase the clarity and precision with respect to the description of basic EMMA system functionality and the high-level parameters by which the MSRB operates the EMMA system. The MSRB believes that issuers, obligated persons, dealers, other submitters and subscribers will benefit from a clearer understanding of this information. While additional technical information regarding the EMMA system is set forth in the EMMA Reporting Specifications, the EMMA Subscription Services Specifications, and other similar documents that the MSRB maintains, the MSRB believes that it is important that material information regarding the EMMA system be clearly described in the EMMA IF. The proposed rule change serves this purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act [19] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change consists of revisions to the EMMA IF to better align the language of the information facility to the MSRB's administration of the EMMA system. The proposed rule change seeks to clarify existing services and make minor changes of a technical nature to the information facility, including certain revisions resulting from recent amendments to Rule 15c2–12. The proposed rule change will not substantively modify the manner in which the MSRB administers the EMMA system in collecting and disseminating information about municipal securities. Accordingly, the MSRB does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board did not solicit comment on the proposed change. Therefore, there are no comments on the proposed rule change received from members, participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2018–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2018–09. 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 MSRB. 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–MSRB–2018–09 and should be submitted on or before January 11, 2019.

For the Commission, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27615 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

[19] *Id.*

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 FR 64630, 17 December 2018.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Wednesday, December 19, 2018 at 10:00 a.m.

CHANGES IN THE MEETING: The following item will not be considered during the Open Meeting on Wednesday, December 19, 2018:

- Whether to adopt rules to implement Section 955 of the Dodd-Frank Wall Street Reform and Consumer Protection Act by requiring disclosure about the ability of a company's employees or directors to hedge or offset

any decrease in the market value of equity securities granted as compensation to, or held directly or indirectly by, an employee or director.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 18, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–27829 Filed 12–19–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84830; File No. SR–CboeBYX–2018–025]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Price Improvement Program

December 17, 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 December 11, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to extend the pilot period for the Exchange's Retail Price Improvement Program.

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 the proposed rule change is to extend the pilot period for the Exchange's Retail Price Improvement Program (the ''Program''). The Program is currently set to expire on the earlier of approval of the filing to make the Program permanent or December 31, 2018.[5] The Exchange now proposes to extend the Program until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

Background

In November 2012, the Commission approved the Program on a pilot basis.[6] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, all Exchange Users [7] are permitted to provide potential price improvement for Retail Orders [8] in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO'', and together with the Protected NBB, the ''Protected NBBO'').[9]

The Program was approved by the Commission on a pilot basis running one year from the date of implementation.[10] The Commission approved the Program on November 27, 2012.[11] The Exchange implemented the Program on January 11, 2013, and has extended the pilot period six times.[12] The pilot period for the Program is currently set to expire on the earlier of approval of the filing to make this rule permanent or December 31, 2018. This filing seeks to extend the pilot until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

Proposal To Extend the Operation of the Program

The Exchange established the Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders (''RPI Orders'') [13] to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has filed to make the pilot program permanent. *See* Securities Exchange Act Release No. 83831 (August 13, 2018), 83 FR 41128 (August 17, 2018) (SR–CboeBYX–2018–014).

[6] *See* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (''RPI Approval Order'') (SR–BYX–2012–019).

[7] A ''User'' is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[8] A ''Retail Order'' is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. *See* Rule 11.24(a)(2).

[9] The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (''NBB'') and national best offer (''NBO'', together with the NBB, the ''NBBO'') will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[10] *See* RPI Approval Order, *supra* note 6 at 71652.

[11] *Id.*

[12] *See* Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR–BYX–2014–001); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR–BYX–2015–05); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR–BYX–2016–01); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR–BatsBYX–2016–15); 81368 (August 10, 2017), 82 FR 38960 (August 16, 2017) (SR–BatsBYX–2017–18); 83758 (August 1, 2018), 83 FR 38757 (August 7, 2018) (SR–CboeBYX–2018–015).

[13] A ''Retail Price Improvement Order'' is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as such. *See* Rule 11.24(a)(3).

additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to gather and analyze data regarding the Program that the Exchange has committed to provide.[14] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[15] Through this filing, the Exchange seeks to extend the current pilot period of the Program until the earlier of approval of the filing to make the Program permanent or June 30, 2019.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[16] In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,[17] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

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 extends an established pilot program, thus allowing the Program to enhance competition for retail order flow and contribute to the public price discovery process.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f)(6) of Rule 19b–4 thereunder,[19] the Exchange has designated this rule filing as non-controversial.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[20] However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest and will allow the Exchange to extend the Program, which will ensure that the Program continues while the Exchange and Commission continue to analyze data regarding the Program.

The Commission believes that waiving the 30-day operative delay for the instant filing is consistent with the protection of investors. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[22]

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2018–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2018–025. 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

[14] *See* RPI Approval Order, *supra* note 6 at 71655.

[15] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. *See* Letter from Anders Franzon, SVP, Deputy General Counsel, Cboe BYX Exchange, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission dated December 11, 2018.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4. As required under Rule 19b–4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeBYX–2018–025 and should be submitted on or before January 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27618 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84833; File No. SR–BX–2018–062]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Equity 7, Section 118

December 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 amend the Exchange's transaction fees at Equity 7, Section 118 to adopt a new credit for entering an order that accesses liquidity in the Nasdaq BX Equities System.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the proposed rule change is to amend the Exchange's transaction fees at Equity 7, Section 118 to adopt a new credit for entering an order that accesses liquidity in the Nasdaq BX Equities System. Specifically, the Exchange is proposing to provide a credit of $0.0018 per share executed for orders that access liquidity in Tape A securities (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price). To qualify for the proposed credit, a member must access liquidity equal to or exceeding 0.30% of total Consolidated Volume[3] during a month. The proposed new credit, and its associated qualification criteria, is similar to existing credits provided for Orders that access liquidity, which require a certain level of total Consolidated Volume accessed during a month to qualify.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [6]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [7] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[8] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [9]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Consolidated Volume'' shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* Equity 7, Section 118.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[7] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[8] *See NetCoalition,* at 534–535.

[9] *Id.* at 537.

the execution of order flow from broker dealers' . . . .'' [10]

The Exchange believes that the proposed $0.0018 per share executed credit for orders that access liquidity in Tape A securities (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) is reasonable because the Exchange provides other $0.0018 per share executed credits for entering an order that accesses liquidity in the Nasdaq BX Equities System. For example, the Exchange currently provides members a credit of $0.0018 per share executed for an order that accesses liquidity in securities in Tapes A and C (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that: (i) Accesses liquidity equal to or exceeding 0.20% of total Consolidated Volume during a month; and (ii) accesses 20% more liquidity as a percentage of Consolidated Volume than the member accessed in May 2018. The proposed credit will provide another opportunity to members to receive a $0.0018 per share executed credit in return for certain levels of participation on the Exchange as measured by total Consolidated Volume.

The Exchange believes that the proposed $0.0018 per share executed credit for orders that access liquidity in Tape A securities (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee to all similarly situated members. To qualify for the new credit, a member must access liquidity equal to or exceeding 0.30% of total Consolidated Volume during a month. Like the other qualification criteria required to receive a credit for an order that accesses liquidity, the proposed qualification criteria ensures that members qualifying for this credit are meaningfully participating on the Exchange in a given month. The Exchange notes that any member may qualify for the proposed credit if it meets the levels of total Consolidated Volume required by the credit's qualification criteria. Moreover, if the level of total Consolidated Volume is too high for a member to achieve in a given month, the member may qualify for other lower credits with lower total Consolidated Volume qualification requirements available for orders that access liquidity in Tape A securities (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price). For example, the Exchange provides a credit of $0.0015 per share executed for an order that accesses liquidity (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price) entered by a member that accesses liquidity equal to or exceeding 0.065% of total Consolidated Volume during month. Last, the Exchange notes that the proposed credit is limited to orders that access liquidity in Tape A securities. The Exchange is specifically attempting to increase the level of liquidity removal in Tape A securities, which the Exchange has identified as an area in need of improvement. Members will continue to have opportunities to qualify for the same or similar credits for removal of liquidity in Tape B and C securities. Thus, the Exchange believes that this additional new credit provides all of its members with choice and flexibility, and is therefore an equitable allocation and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed new credit tier does not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed credit provides another opportunity for all market participants to receive a credit in return for market-improving activity on the Exchange. In this regard, the new credit tier is designed to provide incentive to market participants to remove a certain level of total Consolidated Volume during a month receive the credit for its orders that access liquidity in securities in Tape A securities (excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with a Non-displayed price). Thus, the new credit may increase activity on the Exchange by attracting removers of liquidity in Tape A securities. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will not gain market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[10] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2018–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit 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–BX–2018–062 and should be submitted on or before January 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27621 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84835; File No. SR–Phlx–2018–80]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pilot Period for the Exchange's Nonstandard Expirations Pilot Program

December 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2018 Nasdaq PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the pilot period for the Exchange's nonstandard expirations pilot program, currently set to expire on December 15, 2018.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 15, 2017 the Commission approved a proposed rule change for the listing and trading on the Exchange, on a twelve month pilot basis, of p.m.-settled options on broad-based indexes with nonstandard expirations dates.[3] The pilot program permits both Weekly Expirations and End of Month (''EOM'') expirations similar to those of the a.m.-settled broad-based index options, except that the exercise settlement value of the options subject to the pilot are based on the index value derived from the closing prices of component stocks.

Pursuant to subsection (b)(vii)(1), Weekly Expirations, to Rule 1101A, the Exchange may open for trading Weekly Expirations on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). Weekly Expirations are be subject to all provisions of Exchange Rule 1101A and are treated the same as options on the same underlying index that expire on the third Friday of the expiration month. Unlike the standard monthly options, however, Weekly Expirations are p.m.-settled.

Similarly, pursuant to subsection (b)(vii)(2), Weekly Expirations, to Rule 1101A, the Exchange may open for trading EOMs on any broad-based index eligible for standard options trading to expire on the last trading day of the month. EOMs are subject to all provisions of Rule 1101A and treated the same as options on the same underlying index that expire on the third Friday of the expiration month. However, the EOMs are p.m.-settled.

The Exchange now proposes to amend Exchange Rule 1101A(b)(vii)(3) so that the duration of the pilot program for these nonstandard expirations will be through May 6, 2019. The Exchange continues to have sufficient systems capacity to handle p.m.-settled options on broad-based indexes with nonstandard expirations dates and has not encountered any issues or adverse market effects as a result of listing them. Additionally, there is continued investor interest in these products. The Exchange will make public on its website any data and analysis it submits

[3] *See* Securities Exchange Act Release No. 82341 (December 15, 2018), 82 FR 60651 (December 21, 2017) (approving SR–Phlx–2017–79).

to the Commission under the pilot program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed rule change will protect investors and the public interest by providing the Exchange, the Commission and investors the benefit of additional time to analyze nonstandard expiration options. By extending the pilot program, investors may continue to benefit from a wider array of investment opportunities. Additionally, both the Exchange and the Commission may continue to monitor the potential for adverse market effects of p.m.-settlement on the market, including the underlying cash equities market, at the expiration of these options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Options with nonstandard expirations would be available for trading to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that such waiver will allow investors to continue to trade nonstandard expiration options listed by the Exchange as part of the pilot program on an uninterrupted basis. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the pilot program to continue uninterrupted, thereby avoiding investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–80 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–Phlx–2018–80. 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–Phlx–2018–80, and should be submitted on or before January 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27617 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84836; File No. SR–OCC–2018–013]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Extend Term Limits for Member Directors Serving on The Options Clearing Corporation's Board of Directors

December 17, 2018.

I. Introduction

On October 26, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2018–013 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] to extend the term limits for Member Directors serving on OCC's Board of Directors (''Board'') from two consecutive three-year terms to three consecutive three-year terms. The Proposed Rule Change was published for comment in the **Federal Register** on November 7, 2018,[3] and the Commission has received no comments in response.

II. Background [4]

OCC proposes a change to Article III, Section 2 of its By-Laws and to the Board of Directors Charter and Corporate Governance Principles (''Board Charter'') that would extend the term limits for Member Directors from two consecutive three-year terms to three consecutive three-year terms. According to OCC, the purpose of the change is to address issues associated with frequent Member Director turnover by providing the potential for longer consecutive service by Member Directors who, among other considerations, may have developed considerable knowledge about OCC's business and the interests of Clearing Members.

Board Composition and Member Director Considerations

OCC's Certificate of Incorporation and By-Laws establish the Board's composition and the procedures for director selection. Pursuant to these documents, when at full capacity, the Board consists of twenty directors: (i) Nine directors representing OCC Clearing Members (''Member Directors''); (ii) five directors designated by and representing each of OCC's five Equity Exchanges (''Exchange Directors''); (iii) five directors who are not affiliated with any national securities exchange, national securities association, or with any broker or dealer in securities (''Public Directors''); and (iv) one management director, who serves as the Executive Chairman (''Management Director'').[5]

According to OCC, Member Directors serve on the Board to comply with Section 17A(b)(3)(C) of the Exchange Act, which requires, among other things, that the rules of a clearing agency assure fair representation of its participants in the selection of its directors and administration of its affairs.[6] The term ''participant'' when used with respect to a clearing agency under the Exchange Act means any person, such as a Clearing Member, who directly uses the clearing agency to clear or settle securities transactions.[7] Accordingly, OCC's By-Laws set forth the qualifications for Member Directors, providing that a Member Director must be either a Clearing Member or representative (*e.g.,* a director, senior officer, principal, or general partner) of a Clearing Member Organization or an affiliate of such organization.[8]

At its annual meeting of stockholders, OCC's stockholders elect Member Directors from a list of nominees prepared by the Board's Governance and Nominating Committee (''GNC'') and approved by the Board.[9] In furtherance of the Exchange Act's fair representation requirement described above, Article III, Section 5 of OCC's By-Laws requires the GNC in selecting Member Director nominees to ''endeavor to achieve balanced representation among Clearing Members on the Board of Directors to assure that (i) not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume, and (ii) the mix of Member Directors includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors.'' [10] All director nominees, including Member Director nominees, must also be considered under the standards for directors in OCC's Fitness Standards for Directors, Clearing Members, and Others (''Fitness Standards'') [11] regarding their skills, experience, expertise, attributes, and professional backgrounds.[12] The Fitness Standards include criteria that apply specifically to Member Directors.[13] In addition, at least every three years, the GNC is required to review the composition of the Board as a whole for consistency with public interest and regulatory requirements, including whether the Board reflects the appropriate balance across the categories of directors such as Member Directors.[14]

Member Director Term Limits

Member Directors are the only type of OCC directors currently subject to term limits. Specifically, Member Directors are limited to serving two consecutive three-year terms for a total of six consecutive years of Board service (excluding any time that may be served filling a vacancy).[15] All other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 34–84521 (Nov. 1, 2018), 83 FR 55768 (Nov. 7, 2018) (''Notice'').

[4] All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules. OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[5] OCC By-Laws, Article III, Sections 1, 2, 6, 6A, and 7 (addressing the number of directors and required qualifications of Member Directors, Exchange Directors, Public Directors, and the Management Director); *see also* Board Charter at 4 (Size of Board; Composition).

[6] 15 U.S.C. 78q–1(b)(3)(C).

[7] *See* 15 U.S.C. 78c(a)(24) (defining the term ''participant'' when used with respect to a clearing agency); 15 U.S.C. 78c(a)(9) (defining the term ''person'').

[8] OCC By-Laws, Article I, Section 1.R.(6) and Article III, Section 2.

[9] OCC By-Laws, Article III, Section 5. In advance of the election, OCC shares the list of nominees with Clearing Members who are provided an opportunity to submit additional nominees. *Id.*

[10] OCC By-Laws, Article III, Section 5.

[11] The Fitness Standards are available on OCC's public website: *https://www.theocc.com/about/corporate-information/board-charter.jsp.*

[12] *See* OCC's Fitness Standards at 1–2; *see also* OCC Governance and Nominating Committee Charter (''GNC Charter'') at 3 (providing that the GNC shall identify, screen, and review individuals qualified to be elected or appointed to serve as Member Directors consistent with the Fitness Standards), available on OCC's public website at *https://www.theocc.com/about/corporate-information/board-committee-charters.jsp;* OCC By-Laws Article III, Section 2, Interpretation and Policy .01 (providing that the GNC shall use the Fitness Standards for Directors, Clearing Members, and Others in considering Member Director nominees).

[13] Additional criteria for Member Directors include: (i) Balanced representation among all Clearing Members; (ii) balanced representation of all business activities of Clearing Members; (iii) nature of the firm with which each prospective director is associated; (iv) industry affiliations; (v) assure that not all Member Directors are representatives of the largest Clearing Member Organizations based on the prior year's volume; and (vi) develop a mix of Member Directors that includes representatives of Clearing Member Organizations that are primarily engaged in agency trading on behalf of retail customers or individual investors. Fitness Standards at 2.

[14] GNC Charter at 3–4.

[15] OCC By-Laws, Article III, Section 2(a). For example, a Member Director who is appointed in 2018 to fill a vacancy and then is elected to serve a three-year term beginning in 2020 would

Continued

directors—Exchange Directors, Public Directors, and the Management Director—are not subject to any term limits.[16]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[17] After carefully considering the Proposed Rule Change, the Commission finds the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(C) of the Exchange Act [18] and Rules 17Ad–22(e)(2)(i), (e)(2)(iii), and (e)(2)(iv) thereunder.[19]

A. Consistency With Section 17A(b)(3)(C) of the Exchange Act

Section 17A(b)(3)(C) of the Exchange Act [20] requires, among other things, that the rules of a clearing agency assure a fair representation of its participants in the selection of its directors and administration of its affairs.[21] The Exchange Act does not define fair representation or set up particular standards of representation. The Commission has stated that, ''at a minimum, fair representation requires that the entity responsible for nominating individuals for membership on the board of directors should be obligated by by-law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross-section of the community of participants.'' [22] The Commission believes that the Proposed Rule Change is consistent with the fair representation requirement.

First, the Commission agrees that increasing the number of three-year terms that Member Directors may serve from two to three could provide OCC with the ability to retain the experience of Member Directors who, among other considerations, may have developed considerable knowledge about OCC's business and the interests of Clearing Members and therefore could bring significant value to OCC's governance process. Moreover, the mechanisms described above in the applicable By-Laws and board committee charters would continue to require the GNC to endeavor to achieve balanced representation among Clearing Members on the Board when nominating Member Directors and in conducting reviews of the Board's composition.[23] The Commission believes that these mechanisms should be sufficient to continue to promote the fair representation of Clearing Members, while still permitting OCC to potentially retain the services of experienced Member Directors. Further, the Commission notes that the Proposed Rule Change would not guarantee the nomination or election of a Member Director to a third consecutive term. For these reasons, the Commission believes that the Proposed Rule Change is consistent with Section 17A(b)(3)(C) of the Exchange Act.[24]

B. Consistency With Rules 17Ad–22(e)(2)(i), (e)(2)(iii), and (e)(2)(iv) Under the Exchange Act

Rules 17Ad–22(e)(2)(i), (e)(2)(iii), and (e)(2)(iv) under the Exchange Act require that a covered clearing agency, such as OCC, establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things: Are clear and transparent; support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, and the objectives of owners and participants; and establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[25] The Commission believes that the Proposed Rule Change is consistent with these provisions of Rule 17Ad–22(e)(2) for the following reasons.

First, the revised term limits for Member Directors would be set forth explicitly in OCC's By-Laws and Board Charter, both of which are available on the OCC website. We believe that, by making these documents publicly available and easily accessible, OCC would be providing clear and transparent governance arrangements consistent with the requirements of Rule 17Ad–22(e)(2)(i).[26]

Second, for the same reasons we believe the Proposed Rule Change is consistent with the fair representation requirements under Section 17A(b)(3)(C) of the Exchange Act,[27] as discussed above in Section III.A, the Commission believes that the Proposed Rule Change is consistent with Rule 17Ad–22(e)(2)(iii)'s [28] requirement that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies and the objectives of owners and participants.

Finally, by providing OCC with the potential ability to retain the experience of Member Directors who, among other considerations, may have developed considerable knowledge about OCC's business and the interests of Clearing Members that may be difficult to replace and that could bring significant value to OCC's governance process, we believe that the Proposed Rule Change would promote a Board composition in which OCC's directors have appropriate experience and skills to discharge their duties and responsibilities. Accordingly, the Commission believes that ensuring that OCC has the flexibility to have Member Directors serve a third consecutive three-year term should help to ensure that OCC's Board has the appropriate experience and skills to discharge their responsibilities, consistent with the requirements of Rule 17Ad–22(e)(iv).[29]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [30] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[31] that the Proposed Rule Change (SR–OCC–2018–013) be, and hereby is, approved.

currently be eligible to serve out two consecutive three-year terms ending in 2026.

[16] The Commission previously approved the removal of term limits for Public Directors in 2016. Exchange Act Release No. 34–78862 (Sept. 16, 2016), 81 FR 65415, 65427 (Sept. 22, 2016) (SR–OCC–2016–002).

[17] 15 U.S.C. 78s(b)(2)(C).

[18] 15 U.S.C. 78q–1(b)(3)(C).

[19] 17 CFR 240.17Ad–22(e)(i), (iii), and (iv).

[20] 15 U.S.C. 78q–1(b)(3)(C).

[21] *See supra* note 7.

[22] Exchange Act Release No. 34–20221 (Sept. 23, 1983), 48 FR 45167, 45172 (Oct. 3, 1983) (Depository Trust Co., et al.; Order).

[23] *See supra* notes 10–13.

[24] 15 U.S.C. 78q–1(b)(3)(C).

[25] 17 CFR 240.17Ad–22(e)(i), (iii), and (iv).

[26] 17 CFR 240.17Ad–22(e)(i).

[27] 15 U.S.C. 78q–1(b)(3)(C).

[28] 17 CFR 240.17Ad–22(e)(iii).

[29] 17 CFR 240.17Ad–22(e)(iv).

[30] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27612 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84832; File No. SR–CboeEDGX–2018–059]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend the Exchange's Fee Schedule Applicable to Its Equities Trading Platform

December 17, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2018, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the Exchange's fee schedule applicable to its equities trading platform (''EDGX Equities'') to introduce: (1) A ''Retail Volume Tier'' for firms that execute a significant volume of liquidity providing retail order flow on EDGX, and (2) a ''Step-Up Tier'' based on growth in the member's liquidity provided on EDGX.

The text of the proposed changes to the fee schedule are attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the EDGX Equities fee schedule to introduce: (1) A ''Retail Volume Tier'' for firms that execute a significant volume of liquidity providing retail order flow on EDGX, and (2) a ''Step-Up Tier'' based on growth in the member's liquidity provided on EDGX. The Exchange believes that both of the proposed changes would encourage more liquidity and opportunities for investors to trade on the Exchange.

I. Retail Volume Tier

A ''Retail Member Organization'' or ''RMO'' is a member (or a division thereof) that has been approved by the Exchange to submit Retail Orders.[3] Due to the intense competition for retail order flow, the Exchange provides special pricing for Retail Orders as an incentive for members to bring such orders to EDGX instead of another exchange or off-exchange venue. Specifically, Retail Orders that add liquidity and yield fee code ZA[4] currently benefit from an enhanced rebate of $0.0032 per share. The Exchange is interested in attracting additional retail order flow, and therefore proposes to introduce a Retail Volume Tier that is designed to encourage more retail participation. The Retail Volume Tier would provide further enhanced rebates to liquidity providing Retail Orders, provided that the member executes a specified average daily volume (''ADV'')[5] in such orders on EDGX. As proposed, a Retail Order that adds liquidity under fee code ZA would be eligible for a rebate of $0.0037 per share if the member's ADV in Retail Orders that add liquidity (*i.e.,* yielding fee code ZA) is greater than or equal to 0.35% of Total Consolidated Volume (''TCV'').[6]

II. Step-Up Tier

Currently, the EDGX Equities fee schedule contains six Add Volume Tiers that provide enhanced rebates, ranging from of $0.0025 to $0.0032 per share, for displayed orders that add liquidity in Tapes A, B, and C and yield fee codes B,[7] V,[8] Y,[9] 3[10] and 4.[11] To encourage market participants to provide more liquidity on EDGX, the Exchange proposes to introduce a seventh Add Volume Tier that is based on the growth in liquidity providing orders that the member executes on EDGX—*i.e.,* the ''Step-Up Tier.'' As proposed, the Exchange would provide rebate of $0.0033 per share for displayed orders that add liquidity to members that execute a Step-Up Add TCV from October 2018 that is equal to or greater

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* EDGX Rule 11.21(a)(1). A ''Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. *See* EDGX Rule 11.21(a)(2).

[4] ''ZA'' is associated with Retail Orders that add liquidity.

[5] ADAV means average daily added volume calculated as the number of shares added per day and ADV means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADAV and ADV is calculated on a monthly basis.

The Exchange excludes from its calculation of ADAV and ADV shares added, removed, or routed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours (''Exchange System Disruption''), on any day with a scheduled early market close, and on the last Friday in June (the ''Russell Reconstitution Day'').

With prior notice to the Exchange, a Member may aggregate ADAV and ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD).

[6] TCV means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close, and the Russell Reconstitution Day.

[7] ''B'' is associated with displayed orders that add liquidity on EDGX for Tape B.

[8] ''V'' is associated with displayed orders that add liquidity on EDGX for Tape A.

[9] ''Y'' is associated with displayed orders that add liquidity on EDGX for Tape C.

[10] ''3'' is associated with displayed orders that add liquidity on EDGX for Tape A or C during the post-market or pre-market trading sessions.

[11] ''4'' is associated with displayed orders that add liquidity on EDGX for Tape B during the post-market or pre-market trading sessions.

than 0.35%. As currently defined in the EDGX Equities fee schedule, Step-Up Add TCV means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV. Members that achieve the proposed Step-Up Tier must therefore increase the amount of liquidity that they provide on EDGX, thereby contributing to a deeper and more liquid market.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the requirements of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. Specifically, the Exchange believes that the proposed changes to the EDGX Equities fee schedule are appropriately designed to encourage market participants to send additional liquidity providing orders to the Exchange, and thereby contribute to a vibrant and competitive market. Volume-based rebates such as those proposed herein have been widely adopted by equities exchanges, and provide benefits to market participants that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. As described in more detail below, the Exchange believes that the proposed tiers are reasonable, equitable, and not unfairly discriminatory as they will continue to provide members with an incentive to provide more liquidity on EDGX, to the benefit of investors.

I. Retail Volume Tier

The Exchange currently provides pricing incentives to Retail Member Organizations that execute liquidity providing Retail Orders on EDGX, and desires to further enhance those incentives in order to encourage additional retail participation. The proposed Retail Volume Tier would achieve that result by providing a higher rebate to Retail Orders that provide liquidity if submitted by a member that executes a significant volume of liquidity providing Retail Orders on EDGX. NYSE Arca, Inc. (''Arca'') also operates a similar volume-based rebate program that provides tiered rebates of up to $0.0035 [sic] per share to attract retail order flow.[14]

The Exchange believes that the proposed Retail Volume Tier is reasonable and equitable as it would allow EDGX to effectively compete for retail order flow with Arca as well as other exchanges and the many off-exchange venues that execute the majority of retail order flow today. The Exchange previously offered volume based incentives for Retail Orders. That program, which was discontinued in March 2016 when the Exchange increased the base rebate for Retail Orders that add liquidity,[15] was substantially similar to the one proposed herein, except that both the rebate amount and the volume required to achieve that rebate were lower than proposed today. The Exchange believes that the current proposal is appropriately designed to attract Retail Orders to EDGX given the high degree of competition for such orders in today's market. The Exchange believes that attracting liquidity in Retail Orders would incentivize other members to send order flow to EDGX to trade with such Retail Orders. In addition, the Exchange believes that this increased liquidity would potentially stimulate further price competition for Retail Orders, thereby deepening the Exchange's liquidity pool in both and retail and other orders, supporting the quality of price discovery, and promoting market transparency.

The Exchange also believes that the proposed Retail Volume Tier is not unfairly discriminatory because it applies equally to all members that execute liquidity providing Retail Orders and meet the specified volume threshold. Retail Member Organizations that do not meet the proposed volume threshold would continue to earn the current rebate, which already provides a significant incentive for executing retail order flow on EDGX. The Exchange believes that it is appropriate to limit the proposed enhanced rebates to Retail Orders as the Exchange is attempting to increase retail participation. Retail participation is more likely to reflect long-term investment intentions, and may therefore positively impact market quality. Accordingly, the presence of Retail Orders on EDGX has the potential to benefit all market participants. As explained in the purpose section of this proposed rule change, competition for retail order flow is particularly fierce, with Arca also providing a high rebate to market participants that execute a significant amount of such orders on that exchange. In that context, the Exchange believes that it is appropriate to provide additional incentives to Retail Orders in order to attract that order flow.

II. Step-Up Tier

The Exchange believes the proposed Step-Up Tier is a reasonable means to encourage members to increase the liquidity that they provide on EDGX based on increasing their volume above a predetermined baseline. The Exchange has previously offered similar incentives that were designed to encourage additional growth in liquidity provided on EDGX,[16] and believes that introducing such a tier again would be helpful in attracting liquidity to the Exchange to the benefit of all market participants. Deepening the Exchange's liquidity pool benefits investors by encouraging more price competition and providing additional opportunities to trade. The Exchange believes that the proposed new tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier encourages members to add increased liquidity to EDGX each month. Furthermore, the Exchange believes that the proposed Step-Up Tier is not unfairly discriminatory as it applies uniformly to all members that increase the volume of liquidity that they provide on EDGX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed changes are designed to enhance competition by attracting additional liquidity and increasing the competitiveness of the Exchange. The proposed rebate tiers would apply to all members uniformly based on the amount and type of order flow that they route to EDGX. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to encourage market participants to direct their order flow to the Exchange.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Arca Equities Fees and Charges, Trade Related Fees and Credits, Retail Order Tier and Retail Order Step-Up Tiers.

[15] *See* Securities Exchange Act Release No. 77394 (March 17, 2016), 81 FR 15596 (March 23, 2016) (SR–BatsEDGX–2016–02).

[16] *See* Securities Exchange Act Release No. 80034 (February 14, 2017), 82 FR 11275 (February 21, 2017) (SR–BatsEDGX–2017–09).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2018–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2018–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–059 and should be submitted on or before January 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2018–27611 Filed 12–20–18; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2018–0042]

Privacy Act of 1974; System of Records

AGENCY: Office of Retirement and Disability Policy, Office of Research, Demonstration, and Employment Support, Social Security Administration (SSA).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to establish a new system of records entitled the *Disability Analysis File (DAF) and the National Beneficiary Survey (NBS) Data System,* (60–0382). This notice publishes details of the system as set forth under the caption **SUPPLEMENTARY INFORMATION.**

DATES: This system of records is effective upon its publication in today's **Federal Register**, with the exception of the routine uses, which are effective January 22, 2019. We invite public comment on the routine uses or other aspects of this system of records. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Please submit any comments by January 22, 2019.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov*, please reference docket number SSA–2018–0042. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andrea Huseth, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–6868, email: *andrea.huseth@ssa.gov* and Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–2950, email: *tristin.dorsey@ssa.gov.*

SUPPLEMENTARY INFORMATION: The DAF is an analytical file consisting of agency program data in an easy-to-use format. Each year, we create a new version of the file. The DAF contains historical, longitudinal, and one-time data [1] on all beneficiaries with disabilities who were between age 18 and retirement age and who participated in the Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) programs at any time between 1996 and the year of the file. The file also includes data on SSI child beneficiaries who participated in the SSI program.

The NBS collects data from a national sample of SSDI and SSI beneficiaries, covering a wide range of topics including socio-demographic information, limiting conditions, health

[1] Historical data provides characteristics about specific incidents that occurred in the past. Longitudinal data is information provided at intervals over time to indicate change over time, *e.g.,* benefit amounts in each months from 1994 through the end of the file. One-time data provides information about a beneficiary that does not change over time, *e.g.,* sex or date of birth.

and functional status, health insurance, interest in work, barriers to work, use of services, employment, income, and experience with Social Security programs including Ticket to Work.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this new system of records.

Dated: October 1, 2018.

Mary Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER

Disability Analysis File (DAF) and the National Beneficiary Survey (NBS) Data System, 60–0382.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Office of Retirement and Disability Policy, Office of Research, Demonstration, and Employment Support, 6401 Security Boulevard, Baltimore, Maryland 21235.

SYSTEM MANAGER(S):

Social Security Administration, Deputy Commissioner for Retirement and Disability Policy, Office of Research, Demonstration, and Employment Support, 6401 Security Boulevard, Baltimore, Maryland 21235, *^ORDES_Controls@ssa.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 234, 1106, and 1110 of the Social Security Act (42 U.S.C. 434, 1306, and 1310) and SSA Regulations (20 CFR part 401.165).

PURPOSE(S) OF THE SYSTEM:

We use this system to perform research about SSDI and/or SSI beneficiaries. We may also grant outside researchers access to information in this system when conducting SSA-approved research. Internal and external researchers and statisticians use the data to perform in-depth research including, but not limited to, examining the medical, economic, and social consequences of limitations in work activity for individuals with disabilities and their families; program planning and evaluation; evaluation of proposals for policy and legislative changes; and, to determine the characteristics of program applicants and benefit recipients.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

We maintain information about past, present, and potential beneficiaries (*e.g.,* denied applicants) of SSDI and SSI, as well as State Vocational Rehabilitation programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include name; Social Security number (SSN); socioeconomic data (*e.g.,* education, work, and earnings); demographics, (*e.g.,* date of birth, date of death, sex, and state of residence); medical characteristics, (*e.g.,* number of limitations, self-reported health, mental health score); disability characteristics, (*e.g.* primary diagnosis code and dual eligibility); information concerning subjects, (*e.g.,* health, self-reported health status, work experience, and family relationships); benefits, (*e.g.,* combined SSI and SSDI); and use of medical and rehabilitative services, (*e.g.,* agency closure type and service use).

RECORD SOURCE CATEGORIES:

We obtain information in this system from other SSA systems of records, including but not limited to 60–0050, Completed Determination Record—Continuing Disability Determinations; 60–0058, Master File of Social Security Number (SSN) Holders and SSN Applications; 60–0090, Master Beneficiary Record; 60–0103, Supplemental Security Income Record and Special Veterans Benefits; 60–0221, Vocational Rehabilitation Reimbursement Case Processing System; 60–0295, Ticket-to-Work and Self-Sufficiency Program Payment Database; and 60–0320, Electronic Disability (eDIB) Claim File.

The system also contains data from system of records 60–0059, Earnings Recording and Self-Employment Income System. Only SSA staff have access to data from the Earnings Recording and Self-Employment Income System.

We also obtain information in this system from other Federal agencies (*e.g.,* the U.S. Census Bureau and U.S. Department of Education (*e.g.,* the Rehabilitation Services Administration, for vocational rehabilitation program applicant or participant data)); surveys (*e.g.,* the National Beneficiary Survey); and other extramural research conducted under agreements, contracts, and grants between SSA and other agencies or entities.

ROUTINE USES OF RECORDS COVERED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code, unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To contractors and Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

2. To contractors, cooperative agreement awardees, State agencies, Federal agencies, and Federal congressional support agencies for research and statistical activities that are designed to increase knowledge about present or alternative Social Security programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to the Social Security program or beneficiaries. We will disclose information under this routine use pursuant only to a written agreement with SSA.

3. To organizations and agencies that have been granted on-site access only to the DAF–NBS system for research and statistics activities that are designed to increase knowledge about present or alternative Social Security programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to the Social Security program or beneficiaries. We will disclose information under this routine use pursuant only to a written agreement between the organization or agency and SSA.

4. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for SSA, as authorized by law, and they need access to personally identifiable information (PII) in SSA records in order to perform their assigned agency functions.

5. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or third party acting on the subject's behalf.

6. To the Office of the President, in response to an inquiry from that office made on behalf of, and at the request of, the subject of record or a third party acting on the subject's behalf.

7. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal, when:

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines the litigation is likely to affect SSA or any of its components,is a party to the litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to DOJ, court or other tribunal, or another party is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

8. To Federal, State and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities; or

(b) to assist in investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

9. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

10. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connections with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

11. To another Federal agency or Federal entity, when the SSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) Responding to a suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We store data in paper form (*e.g.,* questionnaire forms, computer printouts) and in electronic form (*e.g.,* magnetic tape and disc).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We retrieve files by case number or SSN. We also retrieve files by socioeconomic, demographic, medical, and disability characteristics.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

We retain records until 90 days old or no longer needed pursuant to supervisory authorization, whichever is appropriate, in accordance with the approved NARA General Records Schedule 4.2: Information Access and Protection Records (DAA–GRS–2013–0007–0012).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files with personal identifiers in secure storage areas accessible only by our authorized employees and contractors who have a need for the information when performing their official duties. Security measures include the use of codes and profiles, personal identification number and password, and personal identification verification cards. We keep paper records in locked cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties. To the maximum extent consistent with the approved research needs, we purge personal identifiers from micro-data files prepared for purposes of research and subject these files to procedural safeguards to assure anonymity.

We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII (5 U.S.C. 552a(i)(1)). Furthermore, employees and contractors with access to databases maintaining PII must sign a sanctions document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

In addition, all external researchers accessing information from the DAF–NBS system of records will be required to complete the appropriate security awareness training, which includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of, PII.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for notification of, or access to, information about them contained in this system by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include (1) a notarized statement to verify their identity or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records may also make an in-person request by providing their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identifying document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2018–27665 Filed 12–20–18; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10637]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Tintoretto: Artist of Renaissance Venice'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Tintoretto: Artist of Renaissance Venice,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, District of Columbia, from on or about March 10, 2019, until on or about July 7, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–21 of December 14, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–27631 Filed 12–20–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10635]

Secretary of State's Determination Under the International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016

The Secretary of State's designation of ''countries of particular concern'' and ''special watch list'' countries for religious freedom violations pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), as amended (the Act). Notice is hereby given that, on November 28, 2018, the Secretary of State, under authority delegated by the President, designated each of the following as a ''country of particular concern'' (CPC) under section 402(b) of the Act, for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Eritrea, Iran, the Democratic People's Republic of Korea, Pakistan, Saudi Arabia, Sudan, Tajikistan, Turkmenistan. The Secretary simultaneously designated the following Presidential Actions for these CPCs:

For Burma, the existing ongoing restrictions referenced in 22 CFR 126.1, pursuant to section 402(c)(5) of the Act;

For China, the existing ongoing restriction on exports to China of crime control and detection instruments and equipment, under the Foreign Relations Authorization Act of 1990 and 1991 (Pub. L. 101–246), pursuant to section 402(c)(5) of the Act;

For Eritrea, the existing ongoing restrictions referenced in 22 CFR 126.1, pursuant to section 402(c)(5) of the Act;

For Iran, the existing ongoing travel restrictions in section 221(c) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) for individuals identified under section 221(a)(1)(C) of the TRA in connection with the commission of serious human rights abuses, pursuant to section 402(c)(5) of the Act;

For the Democratic People's Republic of Korea, the existing ongoing restrictions to which the Democratic People's Republic of Korea is subject, pursuant to sections 402 and 409 of the Trade Act of 1974 (the Jackson-Vanik Amendment), pursuant to section 402(c)(5) of the Act;

For Pakistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Saudi Arabia, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Sudan, the restriction in the annual Department of State, Foreign Operations, and Related Programs Appropriations Act on making certain appropriated funds available for assistance to the Government of Sudan, currently set forth in section 7042(i) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141), and any provision of law that is the same or substantially the same as this provision, pursuant to section 402(c)(5) of the Act;

For Tajikistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Turkmenistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act; and

In addition, the Secretary of State has designated the following countries as ''special watch list'' countries for engaging in or tolerating severe violations of religious freedom: Comoros, Russia, and Uzbekistan.

The Secretary of State's designation of ''entities of particular concern'' for religious freedom, pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292). Notice is hereby given that, on November 28, 2018, the Secretary of State, under authority delegated by the President, designated each of the following as an entity of particular concern'' under section 301 of the Frank R. Wolf International Religious Freedom Act of 2016 (Pub. L. 114–281), for having engaged in particularly severe violations of religious freedom: al-Nusra Front, al-Qa'ida in the Arabian Peninsula, al-Qa'ida, al-Shabab, Boko Haram, the Houthis, ISIS, ISIS-Khorasan, and the Taliban.

FOR FURTHER INFORMATION CONTACT: Howard Chyung, Office of International Religious Freedom, Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, (Phone: (202) 647–3865 or Email: *ChyungHH@state.gov*).

Daniel L. Nadel,

Director, Office of International Religious Freedom, Department of State.

[FR Doc. 2018–27632 Filed 12–20–18; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice: 10638]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Caravans of Gold, Fragments in Time: Art, Culture, and Exchange across Medieval Saharan Africa'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Caravans of Gold, Fragments in Time: Art, Culture, and Exchange across Medieval Saharan Africa,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Mary and Leigh Block Museum of Art, Northwestern University, Evanston, Illinois, from on or about January 25, 2019, until on or about July 21, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–21 of December 14, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–27723 Filed 12–20–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10639]

Notice of Public Meeting

The Department of State will conduct an open meeting at 1:00 p.m. Eastern Standard Time on Wednesday, February 12, 2019, in room 6I10–01–A of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Avenue SE, Washington, DC, 20593. The primary purpose of the meeting is to prepare for the sixth session of the International Maritime Organization's (IMO) Sub-Committee on Pollution Prevention and Response (PPR 6) to be held at the IMO Headquarters, United Kingdom, on February 18–22, 2019.

The agenda items to be considered include:

—Adoption of the agenda.
—Decisions of other IMO bodies.
—Safety and pollution hazards of chemicals and preparation of consequential amendments to the IBC Code.
—Revised guidance on ballast water sampling and analysis.
—Revised guidance on methodologies that may be used for enumerating viable organisms.
—Amendment of annex 1 to the AFS Convention to include controls on cybutryne, and consequential revision of relevant guidelines.
—Consideration of the impact on the Arctic of emissions of Black Carbon from international shipping.
—Consistent implementation of regulation 14.1.3 of MARPOL Annex VI.
—Amendments to regulation 14 of MARPOL Annex VI to require a dedicated sampling point for fuel oil.
—Standards for shipboard gasification of waste systems and associated amendments to regulation 16 of MARPOL Annex VI.
—Review of the 2015 Guidelines for Exhaust Gas Cleaning Systems (resolution MEPC.259(68)).
—Development of measures to reduce risks of use and carriage of heavy fuel oil as fuel by ships in Arctic waters.
—Review of the IBTS Guidelines and amendments to the IOPP Certificate and Oil Record Book.
—Amendments to the 2012 Guidelines on implementation of effluent standards and performance tests for sewage treatment plants (resolution MEPC.227(64)) to address inconsistencies in their application.
—Guide on practical methods for the implementation of the OPRC Convention and the OPRC–HNS Protocol.
—Unified interpretation to provisions of IMO environment-related conventions.
—Biennial agenda and provisional agenda for PPR 7.
—Election of Chair and Vice-Chair for 2020.
—Any other business.
—Report to the Marine Environment Protection Committee.

Members of the public may attend this meeting up to the seating capacity of the room. Upon request to the meeting coordinator, members of the public may also participate via teleconference, up to the capacity of the teleconference phone line. To access the teleconference line, participants should call (202) 475–4000 and use Participant Code: 887 809 72. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Melissa Perera, by email at *Melissa.E.Perera@uscg.mil,* by phone at (202) 372–1446, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington DC 20593–7509, not later than February 5, 2019, five business days prior to the meeting. Requests made after February 5, 2019 might not be able to be accommodated.

Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Coast Guard Headquarters building. The building is accessible by taxi, public transportation, and privately owned conveyance (upon request).

Joel C. Coito,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2018–27725 Filed 12–20–18; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36247]

Florida Gulf & Atlantic Railroad, LLC—Acquisition and Operation Exemption With Interchange Commitment—CSX Transportation, Inc.

Florida Gulf & Atlantic Railroad, LLC (FGA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from CSX Transportation, Inc. (CSXT), and to operate, approximately 373 miles of rail line pursuant to a purchase and sale agreement and a freight operating agreement with CSXT. The rail lines to be acquired and operated by FGS consists of the following: (1) The Tallahassee Subdivision between

Baldwin, Fla., at or near CSXT milepost SP 653.3, and Chattahoochee, Fla., at or near CSXT milepost SP 842.5; (2) the P&A Subdivision between Chattahoochee, at or near CSXT milepost 00K810.7, and Pensacola, Fla., at or near CSXT milepost 00K651.0; and (3) portions of the Bainbridge Subdivision between Tallahassee, Fla., at or near CSXT milepost SLC 52.0, and Attapulgus, Ga., at or near CSXT milepost SLC 79.0 (collectively, the ''Lines'').

As part of this transaction, CSXT will retain limited overhead trackage rights only for the movement of certain CSXT freight traffic, in CSXT's trains, locomotives, cars, and equipment with CSXT's own crews over the following segments of the Lines: (1) The Tallahassee Subdivision between the connection with CSXT at Baldwin, at or near CSXT milepost SP 653.3 and Chattahoochee, at or near CSXT milepost SP 842.5; and (2) the P&A Subdivision between Chattahoochee, at or near CSXT milepost 00K810.7, and the connection with CSXT at Pensacola, at or near CSXT milepost 00K 651.0. In addition, FGA will acquire trackage rights to operate its trains, locomotives, cars and equipment with its own crews, solely for the purposes of conducting interchange with CSXT, on the following segments of CSXT rail lines: (1) CSXT milepost 00K651.0 to milepost 00K 649.0, near Pensacola; and (2) CSXT milepost SP 653.3 to milepost S 653.0, near Baldwin.

This transaction is related to a concurrently filed verified notice of exemption under 49 CFR 1180.2(d)(2) in *RailUSA, LLC & American Rail Partners, LLC—Continuance in Control Exemption—Florida Gulf & Atlantic Railroad, LLC,* Docket No. FD 36248, in which RailUSA, LLC, and American Rail Partners, LLC, the direct owner and indirect owner of FGA, respectively, seek Board approval to continue in control of FGA upon FGA's becoming a Class III rail carrier.

As required under 49 CFR 1150.33(h)(1), FGA has disclosed in its verified notice that the freight operating agreement between FGA and CSXT [1] contains an interchange commitment that affects the interchange with carriers other than CSXT at the interchange points of Chattahoochee and Cottondale, Fla. In addition, FGA has provided the additional information regarding the interchange commitment required by section 1150.33(h)(1).

FGA certifies that its projected annual revenues do not exceed those that would qualify it as a Class III rail carrier. FGA notes, however, that its annual operating revenues will exceed $5 million. Accordingly, in compliance with 49 CFR 1150.32(e), FGA certified on November 6, 2018, that, on that day, the required 60-day notice of this transaction was posted at the workplaces of CSXT employees on the Lines and served on the national offices of those employees' unions.

The earliest this transaction may be consummated is January 6, 2019, the effective date of the exemption (30 days after the verified notice was filed).

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 no later than December 28, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36247, 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 Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036.

According to FGA, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b)(1).

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: December 14, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–27524 Filed 12–20–18; 8:45 am]

BILLING CODE 4915–01–P

[1] FGA filed a confidential version of the freight operating agreement with its notice of exemption to be kept confidential by the Board under 49 CFR 1104.14(a) without need for the filing of an accompanying motion for protective order under 49 CFR 1104.14(b).

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2019–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the first quarter 2019 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The first quarter 2019 RCAF (Unadjusted) is 1.058. The first quarter 2019 RCAF (Adjusted) is 0.448. The first quarter 2019 RCAF–5 is 0.419.

DATES: *Applicability Date:* January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our website at *www.stb.gov.* Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

By the Board, Board Members Begeman and Miller.

Decided: December 17, 2018.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–27750 Filed 12–20–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36248]

RailUSA, LLC and American Rail Partners, LLC—Continuance in Control Exemption—Florida Gulf & Atlantic Railroad, LLC

RailUSA, LLC (RailUSA) and American Rail Partners, LLC (ARP), each a noncarrier, have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Florida Gulf & Atlantic Railroad, LLC (FGA), upon FGA's becoming a Class III rail carrier. FGA is a newly formed noncarrier entity that is wholly owned by RailUSA. RailUSA, in turn, is wholly owned by ARP. Thus, RailUSA directly controls FGA, and ARP indirectly controls FGA.

This transaction is related to a concurrently filed verified notice of exemption in *Florida Gulf & Atlantic Railroad—Acquisition & Operation Exemption With Interchange Commitment—CSX Transportation, Inc.,* Docket No. FD 36247. In that proceeding, FGA seeks an exemption under 49 CFR 1150.31 to acquire and operate approximately 373 miles of rail line in Florida and Georgia currently owned and operated by CSX Transportation, Inc., consisting of the

following: (1) The Tallahassee Subdivision between Baldwin, Fla., at or near CSXT milepost SP 653.3, and Chattahoochee, Fla., at or near CSXT milepost SP 842.5; (2) the P&A Subdivision between Chattahoochee, at or near CSXT milepost 00K810.7, and Pensacola, Fla., at or near CSXT milepost 00K651.0; and (3) portions of the Bainbridge Subdivision between Tallahassee, Fla., at or near CSXT milepost SLC 52.0, and Attapulgus, Ga., at or near CSXT milepost SLC 79.0.

The earliest this transaction may be consummated is January 6, 2019, the effective date of the exemption (30 days after the verified notice was filed).

RailUSA and ARP currently control one rail carrier, Grenada Railroad, LLC (GRR), a Class III carrier that leases and operates on lines in Mississippi and Tennessee. RailUSA and ARP represent that: (1) The lines to be acquired and operated by FGA do not connect with the GRR lines; (2) the continuance in control is not part of a series of anticipated transactions that would connect any rail line to be operated by FGA with any GRR rail line; and (3) the transaction does not involve a Class I rail carrier. Therefore, the proposed transaction is 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 only Class III carriers are involved.

If the 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 no later than December 28, 2018 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36248, 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 Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036.

Board decisions and notices are available on our website at *www.stb.gov.*

Decided: December 14, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2018–27522 Filed 12–20–18; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Route 303 Loop, State Route 30 to Interstate 10 (Papago Freeway) in Goodyear, AZ

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the State Route (SR) 303 Loop (L), SR 30 to Interstate 10 (I–10) project in Goodyear, AZ. The actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 20, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Hansen, Team Leader Planning, Environment, Air Quality, Realty, and Civil Rights Team, Federal Highway Administration, 4000 N Central Avenue, Suite 1500, Phoenix, Arizona 85012–3500; telephone: (602) 379–3646, fax: (602)382–8998, email: *Alan.Hansen@dot.gov.* The FHWA Arizona Division Office's normal business hours are 7:30 a.m. to 4 p.m. (Mountain Standard Time).

You may also contact: Ms. Rebecca Yedlin, Environmental Coordinator, Federal Highway Administration, 4000 N Central Ave., Suite 1500, Phoenix, Arizona 85012–3500; telephone: (602) 379–3646, fax: (602) 382–8998, email: *Rebecca.Yedlin@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of Arizona: SR 303L, SR 30 to I–10. The actions by the Federal agencies and the laws under which such actions were taken, are described in the Draft EA approved on June 12, 2018, Final EA approved on November 6, 2018, in the FHWA Finding of No Significant Impact issued on November 6, 2018, and in other documents in the FHWA administrative record. Project decision documents are also available online at: *https://www.azdot.gov/planning/transportation-studies/loop-303-from-i-10-to-sr-30/documents.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the US Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Water:* Clean Water Act 33 U.S.C. 1251–1387.

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898,

Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 13, 2018.

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2018–27697 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0183]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DOVE IV (36′ Sailboat); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0183 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0183 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0183, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOVE IV is:

—*Intended Commercial Use of Vessel:* ''6-pack charter service for environmental education''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: San Luis, CA)

—*Vessel Length and Type:* 36′ cutter rugged sloop sailboat full keel

The complete application is available for review identified in the DOT docket as MARAD–2018–0183 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2018–0183 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *

Dated: December 18, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–27679 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0181]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WAXI 2 (25.6′ Small Passenger Ferry); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0181 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0181 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0181, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WAXI 2 is:

—*Intended Commercial Use of Vessel:* Waterborne passenger transportation throughout Boston Harbor via water taxi. The applicant is the exclusive provider of such services to and from the Boston Harbor Hotel At Rowes Wharf and Logan International Airport, both points located within the Port of Boston, Massachusetts.

—*Geographic Region Including Base of Operations:* ''Massachusetts'' (Base of Operations: Port of Boston, Massachusetts)

—*Vessel Length and Type:* 25.6′ small passenger ferry

The complete application is available for review identified in the DOT docket as MARAD–2018–0181 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2018–0181 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *

Dated: December 18, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–27682 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0180]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel STARDUST (103′ Motor Vessel); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0180 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0180 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0180, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel STARDUST is:

—*Intended Commercial Use Of Vessel:* ''Passengers for hire on general cruising trips, harbor excursions, overnight trips to local islands/ports''

—*Geographic Region Including Base of Operations:* ''California'' (Base of Operations: San Diego, CA)

—*Vessel Length and Type:* 103′ raised pilot house motor vessel aluminum hull

The complete application is available for review identified in the DOT docket as MARAD–2018–0180 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0180 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *

Dated: December 18, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–27680 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0182]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel WAXI 1 (25.6′ Small Passenger Ferry); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before January 22, 2019.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2018–0182 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2018–0182 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2018–0182, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WAXI 1 is:

—*Intended Commercial Use of Vessel:* waterborne passenger transportation throughout Boston Harbor via water taxi. The applicant is the exclusive provider of such services to and from the Boston Harbor Hotel At Rowes Wharf and Logan International Airport, both points located within the Port of Boston, Massachusetts.

—*Geographic Region Including Base of Operations:* ''Massachusetts'' (Base of Operations: Port of Boston, Massachusetts)

—*Vessel Length and Type:* 25.6′ small passenger ferry

The complete application is available for review identified in the DOT docket as MARAD–2018–0182 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2018–0182 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) * * *

Dated: December 18, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.

Secretary, Maritime Administration.

[FR Doc. 2018–27681 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Opportunity for the Department of Transportation's Nationally Significant Freight and Highway Projects (INFRA Grants) for Fiscal Year 2019

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Notice of funding opportunity.

Infrastructure for Rebuilding America (INFRA) Program

FY 2019 Notice of Funding Opportunity

SUMMARY: The Nationally Significant Freight and Highway Projects (INFRA) program provides Federal financial assistance to highway and freight

projects of national or regional significance. This notice solicits applications for awards under the program's fiscal year (FY) 2019 funding, subject to the availability of appropriated funds.

DATES: Applications must be submitted by 8:00 p.m. EST March 4, 2019. The *Grants.gov* ''Apply'' function will open by January 7, 2019.

ADDRESSES: Applications must be submitted through *www.Grants.gov*. Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice, please contact the Office of the Secretary via email at *INFRAgrants@dot.gov,* or call Paul Baumer at (202) 366–1092. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on USDOT's website at *https://www.transportation.gov/buildamerica/INFRAgrants.*

SUPPLEMENTARY INFORMATION: The organization of this notice is based on an outline set in 2 CFR part 200 to ensure consistency across Federal financial assistance programs. However, that format is designed for locating specific information, not for linear reading. For readers seeking to familiarize themselves with the INFRA program, the Department encourages them to begin with Section A (Program Description), which describes the Department's goals for the INFRA program and purpose in making awards, and Section E (Application Review Information), which describes how the Department will select among eligible applications. Those two sections will provide appropriate context for the remainder of the notice: Section B (Federal Award Information) describes information about the size and nature of awards; Section C (Eligibility Information) describes eligibility requirements for applicants and projects; Section D (Application and Submission Information) describes in detail how to apply for an award; Section F (Federal Award Administration Information) describes administrative requirements that will accompany awards; and Sections G (Federal Awarding Agency Contacts) and H (Other Information) provide additional administrative information.

Table of Contents

A. Program Description

1. Overview

The INFRA program provides Federal financial assistance to highway and freight projects of national or regional significance. To maximize the value of FY 2019 INFRA funds for all Americans, the Department is focusing the competition on transportation infrastructure projects that support four key objectives, each of which is discussed in greater detail in section A.2:

(1) Supporting economic vitality at the national and regional level;

(2) Leveraging Federal funding to attract non-Federal sources of infrastructure investment;

(3) Deploying innovative technology, encouraging innovative approaches to project delivery, and incentivizing the use of innovative financing; and

(4) Holding grant recipients accountable for their performance.

This notice's focus on the four key objectives does not supplant the Department's focus on safety as our top priority. The Department is committed to reducing fatalities and serious injuries on the surface transportation system. To reinforce the Department's safety priority, the USDOT will require projects that receive INFRA awards to consider and effectively respond to data-driven transportation safety concerns. Section F.2.a describes related requirements that the Department will impose on each INFRA project. These requirements focus on performing detailed, data-driven safety analyses and incorporating project elements that respond to State-specific safety priority areas.

2. Key Program Objectives

This section of the notice describes the four key program objectives that the Department intends to advance with FY 2019 INFRA funds. These four objectives are reflected in later portions of the notice, including section E.1, which describes how the Department will evaluate applications to advance these objectives, and section D.2.b, which describes how applicants should address the four objectives in their applications.

a. Key Program Objective #1: Supporting Economic Vitality

A strong transportation network is critical to the functioning and growth of the American economy. The nation's industry depends on the transportation network not only to move the goods that it produces, but also to facilitate the movements of the workers who are responsible for that production. When the nation's highways, railways, and ports function well, that infrastructure connects people to jobs, increases the efficiency of delivering goods and thereby cuts the costs of doing business, reduces the burden of commuting, and improves overall well-being. When the transportation network fails—whether due to increasing bottlenecks, growing connectivity gaps, or unsafe, crumbling conditions—our economy suffers. Projects that address congestion in our major urban areas, particularly those that do so through the use of congestion pricing or the deployment of advanced technology, projects that bridge gaps in service in our rural areas, and projects that attract private economic development, all have the potential to support national or regional economic vitality. Therefore, USDOT seeks applications for these types of infrastructure projects under the INFRA program.

b. Key Program Objective #2: Leveraging of Federal Funding

The Department is committed to supporting the President's call for more infrastructure investment. That goal will not be achieved through Federal investment alone, but rather requires States, local governments, and the private sector to maximize their own contributions.

To increase the leveraging of Federal funding, the INFRA program will give priority consideration to projects that

use all available non-Federal resources for development, construction, operations, and maintenance. As described further in section E.1.a (Criterion #2), the Department will also consider the level at which these resources are in fact available, particularly for rural areas. These projects include projects that maximize State, local, and private sector funding, projects that raise revenue directly, and projects that pair INFRA grants with broader-scale innovative financing, including Federal credit assistance such as Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation Improvement Financing (RRIF) loans.

By emphasizing leveraging of Federal funding, the Department expects to expand the total resources being used to build and restore infrastructure, rather than have Federal dollars merely displace or substitute for State, local, and private funds.

c. Key Program Objective #3: Innovation

The Department seeks to use the INFRA program to encourage innovation in three areas: (1) The deployment of innovative technology and expanded access to broadband; (2) use of innovative permitting, contracting, and other project delivery practices; and (3) innovative financing. This objective supports the Department's strategic goal of innovation, with the potential for significantly enhancing the safety, efficiency, and performance of the transportation network. DOT anticipates INFRA projects will support the integration of new technology and facilitate increased public and private sector collaboration. In section E.1.c (Criterion #3), the Department provides many examples of innovative technologies, practices, and financing. It encourages applicants to identify those that are suitable for their projects and local constraints.

d. Key Program Objective #4: Performance and Accountability

The Department seeks to increase project sponsor accountability and performance by evaluating each INFRA applicant's plans to address the full lifecycle costs of their project and willingness to condition award funding on achieving specific Departmental goals.

To maximize public benefits from INFRA funds and promote local activity that will provide benefits beyond the INFRA-funded projects, the Department seeks projects that allow it to condition funding on specific, measurable outcomes. For appropriate projects, the Department may use one or more of the following types of events to trigger availability of some or all INFRA funds: (1) Reaching construction and project completion in a timely manner; (2) achieving transportation performance objectives that support economic vitality or improve safety; and (3) making specific State or local policy changes that facilitate interstate commerce.

The Department does not intend to impose these conditions on unwilling or uninterested INFRA recipients, nor does it intend to limit the types of projects that should consider accountability mechanisms. Instead, in section E.1.d (Criterion #4), the Department provides a framework for accountability measures and encourages applicants to voluntarily identify those that are most appropriate for their projects and local constraints.

3. Changes From the FY 2017–2019 NOFO

The FY 2019 INFRA Notice includes changes to multiple selection criteria, including criterion #2, criterion #3, and criterion #4. Applicants who are planning to re-apply using materials prepared for prior competitions should ensure that their FY 2019 application fully addresses the criteria and considerations described in this Notice and that all relevant information is up to date.

B. Federal Award Information

1. Amount Available

The FAST Act authorizes the INFRA program at $4.5 billion for fiscal years (FY) 2016 through 2020, including $950 million[1] for FY 2019, to be awarded by USDOT on a competitive basis to projects of national or regional significance that meet statutory requirements. This notice solicits applications for the $855–902.5 million in FY 2019 INFRA funds that the Department anticipates will be available for awards. The estimate may be higher or lower than the final amount, which is dependent on fiscal year 2019 appropriations, which have yet to be enacted. Any award under this notice will be subject to the availability of appropriated funds.

[1] Funds are subject to the overall Federal-aid highway obligation limitation, and funds in excess of the obligation limitation provided to the program are distributed to the States. While $950 million is authorized for FY 2019, the Department anticipates between $855 and $902.5 million available for award. The number will be finalized following enactment of full year FY 19 Appropriations. For additional information see FAST Act § 1102 (f) and the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2016, Public Law 114–113, div. L § 120.

2. Restrictions on Award Portfolio

The Department will make awards under the INFRA program to both large and small projects (refer to section C.3.ii.for a definition of large and small projects). For a large project, the FAST Act specifies that an INFRA grant must be at least $25 million. For a small project, including both construction awards and project development awards, the grant must be at least $5 million. For each fiscal year of INFRA funds, 10 percent of available funds are reserved for small projects, and 90 percent of funds are reserved for large projects.

The FAST Act specifies that not more than $500 million in aggregate of the $4.5 billion authorized for INFRA grants over fiscal years 2016 to 2020 may be used for grants to freight rail, water (including ports), or other freight intermodal projects that make significant improvements to freight movement on the National Highway Freight Network. After accounting for FY 2016–2018 INFRA selections, approximately $200 million within this constraint remains available. Only the non-highway portion(s) of multimodal projects count toward this limit. Grade crossing and grade separation projects do not count toward the limit for freight rail, port, and intermodal projects.

The FAST Act directs that at least 25 percent of the funds provided for INFRA grants must be used for projects located in rural areas, as defined in Section C.3.iv. The Department may elect to go above that threshold. The USDOT must consider geographic diversity among grant recipients, including the need for a balance in addressing the needs of urban and rural areas.

C. Eligibility Information

To be selected for an INFRA grant, an applicant must be an Eligible Applicant and the project must be an Eligible Project that meets the Minimum Project Size Requirement.

1. Eligible Applicants

Eligible applicants for INFRA grants are: (1) A State or group of States; (2) a metropolitan planning organization that serves an Urbanized Area (as defined by the Bureau of the Census) with a population of more than 200,000 individuals; (3) a unit of local government or group of local governments; (4) a political subdivision of a State or local government; (5) a special purpose district or public authority with a transportation function, including a port authority; (6) a Federal land management agency that applies jointly with a State or group of States;

(7) a tribal government or a consortium of tribal governments; or (8) a multi-State or multijurisdictional group of public entities.

Multiple States or jurisdictions that submit a joint application should identify a lead applicant as the primary point of contact. Joint applications should include a description of the roles and responsibilities of each applicant and should be signed by each applicant. The applicant that will be responsible for financial administration of the project must be an eligible applicant.

2. Cost Sharing or Matching

This section describes the statutory cost share requirements for an INFRA award. Cost share will also be evaluated according to the ''Leveraging of Federal Funding'' evaluation criterion described in Section E.1.a.ii. That section clarifies that the Department seeks applications for projects that exceed the minimum non-Federal cost share requirement described here.

INFRA grants may be used for up to 60 percent of future eligible project costs. Other Federal assistance may satisfy the non-Federal share requirement for an INFRA grant, but total Federal assistance for a project receiving an INFRA grant may not exceed 80 percent of future eligible project costs. Non-Federal sources include State funds originating from programs funded by State revenue, local funds originating from State or local revenue-funded programs, private funds or other funding sources of non-Federal origins. If a Federal land management agency applies jointly with a State or group of States, and that agency carries out the project, then Federal funds that were not made available under titles 23 or 49 of the United States Code may be used for the non-Federal share. Unless otherwise authorized by statute, local cost-share may not be counted as non-Federal share for both the INFRA and another Federal program. For any project, the Department cannot consider previously incurred costs or previously expended or encumbered funds towards the matching requirement. Matching funds are subject to the same Federal requirements described in Section F.2.b as awarded funds.

For the purpose of evaluating eligibility under the statutory limit on total Federal assistance, funds from the TIFIA and RRIF credit assistance programs are considered Federal assistance and, combined with other Federal assistance, may not exceed 80 percent of the future eligible project costs.

3. Other

a. Eligible Projects

Eligible projects for INFRA grants are: highway freight projects carried out on the National Highway Freight Network (23 U.S.C. 167); highway or bridge projects carried out on the National Highway System (NHS), including projects that add capacity on the Interstate System to improve mobility or projects in a national scenic area; railway-highway grade crossing or grade separation projects; or a freight project that is (1) an intermodal or rail project, or (2) within the boundaries of a public or private freight rail, water (including ports), or intermodal facility. A project within the boundaries of a freight rail, water (including ports), or intermodal facility must be a surface transportation infrastructure project necessary to facilitate direct intermodal interchange, transfer, or access into or out of the facility and must significantly improve freight movement on the National Highway Freight Network. Improving freight movement on the National Highway Freight Network may include shifting freight transportation to other modes, thereby reducing congestion and bottlenecks on the National Highway Freight Network. For a freight project within the boundaries of a freight rail, water (including ports), or intermodal facility, Federal funds can only support project elements that provide public benefits.

b. Eligible Project Costs

INFRA grants may be used for the construction, reconstruction, rehabilitation, acquisition of property (including land related to the project and improvements to the land), environmental mitigation, construction contingencies, equipment acquisition, and operational improvements directly related to system performance. Statutorily, INFRA grants may also fund development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering, design, and other preconstruction activities, provided the project meets statutory requirements. However, the Department is seeking to use INFRA funding on projects that result in construction. Public-private partnership assessments for projects in the development phase are also eligible costs.

INFRA grant recipients may use INFRA funds to pay the subsidy and administrative costs necessary to receive TIFIA credit assistance.

c. Minimum Project Size Requirement

For the purposes of determining whether a project meets the minimum project size requirement, the Department will count all future eligible project costs under the award and some related costs incurred before selection for an INFRA grant. Previously incurred costs will be counted toward the minimum project size requirement only if they were eligible project costs under Section C.3.b. and were expended as part of the project for which the applicant seeks funds. Although those previously incurred costs may be used for meeting the minimum project size thresholds described in this Section, they cannot be reimbursed with INFRA grant funds, nor will they count toward the project's required non-Federal share.

i. Large Projects

The minimum project size for large projects is the lesser of $100 million; 30 percent of a State's FY 2018 Federal-aid apportionment if the project is located in one State; or 50 percent of the larger participating State's FY 2018 apportionment for projects located in more than one State. The following chart identifies the minimum total project cost for projects for FY 2018 for both single and multi-State projects.

State	FY19 NSFHP (30% of FY18 apportionment) one-state minimum (millions)	FY19 NSFHP (50% of FY18 apportionment) multi-state minimum* (millions)
Alabama	$100	$100
Alaska	100	100
Arizona	100	100
Arkansas	100	100
California	100	100
Colorado	100	100
Connecticut	100	100
Delaware	53	89
Dist. of Col	50	84
Florida	100	100
Georgia	100	100
Hawaii	53	89
Idaho	90	100
Illinois	100	100
Indiana	100	100
Iowa	100	100
Kansas	100	100
Kentucky	100	100
Louisiana	100	100
Maine	58	97
Maryland	100	100
Massachusetts	100	100
Michigan	100	100
Minnesota	100	100
Mississippi	100	100
Missouri	100	100
Montana	100	100
Nebraska	91	100
Nevada	100	100
New Hampshire	52	87

State	FY19 NSFHP (30% of FY18 apportionment) one-state minimum (millions)	FY19 NSFHP (50% of FY18 apportionment) multi-state minimum* (millions)
New Jersey	100	100
New Mexico	100	100
New York	100	100
North Carolina	100	100
North Dakota	78	100
Ohio	100	100
Oklahoma	100	100
Oregon	100	100
Pennsylvania	100	100
Rhode Island	69	100
South Carolina	100	100
South Dakota	89	100
Tennessee	100	100
Texas	100	100
Utah	100	100
Vermont	64	100
Virginia	100	100
Washington	100	100
West Virginia	100	100
Wisconsin	100	100
Wyoming	81	100

** For multi-State projects, the minimum project size is the largest of the multi-State minimums from the participating States.*

ii. Small Projects

A small project is an eligible project that does not meet the minimum project size described in Section C.3.c.i.

d. Large/Small Project Requirements

For a large project to be selected, the Department must determine that the project generates national or regional economic, mobility, or safety benefits; is cost-effective; contributes to one or more of the goals described in 23 U.S.C 150; is based on the results of preliminary engineering; has one or more stable and dependable funding or financing sources available to construct, maintain, and operate the project, and contingency amounts are available to cover unanticipated cost increases; cannot be easily and efficiently completed without other Federal funding or financial assistance; and is reasonably expected to begin construction no later than 18 months after the date of obligation. These requirements are discussed in greater detail in section D.2.b.vii.

For a small project to be selected, the Department must consider the cost-effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out.

e. Rural/Urban Area

This section describes the statutory definition of urban and rural areas and the minimum statutory requirements for projects that meet those definitions. For more information on how the Department consider projects in urban, rural, and low population areas as part of the selection process, see Section E.1.a. Criterion #2, and E.1.c.

The INFRA statute defines a rural area as an area outside an Urbanized Area [2] with a population of over 200,000. In this notice, urban area is defined as inside an Urbanized Area, as a designated by the U.S. Census Bureau, with a population of 200,000 or more.[3] Rural and urban definitions differ in some other USDOT programs, including TIFIA and the FY 2018 BUILD Discretionary Grants program. Cost share requirements and minimum grant awards are the same for projects located in rural and urban areas. The Department will consider a project to be in a rural area if the majority of the project (determined by geographic location(s) where the majority of the money is to be spent) is located in a rural area. However, if a project consists of multiple components, as described under section C.3.f or C.3.g., then for each separate component the Department will determine whether that component is rural or urban. In some circumstances, including networks of projects under section C.3.g that cover wide geographic regions, this component-by-component determination may result in INFRA awards that include urban and rural funds.

f. Project Components

An application may describe a project that contains more than one component. The USDOT may award funds for a component, instead of the larger project, if that component (1) independently meets minimum award amounts described in Section B and all eligibility requirements described in Section C, including the requirements for large projects described in Sections C.3.d and D.2.b.vii; (2) independently aligns well with the selection criteria specified in Section E; and (3) meets National Environmental Policy Act (NEPA) requirements with respect to independent utility. Independent utility means that the component will represent a transportation improvement that is usable and represents a reasonable expenditure of USDOT funds even if no other improvements are made in the area, and will be ready for intended use upon completion of that component's construction. If an application describes multiple components, the application should demonstrate how the components collectively advance the purposes of the INFRA program. An applicant should not add multiple components to a single application merely to aggregate costs or avoid submitting multiple applications.

Applicants should be aware that, depending upon applicable Federal law and the relationship among project components, an award funding only some project components may make other project components subject to Federal requirements as described in Section F.2.b. For example, under 40 CFR 1508.25, the NEPA review for the funded project component may need to include evaluation of all project components as connected, similar, or cumulative actions.

The Department strongly encourages applicants to identify in their applications the project components that meet independent utility standards and separately detail the costs and INFRA funding requested for each component. If the application identifies one or more independent project components, the application should clearly identify how each independent component addresses selection criteria and produces benefits on its own, in addition to describing how the full proposal of which the independent component is a part addresses selection criteria.

g. Network of Projects

An application may describe and request funding for a network of projects. A network of projects is one INFRA award that consists of multiple projects addressing the same transportation problem. For example, if an applicant seeks to improve efficiency along a rail corridor, then their application might propose one award for four grade separation projects at four different railway-highway crossings. Each of the four projects would independently reduce congestion but the overall benefits would be greater if the projects were completed together under a single award.

The USDOT will evaluate applications that describe networks of projects similar to how it evaluates projects with multiple components. Because of their similarities, the guidance in Section C.3.f is applicable to networks of projects, and applicants should follow that guidance on how to

[2] For Census 2010, the Census Bureau defined an Urbanized Area (UA) as an area that consists of densely settled territory that contains 50,000 or more people. Updated lists of UAs are available on the Census Bureau website at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/*. For the purposes of the INFRA program, Urbanized Areas with populations fewer than 200,000 will be considered rural.

[3] See *www.transportation.gov/buildamerica/InFRAgrants* for a list of Urbanized Areas with a population of 200,000 or more.

present information in their application. As with project components, depending upon applicable Federal law and the relationship among projects within a network of projects, an award that funds only some projects in a network may make other projects subject to Federal requirements as described in Section F.2.

h. Application Limit

To encourage applicants to prioritize their INFRA submissions, each eligible applicant may submit no more than three applications. The three-application limit applies only to applications where the applicant is the lead applicant. There is no limit on applications for which an applicant can be listed as a partnering agency. If a lead applicant submits more than three applications as the lead applicant, only the first three received will be considered.

D. Application and Submission Information

1. Address

Applications must be submitted through *www.Grants.gov*. Instructions for submitting applications can be found at *https://www.transportation.gov/buildamerica/InFRAgrants.*

2. Content and Form of Application

The application must include the Standard Form 424 (Application for Federal Assistance), Standard Form 424C (Budget Information for Construction Programs), cover page, and the Project Narrative. More detailed information about the cover pages and Project Narrative follows.

a. Cover Page

Each application should contain a cover page with the following chart:

Basic Project Information:	
What is the Project Name?	
Who is the Project Sponsor?	
Was an INFRA application for this project submitted previously? (If Yes, please include title).	
Project Costs:	
INFRA Request Amount	$
Estimated federal funding (excl. INFRA)	$
Estimated non-federal funding	$
Future Eligible Project Cost (Sum of previous three rows)	$
Previously incurred project costs (if applicable)	$
Total Project Cost (Sum of 'previous incurred' and 'future eligible')	$
Are matching funds restricted to a specific project component? If so, which one?	
Project Eligibility:	
Approximately how much of the estimated future eligible project costs will be spent on components of the project currently located on National Highway Freight Network (NHFN)?	$
Approximately how much of the estimated future eligible project costs will be spent on components of the project currently located on the National Highway System (NHS)?	$
Approximately how much of the estimated future eligible project costs will be spent on components constituting railway-highway grade crossing or grade separation projects?	$
Approximately how much of the estimated future eligible project costs will be spent on components constituting intermodal or freight rail projects, or freight projects within the boundaries of a public or private freight rail, water (including ports), or intermodal facility?	$
Project Location:	
State(s) in which project is located.	
Small or large project	Small/Large.
Urbanized Area in which project.	
is located, if applicable.	
Population of Urbanized Area.	
Is the project currently programmed in the:	Yes/no (*please specify in which plans the project is currently programmed).*
• TIP.	
• STIP.	
• MPO Long Range Transportation Plan.	
• State Long Range Transportation Plan.	
• State Freight Plan?	

b. Project Narrative for Construction Projects

The Department recommends that the project narrative follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Project Description	See D.2.b.i
II. Project Location	See D.2.b.ii.
III. Project Parties	See D.2.b.iii.
IV. Grant Funds, Sources and Uses of all Project Funding.	See D.2.b.iv.
V. Merit Criteria	See D.2.b.v.
VI. Project Readiness	See D.2.b.vi and E.1.c.ii.
VII. Large/Small Project Requirements.	See D.2.b.vii.

The project narrative should include the information necessary for the Department to determine that the project satisfies project requirements described in Sections B and C and to assess the selection criteria specified in Section E.1. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by the Department. The Department may ask any applicant to supplement data in its application, but expects applications to be complete upon submission.

In addition to a detailed statement of work, detailed project schedule, and detailed project budget, the project narrative should include a table of contents, maps, and graphics, as appropriate, to make the information easier to review. The Department recommends that the project narrative be prepared with standard formatting preferences (*i.e.,* a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins). The project narrative may not exceed 25 pages in length, excluding cover pages and table of contents. The only substantive portions that may exceed the 25-page limit are documents supporting assertions or

conclusions made in the 25-page project narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials. If supporting documents are submitted, applicants should clearly identify within the project narrative the relevant portion of the project narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously to a modal administration in support of a different USDOT financial assistance program may be referenced and described as unchanged. The Department recommends using appropriately descriptive final names (*e.g.,* ''Project Narrative,'' ''Maps,'' ''Memoranda of Understanding and Letters of Support,'' etc.) for all attachments. The USDOT recommends applications include the following sections:

i. Project Summary

The first section of the application should provide a concise description of the project, the transportation challenges that it is intended to address, and how it will address those challenges. This section should discuss the project's history, including a description of any previously incurred costs. The applicant may use this section to place the project into a broader context of other infrastructure investments being pursued by the project sponsor.

ii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location. If the project is located within the boundary of a Census-designated Urbanized Area, the application should identify the Urbanized Area.

iii. Project Parties

This section of the application should list all project parties, including details about the proposed grant recipient and other public and private parties who are involved in delivering the project, such as port authorities, terminal operators, freight railroads, shippers, carriers, freight-related associations, third-party logistics providers, and freight industry workforce organizations.

iv. Grant Funds, Sources and Uses of Project Funds

This section of the application should describe the project's budget. At a minimum, it should include:

(A) Previously incurred expenses, as defined in Section C.3.c.

(B) Future eligible costs, as defined in Section C.3.c.

(C) For all funds to be used for future eligible project costs, the source and amount of those funds.

(D) For non-Federal funds to be used for future eligible project costs, documentation of funding commitments should be referenced here and included as an appendix to the application.

(E) For Federal funds to be used for future eligible project costs, the amount, nature, and source of any required non-Federal match for those funds.

(F) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each major construction activity, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal; INFRA; and other Federal. If the project contains components, the budget should separate the costs of each project component. If the project will be completed in phases, the budget should separate the costs of each phase. The budget should be detailed enough to demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

(G) Information showing that the applicant has budgeted sufficient contingency amounts to cover unanticipated cost increases.

(H) The amount of the requested INFRA funds that would be subject to the limit on freight rail, port, and intermodal infrastructure described in Section B.2.

In addition to the information enumerated above, this section should provide complete information on how all project funds may be used. For example, if a particular source of funds is available only after a condition is satisfied, the application should identify that condition and describe the applicant's control over whether it is satisfied. Similarly, if a particular source of funds is available for expenditure only during a fixed time period, the application should describe that restriction. Complete information about project funds will ensure that the Department's expectations for award execution align with any funding restrictions unrelated to the Department, even if an award differs from the applicant's request.

v. Merit Criteria

This section of the application should demonstrate how the project aligns with the Merit Criteria described in Section E.1 of this notice. The Department encourages applicants to address each criterion or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but the following organization, which addresses each criterion separately, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about how the applicant should organize their application. Guidance describing how the Department will evaluate projects against the Merit Criteria is in Section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

Criterion #1: Support for National or Regional Economic Vitality

This section of the application should describe the anticipated outcomes of the project that support the Economic Vitality criterion (described in Section E.1.a of this notice). The applicant should summarize the conclusions of the project's benefit-cost analysis, including estimates of the project's benefit-cost ratio and net benefits. The applicant should also describe economic impacts and other data-supported benefits that are not included in the benefit-cost analysis.

The benefit-cost analysis itself should be provided as an appendix to the project narrative, as described in Section D.2.d. of this notice.

Criterion #2: Leveraging of Federal Funding

While the Leveraging Criterion will be assessed according to the methodology described in Section E.1.a., this section of the application may be used to include additional information that may strengthen the Department's understanding of the project sponsor's effort to improve non-federal leverage, including:

(A) A description of the applicant's activities to maximize the non-Federal share of the project funding;

(B) a description of all evaluations of the project for private funding, the outcome of those evaluations, and all activities undertaken to pursue private funding for the project;

(C) a description of any fiscal constraints that affect the applicant's ability to increase the amount of non-Federal revenue dedicated for transportation infrastructure.

Criterion #3: Potential for Innovation

This section of the application should contain sufficient information to evaluate how the project includes or enables innovation in: (1) The accelerated deployment of innovative technology and expanded access to broadband; (2) use of innovative permitting, contracting, and other project delivery practices; and (3) innovative financing. If the project does not address a particular innovation area, the application should state this fact. Please see Section E.1.a for additional information.

Criterion #4: Performance and Accountability

This section of the application should include sufficient information to evaluate how the applicant will advance the Performance and Accountability program objective. In general, the applicant should indicate which (if any) accountability measures they are willing to implement or have implemented, along with the specific details necessary for the Department to evaluate their accountability measure. The applicant should also address the lifecycle cost component of this criterion in this section. See Section E.1.a for additional information.

vi. Project Readiness

This section of the application should include information that, when considered with the project budget information presented elsewhere in the application, is sufficient for the Department to evaluate whether the project is reasonably expected to begin construction in a timely manner. To assist the Department's project readiness assessment, the applicant should provide the information requested on technical feasibility, project schedule, project approvals, and project risks, each of which is described in greater detail in the following sections. Applicants are not required to follow the specific format described here, but this organization, which addresses each relevant aspect of project readiness, promotes a clear discussion that assists project evaluators. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

The guidance here is about what information applicants should provide and how the applicant should organize their application. Guidance describing how the Department will evaluate a project's readiness is described in section E.1 of this notice. Applicants also should review that section before considering how to organize their application.

(A) Technical Feasibility. The applicant should demonstrate the technical feasibility of the project with engineering and design studies and activities; the development of design criteria and/or a basis of design; the basis for the cost estimate presented in the INFRA application, including the identification of contingency levels appropriate to its level of design; and any scope, schedule, and budget risk-mitigation measures. Applicants should include a detailed statement of work that focuses on the technical and engineering aspects of the project and describes in detail the project to be constructed.

(B) Project Schedule. The applicant should include a detailed project schedule that identifies all major project milestones. Examples of such milestones include State and local planning approvals (programming on the Statewide Transportation Improvement Program), start and completion of NEPA and other Federal environmental reviews and approvals including permitting; design completion; right of way acquisition; approval of plans, specifications and estimates (PS&E); procurement; State and local approvals; project partnership and implementation agreements including agreements with railroads; and construction. The project schedule should be sufficiently detailed to demonstrate that:

(1) All necessary activities will be complete to allow INFRA funds to be obligated sufficiently in advance of the statutory deadline (September 30, 2022 for FY 2019 funds), and that any unexpected delays will not put the funds at risk of expiring before they are obligated;

(2) the project can begin construction quickly upon obligation of INFRA funds, and that the grant funds will be spent expeditiously once construction starts; and

(3) all real property and right-of-way acquisition will be completed in a timely manner in accordance with 49 CFR part 24, 23 CFR part 710, and other applicable legal requirements or a statement that no acquisition is necessary.

(C) Required Approvals.

(1) Environmental Permits and Reviews. The application should demonstrate receipt (or reasonably anticipated receipt) of all environmental approvals and permits necessary for the project to proceed to construction on the timeline specified in the project schedule and necessary to meet the statutory obligation deadline, including satisfaction of all Federal, State, and local requirements and completion of the NEPA process. Specifically, the application should include:

(a) Information about the NEPA status of the project. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the final Categorical Exclusion, Finding of No Significant Impact, Record of Decision, and any other NEPA documents prepared. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all milestones and of the final NEPA determination. If the last agency action with respect to NEPA documents occurred more than three years before the application date, the applicant should describe why the project has been delayed and include a proposed approach for verifying and, if necessary, updating this material in accordance with applicable NEPA requirements.

(b) Information on reviews, approvals, and permits by other agencies. An application should indicate whether the proposed project requires reviews or approval actions by other agencies,[4] indicate the status of such actions, and provide detailed information about the status of those reviews or approvals and should demonstrate compliance with any other applicable Federal, State, or local requirements, and when such approvals are expected. Applicants should provide a website link or other reference to copies of any reviews, approvals, and permits prepared.

(c) Environmental studies or other documents—preferably through a website link—that describe in detail known project impacts, and possible mitigation for those impacts.

(d) A description of discussions with the appropriate USDOT modal administration field or headquarters office regarding the project's compliance with NEPA and other applicable Federal environmental reviews and approvals.

[4] Projects that may impact protected resources such as wetlands, species habitat, cultural or historic resources require review and approval by Federal and State agencies with jurisdiction over those resources.

(e) A description of public engagement about the project that has occurred, including details on the degree to which public comments and commitments have been integrated into project development and design.

(2) State and Local Approvals. The applicant should demonstrate receipt of State and local approvals on which the project depends, such as State and local environmental and planning approvals and STIP or TIP funding. Additional support from relevant State and local officials is not required; however, an applicant should demonstrate that the project has broad public support.

(3) Federal Transportation Requirements Affecting State and Local Planning. The planning requirements applicable to the Federal-aid highway program apply to all INFRA projects, but for port, freight, and rail projects, planning requirements of the operating administration that will administer the INFRA project will also apply,[5] including intermodal projects located at airport facilities.[6] Applicants should demonstrate that a project that is required to be included in the relevant State, metropolitan, and local planning documents has been or will be included in such documents. If the project is not included in a relevant planning document at the time the application is submitted, the applicant should submit a statement from the appropriate planning agency that actions are underway to include the project in the relevant planning document.

To the extent possible, freight projects should be included in a State Freight Plan and supported by a State Freight Advisory Committee (49 U.S.C. 70201, 70202). Applicants should provide links or other documentation supporting this consideration.

Because projects have different schedules, the construction start date for each INFRA grant will be specified in the project-specific agreements signed by relevant modal administration and the grant recipients, based on critical path items that applicants identify in the application and will be consistent with relevant State and local plans.

(D) Assessment of Project Risks and Mitigation Strategies. Project risks, such as procurement delays, environmental uncertainties, increases in real estate acquisition costs, uncommitted local match, or lack of legislative approval, affect the likelihood of successful project start and completion. The applicant should identify all material risks to the project and the strategies that the lead applicant and any project partners have undertaken or will undertake in order to mitigate those risks. The applicant should assess the greatest risks to the project and identify how the project parties will mitigate those risks.

To the extent it is unfamiliar with the Federal program, the applicant should contact USDOT modal field or headquarters offices as found at *www.transportation.gov/infragrants* for information on what steps are pre-requisite to the obligation of Federal funds in order to ensure that their project schedule is reasonable and that there are no risks of delays in satisfying Federal requirements.

vii. Large/Small Project Requirements

To select a large project for award, the Department must determine that the project satisfies several statutory requirements enumerated at 23 U.S.C. 117(g) and restated in the table below. The application must include sufficient information for the Department to make these determinations. Applicants should use this section of the application to summarize how their project meets each of the following requirements. Applicants are not required to reproduce the table below in their application, but following this format will help evaluators identify the relevant information that supports each large project determination. To minimize redundant information in the application, the Department encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

Large project determination	Guidance
1. Does the project generate national or regional economic, mobility, or safety benefits?	Summarize the economic, mobility, and safety benefits described in Section V of the application, and describe the scale of their impact in national or regional terms.
2. Is the project cost effective?	Highlight the results of the benefit cost analysis described in Section V of the application.
3. Does the project contribute to one or more of the Goals listed under 23 U.S.C. 150 (and shown below)? (b) National Goals.—It is in the interest of the United States to focus the Federal-aid highway program on the following national goals: (1) Safety.—To achieve a significant reduction in traffic fatalities and serious injuries on all public roads. (2) Infrastructure condition.—To maintain the highway infrastructure asset system in a state of good repair. (3) Congestion reduction.—To achieve a significant reduction in congestion on the National Highway System.	Specify the Goal(s) and summarize how the project contributes to that goal(s). This information may also be found in Section I or Section V.

[5] In accordance with 23 U.S.C. 134 and § 135, all projects requiring an action by the Federal Highway Administration (FHWA) must be in the applicable plan and programming documents (*e.g.,* metropolitan transportation plan, transportation improvement program (TIP) and statewide transportation improvement program (STIP)). Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. Inclusion in the STIP is required under certain circumstances. To the extent a project is required to be on a metropolitan transportation plan, TIP, and/or STIP, it will not receive an INFRA grant until it is included in such plans. Projects not currently included in these plans can be amended by the State and metropolitan planning organization (MPO). Projects that are not required to be in long range transportation plans, STIPs, and TIPs will not need to be included in such plans in order to receive an INFRA grant. Port, freight rail, and intermodal projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. However, applicants seeking funding for freight projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals. Means of demonstrating this consistency would include whether the project is in a TIP or a State Freight Plan that conforms to the requirements Section 70202 of Title 49 prior to the start of construction. Port planning guidelines are available at *StrongPorts.gov.*

[6] Projects at grant obligated airports must be compatible with the FAA-approved Airport Layout Plan (ALP), as well as aeronautical surfaces associated with the landing and takeoff of aircraft at the airport. Additionally, projects at an airport: Must comply with established Sponsor Grant Assurances, including (but not limited to) requirements for non-exclusive use facilities, consultation with users, consistency with local plans including development of the area surrounding the airport, and consideration of the interest of nearby communities, among others; and must not adversely affect the continued and unhindered access of passengers to the terminal.

Large project determination	Guidance
(4) System reliability.—To improve the efficiency of the surface transportation system. (5) Freight movement and economic vitality.—To improve the national freight network, strengthen the ability of rural communities to access national and international trade markets, and support regional economic development. (6) Environmental sustainability.—To enhance the performance of the transportation system while protecting and enhancing the natural environment. (7) Reduced project delivery delays.—To reduce project costs, promote jobs and the economy, and expedite the movement of people and goods by accelerating project completion through eliminating delays in the project development and delivery process, including reducing regulatory burdens and improving agencies' work practices.	
4. Is the project based on the results of preliminary engineering?	Yes/No. Please provide evidence of preliminary engineering. For more information on preliminary engineering activities, please see: *https://www.fhwa.dot.gov/federalaid/150311.cfm.*
5a. With respect to non-Federal financial commitments, does the project have one or more stable and dependable funding or financing sources to construct, maintain, and operate the project?	Please indicate funding source(s) and amounts. Historical trends, current policy, or future feasibility analyses can be used as evidence to substantiate the stable and dependable nature of the non-Federal funding or financing.
5b. Are contingency amounts available to cover unanticipated cost increases?	Contingency amounts are often, but not always, expressly shown in project budgets or the SF–424C. If your project cost estimates include an implicit contingency calculation, please say so directly.
6. Is it the case that the project cannot be easily and efficiently completed without other Federal funding or financial assistance available to the project sponsor?	Discussion of the impact that not having any Federal funding, including an INFRA grant, would have on project's schedule, cost, or likelihood of completion, can help convey whether a project can be completed as easily or efficiently without Federal funding available to the project sponsor.
7. Is the project reasonably expected to begin construction not later than 18 months after the date of obligation of funds for the project?	Please reference project budget and schedule when providing evidence.

For a small project to be selected, the Department must consider the cost effectiveness of the proposed project and the effect of the proposed project on mobility in the State and region in which the project is carried out. If an applicant seeks an award for a small project, it should use this section to provide information on the project's cost effectiveness and the project's effect on the mobility in its State and region, or refer to where else the information can be found in the application.

c. Guidance for Benefit-Cost Analysis

This section describes the recommended approach for the completion and submission of a benefit-cost analysis (BCA) as an appendix to the Project Narrative. The results of the analysis should be summarized in the Project Narrative directly, as described in Section D.2.b.v.

Applicants should delineate each of their project's expected outcomes in the form of a complete BCA to enable the Department to consider cost-effectiveness (small projects), determine whether the project will be cost effective (large projects), estimate a benefit-cost ratio and calculate the magnitude of net benefits and costs for the project. In support of each project for which an applicant seeks funding, the applicant should submit a BCA that quantifies the expected benefits and costs of the project against a no-build baseline. Applicants should use a real discount rate (*i.e.,* the discount rate net of the inflation rate) of 7 percent per year to discount streams of benefits and costs to their present value in their BCA.

The primary economic benefits from projects eligible for INFRA grants are likely to include savings in travel time costs, vehicle operating costs, and safety costs for both existing users of the improved facility and new users who may be attracted to it as a result of the project. Reduced damages from vehicle emissions and savings in maintenance costs to public agencies may also be quantified. Applicants may describe other categories of benefits in the BCA that are more difficult to quantify and value in economic terms, such as improving the reliability of travel times or improvements to the existing human and natural environments (such as increased connectivity, improved public health, storm water runoff mitigation, and noise reduction), while also providing numerical estimates of the magnitude and timing of each of these additional impacts wherever possible. Any benefits claimed for the project, both quantified and unquantified, should be clearly tied to the expected outcomes of the project.

The BCA should include the full costs of developing, constructing, operating, and maintaining the proposed project (including both previously incurred and future costs), as well as the expected timing or schedule for costs in each of these categories. The BCA may also consider the present discounted value of any remaining service life of the asset at the end of the analysis period (net of future maintenance and rehabilitation costs) as a deduction from the estimated costs. The costs and benefits that are compared in the BCA should also cover the same project scope.

The BCA should carefully document the assumptions and methodology used to produce the analysis, including a description of the baseline, the sources of data used to project the outcomes of the project, and the values of key input parameters. Applicants should provide all relevant files used for their BCA, including any spreadsheet files and technical memos describing the analysis (whether created in-house or by a contractor). The spreadsheets and technical memos should present the calculations in sufficient detail and transparency to allow the analysis to be reproduced by USDOT evaluators. Detailed guidance for estimating some types of quantitative benefits and costs, together with recommended economic values for converting them to dollar

terms and discounting to their present values, are available in the Department's guidance for conducting BCAs for projects seeking funding under the INFRA program (see *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance*).

Applicants for freight projects within the boundaries of a freight rail, water (including ports), or intermodal facility should also quantify the benefits of their proposed projects for freight movements on the National Highway Freight Network, and should demonstrate that the Federal share of the project funds only elements of the project that provide public benefits.

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant must: (1) Be registered in SAM before submitting its application; (2) provide a valid unique entity identifier in its application; and (3) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. The Department may not make an INFRA grant to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Department is ready to make an INFRA grant, the Department may determine that the applicant is not qualified to receive an INFRA grant and use that determination as a basis for making an INFRA grant to another applicant.

4. Submission Dates and Timelines

a. Deadline

Applications must be submitted by 8:00 p.m. EST March 4, 2019. The *Grants.gov* ''Apply'' function will open by January 7, 2019.

To submit an application through *Grants.gov*, applicants must:

(1) Obtain a Data Universal Numbering System (DUNS) number:

(2) Register with the System Award for Management (SAM) at *www.sam.gov;* and

(3) Create a *Grants.gov* username and password;

(4) The E-business Point of Contact (POC) at the applicant's organization must also respond to the registration email from *Grants.gov* and login at *Grants.gov* to authorize the POC as an Authorized Organization Representative (AOR). Please note that there can only be one AOR per organization.

Please note that the *Grants.gov* registration process usually takes 2–4 weeks to complete and that the Department will not consider late applications that are the result of failure to register or comply with *Grants.gov* applicant requirements in a timely manner. For information and instruction on each of these processes, please see instructions at *http://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If interested parties experience difficulties at any point during the registration or application process, please call the *Grants.gov* Customer Service Support Hotline at 1(800) 518–4726, Monday–Friday from 7:00 a.m. to 9:00 p.m. EST.

b. Consideration of Application

Only applicants who comply with all submission deadlines described in this notice and submit applications through *Grants.gov* will be eligible for award. Applicants are strongly encouraged to make submissions in advance of the deadline.

c. Late Applications

Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties outlined in Section D.4.d.

d. Late Application Policy

Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *INFRAgrants@dot.gov* prior to the application deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide:

(1) Details of the technical issue experienced;

(2) Screen capture(s) of the technical issues experienced along with corresponding *Grants.gov* ''Grant tracking number'';

(3) The ''Legal Business Name'' for the applicant that was provided in the SF–424;

(4) The AOR name submitted in the SF–424;

(5) The DUNS number associated with the application; and

(6) The *Grants.gov* Help Desk Tracking Number.

To ensure a fair competition of limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all of the instructions in this notice of funding opportunity; and (4) technical issues experienced with the applicant's computer or information technology environment. After the Department reviews all information submitted and contacts the *Grants.gov* Help Desk to validate reported technical issues, USDOT staff will contact late applicants to approve or deny a request to submit a late application through *Grants.gov*. If the reported technical issues cannot be validated, late applications will be rejected as untimely.

E. Application Review Information

1. Criteria

a. Merit Criteria for Construction Projects

To differentiate among applications for construction projects under this notice, the Department will consider the extent to which the project addresses the follow criteria, which are explained in greater detail below and reflect the key program objectives described in Section A.2: (1) Support for national or regional economic vitality; (2) leveraging of Federal funding; (3) potential for innovation; and (4) performance and accountability. The Department is neither weighting these criteria nor requiring that each application address every criterion, but the Department expects that competitive applications will substantively address all four criteria.

Criterion #1: Support for National or Regional Economic Vitality

The Department will consider the extent to which a project would support the economic vitality of either the nation or a region. To the extent possible, the Department will rely on quantitative, data-supported analysis to assess how well a project addresses this criterion, including an assessment of the applicant-supplied benefit-cost analysis described in Section D.2.d. In addition to considering the anticipated outcomes of the project that align with this criterion, the Department will consider estimates of the project's benefit-cost ratio and net quantifiable benefits.

There are several different types of projects that the Department anticipates will successfully support national or regional economic vitality, including projects that:

- Achieve a significant reduction in traffic fatalities and serious injuries on the surface transportation system;
- Improve interactions between roadway users, reducing the likelihood of derailments or high consequence events;
- Eliminate bottlenecks in the freight supply chain;
- Ensure or restore the good condition of infrastructure that supports commerce and economic growth;

- Sustain or advance national or regional economic development in areas of need, including projects that provide or improve connections to the Nation's transportation network to support the movement of freight and people; and
- Reduce barriers separating workers from employment centers, including projects that are primarily oriented toward reducing traffic congestion and corridor projects that reduce transportation network gaps to connect peripheral regions to urban centers or job opportunities.

The Department anticipates that applications for networks of projects are likely to align well with this evaluation criterion because networks of projects often are able to address problems on a broader scale.

Criterion #2: Leveraging of Federal Funding

To maximize the impact of INFRA awards, the Department seeks to leverage INFRA funding with non-Federal contributions. To evaluate this criterion, the Department will assign a rating to each project based on how the calculated non-federal share of the project's future eligible project costs compares with other projects proposed for INFRA funding. The Department will sort large and small project applications' non-federal leverage percentage from high to low, and the assigned ratings will be based on quintile: Projects in the 80th percentile and above receive the highest rating; the 60th–79th percentile receive the second highest rating; 40th–59th, the third highest; 20th–39th, the fourth highest; and 0–19th, the lowest rating.

DOT recognizes that applicants have varying abilities and resources to contribute non-Federal contributions. If an applicant describes broader fiscal constraints that affect its ability to generate or draw on non-Federal contributions, the Department may consider those constraints. Relevant constraints may include the size of the population taxed to supply the matching funds, the wealth of that population, or other constraints on the raising of funds. In addition, the Department may consider whether there are obstacles to collecting non-federal revenue from a project's beneficiaries, including the extent to which a project's beneficiaries reside in the sponsor's jurisdiction.

This evaluation criterion is separate from the statutory cost share requirements for INFRA grants, which are described in Section C.2. Those statutory requirements establish the minimum permissible non-Federal share; they do not define a competitive INFRA project.

Criterion #3: Potential for Innovation

The Department seeks to use the INFRA program to encourage innovation in three areas: (1) The accelerated deployment of innovative technology and expanded access to broadband; (2) use of innovative permitting, contracting, and other project delivery practices; and (3) innovative financing. The project will be assigned an innovation rating based on how it cumulatively addresses these areas. Applications which address at least two of these three areas will be assigned a high rating. Applications which address one of these areas will be assigned a medium rating. Applications which address none of these areas will be assigned a low rating.

In Innovation Area #1: Technology, the application will be determined to have addressed the Technology Innovation Area if the INFRA project incorporates any of the following:

- Conflict detection and mitigation technologies (*e.g.,* intersection alerts, signal prioritization, or smart traffic signals);
- Dynamic signaling or pricing systems to reduce congestion;
- Signage and design features that facilitate autonomous or semi-autonomous vehicle technologies;
- Applications to automatically capture and report safety-related issues (*e.g.,* identifying and documenting near-miss incidents);
- V2X Technologies (*e.g.* technology which facilitates passing of information between a vehicle and any entity which may affect the vehicle);
- Cybersecurity elements to protect safety-critical systems;
- Technology at land and sea ports of entry that reduces congestion, wait times, and delays, while maintaining or enhancing the integrity of our border;
- Other Intelligent Transportation Systems (ITS) which directly benefit the project's users.

The application will also address the Technology Innovation Area if the project facilitates broadband deployment and the installation of high-speed networks concurrent with project construction.

In Innovation Area #2: Project Delivery, the Department will assess whether the applicant intends to pursue an innovative strategy to improve project delivery. These strategies will result in more efficient project implementation. Some of these strategies may require the use of a SEP–14 or SEP–15 waiver, but many do not: An application can address this innovation area without requiring a waiver. Examples of innovative project delivery include:

- Contracting/Procurement:
  - *Indefinite Quantity/Indefinite Delivery Contracting*
  - *Alternative Pavement Type Bidding*
  - *No Excuse Bonuses*
  - *Lump Sum Bidding*
  - *Best Value Procurement*
  - *System Integrator Contracts*
  - *Progressive Design-Build*
  - *P3 DBFOM Procurements*
- Environmental Requirements
  - *NEPA/Section 404 Merger*
  - *Use of Permitting/Authorization Agency Liaisons*
  - *Establishment of State/Local ''One-Stop-Shop'' for Permitting*
  - *Programmatic Agreements*
- Every Day Counts Initiative
  - *Use of proven technologies and innovations to shorten and enhance project delivery listed at https://www.fhwa.dot.gov/innovation/everydaycounts/edc_innovation.cfm*

Finally, in Innovation Area #3, Innovative Financing, the Department will consider if the project financial plan incorporates funding or financing from innovative sources, or if the applicant describes recent or pending efforts to raise significant new revenue for transportation investment across its program.

Examples of innovative sources in a financial plan include:

- *Private Sector contributions, excluding donated right-of-way, amounting to at least $5 million,*
- *Revenue from the competitive sale or lease of publicly owned or operated asset, or*
- *Financing supported by direct project user fees*

Examples of significant new revenue—provided it is dedicated to transportation investment across an applicant's program—include:

- *Revenue resulting from recent or pending increases to sales or fuel taxes*
- *Revenue resulting from the recent or pending implementation of tolling*
- *Revenue resulting from the recent or pending adoption of value capture strategies such as tax-increment financing*
- *Revenue resulting from the recent or pending competitive sale or lease of publicly owned or operated assets*

Criterion #4: Performance and Accountability

The Department encourages applicants to describe a credible plan to address the full lifecycle costs associated with the project and implement an accountability measure as described in Section A.2.d of this NOFO.

A credible plan to address full lifecycle costs should include, at a minimum, (1) an estimate of the lifecycle costs of the project; (2) an identified source of funding that will be sufficient to pay for operation and maintenance of the project; and (3) a description of controls in place to ensure the identified funding will not be diverted away from operation and

maintenance. Examples of such controls include if a private sector entity is contractually obligated to maintain the project, if a project sponsor has a demonstrated history of fully funding maintenance on its assets, or if the sponsor describes an asset management plan or strategy.

Applicants intending to address the accountability measure portion of this criterion should describe how they meet at least one of the three options below:

(1) The applicant should agree to meet a specific construction start and completion date, detailed in the application. If the project sponsor does not meet these deadlines, the project will be subject to forfeit or return of up to 10% of the awarded funds, or $10 million, whichever is lower.

(2) The applicant should propose a specific indicator of project success that will be evident within 12 months of project completion. The indicator should relate to a benefit estimated in the BCA (*e.g.,* travel time savings), and the level of performance should be consistent with the estimates in the BCA. If the project fails to produce this specific outcome in the time allotted, it will be subject to forfeit or return of up to 10% of the awarded funds, or $10 million, whichever is lower.

(3) The applicant should describe a specific recent example of enacting state or local policy change to facilitate interstate commerce. Examples include:

a. Collaborating with neighboring states on interstate toll financing

b. Collaborating on cross-state energy distribution infrastructure

The project will be assigned a Performance and Accountability rating based on how it addresses these areas. Applications that address both lifecycle costs and accountability measures will receive a high rating. Applications that address either lifecycle costs or accountability measures, but not both, will receive a medium rating. Applications that address neither area will receive a low rating.

b. Additional Considerations

i. Geographic Diversity

By statute, when selecting INFRA projects, the Department must consider contributions to geographic diversity among recipients, including the need for a balance between the needs of rural and urban communities. However, the Department also recognizes that it can better balance the needs of rural and urban communities if it does not take a binary view of urban and rural. Accordingly, in addition to considering whether a project is ''rural'' as defined by the INFRA statute and described in section C.3.e, when balancing the needs of rural and urban communities, the Department will consider the actual population of the community that each project serves.

ii. Project Readiness

During application evaluation, the Department considers project readiness in two ways: To assess the likelihood of successful project delivery and to confirm that a project will satisfy statutory readiness requirements.

First, the Department will consider significant risks to successful completion of a project, including risks associated with environmental review, permitting, technical feasibility, funding, and the applicant's capacity to manage project delivery. Risks do not disqualify projects from award, but competitive applications clearly and directly describe achievable risk mitigation strategies. A project with mitigated risks is more competitive than a comparable project with unaddressed risks.

Second, by statute, the Department cannot award a large project unless that project is reasonably expected to begin construction within 18 months of obligation of funds for the project. Obligation occurs when a selected applicant enters a written, project-specific agreement with the Department and is generally after the applicant has satisfied applicable administrative requirements, including transportation planning and environmental review requirements. Depending on the nature of pre-construction activities included in the awarded project, the Department may obligate funds in phases. Preliminary engineering and right-of-way acquisition activities, such as environmental review, design work, and other preconstruction activities, do not fulfill the requirement to begin construction within 18 months of obligation for large projects. By statute, INFRA funds must be obligated within three years of the end of the fiscal year for which they are authorized. Therefore, for awards with FY 2019 funds, the Department will determine that large projects with an anticipated obligation date beyond September 30, 2022 are not reasonably expected to begin construction within 18 months of obligation.

iii. Previous Awards

The Department may consider whether the project has previously received an award from the TIGER, BUILD, FASTLANE, INFRA, or other departmental discretionary grant programs.

2. Review and Selection Process

The USDOT will review all eligible applications received before the application deadline. The INFRA process consists of a Technical Evaluation phase and Senior Review. In the Technical Evaluation phase, teams will, for each project, determine whether the project satisfies statutory requirements and rate how well it addresses the selection criteria. The Senior Review Team will consider the applications and the technical evaluations to determine which projects to advance to the Secretary for consideration. The Secretary will ultimately select the projects for award. A Quality Control and Oversight Team will ensure consistency across project evaluations and appropriate documentation throughout the review and selection process.

3. Additional Information

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.205. The Department must review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). An applicant may review information in FAPIIS and comment on any information about itself. The Department will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the Secretary will announce awarded projects by posting a list of selected projects at *https://www.transportation.gov/buildamerica/INFRAgrants.* Following the announcement, the Department will contact the point of contact listed in the SF 424 to initiate negotiation of a project-specific agreement.

2. Administrative and National Policy Requirements

a. Safety Requirements

The Department will require INFRA projects to meet two general requirements related to safety. First, INFRA projects must be part of a thoughtful, data-driven approach to safety. Each State maintains a strategic

highway safety plan.[7] INFRA projects will be required to incorporate appropriate elements that respond to priority areas identified in that plan and are likely to yield safety benefits. Second, INFRA projects will incorporate appropriate safety-related activities that the Federal Highway Administration (FHWA) has identified as ''proven safety countermeasures'' due to their history of demonstrated effectiveness.[8]

After selecting INFRA recipients, the Department will work with those recipients on a project-by-project basis to determine the specific safety requirements that are appropriate for each award.

b. Other Administrative and Policy Requirements

All INFRA awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by USDOT at 2 CFR part 1201. A project carried out under the INFRA program will be treated as if the project is located on a Federal-aid highway. All INFRA projects are subject to the Buy America requirement at 23 U.S.C. 313. Additionally, applicable Federal laws, rules and regulations of the relevant operating administration administering the project will apply to the projects that receive INFRA grants, including planning requirements, Stakeholder Agreements, and other requirements under the Department's other highway, transit, rail, and port grant programs. For an illustrative list of the applicable laws, rules, regulations, executive orders, policies, guidelines, and requirements as they relate to an INFRA grant, please see *http://www.ops.fhwa.dot.gov/Freight/infrastructure/nsfhp/fy2016_gr_exhbt_c/index.htm.*

The applicability of Federal requirements to a project may be affected by the scope of the NEPA reviews for that project. For example, under 23 U.S.C. 313(g), Buy America requirements apply to all contracts that are eligible for assistance under title 23, United States Code, and are carried out within the scope of the NEPA finding, determination, or decision regardless of the funding source of such contracts if at least one contract is funded with Title 23 funds.

[7] Information on State-specific strategic highway safety plans is available at *https://safety.fhwa.dot.gov/shsp/other_resources.cfm.*

[8] Information on FHWA proven safety countermeasures is available at: *https://safety.fhwa.dot.gov/provencountermeasures/.*

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for an INFRA grant must submit the Federal Financial Report (SF–425) on the financial condition of the project and the project's progress, as well as an Annual Budget Review and Program Plan to monitor the use of Federal funds and ensure accountability and financial transparency in the INFRA program.

b. Reporting of Matters Related to Integrity and Performance

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the Office of the Secretary via email at *INFRAgrants@dot.gov.* For other INFRA program questions, please contact Paul Baumer at (202) 366–1092. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, up to the application deadline, the Department will post answers to common questions and requests for clarifications on USDOT's website at *https://www.transportation.gov/buildamerica/INFRAgrants.* To ensure applicants receive accurate information about eligibility or the program, the applicant is encouraged to contact USDOT directly, rather than through intermediaries or third parties, with questions.

H. Other Information

1. Protection of Confidential Business Information

All information submitted as part of, or in support of, any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, USDOT will follow the procedures described in its FOIA regulations at 49 CFR 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

2. Publication of Application Information

Following the completion of the selection process and announcement of awards, the Department intends to publish a list of all applications received along with the names of the applicant organizations and funding amounts requested. Except for the information properly marked as described in Section H.1., the Department may make application narratives publicly available.

Issued in Washington, DC, on December 17, 2018.

Elaine L. Chao,

Secretary of Transportation.

[FR Doc. 2018–27695 Filed 12–20–18; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Proposed Collection; Comment Request for Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

DATES: Written comments must be submitted on or before February 19, 2019 to be assured of consideration.

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

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions on the website for submitting comments.

Fax: Attn: Request for Comments (Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts) 202–622–1759.

Mail: Attn: Request for Comments (Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Instructions: All submissions received must include the agency name and the **Federal Register** Doc. number that appears at the end of this document. Comments received will be made available to the public via *regulations.gov* or upon request, without change and including any personal information provided.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Title: Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

OMB Number: 1505–0243.

Abstract: Section 561.504(b) of the Iranian Financial Sanctions Regulations, 31 CFR part 561 (the IFSR), specifies that a U.S. financial institution that maintained a correspondent account or payable-through account for a foreign financial institution whose name is added to the Part 561 List [1] on OFAC's website (*www.treasury.gov/ofac*) as subject to a prohibition on the maintaining of such accounts must file a report with OFAC that provides full details on the closing of each such account within 30 days of the closure of the account. This collection of information assists in verifying that U.S. financial institutions are complying with prohibitions on maintaining correspondent accounts or payable-through accounts for foreign financial institutions listed on the Part 561 List. The reports will be reviewed by the U.S. Department of the Treasury and may be used for compliance and enforcement purposes by the agency.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: U.S. financial institutions operating correspondent accounts or payable-through accounts for foreign financial institutions.

Estimated Number of Respondents: The likely respondents and record-keepers affected by this collection of information in section 561.504(b) are U.S. financial institutions operating correspondent accounts or payable through accounts for foreign financial institutions. Since the date this reporting requirement was added to the IFSR (February 27, 2012) through June 18, 2015, OFAC added the names of two foreign financial institutions to the Part 561 List, of which one remains. No foreign financial institution was added to the Part 561 List during the current reporting period (through December 15, 2018), and the number of respondents to this collection has been zero. For future notices, OFAC will continue to report retrospectively on the number of respondents during the reporting period.

Estimated Time per Respondent: 2 hours per response.

Estimated Total Annual Burden Hours: While no responses are expected, an estimate of 1 response (2 hours) is being included to account for the possibility that someone could have to provide a notification in the future.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 17, 2018.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–27623 Filed 12–20–18; 8:45 am]

BILLING CODE 4810–AL–P

[1] On March 1, 2018, OFAC created a new list, titled the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (the ''CAPTA List''). The CAPTA List will include foreign financial institutions subject to correspondent or payable-through account sanctions pursuant to sanctions authorities including the Ukraine Freedom Support Act of 2014, as amended by the Countering America's Adversaries Through Sanctions Act, and the North Korea Sanctions Regulations, 31 CFR part 510, as well as the specific strict conditions or prohibitions to which the foreign financial institutions are subject. It eventually will be expanded to include foreign financial institutions subject to correspondent or payable-through account sanctions pursuant to additional authorities, including the Iranian Financial Sanctions Regulations, 31 CFR part 561, which are currently identified on OFAC's Part 561 List. At that time, by separate action, OFAC will move the name of the foreign financial institution on the Part 561 List, along with the relevant prohibition or strict condition(s) to which the foreign financial institution is subject, to the CAPTA List. This will not impact the relevant reporting requirement.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 8038–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to

comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8038–T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

DATES: Written comments should be received on or before February 19, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6236, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

OMB Number: 1545–1219.

Revenue Procedure Number: 8038–T.

Abstract: Form 8038–T is used by issuers of tax exempt bonds to report and pay the arbitrage rebate and to elect and/or pay various penalties associated with arbitrage bonds. The issuers include state and local governments.

Current Actions: There is currently, no change to the form. We are updating the records to include the recordkeeping burden associated with regulation section 1.148–5(d)(6)(iii), previously approved under OMB number 1545–1490 and 1545–1098.

Type of Review: Revision of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 3,900.

Estimated Time per Respondent: 24 hrs., 11 min.

Estimated Total Annual Burden Hours: 59,325.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 13, 2018.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2018–27596 Filed 12–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 14145

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 14145, IRS Applicant Contact Card.

DATES: Written comments should be received on or before February 19, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS Applicant Contact Card.

OMB Number: 1545–2240.

Form Number: 14145.

Abstract: The Internal Revenue Service contact card is used to collect contact information from individuals who may be interested in working for the IRS now, or at any time in the future (potential applicants) Form 14145 requests information to enter into a database to allow the IRS to send information about jobs to potential applicants. Cards are then destroyed after input into the database. The potential applicant is only contacted about jobs which correspond to the job categories selected by the IRS Recruiter on Form 14145.

Current Actions: There is no change in the form previously approved by OMB. However, the total burden previously approved, needs to be lowered by 64,721 hours, to correct an error in the previous submission. The correct burden estimates should be; 16,045 estimated responses and a total estimated annual burden of 1,364 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 16,045.

Estimated Time per Respondent: 5 min.

Estimated Total Annual Burden Hours: 1,364.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 13, 2018.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2018–27597 Filed 12–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Schedule E (F 1040)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Schedule E (Form 1040), Supplemental Income and Loss.

DATES: Written comments should be received on or before February 19, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Supplemental Income and Loss.

OMB Number: 1545–1972.

Form Number: Schedule E (Form 1040).

Abstract: Schedule E (Form 1040) is used by individuals to report their Supplemental Income. The data is used to verify that the items reported on the form are correct and also for general statistical use.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 570,000.

Estimated Time per Respondent: 9 hrs., 56 min.

Estimated Total Annual Burden Hours: 5,665,800.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: December 13, 2018.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2018–27598 Filed 12–20–18; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibition on Funding of Unlawful internet Gambling

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 22, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Treasury Departmental Offices (DO)

Title: Prohibition on Funding of Unlawful internet Gambling.

OMB Control Number: 1505–0204.

Type of Review: Extension without change of a currently approved collection.

Description: The Unlawful internet Gambling Enforcement Act of 2006 (Act) (enacted as Title VIII of the Security and Accountability For Every Port Act of 2006, Public Law 109–347, 120 Stat. 1884, and codified at 31 U.S.C. 5361–5367) required the Secretary of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board), in consultation with the Attorney General, to prescribe regulations requiring designated payment systems and all participants therein to prevent or prohibit unlawful internet gambling transactions (referred to in the Act as ''restricted transactions'') through the establishment of reasonably designed policies and procedures. 31 U.S.C. 5364(a).

To carry out the Act, the Treasury's Departmental Offices and the Board, after consulting with the Justice Department, published a final rule on November 18, 2008 in the **Federal Register** (73 FR 69382) requiring designated payment systems and all participants therein (referred to collectively in the final rule as ''participants in designated payment systems'') to establish and implement written policies and procedures reasonably designed to prevent or prohibit restricted transactions. 31 CFR 132.5(a).

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 6,038.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 6,038.

Estimated Time per Response: 100 hours for each new institution, 8 hours to maintain existing policies and procedures.

Estimated Total Annual Burden Hours: 48,580.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 18, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–27751 Filed 12–20–18; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 22, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Life Insurance Statement.

OMB Control Number: 1545–0022.

Type of Review: Extension without change of a currently approved collection.

Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Form: 712.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 60,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 60,000.

Estimated Time per Response: 18.67 hours per response.

Estimated Total Annual Burden Hours: 1,120,200.

Title: Employer's Quarterly Federal Tax Return.

OMB Control Number: 1545–0029.

Type of Review: Extension without change of a currently approved collection.

Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability. The Form 8974 was developed to determine the portion of the elected amount that can be claimed for the quarter on the Form 941.

Form: 941, 941 Sch B, 941 Scd D, 941 PRR, 941–PR Sch B, 941–X, 941–X PR, 941V. 941 PR V, 941 SS/V, 941 SS, 941 Sch R, 8974.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 38,861,546.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 38,861,546.

Estimated Time per Response: 10.3 hours per response.

Estimated Total Annual Burden Hours: 402,024,858.

Title: Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code.

OMB Control Number: 1545–0047.

Type of Review: Revision of a currently approved collection.

Description: These forms and schedules are needed to determine that

IRC section 501(a) tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. The data is also used for general statistical purposes. These forms are used by Tax Exempt organizations to specify their items of gross income, receipts and disbursements.

Form: 990, Instructions for Form 990–PF, Return of Private Fo, 990–W, Instructions for Form 990–T, Exempt Organization B, Schedule C (Form 990 & 990–EZ), Schedule F (Form 990), Schedule E (Form 990 & 990–EZ), Schedule G (Form 990 & 990–EZ), Instructions for Schedule G (Form 990 or 990–EZ),, Instructions for Form 1023, Application for Recogn, 1024, 1028, Form 990–EZ, 990–PF, 990–PF (2018 Draft), 990–T, 990–T (2018 Draft), Schedule A (Form 990 & 990–EZ), Instructions for Schedule A (Form 990 or Form 990–, Schedule B (Form 990, 990–EZ, 990–PF), Instructions for Schedule F (Form 990), Statement, Schedule L (Form 990 & 990–EZ), 5884–C, 8038, Instructions for Form 8038, Information Return for, 8038–B, Instructions for Form 8038–B, Information Return f, 8038–B (2017 Draft), 8038–CP, Instructions for Form 8038–CP Return for Credit Pa, 8038–G, Instructions for Form 8038–G, Information Return f, 8038–GC, 8038–R, 8038–T, 8038–T (2017 Draft), 8038–TC, 8038–TC (2017 Draft), Instructions for Form 8038–TC, Information Return, 8282, 8453–E.O., 8453–X, 8718, 8868, 8870, 8872, Instructions for Form 8872, Political Organization, 8879–E.O., 8886–T, Instructions for Form 8886–T, Disclosure by Tax-Ex, 8899, Schedule M (Form 990), 1023–EZ, Instructions for Form 1024, Application for Recogn, 990 (2018 Draft), Instructions for Form 990–EZ, Short Form Return of, Schedule D (Form 990), Instructions for Schedule D (Form 990), Supplement, Schedule H (Form 990), Instructions for Schedule H (Form 990), Hospitals, Instructions for Schedule L (Form 990 or 990–EZ),, Instructions for Schedule R (Form 990), Related Or, 1023–I, 1024–A, Form 1023, 5578, 8871, Instructions for Form 1024–A, Instructions for Form 8038–T, Arbitrage Rebate and, Form 990–N Electronic Notice (e-Postcard) for Tax-, Schedule O (Form 990 & 990–EZ), Schedule N (Forms 990 & 990–EZ), Schedule R (Form 990), Instructions for Form 1028, Application for Recogn, Instructions for Form 990, Return of Organization, 2018 Draft Instructions for Form 990, Return of Or, 990–EZ (2018 Draft), Schedule I (Form 990), Schedule J (Form 990), Instructions for Schedule J (Form 990), Compensati, Schedule K (Form 990), Instructions for Schedule K (Form 990), Supplement, Schedule A, Schedule B, Schedule C, Schedule D, Schedule E, Schedule F–1, Schedule G, Schedule H, Schedule I–I, Schedule J–2), Schedule K, Schedule, K, Schedule L, Schedule M, Schedule N–A, Schedule N, Schedule R–1.

Affected Public: Not-for Profit institutions.

Estimated Number of Respondents: 1,413,200.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,413,200.

Estimated Time per Response: 35 hours per response.

Estimated Total Annual Burden Hours: 50,450,000.

Title: U. S. Business Income Tax Return.

OMB Control Number: 1545–0123.

Type of Review: Revision of a currently approved collection.

Description: These forms are used by businesses to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Forms: Form 1065, Schedule B–2, Instr. 1065, Sch. B–2, 1118, Form 1118, Sch. K, 5471, Schedule P, 8281, 5735, Schedule P, 8610, Schedule A, 8288–A, 8300 (SP), Instructions 8594, 8844, 8838–P, 8850, Form 8865, Schedule G, 8990, 8991, 8991, 1065 Schedule B–1, 1065 Schedule C, 1066 Schedule Q, 1125–E, 1125–A, 1125–E, 1127, 1128, 1128, 1138, 1139, 1139, 2220, 2220, 2553, 2553, 2848, 2848, 3115, 3115, 3468, 3468, 3520, 3520, 3800, 3800, 4136, 4136, 4255, 4466, 8866, 4562, 4562, 8872, 8896, 8900, 1065 Schedule K–1, 1065 Schedule M–3, 1065–B, 1065 Schedule M–3, 1120–ND, W–8 BEN–E, 5713 Schedule B, 1120–PC Schedule M–3, 1042, 1120–S Schedule D, 1120–H, 1120–SF, 1120–F Schedule H, 1120–FSC, 1120–F Schhedule M–3, 1120–F Schedule S, 1120–F Schedule V, 1120 Schedule D, 1120–F Schedule M–3, 8949, W–8 ECI, 1120–L, 1120–IC DISC, 8936, 8864, W–8 ECI, 8871, 8871, 1065, 1065–B, 1065 Schedule K–1, 1065 Schedule C, 1065 Schedule D, 1066, 1118, 1118 Schedule K, 1118 Schedule J, 1120, 1120–C, 1120–F, 1120–F Schedule P, 1120–F Schedule I, W–8 BEN–E, 8911, 8082, 8082, 1120–REIT, 6478, 1120–RIC, 1120–S, 6765, 1120–PC Schedule M–3, 1120–W, 8834, 8907, 1120 Schedule M–3, 1120 Schedule PH, 1120 Schedule UTP, 1120–FSC Schedule P, 1120–IC DISC, 8979, 8992, 8992, 8993, 8993, 8994, 8994, 8996, 8996, 965, 965 B, 965, Schedule A, 965, Schedule B, 965, Schedule C, 965, Schedule D, 965, Schedule E, 965, Schedule F, 965, Schedule G, 965, Schedule H, 4255, 8844, 1065–B Schedule K–1, 1120–S Schedule K–1, 1120–L, 8830, 8908, 1120–PC, 1120–REIT, 1120–S Schedule B–1, 5884, 1065–X, 1065–X, 8845, 1120–S Schedule M–3, 2439, 1120–IC DISC Schedule P, 1120–F Schedule V, 1120–ND, 1120–PC, 56, 8848, 8900, 1120 Schedule O, 5471 Schedule J Schedule M Schedule O, 1120–L Schedule M–3, 8858 Schedule M, 8865 Schedule K–1 Schedule O Schedule P, 1065–B Schedule K–1, 1066, 1118, 1118 Schedule i, 1118 Schedule J, 1118 Schedule K, 1120, 1120 Schedule D, 1120 Schedule H, 1120 Schedule M–3, 1120 Schedule PH, 1120–F Schedule H, 1120–F Schedule i, 1120–F Schedule M–1 and Schedule M–2, 8938, 8941, 8941, 8947, 926, 926, 966, 970, 976, 982, SS–4 (PR), T (TIMBER), W–8 BEN, W–8 IMY, W–8 IMY, 1120–H, 5471 Schedule J, 5471 Schedule M, 5471 Schedule O, 5472, 5713, 6478, 6627, 6781, 7004, 3250–A, 3520–A, 461, 461, 5471, Schedule E, 5471, Schedule H, 5471, Schedule I–1, Inst. 56, 8023, 7004, 8288–B, 8300, 8404, 8453–B, 8655, 8716, 8932, 8933, 8936, 8937, 8937, 8938, 1120 Schedule B, 1120 Schedule N, 1120 Schedule O, 1120–C, 1120 Schedule G, 5713, 5884–B, 8023, 8050, 8275, 8275–R, 8302, 8308, 8329, 8621–A, 8697, W–8 BEN, 8804, 8805, 8804 Schedule A, 8804 Schedule A, 8804–W, 8804–W, 8810, 8810, 8813, 8816, 8819, 8820, 8822–B, 8824, 8824, 8825, 8826, 8827, 8832, 8833, 8835, 8835, 8842, 8844, 8845, 8846, 8858, 8858, 8858 Schedule M, 8864, 8865, 8865, 8865 Schedule K–1, 8865 Schedule O, 8865 Schedule P, 8866, 8869, 8872, 8873, 8873, 8874, 8875, 8878–A, 8879–B, 8879–C, 8879–I, 8879–PE, 8879–S, 8881, 8882, 8883, 8883, 8886, 8886, 8893, 8894, 973, SS–4, SS–4, SS–4 (PR), T (TIMBER), 972, 1120–L Schedule M–3, 1120–POL, 1120–RIC, 5472, 56, 56F, 5735, 6198, 6198, 6765, 8275, 8283, 8288, 8288, 8453–C, 8453–PE, 8453–S, 8621, 8697, 8911, 8912, 8912, 8916, 8916–A, 8918, 8923, 8918, 8925, 8926, 8926, 8927, 8931, 8610, 8813, 8850, 8966, 8902, 8902, 1120 Schedule UTP, 1120–F, 1120–F Schedule S, 1120–IC DISC Schedule K, 1120–IC DISC Schedule Q, 1120–S, 1120–S Schedule D, 1120–S Schedule K–1, 1120–S Schedule M–3, 1120–SF, 1120–W, 1120–X, 4626, 4684, 4684, 4626, 4797, 4797, 4810, 4876–A, 5452, 5471, 5471, 1122, 2438, 5713 Schedule A, 5713 Schedule C, 5735, 5884, 8275–R, 8806, 8838, 1065 Schedule D, 1120–F Schedule M–3, 1120–F Schedule P, 1120–FSC, 8805, 8283, 8609, 8609,

8609–A, 8609–A, 8611, 8621, 8621–A, 8693, 8703, 8903, 8903, 8906, 8907, 8908, 8909, 8910, 8910, 8453–I, 8453–X, 851, 8586, 8594, 8752, 1000, 1042, 1065, 8979, 8804, 1099–LS, 1065X, 8966–C, Instructions for Form 1065, Schedule D, 8865, Schedule H, 8966.

Affected Public: Businesses or other for-profits, Farms.

Estimated Number of Respondents: 11,300,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 11,300,000.

Estimated Time per Response: 27 hours per response.

Estimated Total Annual Burden Hours: 3,157,000,000.

Title: Investment Credit.

OMB Control Number: 1545–0155.

Type of Review: Extension without change of a currently approved collection.

Description: Taxpayers are allowed a credit against their income tax for certain expenses they incur for their trades or businesses. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been correctly computed. This submission was revised to reflect a decline in burden.

Form: 3468.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 15,345.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 15,345.

Estimated Time per Response: 34.11 hours per response.

Estimated Total Annual Burden Hours: 523,418.

Title: Form 5310, Application for Determination for Terminating Plan; Form 6088, Distributable Benefits from Employee Pension Benefit Plans.

OMB Control Number: 1545–0202.

Type of Review: Extension without change of a currently approved collection.

Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Forms: 5310, 6088.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,244.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1,244.

Estimated Time per Response: 66 hours per response.

Estimated Total Annual Burden Hours: 82,231.

Title: Work Opportunity Credit.

OMB Control Number: 1545–0219.

Type of Review: Extension without change of a currently approved collection.

Description: IRC section 38(b) (2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to figure the credit. IRS uses the information on the form to verify that the correct amount of credit was claimed.

Form: 5884.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 10,000.

Estimated Time per Response: 6.94 hours per response.

Estimated Total Annual Burden Hours: 69,400.

Title: TD 8379—Excise Tax Relating to Gain or Other Income Realized by Any Person on Receipt of Greenmail.

OMB Control Number: 1545–1049.

Type of Review: The previously approved regulations provide rules relating to the manner and method of reporting and paying the nondeductible 50 percent excise tax imposed by section 5881 of the Internal Revenue Code with respect to the receipt of greenmail. The reporting requirements will be used to verify that the excise tax imposed under section 5881 is properly reported and timely paid. Form 8725 is used by persons who receive ''greenmail'' to compute and pay the excise tax on greenmail imposed under Internal Revenue Code section 5881. IRS uses the information to verify that the correct amount of tax has been reported.

Form: 8725.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 12.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 12.

Estimated Time per Response: 7.63 hours per response.

Estimated Total Annual Burden Hours: 92.

Title: TD 8352 (temp & final) Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes; TD 8531—Final Regulations Under Section 382.

OMB Control Number: 1545–1120.

Type of Review: Extension without change of a currently approved collection.

Description: (CO–69–87 and CO–68–87) These previously approved regulations require reporting by a corporation after it undergoes an ''ownership change'' under sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO–18–90) These regulations provide rules for the treatment of options under IRC section 382 for purposes of determining whether a corporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 75,150.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 75,150.

Estimated Time per Response: 2.9 hours per response.

Estimated Total Annual Burden Hours: 220,575.

Title: Conclusive Presumption of Worthlessness of Debts Held by Banks.

OMB Control Number: 1545–1254

Type of Review: Extension without change of a currently approved collection.

Description: Paragraph (d)(3) of section 1.166–2 of the previously approved regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section 1.166–2(d)(3) is necessary to monitor the elections.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 200.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 200.

Estimated Time per Response: .25 hour per response.

Estimated Total Annual Burden Hours: 50.

Title: Renewable Electricity, Refined Coal, and Indian Coal Production Credit.

OMB Control Number: 1545–1362.

Type of Review: Extension without change of a currently approved collection.

Description: Filers claiming the general business credit for electricity produced from certain renewable resources under Internal Revenue Code sections 38 and 45 must file Form 8835.

Form: 8835.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 477.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 477.

Estimated Time per Response: 18.28 hours per response.

Estimated Total Annual Burden Hours: 8,720.

Title: Clear Reflection of Income in the Case of Hedging Transactions.

OMB Control Number: 1545–1412.

Type of Review: Extension without change of a currently approved collection.

Description: On October 20, 1993, the Service published in the **Federal Register** (58 FR 54077) a notice of proposed rulemaking (FI–54–93) relating to the accounting for business hedging transactions. This notice also contained proposed amendments to regulations under sections 446 and 461 of the Code. TD 8554 contains the final regulations relating to accounting for business hedging transactions. These previously approved final regulations provide guidance to taxpayers regarding when gain or loss from common business hedging transactions is recognized for tax purposes.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 100,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 100,000.

Estimated Time per Response: .2 hours per response.

Estimated Total Annual Burden Hours: 20,000.

Title: Revenue Procedure 2015–41 (Formerly 2006–9)—Section 482—Allocation of Income and Deductions Among Taxpayers.

OMB Control Number: 1545–1503.

Type of Review: Extension without change of a currently approved collection.

Description: The information requested is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Form: None.

Affected Public: Businesses or other for-profits, Individuals or Households.

Estimated Number of Respondents: 390.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 390.

Estimated Time per Response: 28 hours per response.

Estimated Total Annual Burden Hours: 10,900.

Title: Form 911—Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order).

OMB Control Number: 1545–1504.

Type of Review: Extension without change of a currently approved collection.

Description: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails to take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the state or city where the taxpayer lives.

Form: 911.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 93,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 93,000.

Estimated Time per Response: .5 hours per response.

Estimated Total Annual Burden Hours: 46,500.

Title: Rev. Proc. 2007–32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.

OMB Control Number: 1545–1530.

Type of Review: Extension without change of a currently approved collection.

Description: Tip Rate Determination Agreement (Gaming Industry) Information is required by the Internal Revenue Service in its Compliance efforts to assist employers and their employees in understanding and complying with section 6053(a), which requires employees to report all their tips monthly to their employers. Gaming Industry Tip Compliance Agreement Program Taxpayers who operate gaming establishments may enter into an agreement with the Internal Revenue Service to establish tip rates and occupational categories for all tipped employees of the taxpayer. The agreements will require substantiation of the tip rates as well.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 710.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 710.

Estimated Time per Response: 14.74 hours per response.

Estimated Total Annual Burden Hours: 10,467.

Title: TD 9308 (Reg 125071–06) Reporting Requirements for Widely Held Fixed Investment Trusts. Previously TD 9279.

OMB Control Number: 1545–1540.

Type of Review: Extension without change of a currently approved collection.

Description: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,200.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 1,200.

Estimated Time per Response: 2 hours per response.

Estimated Total Annual Burden Hours: 2,400.

Title: Combined Information Reporting.

OMB Control Number: 1545–1667.

Type of Review: The revenue procedure permits combined information reporting by a successor ''business entity'' (*i.e.,* a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 6,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 6,000.

Estimated Time per Response: .08 hour per response.

Estimated Total Annual Burden Hours: 500.

Title: Qualified Transportation Fringe Benefits.

OMB Control Number: 1545–1676.

Type of Review: Extension without change of a currently approved collection.

Description: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 7,530,313.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 48,589,824.

Estimated Time per Response: .27 hours per response.

Estimated Total Annual Burden Hours: 12,968,728.

Title: Credit for Small Employer Pension Plan Startup Costs.

OMB Control Number: 1545–1810.

Type of Review: Extension without change of a currently approved collection.

Description: Qualified small employers use Form 8881 to request a credit for start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement related education of employees with respect to the plan. The credit is 50% of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Form: 8881.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 66,667.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 66,667.

Estimated Time per Response: 3.53 hours per response.

Estimated Total Annual Burden Hours: 235,335.

Title: Revenue Procedure 2003–33—Section 9100 Relief for 338 Elections.

OMB Control Number: 1545–1820.

Type of Review: Extension without change of a currently approved collection.

Description: Pursuant to Sec. 301.9100–3 of the Procedure and Administration Regulations, this procedure grants certain taxpayers an extension of time to file an election described in Sec. 338(a) or Sec. 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 60.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 300.

Title: TD 9207 (final)—Assumptions of Partner Liabilities; REG–106736–00 (NPRM).

OMB Control Number: 1545–1843.

Type of Review: Extension without change of a currently approved collection.

Description: In order to be entitled to a deduction with respect to the economic performance of a contingent liability that was contributed by a partner and assumed by a partnership, the partner, or former partner of the partnership, must receive notification of economic performance of the contingent liability from the partnership or other partner assuming the liability.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 250.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 250.

Estimated Time per Response: .5 hour per response.

Estimated Total Annual Burden Hours: 125.

Title: Notice 2007–70—Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).

OMB Control Number: 1545–1980.

Type of Review: Charitable organizations are required to send an acknowledgement of car donations to the donor and to the Service. The purpose of is to prevent donors from taking inappropriate deductions.

Form: None.

Affected Public: not-for-profit institutions.

Estimated Number of Respondents: 4,300.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 4,300.

Estimated Time per Response: 5 hours per response.

Estimated Total Annual Burden Hours: 21,930.

Title: Distilled Spirits Credit.

OMB Control Number: 1545–1982.

Type of Review: Form 8906, Distilled Spirits Credit, was developed to carry out the provisions of IRC section 5011(a). This section allows eligible wholesalers and persons subject to IRC section 5055 an income tax credit for the average cost of carrying excise tax on bottled distilled spirits. The form provides a means for the eligible taxpayer to compute the amount of credit.

Form: 8906.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 300.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 300.

Estimated Time per Response: 1.86 hours per response.

Estimated Total Annual Burden Hours: 9,558.

Title: Requirements related to energy efficient homes credit; manufactured homes.

OMB Control Number: 1545–1994.

Type of Review: Extension without change of a currently approved collection.

Description: This previously approved notice supersedes Notice 2006–28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006–28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008. Notice 2006–28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006–28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008–35.

Form: None.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 15.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 15.

Estimated Time per Response: 4 hours per response.

Estimated Total Annual Burden Hours: 60.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 18, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–27735 Filed 12–20–18; 8:45 am]

BILLING CODE 44830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; The Community Development Financial Institutions Program—Certification Application

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 22, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

The Community Development Financial Institutions (CDFI)

Title: The Community Development Financial Institutions Program—Certification Application.

OMB Control Number: 1559–0028.

Type of Review: Revision of a currently approved collection.

Description: The certification application will be used to determine whether an entity seeking CDFI certification or recertification meets the Fund's requirements for such certification as set forth in 12 CFR 1805.201.

Form: CDFI Form 0005.

Affected Public: Not-for-profit institutions, State, Local and Tribal governments.

Estimated Number of Respondents: 305.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 11,438.

Estimated Time per Response: 37.5 hours per response.

Estimated Total Annual Burden Hours: 11,438.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 18, 2018.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2018–27752 Filed 12–20–18; 8:45 am]

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Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 66

National Bioengineered Food Disclosure Standard; Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 66

[Doc. No. AMS–TM–17–0050]

RIN 0581–AD54

National Bioengineered Food Disclosure Standard

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the new national mandatory bioengineered (BE) food disclosure standard (NBFDS or Standard). The new Standard requires food manufacturers, importers, and other entities that label foods for retail sale to disclose information about BE food and BE food ingredients. This rule is intended to provide a mandatory uniform national standard for disclosure of information to consumers about the BE status of foods. Establishment and implementation of the new Standard is required by an amendment to the Agricultural Marketing Act of 1946.

DATES: *Effective Date:* This rule becomes effective February 19, 2019.

Implementation Date: January 1, 2020.

Extended Implementation Date (for small food manufacturers): January 1, 2021.

Voluntary Compliance Date: Ends on December 31, 2021.

Mandatory Compliance Date: January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Arthur L. Neal, Jr, Deputy Administrator, Transportation and Marketing Program, AMS, USDA, 1400 Independence Ave. SW, Room 4543–S, Washington, DC 20250; email: *Arthur.Neal@usda.gov;* telephone: 202–690–1300; or fax: 202–690–0338.

SUPPLEMENTARY INFORMATION: On July 29, 2016, Public Law 114–216 amended the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), as amended (amended Act), by adding Subtitles E and F. Subtitle E of the amended Act directs the Secretary of Agriculture (Secretary) to establish the NBFDS for disclosing any food that is or may be bioengineered. 7 U.S.C. 1639b(a)(1). Subtitle E also directs the Secretary to establish requirements and procedures necessary to carry out the new Standard. 7 U.S.C. 1639b(a)(2).

Outline of the Final Rule

I. Introduction

The Secretary delegated authority for establishing and administering the NBFDS to the Agricultural Marketing Service (AMS). To assist with development of the new Standard, AMS posted 30 questions for public consideration and comment on its website (*https://www.ams.usda.gov/rules-regulations/public-input-bioengineered-food-disclosure-questions*) on June 28, 2017. Contributors from diverse backgrounds, including consumers, food manufacturers and retailers, farmers and processors, State and foreign governments, and various associations and other interested groups representing consumers and industry submitted over 112,000 responses. AMS posted the responses on its website.

AMS considered responses to the 30 questions in the development of a proposed rule, which was included in a notice of proposed rulemaking (NPRM) published in the **Federal Register** on May 4, 2018 (83 FR 19860). The NPRM outlined AMS's proposed requirements and procedures for the new Standard to be codified at 7 CFR part 66 and requested public comment on several regulatory alternatives offered for consideration. The public comment period closed on July 3, 2018. AMS received approximately 14,000 comments by the end of the comment period.

Subsequent to publication of the NPRM, AMS published two documents in the **Federal Register** related to this proceeding. The first, published on May 23, 2018 (83 FR 23827), announced the availability of a recorded webinar about the proposed NBFDS on AMS's website. The second, published on June 20, 2018 (83 FR 28547), made a correction to the Initial Regulatory Flexibility Analysis contained in the NPRM to clarify that the proposed rule was not expected to have a significant economic impact on a substantial number of small business entities.

AMS also published two supplemental documents related to the NBFDS. One, a Regulatory Impact Analysis and its supporting documents, was posted on *Regulations.gov* at *https://www.regulations.gov/document?D=AMS-TM-17-0050-2833*. The other, a graphic document showing alternative proposals for BE food disclosure labels, was posted on *Regulations.gov* at *https://www.regulations.gov/document?D=AMS-TM-17-0050-0003,* and on AMS's website at *https://www.ams.usda.gov/sites/default/files/media/ProposedBioengineeredLabels.pdf.*

The amended Act directs the Secretary to conduct a study to identify potential technological challenges related to electronic or digital disclosure

methods. *See* 7 U.S.C. 1639b(c)(1). AMS sponsored such a study, and the results were published on AMS's website (*https://www.ams.usda.gov/reports/study-electronic-or-digital-disclosure*) in September 2017. Public comments on the results of the study were solicited in conjunction with the NPRM. The Secretary's determination regarding this matter is discussed in Section III of this final rule.

Finally, Subtitle F of the amended Act addresses Federal preemption of State and local genetic engineering labeling requirements. 7 U.S.C. 1639i. Subtitle F also specifies that certification of food under the U.S. Department of Agriculture's (USDA) National Organic Program (NOP) (7 CFR part 205) shall be considered sufficient to make claims about the absence of bioengineering in the food. 7 U.S.C. 6524.

The purpose of the NBFDS as contained in this final rule is to provide a mandatory disclosure standard for BE food, by which uniform information is provided to consumers. Nothing in the disclosure requirements set out in this final rule conveys information about the health, safety, or environmental attributes of BE food as compared to non-BE counterparts.

In fact, the regulatory oversight by USDA and other Federal Government agencies ensures that food produced through bioengineering meets all relevant Federal health, safety, and environmental standards. The agencies responsible for oversight of the products of biotechnology include: USDA's Animal and Plant Health Inspection Service (APHIS), the U.S. Environmental Protection Agency (EPA), and the Department of Health and Human Services' Food and Drug Administration (FDA). The Coordinated Framework for Regulation of Biotechnology (Coordinated Framework) is a policy framework that summarizes the roles and responsibilities of these three principal regulatory agencies with respect to regulating biotechnology products.

The final rule is intended to provide for disclosure of foods that are or may be bioengineered to consumers, but also seeks to minimize implementation and compliance costs for the food industry—costs that could be passed on to all consumers. To that end, AMS has tried to craft requirements that are clear and straightforward, incorporating flexibility where appropriate. Public input has been invaluable to this effort; public comments submitted in response to the proposed rule were critical to the development of the final rule.

The following discussion of the NBFDS is divided into three parts: (1) Applicability; (2) disclosure; and (3) administrative provisions.

II. Applicability

The amended Act directs USDA to promulgate regulations regarding foods required to bear a disclosure indicating that the food is or may be bioengineered. 7 U.S.C. 1639b(b). At the outset, the amended Act establishes the scope of the NBFDS by defining ''bioengineering'' and ''food,'' and by limiting mandatory disclosure to those foods subject to the labeling requirements of the Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. 301 *et seq.*) and to certain foods subject to labeling under the Federal Meat Inspection Act (FMIA)(21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA)(21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (EPIA)(21 U.S.C. 1031 *et seq.*) administered by the Food Safety and Inspection Service (FSIS). 7 U.S.C. 1639 and 1639a. Definitions pertinent to the new part 66, descriptions of foods that are subject to disclosure, and explanations of applicable exemptions are included in subpart A of the new regulatory section.

Section 66.3 sets forth the general requirements for disclosure. Section 66.3(a) requires that labels for bioengineered food must bear a BE disclosure consistent with the requirements of part 66. Section 66.3(a)(2) prohibits labels for food that is not bioengineered from bearing a BE disclosure unless the food may bear a voluntary disclosure under § 66.116, based on records maintained under § 66.302.

A. Definitions

Section 66.1 lists the definitions that apply to new part 66. For subpart A, the key terms are ''bioengineered food,'' ''bioengineered substance,'' ''food,'' ''label,'' ''predominance,'' ''similar retail food establishment,'' ''very small food manufacturer,'' and ''List of Bioengineered Foods.'' These terms are critical in determining what foods require a BE disclosure.

B. Food Subject to Disclosure

Whether a food is subject to the labeling requirements of the amended Act, depends as a preliminary matter on whether the product at issue is a food. The amended Act codified the definition of ''food'' as ''a food (as defined in section 321 of title 21) that is intended for human consumption.''[1] 7 U.S.C. 1639(2). The final rule adopts the same definition of ''food'' as used in the amended Act.

The FDCA defines ''food'' as ''. . . (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.'' 21 U.S.C. 321(f). Ultimately, FDA has jurisdiction over the FDCA and has the authority to determine what is considered ''food'' under the FDCA. AMS has deferred to FDA in interpreting the definition of ''food.'' However, the amended Act limits the definition of food for purposes of the NBFDS to articles used for human consumption and does not include articles used for animals. Therefore, although pet food and animal feed are ''food'' under the FDCA, such foods for animals are not covered by this regulation, pursuant to the amended Act. Chewing gum is considered to be ''intended for human consumption,'' and is therefore considered a ''food'' for the purpose of the NBFDS.

Under the FDCA, the definition of ''food'' includes both articles used for food or drink and articles used for components of any such article. For instance, a raw agricultural commodity such as an apple constitutes food under FDCA. A processed item like a soup with the following ingredients—water, broccoli, vegetable oil, modified food starch, and wheat flour—is also a food, as are each of those ingredients. Other examples of ''food'' under the FDCA include dietary supplements, processing aids, and enzymes.

Not all food within the FDCA's definition falls within the scope of the NBFDS. The amended Act limits the disclosure to (1) food that is subject to the labeling requirements of the FDCA; or (2) food that is subject to the requirements of the three FSIS statutes previously mentioned, with certain exceptions. *See* 7 U.S.C. 1639a. As for the FDCA, which is under FDA jurisdiction, the NBFDS applies to all foods subject to its labeling requirements, including but not limited to raw produce, seafood, dietary supplements, and most prepared foods, such as breads, cereals, non-meat canned and frozen foods, snacks, desserts, and drinks. Distilled spirits, wines, or malt beverages as defined by the Federal Alcohol Administration Act (FAA Act) are foods under the FDCA but are not subject to the NBFDS because they are subject to the labeling provisions of the FAA Act rather than the labeling requirements of the FDCA. Alcoholic beverages not subject to the labeling provisions of the FAA Act, such as wines with less than seven percent alcohol by volume and beers brewed without malted barley and hops,

[1] The original text of the amended Act referred to section 201 of the FDCA, but the reference was changed to section 321 of title 21 in the codification of the statute.

would be subject to the NBFDS. The amended Act also specifies that the NBFDS only applies to foods subject to the labeling requirements of the three FSIS statutes if the most predominant ingredient of the food would independently be subject to the labeling requirements under the FDCA; or if the most predominant ingredient of the food is broth, stock, water, or a similar solution and the second-most predominant ingredient of the food would independently be subject to the labeling requirements under the FDCA. *See* 7 U.S.C. 1639a(c)(2).

FDA's method of determining predominance relies on weight of the ingredients, as does FSIS's. The NBFDS uses the same methods FDA uses to determine predominance at 21 CFR 101.4(a)(1), which provides that ingredients required to be declared on the label or labeling of a food, including foods that comply with standards of identity, except those ingredients exempted by § 101.100, shall be listed by common or usual name in descending order of predominance by weight on either the principal display panel or the information panel in accordance with the provisions of § 101.2. Thus, a multi-ingredient food product that contains meat, poultry, or egg product (including beef broth, if identified as a composite ingredient), subject to the FMIA, the PPIA, or the EPIA, respectively, as the first ingredient of the ingredient list on the food label would not be subject to the NBFDS, per the amended Act.

A multi-ingredient food product that contains broth, stock, water, or similar solution as the first ingredient, and a meat, poultry, or egg product as the second ingredient on the food label would also not be subject to the NBFDS. For example, a canned stew where pork is the primary ingredient followed by other ingredients such as sweet corn, would not be subject to the NBFDS. The corn may be bioengineered, but pork, which is subject to the labeling requirements of the FMIA, is the predominant ingredient, so the canned stew product is not subject to the NBFDS, per the amended Act. If, however, a meat, poultry, or egg product is the third most predominant ingredient or lower, the food would be subject to the NBFDS. For example, a soup with the following ingredient list—broth, carrots, chicken, etc., would be subject to disclosure under the NBFDS, and the analysis as to whether it would be considered a ''bioengineered food'' subject to the NBFDS's disclosure requirements would continue.

Seafood, except Siluriformes (catfishes), and meats such as venison and rabbit are subject to the FDCA (but not the Federal Meat Inspection Act). Thus, a multi-ingredient food product that contains one of these as the first ingredient would be subject to the NBFDS. A multi-ingredient product that contained one of these as the second most predominant ingredient or lower, could also require disclosure, unless the product is otherwise exempt (for example, due to the predominance of another ingredient such as chicken or beef, as described above).

C. Bioengineered Food

The amended Act delegates authority to the Secretary to establish the NBFDS regarding ''bioengineered food.'' 7 U.S.C. 1639b(a). This authority includes the ability to define ''bioengineered food,'' consistent with the statutory provisions that address this term. The amended Act also authorizes the Secretary to determine other terms that are similar to ''bioengineering.'' 7 U.S.C. 1639(1).

1. Definition of ''Bioengineering'' and ''Bioengineered Food''

The amended Act defines ''bioengineering'' with respect to a food as referring to a food ''(A) that contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques; and (B) for which the modification could not otherwise be obtained through conventional breeding or found in nature.'' 7 U.S.C. 1639(1). In accordance with its statutory mandate and for purposes of consistency, AMS is directly incorporating this statutory definition into the definition of ''bioengineered food''.

The NPRM invited public comment on two different interpretations of the statutory definition of ''bioengineering'' and on the scope of the regulatory definition of ''bioengineered food.'' Specifically, comments were solicited on whether refined foods and ingredients should be subject to disclosure under the NBFDS.

The first interpretation, identified as Position 1 in the NPRM, stated that refined products do not ''contain genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques'' because the refining process rendered genetic material undetectable using common testing methods. The second interpretation, identified as Position 2 in the NPRM, stated that the scope of the definition of ''bioengineering'' applies to all foods produced from bioengineering, such as refined products.

AMS adopts Position 1 with some modifications. The statutory definition of ''bioengineering'' makes clear that food must ''contain[ ] genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques . . .'' to be labeled as a ''bioengineered food.'' AMS believes that the definition of ''bioengineering'' sets forth the scope of the mandatory disclosure and, therefore, is incorporated into the definition of ''bioengineered food.'' A commenter suggested that AMS adopt a definition of ''highly refined'' if it adopts Position 1. We did not do so because the final rule does not use that term.

AMS has chosen to adopt the definition of ''bioengineered food'' that hews closely to the plain language of the amended Act. This definition references § 66.9 to explain how a regulated entity may demonstrate that a food, including a refined food ingredient, does not contain detectable modified genetic material. AMS has revised the proposed definition of ''bioengineered food'' to reflect its interpretation of the amended Act that foods with undetectable modified genetic material are not bioengineered foods.

Whether a food or food ingredient contains modified genetic material may vary depending on the refining process used to produce the food. For refined foods that are derived from bioengineered crops, no disclosure is required if the food does not contain detectable modified genetic material.

Commenters discussed how testing might be used to detect the presence of modified genetic material in a food. Some commenters stated that testing for modified genetic material would be difficult to enforce, expensive, and present barriers to international trade. These commenters stated that regulated entities may choose to make a BE disclosure rather than conduct testing, thereby resulting in different labels for similar food products.

Other commenters supported the use of testing to determine detectability and offered ideas regarding testing methods and standards to determine the presence or absence of detectable modified genetic material. A few commenters asked AMS to establish minimal standards regarding the analytical tools used for detecting, identifying, and quantifying modified genetic material. Some commenters also urged AMS to update the NBFDS as scientific detection methods evolve, and a few further recommended that AMS maintain publicly available guidance documents or lists of scientifically validated genetic testing methods to

ensure testing consistency in the marketplace.

AMS acknowledges there are multiple ways to determine whether a food or ingredient contains detectable modified genetic material. Because the amended Act authorizes examinations, audits, and similar activities with respect to records for enforcement of the NBFDS (7 U.S.C. 1639b(g)(2)–(3)), AMS added provisions in § 66.9 that describe how regulated entities can use records to demonstrate that modified genetic material is not detectable. Regulated entities are in the best position to know about the products they are sourcing and the refinement processes they have undergone. An entity's records, therefore, can be used to demonstrate that modified genetic material is not detectable.

First, as provided in § 66.9(a)(1), regulated entities can demonstrate that modified genetic material is not detectable with records verifying that the food is sourced from a non-bioengineered crop or other food source, such as non-bioengineered salmon.

Second, as provided in § 66.9(a)(2), regulated entities can demonstrate that modified genetic material is not detectable in the food with records verifying that the food has been subjected to a refinement process ''validated'' to render modified genetic material undetectable. Process validation for the purposes of the NBFDS can be achieved through laboratory testing, as provided in § 66.9(b). Commenters stated that modified genetic material is undetectable when bioengineered crops are refined or processed under certain conditions. Commenters described the food refining and manufacturing process and explained the rigorous quality controls necessary to meet modern customer demands. Based on this information, AMS believes that once a refiner's process has been validated by testing to render modified genetic material undetectable, foods subjected to the same process in a defined, controlled, documented, and repeated way will also have no detectable modified genetic material. Regulated entities that produce or use refined foods may rely on processing records alone to prove the absence of detectable modified genetic material. In other words, foods subjected to the validated refining process would not require additional laboratory testing to prove the lack of modified genetic material.

To comply with NBFDS requirements, regulated entities can maintain records to verify the foods they use have been subjected to refining processes that have been validated to render modified genetic material undetectable. Such records may include customary processing records maintained in the normal course of business, as well as copies of the most recent analytical testing results used to validate the refining process. Section 66.9(c) provides standards of performance for analytical testing to validate that foods subjected to specific refining processes contain no detectable modified genetic material.

Third, as provided in § 66.9(a)(3), regulated entities can demonstrate that modified genetic material is not detectable by maintaining certificates of analysis or other testing records appropriate to the specific food tested which confirm the absence of modified genetic material. As mentioned above and provided in § 66.9(c), AMS established performance standards related to detectability analyses for the purposes of the NBFDS.

AMS recognizes that some regulated entities may wish to disclose that their processed food is derived from a bioengineered source even when modified genetic material is not detectable in the food. In addition to the authority to establish the mandatory disclosure Standard, the amended Act at 7 U.S.C. 1639b(a)(2) grants the Secretary the authority to establish other requirements that are necessary to carry out the Standard. AMS has determined, based on numerous comments, that it is necessary for the Standard to include the ability for regulated entities to disclose voluntarily that their processed food was made with ingredients derived from a bioengineered source to provide a mechanism for regulated entities to provide information to consumers. This provision is discussed in more detail Section III.I.—Voluntary Disclosure, below.

2. Conventional Breeding

AMS did not include a proposed definition of ''conventional breeding,'' a component term of the definition of ''bioengineering.'' The NPRM solicited comments on whether such a definition should be included in the NBFDS, and if so, what it should be.

Many commenters recommended that AMS define ''conventional breeding'' within the NBFDS final rule, to better define the scope of NBFDS for regulated entities and consumers. Several commenters suggested various definitions, including adopting the definition used by FDA or from the Codex Alimentarius. Several commenters stated that the term ''conventional breeding'' is commonly understood in the industry and, therefore, does not need to be defined. Some of those commenters who did not support defining the term argued that any such attempts would be inherently confusing or misleading to consumers.

AMS finds no compelling reason to adopt a definition of ''conventional breeding'' at this time and agrees with commenters who advised not defining the term. AMS finds that ''conventional breeding'' is a commonly understood term within industry and does not need to be defined. As techniques and technology evolve, any definition today could become unworkable or obsolete because it does not and could not anticipate those advancements. Foregoing defining the term allows AMS to respond to those challenges in real time.

3. Found in Nature

AMS did not include a proposed definition of ''found in nature,'' another component term of the definition of ''bioengineering.'' The NPRM solicited comments on whether such a definition should be included in the NBFDS, and if so, what it should be. The NPRM specifically requested comments on whether protections under intellectual property law might be considered when determining whether a genetic modification could be found in nature. Comments were also sought on other possible methods for determining whether a genetic modification could be ''found in nature.''

Commenters generally did not support defining or including the term ''found in nature'' within the NBFDS. Many of those in opposition believed the term ''found in nature'' itself was nebulous, misleading, and not adequately defined by science. Others argued that agriculture is inherently separate from nature. Of those that did request the term be defined, two common suggestions were ''spontaneously occurs in nature, such as natural biological evolution, and does not overcome natural physiological reproductive or combination barriers,'' or ''the kinds of genetic modifications which can occur in nature within the genome of an organism, without human intervention.''

One commenter was concerned that if definitions are deemed necessary, the definitions avoid setting precedents in other regulatory areas, and be kept as simple and as clear as possible. Another group of commenters stated that ''this should be done through a supplemental proposed rule that provides the public with an additional opportunity to provide public comments.''

Commenters mostly rejected the idea of using intellectual property law as a method of determination. Some of the

objections were that it would add more complexity to the NBFDS without any additional clarity; could create unintended disincentives towards development of non-BE foods; or is outside the scope of the NBFDS. One commenter supported the consideration of intellectual property law ''when appropriate, as one non-dispositive factor among others in making a determination.'' Another stated that the absence of a patent should not be a factor in determining if a modification can be found in nature, since it is not required to seek patents on BE food.

AMS finds it unnecessary to define the term ''found in nature.'' AMS received no compelling arguments to define the term and believes that attempting to do so may cause confusion in light of the rapid pace of innovation. In addition, there was little support for relying on intellectual property law to inform decisions about whether specific modifications ''could not otherwise be found in nature.'' In order to incorporate technological changes in industry into this mandatory labeling standard, AMS believes it needs to retain maximum flexibility. That will not be accomplished by narrowly defining ''found in nature.''

D. List of Bioengineered Foods

AMS has developed the List of Bioengineered Foods (List) to identify the crops or foods that are available in a bioengineered form, and to aid regulated entities considering whether they may need to make a BE disclosure. The List is provided in § 66.6 of the Standard. As will be discussed later in Section III—Disclosure, a regulated entity's records will determine whether disclosure for that food is required under the NBFDS. The List includes bioengineered foods for human consumption that may be produced anywhere in the world. But the List should not be considered exhaustive, as new BE products continue to be developed. Even if a food is not on the List, regulated entities that have actual knowledge that a food they are selling is bioengineered, as defined in § 66.1, must make appropriate disclosure of that food. The List will be maintained and updated as described later in this section.

The List of Bioengineered Foods replaces the two lists of commercially available bioengineered foods in the United States that AMS proposed in the NPRM. AMS proposed in the NPRM maintaining lists of ''highly adopted'' and ''non-highly adopted'' BE foods based on U.S. planted crop acreage.

While some commenters agreed that the lists might simplify compliance with the NBFDS, many recommended consolidating the two lists into one and expanding the consolidated list to include bioengineered foods produced in other countries to provide a more complete picture of the variety of foods produced through bioengineering. Commenters argued against equating U.S. planted acreage with human food production and commercial availability in the United States, explaining that a large percentage of highly adopted bioengineered crops are used for animal feed, and that U.S. planted acreage does not necessarily reflect the prevalence of bioengineered foods available on the market. Commenters further argued that commercial availability should not be a basis for regulation, because that attribute is not specified in the definition of BE food, and because commercial availability can vary from country to country, depending on how foods are approved for use.

For simplicity, AMS consolidated the two lists into one and expanded the consolidated List to include bioengineered crops and foods that may be produced in other countries. The List makes no presumptions about market share represented by bioengineered versions of those crops and foods in the United States. It merely provides information about what bioengineered crops and foods (including ingredients made from such foods), that meet the definition of ''bioengineered food'', could be offered for retail sale in the United States, based on information available to AMS. A crop or food may be included on the List, but not require disclosure under the NBFDS. For instance, not all apple varieties are bioengineered. Non-bioengineered apples would not require disclosure. As noted elsewhere, the amended Act requires each person subject to mandatory BE food disclosure under the NBFDS to maintain records such as the Secretary determines to be customary or reasonable in the food industry to establish compliance with the Standard. *See* 7 U.S.C. 1639b(g)(2). The List establishes the need for recordkeeping by regulated entities who are using or selling the crops and foods on the List. Further, the List will aid regulated entities in deciding whether they may need to make a BE disclosure. Options for disclosure related to a regulated entity's records about foods on the List are described in Section III.A.5 and IV.A of this document.

To compile the lists that were proposed in the NPRM, AMS considered data published by the International Service for the Acquisition of Agri-biotech Applications (ISAAA),[2] FDA's list of Biotechnology Consultations on Food from GE Plant Varieties (Consultations), and information published by USDA's Economic Research Service (ERS).[3] AMS also considered input from industry stakeholders and consumers about which foods should be considered bioengineered and require disclosure labeling. Some commenters in response to the NPRM recommended that ISAAA be the sole source for information on international BE foods and the modifications that have been made to them. Some commenters said that foods should be added to the list as soon as any one of FDA's consultation processes are completed for that food. Other commenters suggested that additional sources of data on BE foods, such as *Statistics Canada,*[4] should be considered, given the frequent exchange of foods between Canada and the U.S.

Each of the recommended sources assists in the development and maintenance of the List; the List should represent a composite of information gathered from many sources. However, to be consistent in determining what crops or foods should be on the List, AMS has determined that the foods included on the initial List of Bioengineered Foods must meet the following criteria: (1) They are authorized for commercial production somewhere in the world, and (2) they are reported to be in legal commercial production for human food somewhere in the world. AMS relied on resources such as USDA reports and databases, and ISAAA reports and databases,[5] to determine what crops and foods currently meet those criteria. The List attempts to capture any BE crops or foods that meet the statutory definition of ''bioengineering,'' based on existing technology, and that could potentially be offered for sale in the United States. AMS recognizes that there are other bioengineered foods that meet one of the criteria for list inclusion, but not both. For example, bioengineered rice has been authorized for production and use

[2] ISAAA (2016), Global Status of Commercialized Biotech/GM Crops: 2016. *ISAAA Brief No. 52.* ISAAA: Ithaca, NY. *http://www.isaaa.org/resources/publications/briefs/52/default.asp,* accessed February 5, 2018.

[3] Economic Research Service (2017), Genetically engineered varieties of corn, upland cotton, and soybeans, by state and for the United States, 2000–17, *Adoption of Genetically Engineered Crops in the U.S., https://www.ers.usda.gov/data-products/adoption-of-genetically-engineered-crops-in-the-us.aspx,* accessed February 5, 2018.

[4] Statistics Canada, *https://www.statcan.gc.ca/eng/start,* accessed July 26, 2018.

[5] ISAAA GM Approval Database: *http://www.isaaa.org/gmapprovaldatabase/.* Accessed August 10, 2018.

as food in several countries, but AMS finds no evidence that it is currently in legal commercial production anywhere. Foods such as BE rice could be added to the List through the update process described below when available information suggests that it would be appropriate to do so.

The considerations described above and the NBFDS definition for ''bioengineered food'' will be used to determine what foods would be added to or removed from the List moving forward. (See the Treatment of Technologies section, below.)

Section 66.1 of the NBFDS defines the List of Bioengineered Foods as a list maintained and updated by AMS of foods for which bioengineered versions have been developed. In the NPRM, AMS proposed to describe the initial List in the preamble to the final rule and to update the List by notice in the **Federal Register** with the opportunity for public comment. Given the impact of including foods on the List, we have determined that it is appropriate to incorporate the foods on the List in the final rule text to provide greater transparency. Further, AMS will update the List through rulemaking.

Information and data to support inclusion of each crop or food on the List come from a variety of reliable sources, including industry reports and academic and government sources. In some cases, the listed crop or food itself may not typically be considered human food, but it may be the source from which human food is made. For example, products made from field corn, such as grits, corn chips, corn tortillas, and corn cereal are human foods and may be subject to disclosure if they meet the definition of bioengineered food. The following foods comprise the List of Bioengineered Foods: alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh), potato, salmon (AquAdvantage®), soybean, squash (summer), and sugarbeet.

Where practical, the List includes specific information about individual crops and foods, such as descriptions or trade names, to help distinguish bioengineered versions of those foods from their non-bioengineered counterparts, as requested by commenters. This specificity is intended to identify foods for which disclosure may be necessary, based on the regulated entities' records. For instance, although apples are on the List, most apple varieties are not known to be bioengineered. The List is narrowed by identifying the specific apples that are known to be bioengineered. As other BE versions of the listed foods are authorized and become legally available, AMS will revise such listings to be more generic during the annual update process.

Regulated entities may refer to the AMS website to obtain additional information regarding the associated bioengineered events for crops or foods they are sourcing and determine whether they need to make a disclosure. In some cases, trade names or other information may be provided to further simplify the identification and determination process for regulated entities. As well, information on the website may provide consumers additional details about traits (*e.g.,* non-browning, pesticide resistance, virus resistance, enhanced growth, etc.) for which the foods have been bioengineered. Providing this detailed information is intended to help reduce burdens for regulated entities by narrowing the list of varieties of each food that may be bioengineered.

1. List Maintenance and Revision

AMS proposed in the NPRM that the List be subject to review and update on an annual basis, allowing for public input into the process. AMS also proposed an 18-month compliance period following List updates to allow for food label revisions in response. Such a schedule was proposed to minimize the frequency with which regulated entities would be required to update food labels, if, for instance, new BE foods were added to the List. Some commenters urged AMS to revise the List more frequently to avoid delay providing current information to consumers. Others suggested updates should occur less frequently than proposed to minimize the impact on small businesses that might have to change labels accordingly. Some commenters asked that the compliance period for revising labels be shortened, and others asked that it be extended.

The NPRM described a process to update the List on an annual basis. The final rule adopts that process, except that AMS will also initiate rulemaking to amend the List as appropriate. As described in § 66.7(a), AMS will announce the annual review through the **Federal Register** and on the AMS website. Interested parties may submit recommendations about foods that could be added to or deleted from the List at any time, including in response to the request for recommendations that accompanies the review notice. Recommendations should include data or other information to support those recommendations. AMS will publish any recommendations, along with supporting information, on its website and request comments on the recommendations.

Following a review of available information, including consultation with Federal Government agencies that comprise the Coordinated Framework or any successor body, AMS will make a determination on whether to initiate rulemaking to amend the List. Section 66.7(b) provides an 18-month compliance period from the effective date of any revision to the List to allow regulated entities time to revise existing food labels if needed.

While the List of Bioengineered Foods identifies the foods for which regulated entities must maintain records and that may be required to bear a BE disclosure, the List and the records kept do not alleviate a regulated entity's responsibility for disclosure when the entity has actual knowledge that its food is a BE food. Under § 66.109, a regulated entity with actual knowledge that it is using BE food is responsible for disclosing BE foods, even if the food is not listed on the List of Bioengineered Foods. This section does not require regulated entities to seek out that information, but they also cannot ignore or be willfully blind to information that the food they are sourcing is in fact bioengineered.

2. Treatment of Technologies

Technologies continue to evolve, and food produced through a specific technology may or may not meet the definition of BE food. Respondents to the 30 questions urged AMS to determine whether foods developed through certain emerging technologies would be within the scope of the definition of BE food. However, AMS proposed in the NPRM that the products of technology, rather than solely the technology itself, should be evaluated to determine whether a food meets the BE food definition and might require disclosure. AMS proposed to provide for the consideration of new technologies used to develop foods during the process of reviewing and revising the List pursuant to § 66.7(a). AMS proposed to do so through consultation with the U.S. Government agencies responsible for oversight of the products of biotechnology—USDA–APHIS, EPA, FDA, and appropriate members of the Coordinated Framework for the Regulation of Biotechnology. In that way, AMS could understand whether foods resulting from new technologies would meet the definition of ''bioengineered food'' and should be added to the List. Conversely, foods may be removed from the List if they are no

longer produced from a technology that meets the definition of ''bioengineered food.'' In other cases, some varieties may meet the definition, while others do not.

Comments in response to the NPRM ranged from those commenters who urged that the scope of the NBFDS should reflect the use of all current and emerging technologies to those who argued that some new genetic engineering techniques would fall outside the scope of the statutory definition. AMS continues to believe that determinations about what constitutes BE food for the purposes of the NBFDS should focus primarily on the characteristics of foods that have been produced using bioengineering as defined in the amended Act, and whether such foods meet the definition of ''bioengineered food.'' Thus, as proposed, the products of new technologies will be considered during reviews and updates of the List of Bioengineered Foods.

E. Factors and Conditions

As described in the proposed rule, in promulgating a regulation to carry out the Standard, the amended Act directs the Secretary to establish a process for requesting and granting a determination by the Secretary regarding other factors and conditions under which a food is considered a BE food. 7 U.S.C. 1639b(b)(2)(C). The amended Act does not specify the process by which the Secretary will determine other factors and conditions under which a food is considered a BE food; rather, it provides the Secretary with discretion in setting up such a process.

Commenters were generally supportive of the proposed process for adopting factors or conditions under which a food is considered a BE food, and AMS is adopting the proposed process described in the NPRM. Subpart C describes the process by which people can submit a request or petition for a determination regarding other factors or conditions. The acceptance of a request or petition for determination regarding a factor or condition would then culminate in rulemaking to incorporate the factor or condition into the ''bioengineered food'' definition. Rulemaking allows for transparency and public participation in determining whether or not the definition of ''bioengineered food'' should be amended. Ultimately, the impact of adopting the proposed factors or conditions (as follows) would be to limit the scope of the definition of ''bioengineered food,'' thus potentially excluding certain products from disclosure.

Under § 66.200, the determination process begins with the submission of a request or petition for determination regarding other factors and conditions under which a food is considered a BE food in accordance with § 66.204. Section 66.204 describes the process for submitting a request or petition, including where to send the submission. The submission needs to include a description and analysis of the requested new factor or condition and any supporting documents or data. Section 66.204 describes how to properly mark confidential business information that may be included to support the request, to ensure its confidentiality. Finally, § 66.204 instructs that the submission must explain how the standards for consideration apply to the requested factor or condition.

Section 66.202 describes the standards for consideration by which the Secretary's designee, the AMS Administrator, would evaluate the request or petition. Given the existing statutory definition of ''bioengineering,'' the first standard, in paragraph (a), requires the requested factor or condition to be within the scope of the definition of ''bioengineering'' in 7 U.S.C. 1639(1). The second standard, in paragraph (b), requires the Administrator to evaluate the cost of implementation and compliance. In applying this second standard, the Administrator will evaluate the cost related to the factor or condition, the difficulty for affected regulated entities to implement the factor or condition, especially small businesses, and the difficulty AMS would have in monitoring compliance with the factor or condition. Paragraph (c) allows the Administrator to consider other relevant information as part of the evaluation. Relevant information for a particular proposed factor or condition will include its compatibility with the food labeling requirements of other Federal agencies or foreign governments. In determining compatibility with other requirements, AMS will consult with the U.S. Government agencies responsible for oversight of the products of biotechnology: USDA–APHIS, EPA, and FDA. Such information may allow AMS to align the NBFDS with the standards of other Federal agencies or foreign governments, which may facilitate interstate commerce and trade by allowing for recognition of compatible standards.

The Administrator will also consult with the United States Trade Representative (USTR) and the Department of State to ensure the request or petition regarding other factors and conditions related to BE disclosure requirements results in implementation in a manner consistent with international trade obligations as mandated by 7 U.S.C. 1639c(a). If the Administrator determines that the request or petition satisfies the standards for consideration, AMS will initiate rulemaking that seeks to amend the definition of ''bioengineered food'' in § 66.1 to include the factor or condition.

Some commenters asked AMS to clarify in the final rule the parameters for submitting petitions to adopt factors or conditions. A few commenters asked AMS to establish a specific time period within which the agency would respond to requests for adoption of factors or conditions, as well as a time period for regulated entities to attain compliance with adopted factors or conditions.

AMS has made no changes to the submission parameters in connection with requests or petition for factors and conditions, as we believe they are clear and transparent. AMS has not established a time period within which the agency will respond to requests for adoption of factors or conditions because such responses will vary depending on agency resources, the complexity of the submitted request for adoption of factors or conditions, and the nature of implementing regulation. Similarly, AMS has not provided a time period for regulated entities to attain compliance with adopted factors and conditions in subpart C, as adopted factors and conditions act as carve outs from the statutory definition of bioengineering such that compliance with the adopted factor or condition should not be burdensome. To the extent that the adopted factors or conditions would be burdensome or require additional time for compliance, AMS would address any compliance period in future rulemakings considering the specific adopted factors and conditions.

In the NPRM, AMS proposed two submitted requests for factors and conditions under which a food is considered a BE food. Those requests involved (1) whether incidental additives present in food should be considered ''bioengineered food'' and labeled accordingly; and (2) whether the modified genetic material in a refined food may be detected. The impact of adopting these factors or conditions will be to limit the scope of the definition of ''bioengineered food,'' thus potentially excluding certain products from disclosure.

1. Incidental Additives

The first factor or condition concerns a BE food that is an incidental additive. As described in 21 CFR 101.100(a)(3), incidental additives that are present in food at an insignificant level and do not have any technical or functional effect in the food are exempt from certain labeling requirements under the FDCA. Commenters in response to AMS's 30 questions requested that incidental additives not be subject to disclosure under the proposed NBFDS because they are exempt from inclusion in the ingredient statement on a food label, according to 21 CFR 101.100(a)(3). AMS is aware that an ingredient that is required to be listed in the ingredient list in one product may be used in another product as an incidental additive that is not required to be included in the ingredient list. Under this factor or condition, such an item will only trigger disclosure when it is used as an ingredient that is included on the ingredient list, not when used as an incidental additive.

Application of this factor or condition falls within the scope of the definition of ''bioengineering'' in 7 U.S.C. 1639(1), and thus meets the first standard for consideration. This factor or condition will also satisfy the second standard for consideration—cost of implementation and compliance. Aligning the disclosure requirements of the NBFDS with the ingredient declaration requirements under applicable FDA regulations will simplify compliance and reduce labeling costs for regulated entities. Finally, AMS finds it relevant that adoption of this factor or condition would be compatible with the food labeling requirements of other Federal agencies and some foreign governments.

The impact of adopting this proposed factor or condition as not being within the definition of ''bioengineered food'' is to exclude certain incidental additives from disclosure. Based on public comments on the 30 questions and the NPRM, AMS believes adopting this factor or condition may exempt a number of enzymes that are currently used in food production but not currently listed in the ingredient statement on a food label. However, based on those same comments, AMS is aware that some enzymes may be used in a manner that requires them to be labeled on the ingredient statement. In the NPRM, AMS sought comment on whether, more generally, enzymes present in food should be considered ''bioengineered food.''

AMS has made no changes to this factor and condition regarding incidental additives under which products can be excluded from disclosure. The amended Act provides the Secretary with authority to limit disclosure in certain circumstances. The factors and conditions process offers a fair and rational method by which to consider various proposals. For the reasons mentioned, AMS believes that exempting incidental additives from BE disclosure that are not required to be labeled per FDCA regulations is sensible, in alignment with the labeling requirements of other trading partners and will limit the burden on regulated entities without unduly limiting disclosure for consumers.

Some commenters sought modifications to the text of this provision clarifying what ''insignificant'' means or clarifying the types of incidental additives that are not subject to disclosure. AMS does not believe such clarification is necessary. The provision references the FDA regulations that AMS relied upon in drafting the provision. That FDA regulation describes the circumstances in which incidental additives are not labeled as an ingredient. Title 21 CFR 101.100(a)(3) provides an exemption for incidental additives that are present in a food at insignificant levels and do not have any technical or functional effect in that food. For the purposes of § 101.100(a)(3), incidental additives are:

- Substances that have no technical or functional effect but are present in a food by reason of having been incorporated into the food as an ingredient of another food, in which the substance did have a functional or technical effect.
- Processing aids, which are as follows:
  - Substances that are added to a food during the processing of such food but are removed in some manner from the food before it is packaged in its finished form.
  - Substances that are added to a food during processing, are converted into constituents normally present in the food, and do not significantly increase the amount of the constituents naturally found in the food.
  - Substances that are added to a food for their technical or functional effect in the processing but are present in the finished food at insignificant levels and do not have any technical or functional effect in that food.
- Substances migrating to food from equipment or packaging or otherwise affecting food that are not food additives as defined in section 201(s) of the act; or if they are food additives as so defined, they are used in conformity with regulations established pursuant to section 409 of the act.

Section 101.100(a)(3)(i), (ii), and (iii) provide a list of incidental additives that are not required to be labeled under FDA regulations and by extension are not required to be disclosed as BE foods. AMS believes that the cross-reference to the FDA regulations is clear.

With respect to treatment of yeasts, enzymes, or any other microorganisms, AMS agrees that if they qualify as incidental additives that are not required to be labeled as ingredients on a food label, then they do not require disclosure as BE foods. However, bioengineered yeasts, enzymes, and other organisms that do not qualify as incidental additives that are not required to be labeled as ingredients may require disclosure as BE foods unless they meet the requirements of another provision (for instance, by establishing that their modified genetic material is not detectable). AMS cannot make a categorical exemption for microorganisms in this final rule; however, such an exemption is possible through the factors and conditions process in future rulemakings.

2. Undetectable Modified Genetic Material

The NPRM also sought comment on another proposed factor and condition—excluding food from the disclosure standard where the modified genetic material in the food cannot be detected. As the NPRM noted, if AMS ultimately proceeded with Position 2 and presumed that refined ingredients are bioengineered foods, this factor or condition, if adopted, would be a means to potentially exclude products where modified genetic material cannot be detected. As discussed above, AMS did not adopt Position 2, so this factor or condition is not incorporated into the final rule. The definition of ''bioengineered food'' in the final rule already excludes foods where modified genetic material is not detectable.

F. Exemptions

The amended Act includes two express exemptions to the disclosure requirement: For food served in a restaurant or similar retail food establishment and for very small food manufacturers. 7 U.S.C. 1639b(b)(2)(G). The amended Act also authorizes the Secretary to ''determine the amounts of a bioengineered substance that may be present in food, as appropriate, in order for the food to be a bioengineered food.'' 7 U.S.C. 1639b(b)(2)(B). As well, the amended Act prohibits food derived from an animal to be considered a BE food solely because the animal consumed feed produced from, containing, or consisting of a bioengineered substance. 7 U.S.C. 1639b(b)(2)(A). Finally, Subtitle F specifies that the certification of food under USDA's National Organic Program (7 CFR part 205) shall be

considered sufficient to make claims about the absence of bioengineering in the food. 7 U.S.C. 6524. Section 66.5 incorporates each of these as regulatory exemptions in the NBFDS.

1. Food Served in a Restaurant or Similar Retail Food Establishment

Section 66.5(a) exempts food served in a restaurant or similar retail food establishment from disclosure under the NBFDS. In the NPRM, § 66.1 defined ''similar retail food establishment'' as a cafeteria, lunch room, food stand, saloon, tavern, bar, lounge, other similar establishment operated as an enterprise engaged in the business of selling prepared food to the public, or salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside the retailer's premises. This definition is consistent with the definition of ''food service establishment'' included in other labeling programs authorized by the amended Act. *See* 7 U.S.C. 1638(3) and the regulations at 7 CFR 60.107 and 7 CFR 65.140, with minor modifications.

The NPRM solicited comments on the scope of this definition. Some commenters stated that restaurants should not be exempt from the NBFDS because it would undermine the transparency and consistency important to consumers who want to know the origins of their food. Other commenters supported the exemption generally and AMS's proposed definition. Other commenters stated that AMS's proposed definition was too narrow and should include a list of places as examples, rather than an exclusive list, such as cafeteria, lunch room, food stand, food truck, saloon, tavern, bar, lounge, salad bar, delicatessen, entertainment venue, or other retail business establishment where meals or refreshments constituting food may be purchased. One commenter requested that transportation carriers be added to the list of places exempted from the NBFDS.

Another commenter stated that all foods prepared, processed, or packaged in the retail food establishment, including those utilizing ''central kitchen'' locations for certain prepared foods, should be exempt from the disclosure requirement and that the term ''packaged'' should conform to 21 CFR 1.20, FDA's general food labeling requirements.

Based on the comments received, AMS has modified the definition of ''similar retail food establishment'' to add additional examples, including food truck and transportation carrier. AMS considered including a list of places as examples, rather than an exhaustive list, but believes that the reference to ''other similar establishment operated as an enterprise engaged in the business of selling prepared food to the public'' should capture any additional places that are not specifically listed. To clearly address a point of confusion observed in the comments received, AMS is clarifying that salads, soups, and other ready-to-eat items prepared by grocery stores are exempt from the disclosure requirements.

AMS has not modified the definition to state ''where meals or refreshments constituting food may be purchased,'' as we believe that with this insertion the exemption would be much broader than the plain meaning of the amended Act. AMS believes that the exemption is intended to cover ready-to-eat or prepared foods. To extend the exemption to all foods prepared, processed, or packaged in a retail food establishment, which would include bulk foods such as granola or apples in a bin, would conflict with the requirement that foods subject to FDCA's labeling requirements are subject to disclosure. The modified definition provides clarity and flexibility to regulated entities and is in accordance with the plain language of the amended Act.

2. Very Small Food Manufacturers

Section 66.5(b) exempts very small food manufacturers from the disclosure requirement of the NBFDS. Section 66.1 defines ''very small food manufacturer'' as a food manufacturer with annual receipts of less than $2.5 million. To develop this definition, AMS considered FDA's exemptions or special labeling requirements for certain food if the food is offered for sale by certain persons who have annual gross sales made or business done in sales to consumers that are not more than $500,000 under certain conditions (see 21 CFR 101.9(j)(1)(i) and 101.36(h)(1)) and U.S. Census Bureau (USCB) regulations. AMS evaluated the impact of applying various definitions of ''very small food manufacturer'' by estimating the number of firms that would be exempted, the number of products that would likely be exempt, and the proportion of annual industry sales that would be exempt under each exemption level. The NPRM included the following tables showing the cumulative percentage of firms, products (UPCs), and sales that would be exempt if the definition of ''very small food manufacturer'' were set at the top of each of the annual revenue ranges (based on USCB's 2012 *Statistics of U.S. Businesses*).

FOOD MANUFACTURERS

Establishment receipts threshold (in $)	Cumulative percent of firms exempt (%)	Cumulative percent of products exempt (%)	Cumulative percent of sales exempt (%)
<100,000	20	0	0
100,000–499,999	45	1	0
500,000–999,999	58	2	1
1,000,000–2,499,999	74	4	1
2,500,000–4,999,999	81	6	2
5,000,000–7,499,999	84	7	3
7,500,000–9,999,999	86	8	3

DIETARY SUPPLEMENT MANUFACTURERS

Establishment receipts threshold (in $)	Cumulative percent of firms exempt (%)	Cumulative percent of products exempt (%)	Cumulative percent of sales exempt (%)
<100,000	7.36	0.02	0.00
100,000–499,999	16.75	0.12	0.10
500,000–999,999	26.14	0.33	0.32
1,000,000–2,499,999	45.18	1.54	1.26
2,500,000–4,999,999	59.14	3.26	2.63
5,000,000–7,499,999	62.18	3.83	3.15
7,500,000–9,999,999	63.96	4.41	3.63

Applying the FDA exemptions (annual sales of no more than $500,000) at 21 CFR 101.9(j)(1)(i) and 101.36(h)(1) as described above would exempt 45 percent of firms, only one percent of products, and less than 0.5 percent of sales for food manufacturers, and only 17 percent of firms and about 0.1 percent of products and sales for dietary supplement manufacturers. In conducting the Initial Regulatory Impact Analysis, we estimated the impact of applying the USCB definition of very small enterprise (fewer than 20 employees), which falls somewhere between the $2.5 million and $5 million annual sales cutoffs. We found that both of these revenue cutoff levels for the definition of ''very small food manufacturer'' would offer significantly greater relief for those manufacturers, while still having a relatively minor impact on the amount of information available to consumers. Exempting manufacturers with annual receipts of less than $2.5 million would provide regulatory relief to 74 percent of food manufacturers and 45 percent of dietary supplement manufacturers, while reducing the number of products covered by four percent (two percent for dietary supplements), and the number of purchases covered by only one percent for both food and dietary supplement manufacturers.

The NPRM solicited comments on alternative revenue cutoffs for the definition of ''very small food manufacturer'' of $500,000 and $5 million. Many commenters generally supported AMS's proposal. Some stated that there should be no exemption for very small food manufacturers or to use a $500,000 or $1,000,000 revenue cutoff. Some commenters stated that number of employees was a more suitable criterion in determining the threshold for a very small food manufacturer. One commenter recommended the agency should revise the definition of ''very small food manufacturer'' in proposed 7 CFR 66.1 to read: ''any food manufacturer with either (1) annual receipts of less than $2,500,000 or (2) 50 or fewer employees, measured as an annual daily average.''

Some commenters suggested that we should use food sales, rather than total receipts, to define small food manufacturers to avoid inclusion of firms that have multiple sources of income that could cause them to exceed the threshold. Some commenters stated that the exemption for very small food manufacturers be extended to small retailers.

AMS has made no changes to its proposal. In considering this definition, AMS must balance providing regulatory flexibility for regulated entities and providing information to consumers regarding the bioengineered status of their foods. AMS considered other revenue cutoffs, including those above and below $2,500,000, and considered other definitions from various sources. Because food and dietary supplement manufacturers are in the manufacturing sector, they are both defined by number of employees for purposes of SBA size categorization. However, the firms defined as small or very small for purposes of the NBFDS all fall well below the SBA size categorizations, so we do not feel we need to be bound by that methodology.

In addition, the small food manufacturer definition was defined to be consistent with the FDA definition of small manufacturer under its nutrition labeling standards, which use annual receipts. AMS believes that the very small food manufacturer definition should be consistent with these other definitions.

AMS believes that annual receipts are a reasonable measure in determining the threshold for small businesses and specifically here, very small food manufacturers. Using total receipts is administratively simpler than tracking and demonstrating revenue by category for purposes of this rule. We do not expect that there are a significant number of firms for which this distinction would make a difference, but it would increase recordkeeping burden for all firms that fall under this exemption if it was based on food sales rather than annual receipts.

The $2.5 million threshold will provide relief to small businesses, but will not markedly decrease the number of products subject to disclosure. By defining ''very small food manufacturers'' as those with annual receipts below $2,500,000, about 74 percent of food manufacturers are exempt from mandatory disclosure, but 96 percent of products will still be subject to disclosure. An increase in revenue cutoff would increase the number of exempt businesses, but would also increase the number of products exempt from disclosure. The definition of very small food manufacturer provides flexibility for small entities while providing information to consumers regarding the bioengineered status of their foods.

With respect to comments seeking that this exemption extend to small retailers, AMS states that this exemption is statutorily mandated and cannot be extended to small retailers. To the extent that a small retailer is also a very small food manufacturer, they may be able to take advantage of the exemption in that instance.

3. Threshold

Section 66.5(c) establishes a threshold for the inadvertent or technically unavoidable presence of bioengineered substances of up to five percent (5%) for each ingredient, with no such allowance for any BE presence that is intentional. Section 66.1 defines ''bioengineered substance'' as substance that contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature. This definition differs slightly from the definition in the NPRM. We replaced the word ''matter'' with ''substance'' to simplify

discussions about threshold. Thus, food in which any single ingredient contains more than 5% of a bioengineered substance, regardless of whether its presence is inadvertent or unintentional, is subject to disclosure. Food containing any amount of a bioengineered substance that is not inadvertent or unintentional is also subject to disclosure.

In proposing an appropriate threshold level, AMS considered responses to the 30 questions posted on its website. Respondents offered a number of concepts to consider, including different threshold levels for determining exemptions (0.9, 5, and 10 percent) and different ways of calculating the threshold (by ingredient or by total weight). The NPRM solicited comments on multiple proposed issues pertaining to threshold exemptions. These exemptions consisted of three alternative thresholds for bioengineered substances that would trigger disclosure.

The first proposed option (Alternative 1–A) would establish that food in which an ingredient contains a BE substance that is inadvertent or technically unavoidable, and accounts for no more than five percent (5%) of the specific ingredient, would not be subject to disclosure as a result of that one ingredient. The second proposed option (Alternative 1–B) would establish that food, in which an ingredient contains a BE substance that is inadvertent or technically unavoidable, and accounts for no more than nine-tenths percent (0.9%) of the specific ingredient by weight, would not be subject to disclosure as a result of that one ingredient. The third proposed option (Alternative 1–C) would allow regulated entities to use intentionally a small amount of BE ingredients up to a certain threshold, such as 5% of the total weight of the product, before being required to label a product with a BE disclosure.

Some commenters supported threshold alternative 1–B, which would have exempted products where the bioengineered substance in an ingredient was inadvertent or technically unavoidable and less than 0.9 percent of each specific ingredient by weight. They suggested that this alternative is the most transparent, aligns with consumer expectations, is more widely used in other countries, and is the most closely aligned with existing industry standards.

A small number of comments supported alternative 1–C, an exemption allowing for the intentional use of a bioengineered substance up to 5 percent of the total weight of the food, because it would allow for the de minimis use of BE ingredients. Many commenters generally opposed alternative 1–C.

AMS has adopted Alternative 1–A because we believe this approach appropriately balances providing disclosure to consumers with the realities of the food supply chain. A threshold amount of 5 percent allows BE and non-BE production systems to coexist, whereas a lower threshold, such as 0.9 percent, may increase the regulatory burden for producers and food processors. Any disruption or increased burden on the food supply chain may unnecessarily increase the cost of producing food, and that cost may ultimately be passed on to consumers. To the degree that some production systems and supply chains have already adopted a threshold lower than 5 percent for purposes of voluntary labeling, continued compliance with a lower threshold for the inadvertent or technically unavoidable presence of a BE substance would meet the requirements of the NBFDS.

AMS considered the threshold amounts used by other countries and acknowledges that there is no uniform or universal threshold amount. While some other countries have chosen lower amounts for their threshold, such as 0.9 percent, compliance with a lower threshold for a foreign country would still comply with the NBFDS. For example, a food produced and labeled for sale in a country with a threshold amount of 0.9 percent, would still comply with the 5 percent threshold AMS has chosen because 0.9 percent is lower than 5 percent. AMS believes this approach minimizes the potential burden on trade.

AMS did not choose alternative 1–C or allow for the intentional use of a BE substance without requiring disclosure because the agency believes that allowing entities to avoid disclosing despite the intentional presence of BE substances in food does not provide consumers with the information they desire. In addition, AMS believes that, to the degree regulated entities are currently tracking the use of BE and non-BE foods for voluntary disclosure, most customary records only indicate the presence or absence of a BE substance and not necessarily the amount. Requiring regulated entities to track the amount of a BE substance for purposes of disclosure would create an unnecessary burden on regulated entities and likely increase their compliance costs.

AMS reiterates that the threshold is intended to allow for coexistence among BE and non-BE crops, and nothing about the threshold amount is meant to convey anything related to health, safety, or environmental attributes of BE food as compared to non-BE alternatives. This rule is intended only to provide a mandatory uniform national standard to equip consumers with information for their personal use.

4. Animals Fed With Bioengineered Feed and Their Products

The amended Act prohibits a food derived from an animal from being considered a BE food solely because the animal consumed feed produced from, containing, or consisting of a BE substance. 7 U.S.C. 1639b(b)(2)(A). Section 66.5(d) incorporates this statutory exemption. For example, eggs used in a baked good, where the eggs come from a chicken fed feed produced from BE corn and soy, would not be considered bioengineered solely on the basis of the chicken's feed.

As most commenters noted, this exemption is mandated by the amended Act, and AMS does not have the authority to change this statutory mandate. Some commenters argued that the rationale for excluding the products of animals fed bioengineered feed should also apply to yeasts, rennet, and enzymes produced by fermentation using a bioengineered substrate. The plain reading of the statutory language exempting the products of animals fed bioengineered feed does not provide authority for AMS to extend the exemption to yeast, rennet, or enzymes or to extend the definition of ''animal'' to include those substances. As discussed above, those substances may be exempted if they qualify as an incidental additive or if they do not contain detectable modified genetic material. Thus, the final rule adopts the proposed rule text without revisions.

5. Food Certified Under the National Organic Program

Subtitle F states that ''[i]n the case of food certified under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), the certification shall be considered sufficient to make a claim regarding the absence of bioengineering in the food, such as 'not bioengineered', 'non-GMO', or another similar claim.'' 7 U.S.C. 6524. The NPRM stated that implicit in the statutory provision is that certified organic foods are not subject to BE disclosure. This implication, in conjunction with the Secretary's authority to consider establishing consistency between the NBFDS and the Organic Foods Production Act, permits a regulatory exemption for products certified under

the NOP. *See* 7 U.S.C. 1639b(f). The NPRM proposed that § 66.5(e) would exempt certified organic foods from BE disclosure.

Commenters generally supported this exemption and some commenters stated the need for a technical correction to accurately exempt all food certified under the NOP and to create consistency with both the language and the meaning in the amended Act. The prohibition on the use of excluded methods extends to all NOP certified label categories (''100% Organic,'' ''Organic,'' and ''Made with Organic'') and all ingredients (organic and nonorganic) contained within each label category. Commenters stated that the inclusion of the phrase ''. . . certified organic . . .'' is problematic because it could imply that the exemption does not extend to products certified in the ''made with organic (specified ingredients or food group(s))'' labeling category and recommended that the exemption should be applied to foods certified under the NOP.

AMS agrees with commenters that a technical correction to this provision is required. This exemption is intended to cover all NOP certified label categories (''100% Organic,'' ''Organic,'' and ''Made with Organic'') because NOP regulations at 7 CFR 205.301(a) through (c) clearly require that no ingredient may be bioengineered. *See* 7 CFR 205.301(f)(1) and 205.105(e) and the definition of ''excluded methods'' in 7 CFR 205.2. Accordingly, § 66.5(e) is revised to read ''Food certified under the National Organic Program.'' This exemption, however, does not apply to ''products with less than 70 percent organically produced ingredients'' as described in 7 CFR 205.301(d) and 205.305 because those products may include bioengineered ingredients along with organic ingredients.

G. Severability

AMS has added a new § 66.11 on severability in subpart A. This is a standard provision in regulations. This section provides that if any provision of part 66 is found to be invalid, the remainder of the part shall not be affected.

III. Disclosure

As statutorily required, the NBFDS, ''for the purposes of regulations promulgated and food disclosures made pursuant to[], a bioengineered food that has successfully completed the pre-market Federal regulatory review process shall not be treated as safer than, or not as safe as, a non-bioengineered counterpart of the food solely because the food is bioengineered or produced or developed with the use of bioengineering.'' 7 U.S.C. 1639b(b)(3) The amended Act provides three disclosure options for all food subject to the mandatory BE food disclosure standard, as well as additional options for small food manufacturers, and requires that the Secretary provide reasonable alternative disclosure options for food contained in small and very small packages. 7 U.S.C. 1639b(b)(2)(D), 1639b(b)(F), and 1639b(b)(E). In addition, the amended Act required the Secretary to conduct a study to identify potential technological challenges that may impact whether consumers have access to the bioengineering disclosure through electronic or digital disclosure methods and provides specific factors to be considered in the study. 7 U.S.C. 1639b(c)(1) and 1639(b)(c)(3). Based on the study, if the Secretary determines that consumers would not have sufficient access to the bioengineering disclosure through electronic or digital disclosure methods, the Secretary, after consultation with food retailers and manufacturers, shall provide additional and comparable disclosure options. 7 U.S.C. 1639b(c)(4).

Subpart B specifies: (1) Who is responsible for the BE food disclosure in § 66.100; (2) the text disclosure in § 66.102; (3) the symbol disclosure in § 66.104; (4) the electronic or digital link disclosure in § 66.106; (5) the text message disclosure in § 66.108; (6) the disclosure options for small food manufacturers in § 66.110; (7) the disclosure options for small or very small packages in § 66.112; (8) the disclosure for food sold in bulk containers in § 66.114; (9) the voluntary disclosure in § 66.116; and (10) other claims in § 66.118. As used in subpart B, the key terms include ''information panel'' and ''label.'' As defined in § 66.1, these definitions are consistent with those used in the NOP regulations, 7 CFR 205.2. In addition, the terms ''regulated entity,'' ''marketing and promotional information,'' ''principal display panel,'' ''small package,'' ''very small package,'' and ''small food manufacturer,'' are also discussed.

A. General

1. Responsibility for Disclosure

The amended Act requires bioengineered food and bioengineered food ingredients to be labeled or ''disclosed'' in accordance with regulations promulgated by the Secretary. 7 U.S.C. 1639b(b)(1). Section 66.100(a) identifies three categories of entities responsible for disclosure: Food manufacturers, importers, and certain retailers. This final rule adopts these three categories of responsible entities as proposed. For purposes of clarity, a definition of ''regulated entity'' is incorporated in § 66.1 as ''the food manufacturer, importer, or retailer that is responsible for making bioengineered food disclosures under § 66.100(a).'' Accordingly, if a food is packaged prior to receipt by a retailer, either the food manufacturer or the importer is responsible for ensuring that the food label bears a BE food disclosure in accordance with this part. If a retailer packages a food or sells food in a bulk container and/or display, then the retailer is responsible for ensuring that the food bears a BE food disclosure in accordance with this part. Based on the input received from commenters, this approach will align responsibility for labeling with the requirements of other mandatory food labeling laws and regulations, including those administered by FDA and USDA FSIS.

2. International Impact

Based on extensive input from commenters, we continue to find that importers should be subject to the same disclosure and compliance requirements as domestic entities. Importers of BE foods are subject to the requirements of the NBFDS and are required to make appropriate disclosures on the labels of BE foods imported and sold in the United States.

Based on comments, this rule finds that establishing mutual recognition arrangements with appropriate foreign government entities that have established labeling standards for BE food may be appropriate in the future. No such recognition arrangements are currently in place or are established under this regulation. As no mutual recognition arrangements are currently in place, imports of products are subject to the disclosure and recordkeeping requirements of the NBFDS as described in this final rule. U.S. exports to non-partner countries will need to continue to meet that country's import requirements.

3. Appearance of Disclosure

Requirements on how the disclosure must appear on food labels and packaging remain the same as proposed in the NPRM. As provided in § 66.100(c), the disclosure is required to be of sufficient size and clarity to appear prominently and conspicuously on the label, making it likely to be read and understood by the consumer under ordinary shopping conditions. AMS believes these requirements will align with other mandatory food labeling requirements, including those

administered by FDA (21 CFR 101.15) and FSIS (9 CFR 317.2(b)). While FDA uses the term ''customary conditions of purchase'' (21 CFR 101.15), we have decided to utilize the term ''ordinary shopping conditions,'' as the statutory language references ''shopping'' in 7 U.S.C. 1639b(c)(4). AMS considered prescribing specific type sizes for different disclosure options, but after considering comments, determined that the number and type of disclosure options, combined with the variety of food package sizes, shapes, and colors, would make prescriptive requirements too difficult to implement. AMS believes that the requirements in § 66.100(c) will likely provide the BE food disclosure information to consumers in an accessible and transparent manner, while allowing regulated entities to have flexibility in implementing the requirements.

4. Placement of Disclosure

As proposed, § 66.100(d) offered that the BE food disclosure be placed in one of the following places: The information panel adjacent to the statement identifying the name and location of the manufacturer/distributor or similar information; anywhere on the principal display panel; or an alternate panel if there is insufficient space to place the disclosure on the information panel or the principal display panel. Section 66.100(d) would not apply to bulk foods (see § 66.114). ''Information panel'' as defined in § 66.1 is consistent with the definitions found in the USDA NOP regulations at 7 CFR 205.2, which largely reflect those found in FDA's food labeling regulations at 21 CFR 101.2. ''Principal display panel,'' as defined in § 66.1, reflects the definition found in FDA's food labeling regulations at 21 CFR 101.1. Based on input from commenters, if there is insufficient space on either the information panel or the principal display panel, the disclosure may be placed on an alternate panel likely to be seen by a consumer under ordinary shopping conditions.

Based on commenter feedback, this rule requires locating the disclosure on the information panel or the principal display panel because that is where consumers who are interested in additional food information typically look for information about their food. The information panel typically includes the nutrition fact panel, the ingredient list, the manufacturer/distributor name and address, and, if applicable, the country of origin. The principal display panel typically includes the statement of identity and the net quantity statement, in addition to other marketing claims. AMS believes that placing the BE food disclosure near this existing information will be effective because consumers will be able to see all the disclosures, statements, and marketing claims in one common place on the label.

The NBFDS will require placement of the disclosure adjacent to the manufacturer/distributor name and location statement. Such placement will avoid interference with other required statements on the information panel. We think that the information panel will be an appropriate location for a mandatory BE food disclosure because food manufacturers are accustomed to making statements and disclosures required by FDA and FSIS on the information panel. By also permitting that the disclosure may appear on the principal display panel, AMS acknowledges that some regulated entities may want to increase transparency or highlight specific traits from the BE food in tandem with the BE food disclosure. Also, as a result of input from commenters, we are including additional flexibilities for food manufacturers; if there is insufficient space on the information panel or the principal display panel, the disclosure may be displayed in an alternate panel, provided the disclosure is available to the consumer under ordinary shopping conditions. In response to a received comment, AMS is clarifying the BE disclosure for multi-unit packages. For multi-unit packages where individual units are not labeled for retail sale and are enclosed within and not intended to be separated from the multi-unit package, AMS has determined that disclosure on the outer packaging in a manner consistent with the options provided in § 66.100(c) is sufficient to meet the requirements of the NBFDS. Any additional requirements regarding multi-unit packaging would be addressed in future rulemakings.

This subpart does not prevent, pursuant to § 66.118, regulated entities from making other claims regarding bioengineered foods, provided that such claims are consistent with applicable Federal law.

5. How the List of Bioengineered Foods Relates to Disclosure

The purpose of the List of Bioengineered Foods is to provide regulated entities with a tool to determine whether a food must bear a BE disclosure. If a food or food ingredient is on the List of Bioengineered Foods, and the regulated entity's records show that the food is a bioengineered food or does not indicate whether or not the food is bioengineered, the food must bear a BE disclosure. While we acknowledge that this framework may result in regulated entities placing a BE disclosure on a food that they do not know with certainty is bioengineered, we believe that it is appropriate to err on the side of disclosure to provide consumers with the fullest information about food that could be bioengineered.

The List of Bioengineered Foods is alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh), potato, salmon (AquAdvantage®), soybean, squash (summer), and sugarbeet. These foods comprise most of the bioengineered crops or foods grown in the world and, therefore, most of the bioengineered food and food ingredients. As described in § 66.7, AMS will conduct annual reviews of the List. Through this process, AMS will request public input, including data and other information, to support any changes made. Any amendments (additions or deletions) to this List will be made through rulemaking. We recognize that for some items on this List, most varietals are not bioengineered. Because of this, AMS will maintain more detailed information on its website about each bioengineered crop or food to help regulated entities understand the associated bioengineered events for crops or foods they are sourcing and assist in determining whether disclosure is required. AMS will update information on its website as necessary.

If a regulated entity is using a food, including an ingredient produced from such food, not on the List of Bioengineered Foods, and the regulated entity has actual knowledge that the crop or ingredient is, in fact, bioengineered, the entity is still responsible for labeling the food in compliance with the NBFDS. If a regulated entity uses a food, including an ingredient produced from such food, on the List of Bioengineered Foods and its records demonstrate that the food is not bioengineered (*e.g.,* modified genetic material is not detectable in accordance with § 66.9) or is exempt from disclosure under § 66.5, the food is not required to bear a BE disclosure.

a. Disclosure Options

Regulated entities have several disclosure options (text, symbol, electronic or digital link, and/or text message, with additional options available to small food manufacturers or for small or very small packages), with differing requirements, as described

below. Regardless of the type of disclosure used, regulated entities can generally look to the List of Bioengineered Foods to determine if the food is required to have a BE disclosure.

b. Use of the ''May Be'' Option

The NPRM specifically requested comments on whether the phrase ''may be'' could be used when making a disclosure under the NBFDS. As proposed, the phrase ''may be'' would have been able to be inserted prior to the word ''bioengineered'' in the various disclosure methods, including a ''may be bioengineered'' symbol. This proposal was primarily included in the NPRM to provide regulated entities with flexibility when using food ingredients on the ''low adoption'' list of bioengineered foods. Because the List of Bioengineered Foods adopted in this rule does not distinguish between low and high adoption bioengineered foods, the ''may be'' option is no longer appropriate. Additionally, commenters explained how the use of ''may be'' in the disclosure will lead to unnecessary confusion for regulated entities and for consumers. Commenters explained that when consumers see the words ''may be bioengineered'' on a food package, consumers may be unsure whether the food is bioengineered or whether certain ingredients are bioengineered. Many commenters suggested that the disclosure be an affirmative statement. They noted that many of the countries with mandatory disclosure requirements do not allow the use of a ''may'' statement. Comments from food companies also described confusion around when the ''may be'' wording is appropriate. Commenters noted that because records must be maintained to substantiate claims of disclosure and non-disclosure, any such use of ''may'' claims would only serve to confuse consumers. For these reasons, disclosure under the NBFDS must be made with the term ''bioengineered,'' unless making a voluntary disclosure as described in § 66.116. The ''may be bioengineered'' disclosure cannot be used.

B. Text Disclosure

The amended Act allows for BE food to be labeled with a text disclosure. 7 U.S.C. 1639b(b)(2)(D). Regulated entities may utilize text to disclose the presence of bioengineered food or bioengineered food ingredients for foods in the List of Bioengineered Foods. For a food, including a food ingredient produced from that food, that is a raw agricultural commodity and for which records demonstrate that the food or food ingredient is bioengineered or does not indicate whether the food or food ingredient is bioengineered, the text disclosure is ''bioengineered food.'' This same disclosure is applicable to multi-ingredient food products in which all ingredients are on the List of Bioengineered Foods and are bioengineered or records do not indicate whether the ingredients are bioengineered. For a multi-ingredient food that contains ingredients that are and are not on the List of Bioengineered Foods and records demonstrate that at least one of the ingredients is bioengineered, or do not indicate whether any of the ingredients produced from one of the foods on the List of Bioengineered Foods are bioengineered, the text disclosure is ''contains a bioengineered food ingredient.'' We believe this approach provides flexibility to regulated entities, transparency to consumers, and recognizes that some foods are entirely a product of bioengineering and that some foods are a mix of BE and non-BE food ingredients.

For BE food that is distributed solely in a U.S. territory, § 66.102(b) requires that disclosure statements equivalent to those above be allowed in the predominant language of that territory. AMS believes this approach will make the BE food disclosure more accessible in territories where the predominant language is something other than English. AMS also believes this allows regulated entities who only distribute food in a given territory to respond to consumer demand.

C. Symbol Disclosure

A symbol is another form of BE food disclosure regulated entities may use as set forth in the amended Act. 7 U.S.C. 1639b(c)(4). Regulated entities can use this symbol to designate BE food or food that contains a BE food ingredient.

AMS proposed three alternative symbols with variations of those symbols and invited comment on each alternative and its variation. The three symbols were designed to communicate the bioengineered status of a food in a way that would not disparage biotechnology or suggest BE food is more or less safe than non-BE food. Based on comments, we have decided to use a variation of option 2–A below. AMS requested comments on whether the word ''bioengineered'' should be incorporated into the design of the chosen disclosure symbol. Based on comments, we have decided to include the word ''bioengineered'' in the symbol. This will improve the understanding of the symbol, as many comments explained that they did not understand what the acronym ''BE'' stood for. Comments in response to the NPRM reported results of independent surveys conducted during the public comment period that suggested the greatest number of respondents believe the symbol with the word ''bioengineered'' provides the right amount of information when compared to the symbol with the letters ''BE.'' [6] [7]

The adopted symbol is a circle with a green circumference, with the word ''bioengineered'' displayed at the top and the bottom of the outer ring. The bottom portion of the circle contains an arch, filled in green to the bottom of the circle. The arch contains two light green terrace lines, sloping downward from left to right. On the left side of the arch, near the left side of the circle, is a stem arching towards the center of the circle, ending in a four-pointed starburst. The stem has two leaves coming from the upper side of the stem and pointing towards the top of the circle. At the top of the circle, to the left of center, in the background of the leaves, is a portion of a yellow circle that resembles a sun. The remainder of the circle is filled in light blue, resembling the sky.

Commenters recognized that a multi-colored product label can increase printing costs and disrupt product design in other ways. Therefore, like the USDA Organic seal under the NOP, AMS will allow regulated entities to use a black and white version of the symbol. Regardless of colors, the symbol is required to meet the appearance and placement requirements in § 66.100. A supplemental document to this final rule contains the symbol in full color, as well as another variation of the symbol incorporating the words ''derived from bioengineering'' (for voluntary disclosure discussed below). The document may be viewed in the docket for this rulemaking at *regulations.gov* and on the AMS website.

D. Electronic or Digital Link Disclosure

The third disclosure option available for regulated entities to use is an electronic or digital link disclosure. 7 U.S.C. 1639b(b)(2)(D) and 1639b(d). The amended Act requires that the use of an electronic or digital link to disclose BE food must be accompanied by the

[6] Public comment submitted by the International Food Information Council Foundation (IFIC) reports their May 2018 study regarding consumer attitudes and perceptions related to the NPRM. Comment may be accessed at *https://www.regulations.gov/document?D=AMS-TM-17-0050-8861*.

[7] Public comment submitted by the Rutgers School of Environmental and Biological Sciences reports their June-July 2018 survey regarding consumer perceptions related to the proposed disclosure options in the NPRM. Comment may be accessed at *https://www.regulations.gov/document?D=AMS-TM-17-0050-14011*.

statement ''Scan here for more food information'' or equivalent language that reflects technological changes. 7 U.S.C. 1639b(d)(1). This statutory requirement is incorporated in § 66.106(a)(1). AMS recognizes that electronic and digital links currently used on food products in the marketplace take different forms, and the amended Act allows for equivalent statements that reflect technological changes. Current technology includes, among others, quick response (QR) codes that are detectable by consumers and digital watermark technology that is imperceptible to consumers but can be scanned anywhere on a food package using a smart phone or other device. These technologies may or may not include an embedded Uniform Resource Locator (URL). Consequently, AMS will allow for other alternative statements that can appear above or below an electronic or digital link to direct consumers to the link to the BE food disclosure. Examples of other statements include: ''Scan anywhere on package for more food information,'' or ''Scan icon for more food information.'' The statement will provide the shopper with clear instructions on how to utilize an electronic device to scan a food package to obtain information about the bioengineered content of the food.

Section 66.106(a)(2) incorporates the amended Act's requirement that the electronic or digital disclosure be accompanied by a telephone number that a consumer can call to access the disclosure information. 7 U.S.C. 1639b(d)(4). If a regulated entity decides to utilize electronic or scannable technology to convey bioengineered food information, they must also provide options for the consumer to access the disclosure by calling a phone number. There must be clear instructions for the shopper to ''Call [1–000–000–0000] for more food information.'' Many commenters explained how certain consumers do not understand how to utilize certain scannable technology to access food disclosure information. AMS believes that requiring regulated entities who are disclosing bioengineered food information through scannable means to offer the option to call a telephone number will best provide for accessible and understandable food information.

The telephone number must be available at all times of the day and must clearly provide bioengineered food information to the caller. Pre-recorded information is permitted. The telephone number and instruction must be located in close proximity to the electronic or digital link.

The amended Act requires the electronic or digital link to provide the bioengineering disclosure on the first product information page accessed through the link, without any marketing and promotional information. 7 U.S.C. 1639b(d)(2). Section 66.106(b) incorporates this requirement. ''Marketing and promotional information'' means ''any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs that are distributed, broadcast, or made available to assist in the sale or promotion of a product.'' This definition aligns with that in the NOP regulations at 7 CFR 205.2. If a regulated entity wants to provide additional information about BE food to consumers, the information should be provided outside of the landing page that includes the BE food disclosure.

Based on commenter suggestions to ensure reliable, consistent disclosure information to consumers, AMS is requiring that the disclosure on the product information page conform to the requirements of the text disclosure in § 66.102 or the symbol disclosure in § 66.104. AMS believes that using a uniform, consistent approach to the disclosure language and symbol will make it easier for consumers to understand the disclosure, whether that language or symbol appears on a food label or an electronic or digital device. AMS also believes that this approach will make compliance easier for entities responsible for disclosure, and ensure consistency in the communication of required disclosure information.

If the regulated entity chooses to use an electronic or digital link, the amended Act requires that the entity not collect, analyze, or sell any personally identifiable information about consumers or their devices. 7 U.S.C. 1639b(d)(3)(A). Under § 66.106(b)(4), if such information must be collected to fulfill the disclosure requirements, that information must be deleted immediately and not used for any other purpose. 7 U.S.C. 1639b(d)(3)(B).

E. Study on Electronic or Digital Disclosure and a Text Message Disclosure Option

The amended Act requires the Secretary to conduct a study to identify potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods. 7 U.S.C. 1639b(c)(1). The Department contracted with Deloitte Consulting LLP to perform the study, received the study results from Deloitte Consulting LLP on July 27, 2017, and made the study available to the public on September 6, 2017, at *https://www.ams.usda.gov/reports/study-electronic-or-digital-disclosure.*

As required by the amended Act, the study considered five factors: The availability of wireless internet or cellular networks; the availability of landline telephones in stores; challenges facing small retailers and rural retailers; the efforts that retailers and other entities have taken to address potential technology and infrastructure challenges; and the costs and benefits of installing in retail stores electronic or digital link scanners or other evolving technologies that provide bioengineering disclosure information. 7 U.S.C. 1639b(c)(3). The amended Act also requires the Secretary, after consultation with food retailers and manufacturers, to provide additional and comparable options to access the bioengineering disclosure, should the Secretary determine that consumers, while shopping, would not have sufficient access to the bioengineering disclosure through electronic or digital disclosure methods. 7 U.S.C. 1639b(c)(4).

Several commenters agreed that the challenges described in the study prevented consumers from accessing electronic or digital disclosures. Other commenters noted that smartphone usage and broadband access were increasing in the United States. After reviewing the study and comments submitted to the NPRM related to the study, the Secretary has determined that consumers would not have sufficient access to the bioengineering disclosure through electronic or digital means under ordinary shopping conditions at this time. While a large number of Americans have a smartphone and a large number of national and regional supermarkets provide Wi-Fi, most consumers in the study experienced technical challenges in accessing the bioengineered food disclosure on their phones.

The NPRM proposed text message as an additional disclosure option if the Secretary were to determine that shoppers would not have sufficient access to digital or electronic disclosure. Food manufacturers and retailers that commented on this option were generally supportive of this option. Thus, AMS is adopting the text message option in § 66.108. Regulated entities that choose this option are required to include a statement on the package that instructs consumers on how to receive a text message. Those instructions can be shared or centralized among regulated entities, if so desired. Industry is not prohibited from developing a

standardized instruction or response if it is in compliance with the NBFDS regulations. A one-time automated response would immediately provide the disclosure using text in conformance with § 66.102. Similar to the electronic or digital disclosure, the text message is not allowed to contain marketing and promotional information. The regulated entity must not collect, analyze, or sell any personally identifiable information, unless necessary to complete the disclosure, or use any information related to the text message for marketing purposes. If the regulated entity must collect any personally identifiable information to complete the disclosure process, it must immediately delete the information and not use it for any other purpose. Additionally, consumers must not be charged a fee by the regulated entity to access the disclosure information. However, consumers may be subject to a text messaging fee charged through their wireless telephone carrier.

F. Small Food Manufacturers

The amended Act provides two additional disclosure options for small food manufacturers: (1) A telephone number accompanied by appropriate language to indicate that the phone number provides access to additional information; and (2) an internet website address. 7 U.S.C. 1639b(b)(2)(F)(ii). In addition, in the case of small food manufacturers, the amended Act provides that the implementation date not be earlier than one year after the implementation date for regulations promulgated in accordance with the NBFDS. See 7 U.S.C. 1639b(b)(2)(F)(i).

1. Definition

AMS has made very minor changes to the definition of small food manufacturer. AMS defines ''small food manufacturer'' as ''any food manufacturer with annual receipts of at least $2,500,000 but less than $10,000,000.'' This definition is similar to FDA's final rule to extend the compliance dates for manufacturers with less than $10 million in annual food sales (*see* 83 FR 19619).

Section 66.110 provides two additional options that are available to small food manufacturers in addition to the text, symbol, electronic or digital link, or text message disclosure options. The two options are disclosure by telephone number and by internet website.

2. Telephone Number

Under § 66.110(a), if a small food manufacturer chooses to use a telephone number to disclose the presence of a BE food or BE food ingredients, a compliant text accompanying the telephone number is ''Call [1–000–000–0000] for more food information.'' The telephone number should provide the BE food disclosure regardless of the time of day. Disclosure via telephone number must include a BE food disclosure information that is consistent with § 66.102 in audio form and can be pre-recorded. While some commenters suggested that a telephone disclosure at any time of day would be burdensome and unreasonable, AMS believes that the requirement to provide the BE food disclosure at any time of day is reasonable, given the different hours that consumers shop for groceries and the varying time zones in the United States. Because the disclosure by telephone can be accomplished through a recorded message, AMS does not believe that requiring the disclosure to be available at any time of day will increase the burden on small food manufacturers.

3. Internet Website

Under § 66.110(b), if the small food manufacturer chooses to use an internet website to disclose the presence of BE food or BE food ingredients, text would need to accompany the website address on the label stating, ''Visit [Uniform Resource Locator of the website] for more food information.'' The website must meet the requirements for a product information page in § 66.106(b). Disclosure via website must include a bioengineered food disclosure that is consistent with § 66.102 or § 66.104 in written form. AMS believes that implementing the internet website option for small food manufacturers in conformance with the requirements for the electronic or digital disclosure product information page will give small food manufacturers the flexibility to disclose in a way that is cost effective for a small business, while providing disclosure to consumers and the same level of protection for personally identifiable information.

G. Small and Very Small Packages

The amended Act requires the Secretary to provide alternative reasonable disclosure options for food contained in small or very small packages. 7 U.S.C. 1639b(b)(2)(E). In order to ensure consistency with existing labeling requirements, the definition of ''small packages'' was taken from FDA labeling requirements at 21 CFR 101.9(j)(17). The definition of ''very small package'' was also taken from FDA labeling requirements at 21 CFR 101.9(j)(13)(i). Section 66.112 continues to provide certain flexibilities for food in small and very small packages: A modified version of the electronic or digital link disclosure in § 66.106; a modified version of the text message in § 66.108; and a modified version of the phone number disclosure in § 66.110. In addition, for very small packages, regulated entities may use a label's preexisting Uniform Resource Locator or telephone number for disclosure.

For the modified version of the electronic or digital link, § 66.112(a) allows regulated entities to utilize the electronic or digital link in § 66.106, but replace the statement ''Scan here for more food information'' and the accompanying phone number and instructions required in paragraph (a) of that section with the statement ''Scan for info.'' AMS believes that shortening the statement may make the electronic or digital link disclosure small enough to fit on small and very small packages.

For the modified version of the text message, § 66.112(b) allows regulated entities to utilize the text message in § 66.108, but replace the statement ''Text [number] for more bioengineered food information'' with ''Text [number] for info.'' AMS believes that shortening the statement may make the text message disclosure small enough to fit on small and very small packages. Similarly, AMS believes that a phone number with a short statement is small enough to fit on small and very small packages. Section 66.112(c) requires the disclosure to meet the requirements of § 66.110, but allows the statement ''Call [1–000–000–0000] for more food information'' to be replaced with ''Call [1–000–000–0000] for info.''

AMS recognizes that very small packages have limited surface area on which to bear disclosures. Under § 66.112(d), for very small packages, if the label includes a preexisting Uniform Resource Locator for a website or a telephone number that a person can use to obtain other food information, that website or telephone number may also be used for the BE food disclosure, provided that the disclosure is consistent with § 66.102 or § 66.104 in written or audio form, as applicable.

Stakeholders representing food manufacturers who use small and very small packages indicated that using the symbol under § 66.104 is a viable disclosure option. Accordingly, the symbol and other disclosure options available to all entities responsible for disclosure are also available to those who package foods in small and very small packages. AMS believes providing the additional options described above will provide needed flexibility for

disclosure on small and very small food packages.

H. Food Sold in Bulk Containers

Because bulk products, such as cornmeal in a bin or unpackaged produce, are frequently displayed without packaging and placed on display by retailers, rather than food manufacturers or importers, AMS requires that retailers be held responsible for complying with the BE food disclosure of bulk food. AMS already requires bulk foods sold in grocery stores to comply with Country of Origin Labeling requirements and believes that retailers are already accustomed to ensuring that bulk food appears with appropriate signage.

As requested by several commenters, § 66.114(a) requires that the BE food disclosure on bulk foods appears using any of the options for on-package disclosure including: Text, symbol, electronic or digital link, or text message (if applicable). The disclosure is required to appear on signage or other materials (stickers, bindings, etc.) on or near the bulk item. AMS believes the requirement that the signage or materials include the disclosure will allow consumers to identify and understand the bioengineered status of the food and allow retailers to adapt to new technologies and consumer preference. Retailers who use an electronic or digital link will be required to place any sign or image to be scanned in a place readily accessible by consumers. For all other disclosure options, signs currently used on or near bulk items, when supplemented with the BE food disclosure, are sufficient to comply with the requirements of the amended Act.

I. Voluntary Disclosure

AMS received significant input on the proposed NBFDS regarding the ability for regulated entities to voluntarily label foods not subject to mandatory BE disclosure requirements. Comments from food companies explained that consumers expect transparency and as much information as possible on the origin of food ingredients. Comments from consumers agreed. AMS acknowledges that voluntary disclosure provisions enable food manufacturers, retailers, and other entities to share more information with consumers, provided the information is truthful and not misleading and otherwise in compliance with all applicable Federal laws.

In designing the NBFDS, which is focused on positive disclosure claims, AMS has attempted to provide as much flexibility to the food and grocery industry as possible, along with the transparency to consumers that they expect and deserve. As such, the final rule provides for voluntary labeling (1) by entities that are otherwise exempt from the requirements of the NBFDS or (2) for certain foods that do not meet the definition of ''bioengineered food'' but are derived from bioengineered crops or food. Voluntary labeling is only permitted in these circumstances.

Entities that are exempt from the NBFDS are very small food manufacturers, and restaurants and similar retail food establishments. Under § 66.116(a) those entities may voluntarily include a bioengineered disclosure on their products in the same manner as those that are required to provide a BE disclosure.

Under § 66.116(b), regulated entities may voluntarily include a disclosure for foods or food ingredients derived from items on the List of Bioengineered Foods. A food that meets a factor or condition under paragraph (2) of the definition of ''bioengineered food'' in § 66.1 or is exempt from disclosure under §§ 66.5(c)–(e), is prohibited from voluntary disclosure under the NBFDS. For example, a soup that lists beef broth as the first ingredient on the ingredient list may not bear a voluntary disclosure regardless of the other ingredients in the soup. Voluntary labeling provisions are found in § 66.116.

As described earlier in this final rule, only products that contain ingredients with detectable modified genetic material, as demonstrated through records maintained by the regulated entity, must be disclosed. This means that many refined products originating from bioengineered crops do not constitute bioengineered foods. However, if a food manufacturer, retailer, or importer that would otherwise not be required to provide a disclosure wants to voluntarily disclose that a refined food originates from an item on the List of Bioengineered Foods, it is free to do so. For example, if a beverage company makes a carbonated soda containing corn syrup originating from BE corn, and the corn syrup does not have detectable modified genetic material, the corn syrup alone does not trigger mandatory disclosure. Under voluntary labeling provisions, because the corn syrup originates from BE corn, the beverage company may provide a disclosure explaining to the consumer that the ingredients in the soda are ''derived from bioengineering,'' even though the ingredient is not for the purposes of this regulation considered to be ''bioengineered.''

AMS believes that exempt entities should also be permitted to voluntarily disclose bioengineered foods. For instance, AMS believes that very small food manufacturers, who are entities with less than $2.5 million in annual receipts and who are exempt from mandatory disclosure requirements, should also be able to voluntarily disclose the presence of bioengineered ingredients, or ingredients originating from bioengineered crops. If a very small food manufacturer is using items on the List of Bioengineered Foods that contain modified genetic material and the food would be subject to mandatory disclosure requirements but for the company size exemption, they may provide a disclosure as provided in § 66.116(a). If a very small food manufacturer is using ingredients that do not contain modified genetic material but are derived from items on the List of Bioengineered Foods, they also may utilize the voluntary disclosure rules explained in § 66.116(b).

It is important to note that when entities utilize the voluntary disclosure provisions in § 66.116, they are required to comply with the disclosure requirements (size, location on package, etc.) for text, symbol, digital or electronic link, or text message disclosure, as applicable.

IV. Administrative Provisions

A. Recordkeeping Requirements

The amended Act requires each person subject to mandatory BE food disclosure under the NBFDS to maintain records such as the Secretary determines to be customary or reasonable in the food industry to establish compliance with the Standard. *See* 7 U.S.C. 1639b(g)(2). Persons required to keep such records include food manufacturers, importers, and retailers who label bulk foods or package and label foods for retail sale. Section 66.302(a)(1) therefore requires that regulated entities maintain customary or reasonable records to demonstrate compliance with the BE food disclosure requirements. So long as the records contain sufficient detail as to be readily understood and audited as set forth in § 66.302(a)(2), each entity subject to the disclosure requirement may decide for itself what records and records management protocols are appropriate, given the scope and complexity of individual businesses, as well as the food being produced. AMS notes that regulated entities, both domestic and foreign, will likely have customary or reasonable records in accordance with the NBFDS if they are maintaining records in compliance with

other laws or regulations associated with the food sector.

In general, comments in response to the proposed recordkeeping requirements in the NPRM supported AMS's proposals. Commenters agreed that the recordkeeping requirements of the NBFDS should be consistent with those under other AMS marketing programs so as not to present an unreasonable burden to entities who must comply with the Standard. Commenters observed that the recordkeeping requirements as proposed would probably not impose additional costs or burdens to existing business practices. Commenters provided examples of typical records generated in the course of business that should satisfy the audit requirements under § 66.402 to verify compliance with disclosure requirements under the NBFDS. Commenters suggested that the regulation include examples of appropriate records an entity might maintain to meet the recordkeeping requirements. Commenters supported the proposed flexibility that would allow for record maintenance in the format preferred by the entity. Commenters also supported the proposed two-year record retention period, consistent with the recordkeeping requirements under other USDA and FDA regulations.

AMS agrees that recordkeeping and compliance requirements under the NBFDS should be consistent with those under other AMS programs, such as NOP and PACA, and has incorporated elements from each of those programs into the NBFDS. Accordingly, § 66.302 does not specify the records regulated entities must maintain to demonstrate compliance with the disclosure regulations. Instead, as with other AMS programs, regulated entities are free to determine for themselves which of their customary business records will demonstrate compliance and should be maintained. Section 66.302(a)(4) includes a non-exhaustive list of records that could satisfy the recordkeeping requirements of the NBFDS. That list includes: Supply chain records, bills of lading, invoices, supplier attestations, labels, contracts, brokers' statements, organic certifications, laboratory testing results, validated process verifications, and other records generated or maintained by the regulated entity in the normal course of business. If records demonstrate that a product originates from a country where BE food is not commercially grown, those records are sufficient to justify lack of disclosure and demonstrate compliance with the NBFDS. Section 66.302(a)(2) provides that records can be in paper or electronic format at the discretion of the regulated entity. Section 66.302(a)(3) requires that records be maintained for at least two years beyond the date the food or food product is sold or distributed for retail sale.

As noted above, the amended Act requires that each person subject to mandatory BE food disclosure under the NBFDS must maintain records. In this regard, as noted in section 66.302(b), the List of Bioengineered Foods identifies the foods for which regulated entities must maintain records and that may be required to bear a BE disclosure, based on what the records show. Consistent with the statutory requirement, where the regulated entity has actual knowledge that the food or food ingredient is bioengineered, the regulated entity must maintain records for that food or food ingredient, even if the food is not on the List of Bioengineered Foods.

Some comments in response to the NPRM opposed requiring entities who do not handle BE foods to maintain records to verify compliance with the regulation. Other comments supported AMS's proposal to do so, explaining that all regulated entities subject to the disclosure standard should be required to keep the same kind of records. AMS agrees that all food manufacturers, importers, and retailers who offer for retail sale foods on the List of Bioengineered Foods are considered regulated entities for purposes of the NBFDS insofar as they may be required to make BE food disclosures. Their customary business records should be able to satisfy an audit to determine whether they are in compliance with the disclosure requirements of the NBFDS.

The amended Act requires each person subject to the disclosure requirements of the NBFDS to give the Secretary access to records to establish compliance with the disclosure requirements upon request. Accordingly, § 66.304 sets forth the provisions for AMS's access to records.

AMS proposed in the NPRM that entities would have five business days to provide records to AMS upon request, unless AMS extends the deadline. AMS also proposed to provide prior notice of at least three business days if we need to access the records at the entity's place of business. Finally, AMS proposed that it would examine the records during normal business hours and that entities should make their records available during those times.

Commenters generally supported the proposed five- and three-day timeframes for the production of records and access to records at the entity's place of business, respectively. Some commenters suggested that because the NBFDS is a marketing standard rather than a food safety regulation, longer timeframes for records production would be appropriate. AMS believes that the timelines for records production and access are appropriate for enforcing compliance with the NBFDS and notes that flexibility is provided in the regulation to extend deadlines if necessary. Commenters requested that regulated entities be allowed to maintain records at locations most convenient for each business. AMS agrees that entities can maintain records at the location that best serves the entity's business needs.

Accordingly, § 66.304(a) provides that the entity must provide records to AMS within five business days of AMS's request, unless AMS extends the deadline. Section 66.304(b) provides that AMS will give at least three business days' notice if it needs access to records at the entity's place of business. As well, AMS will examine records during normal business hours, and records should be made available during those times. Finally, entities must provide AMS access to facilities necessary for records examinations. As proposed in the NPRM, § 66.304(c) specifies that if an entity fails to give AMS access to records as required, the result of the examination or audit will be that the entity did not comply with the requirement to provide access to records and that AMS could not confirm whether the entity is in compliance with the disclosure standard of the NBFDS.

B. Enforcement

The amended Act specifies that failure to make a BE food disclosure as required by the NBFDS is prohibited. *See* 7 U.S.C. 1639b(g)(1). Section 66.400 of the NBFDS captures this prohibition. The amended Act authorizes AMS to enforce compliance with the standard only through records audits and examinations, hearings, and public disclosure of the summary of the results of audits, examinations, and similar activities. *See* 7 U.S.C. 1639b(g)(3). The amended Act further states that the Secretary shall have no authority to recall any food subject to the NBFDS ''on the basis of whether the food bears a disclosure that the food is bioengineered.'' *See* 7 U.S.C. 1639b(g)(4).

AMS considered responses to the 30 questions when developing the proposed enforcement provisions of the NBFDS, and many suggestions were incorporated into the proposal. Accordingly, the NPRM outlined a

process for receiving complaints about possible violations of the disclosure standard and set forth a records audit procedure. As provided in the amended Act, AMS proposed to review the records of regulated entities during audits and examinations to verify compliance with the NBFDS's disclosure requirements. Provisions for making findings and allowing for appeals hearings in response to the findings were proposed. Finally, provision was made for publicizing the results of audits, examinations, and hearings.

As with responses to the 30 questions, comments on the proposed NBFDS enforcement provisions reflected a range of opinions about how AMS should enforce compliance with the NBFDS. Many suggested that AMS conduct regularly scheduled or unannounced records audits. Others supported conducting audits and examinations in response to complaints. Some commenters called for the imposition of heavy fines or other penalties for non-compliance, while others agreed that publicizing the results of audits and hearings would be adequate enforcement for this marketing regulation. Several commenters requested that records related to product formulations and formulas remain confidential.

As pointed out in the NPRM, the amended Act does not authorize civil penalties for violations of the NBFDS, and AMS believes some of the other enforcement suggestions to be impractical. Therefore, the enforcement provisions of the NBFDS reflect those proposed in the NPRM, with one exception. Comments in response to the NPRM suggested that AMS provide greater clarity about the process for filing complaints about potential violations of the disclosure standard. Paragraph (a) of § 66.402 is revised to include greater specificity about the complaint process. The remainder of § 66.402 continues to describe the process for initiating records audits or examinations, including providing notice of such activities, making the audit or examination findings available to the regulated entity, and providing for appeals to object to the findings. Section 66.404 provides that within 30 days of receiving the results of an audit or examination of its records, the regulated entity that objects to the findings may request a hearing by filing a request and submitting a response to the findings, along with any supporting documents, to AMS. AMS may allow the entity to make an oral presentation, after which the AMS Administrator may revise the findings of the audit or examination. Section 66.406 provides that AMS will make public the summary of the final results of the audit, examination, or similar activity, and that such final results constitute final agency action for purposes of judicial review of the matter. AMS agrees that the confidential business records, including product formulations and recipes, should not be disclosed.

C. Effective, Implementation, and Compliance Dates

Because this rule is a major rule, the effective date will be February 19, 2019 to comply with the Congressional Review Act. The proposed rule included an initial compliance date of January 1, 2020, and a delayed compliance date of January 1, 2021, for small food manufacturers, as mandated by the amended Act. AMS received several comments on the compliance date, some of which supported the proposed dates, while others sought earlier or later dates.

After considering input from commenters and other available information, AMS recognized that regulated entities should have sufficient time to transition their recordkeeping and labeling processes and procedures to implement the BE disclosure requirements and that the transition should be completed in phases. Section 66.13 sets forth the implementation and compliance dates for the NBFDS. The final rule establishes implementation dates of January 1, 2020, for regulated entities other than small food manufacturers and January 1, 2021, for small food manufacturers. Regulated entities should begin implementing the NBFDS no later than those dates by identifying the foods that will need to bear a BE disclosure, the records necessary to meet the recordkeeping requirements, and the type of BE disclosure they will use on their products.

Following the implementation dates, the final rule establishes a mandatory compliance date and a voluntary compliance period. Mandatory compliance begins on January 1, 2022, and all regulated entities must comply with the requirements of the NBFDS beginning on that date. For regulated entities that can and would like to do so, the final rule provides for a voluntary compliance period that ends on December 31, 2021. We believe this phased approach balances the needs of consumers to have access to information about bioengineered foods they may purchase with the cost and burdens to regulated entities in complying with the NBFDS requirements.

D. Use of Existing Label Inventories

In an effort to reduce costs and burdens, AMS proposed in the NPRM to allow regulated entities to use up food labels that are printed by the initial compliance date, regardless of whether the existing labels comply with the NBFDS, until the remaining label inventories are exhausted or until January 1, 2022, whichever comes first. Comments in response to the NPRM generally reflected two viewpoints. Consumers and consumer groups claimed that manufacturers could theoretically continue printing and using non-compliant labels for up to six years after the Act was amended to require mandatory BE food disclosure. Those commenters urged AMS to allow a shorter compliance period for label use-up. Food manufacturer comments generally supported the proposed label use-up provision, but they asked that the final rule provide a two-year compliance period after the compliance date, rather than specifying a hard date, to allow for regulatory delays. Manufacturer commenters also urged AMS to allow the use of labels compliant with the preempted State GMO labeling laws during the compliance period. Some commenters recommended that AMS allow entities to apply stickers or ink stamp disclosures to existing labels to reduce waste. Others suggested that AMS incorrectly assumes manufacturers maintain large label inventories, asserting that manufacturers order labels in the smallest batches economically practical.

As discussed above, AMS is providing a period of voluntary compliance until December 31, 2021, with mandatory compliance to begin on January 1, 2022. With this voluntary compliance period, it is not necessary to provide for regulated entities to be able to use its existing label inventories. Thus AMS is not adopting this component of the proposed rule. However, in response to comments regarding this proposal, regulated entities may use labels that are compliant with preempted State labeling laws during the voluntary compliance period. They may also apply stickers or ink stamp disclosures to existing labels. The sticker or printing cannot cover any other mandatory labeling, such as nutrition facts.

V. Comments on the NPRM

AMS received approximately 14,000 comments in response to the NPRM. We received comments from individuals, consumer groups, companies, and organizations that represent different segments of the food industry. We

review and respond to the comments below.

1. Definition of ''Food''

In the NPRM, AMS described how it would implement the statutory definition of ''food'' in the amended Act and how the disclosure requirements would intersect with the FDCA, the FMIA, the PPIA, and the EPIA.

Comment: Many commenters supported the proposed definition of ''food.'' Some commenters disagreed with how predominance was determined for meat, poultry, and egg products for purposes of BE food disclosure. Some commenters stated that the final rule should adopt the labeling approach used by FSIS and determine the ingredient predominance based on weight of ingredients so as not to confuse companies and consumers. Other commenters noted that FDA permits composite and component labeling in ingredient declaration statements.

AMS Response: AMS notes that FDA and FSIS use the same method for determining predominance of ingredients by weight. Thus, we agree that the predominance determination for meat, poultry, and egg products should be based on weight. As FDA permits both composite and component labeling, AMS also will permit such ingredient declaration labeling.

Comment: Several commenters pointed out that because most seafood products are subject to the FDCA, BE seafood would be subject to disclosure. However, catfish and related species would not require disclosure because they fall under the FMIA. Commenters stated that this will cause consumer confusion and the rule should be reworded to require all seafood products that contain BE ingredients to be labeled.

AMS Response: AMS acknowledges that there may be consumer confusion if the industry develops a BE catfish and it may not be subject to disclosure, depending on its predominance on the ingredient list, while other BE seafood would be. However, the amended Act clearly sets forth how food subject to the FMIA are to be disclosed and AMS does not have the statutory authority to expand disclosure beyond what those statutory provisions provide.

Comment: Several commenters opposed limiting the definition of ''food'' to food for human consumption and sought to include food for animal consumption to be included.

AMS Response: We appreciate that several commenters would like to extend the BE disclosure to food for animals. The amended Act, however, clearly limits the mandatory disclosure requirements to food for human consumption and AMS does not have the statutory authority to require BE disclosure for food for animal consumption on a mandatory or voluntary basis.

2. Definition of ''Bioengineered Food''

AMS requested public comments on the definition of ''bioengineered food.'' The statutory definition of bioengineering describes food that ''contains genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques.'' In the NPRM, we proposed two interpretations of this definition; Position 1 proposed that highly refined products do not contain genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (rDNA) techniques and therefore are not bioengineered food, while Position 2 proposed that all foods produced from bioengineering, including refined and highly refined products, are bioengineered food.

Comment: Several commenters supported Position 1. Those commenters concluded that, in general, highly refined foods and ingredients do not meet the statutory definition of ''bioengineering,'' and thus, are not subject to the labeling requirements because they lack rDNA. Many of those commenters cited several scientific studies they viewed as demonstrating an absence of genetic material in such foods. Some commenters also noted that the proposed regulation governs the food product, not the source plant from which the food was produced.

AMS Response: Because some countries previously established BE food labeling requirements, the industry recognized the need for standardized methods for the detection of rDNA. Technical Committee 34 (TC 34) ''Food Products'' of the International Organization for Standardization (ISO) developed numerous validated sampling and detection methods to detect rDNA in food products.[8] Subcommittee 16 (SC 16) established the ''Horizontal methods for molecular biomarker analysis'' in 2008. ISO/TC 34/SC 16 published 19 ISO standards and has 17 additional standards under development. The established detection methods are generally carried out in accordance with the ISO/ICE 17025:2017 standard and validated according to Codex Alimentarius guidelines.

These methods are crop and event specific and most rely on quantitative Polymerase Chain Reaction (PCR). In general, the detection methods are most effective when applied to raw agricultural commodities because the DNA remains relatively intact; many types of food processing (*e.g.* heating) serve to degrade and eliminate DNA.

Screening of raw agricultural commodities (*e.g.* seeds, leaves and roots) for rDNA is routinely conducted by the global grain and food industries in order to maintain identity preserved supply chains. After testing at the commodity level, identity is generally preserved through records rather than through additional testing after processing. This is practical since methodology for detection of rDNA at the commodity level is well established; applying these same methods to refined ingredients and processed foods can be much more challenging.

The Pauli study attempted to extract DNA from 55 common foodstuffs derived from soybean, corn, potato, rice, sugar beet, tomato and wheat.[9] They were able to extract some DNA from most of the foodstuffs, but were not able to extract any DNA from refined sugar and oil.[10] Whether rDNA can be detected in processed foods will depend on the specific processing conditions for each food ingredient. The Greiner study analyzed 100 foods derived from BE corn and 100 foods derived from BE soybean; they were able to detect rDNA in 13% of the soy products and 8% of the maize products.[11] The Orlandi study evaluated 63 products derived from BE corn, but only detected rDNA in four of the products, all of which were taco shells.[12] The Arun study found that detectability of rDNA in cookies varied with cooking time and cooking temperature.[13]

When refining food ingredients from agricultural inputs, the objective is often to produce ingredients with a high degree of purity. Therefore, it is not

[8] ISO (2018) *https://www.iso.org/committee/560239.html.*

[9] Pauli *et al.* (2000) Extraction and amplification of DNA from 55 foodstuffs. Mitteilungen aus Lebensmitteluntersuchung und Hygiene. 91:491–501 (Pauli study).

[10] In this study, the scientists were simply extracting total DNA, and any rDNA, if present, would be a minute fraction of the total DNA extracted.

[11] Greiner *et al.* (2005) Qualitative and quantitative detection of genetically modified maize and soy in processed foods sold commercially in Brazil by PCR-based methods. Food Control 16: 753–759 (Greiner study).

[12] Orlandi *et al.* (2002) Analysis of Flour and Food Samples for cry9C from Bioengineered Corn. J Food Protection 65:426–431 (Orlandi study).

[13] Arun *et al.* (2016) The effect of heat processing on PCR detection of genetically modified soy in bakery products. J Health and Food Sci. 2:130–139 (Arun study).

surprising that the industrial processes developed for the refining of sugars and oils effectively eliminate the majority of undesired substances, including DNA and protein. Several published studies have demonstrated that genetic material is not detectable in refined beet sugar or refined cane sugar.[14] One study reported detection of rDNA in raw cane sugar, but not in refined cane sugar; [15] however, the Cheavegatti-Gianotto study did not detect rDNA in raw sugar. One commenter noted that raw cane sugar is not intended for human consumption; rather it is intended as a feedstock for refining white cane sugar. Therefore, all five published studies referred to above reached the same conclusion, that DNA could not be detected in refined sugar.

The sugar refining process from sugar beet or sugarcane juice that has been extracted by pressing or diffusion, then clarified and evaporated, results in sucrose of 99.9% purity. Several of these refining steps involve heating which serves to degrade DNA. Additionally, prior to crystallization, lime is used to remove the impurities remaining in the sugar juice; DNA and protein are effectively removed at this step in the sugar refining process. Based on the available scientific evidence, several countries (*e.g.* Australia, Brazil, Japan, Israel, New Zealand and South Korea) have exempted refined sugar from their respective BE food labeling requirements.

Food grade vegetable oils can be derived from a variety of BE crop sources (*e.g.* corn, soybean, and canola) and can be refined with a variety of methods (*e.g.* chemical vs. physical refining). The detectability of rDNA may vary by crop and by refining method. Substances present in raw vegetable oil are removed by steps such as degumming, neutralizing, bleaching, deodorizing, and dewaxing.

The Pauli study was unable to extract DNA from refined oil. Another study was unable to detect rDNA in refined soybean oil; they observed degradation of DNA during degumming and concluded that degumming was the most important step in removing DNA when refining soybean oil.[16] However, one study was able to detect rDNA in refined soybean oil.[17] These variable results may be due to differences in refining processes; some oil refining processes may effectively eliminate all DNA, while others, such as cold pressing, are unlikely to eliminate all DNA. Similar to refined sugar, several countries (*e.g.* Australia, Brazil, Japan, Israel, New Zealand and South Korea) have exempted refined vegetable oils from their respective BE food labeling requirements.

The studies cited above, as well as similar studies provided by some commenters demonstrate for many refined food products and ingredients, the refining process removes the genetic material so that it can no longer be detected. If the genetic material is not detected, then it is not possible to conclude that the food product or ingredient contains modified genetic material. Thus, based on the available scientific evidence, refined beet and cane sugar, high fructose corn syrup, degummed refined vegetable oils and various other refined ingredients are unlikely to require BE food disclosure because the conditions of processing serve effectively to degrade or eliminate the DNA that was initially present in the raw agricultural commodity.

Comment: Many commenters supported the labeling of all foods produced through bioengineering including refined oils, sugars and starches. They believed processed foods originating from BE raw agricultural commodities should be considered bioengineered food, regardless of whether modified genetic material remains detectable in the final product. Some commenters did not believe disclosure should rely only on the detection of genetic material in a food, or food ingredient, or solely on specific test methods like PCR. Commenters noted that scientific methods may advance to where today's ''undetectable'' genetic material may be detectable using future technologies. In support of this position, commenters cited several studies documenting the evolution of our ability to detect previously undetectable bioengineered products.

AMS Response: AMS appreciates commenters' position on disclosing foods produced through bioengineering. AMS has adopted the statutory definition of ''bioengineering,'' which makes clear that food must ''contain genetic material that has been modified through in vitro rDNA techniques . . .'' to be labeled as a ''bioengineered food.'' Highly refined products have undergone processes that removed genetic material such that it cannot be detected using common testing methods. As such, the NBFDS will not require disclosure for refined products that do not contain modified genetic material. Regulated entities who do not disclose such products would maintain records that substantiate their claim that the products do not contain modified genetic material. As described in the Preamble and in § 66.9, regulated entities can demonstrate that their food products do not contain modified genetic material in multiple ways.

AMS maintains that the products of technology, rather than the technology itself, should determine whether a food meets the BE food definition and requires disclosure unless exempted from disclosure pursuant to § 66.5. We also recognize that emerging technologies could impact the list of foods requiring disclosure. As such, AMS provides for the consideration of new technologies used to develop foods during the process of reviewing and revising the List of Bioengineered Foods.

We recognize that testing methodology may evolve so that a future test may detect modified genetic material in a food ingredient that current tests do not. The definition of ''bioengineered food'' accounts for this possible evolution. If the modified genetic material in that food ingredient becomes detectable under § 66.9 in the future, the food ingredient would be subject to BE disclosure.

Comment: Some commenters supported the inclusion of highly refined ingredients and foods, such as oils and sugars derived from bioengineered crops, in the mandatory disclosure standard (Position 2). Some commenters who supported Position 2 viewed it as being consistent with the FDA's guidance to manufacturers entitled, ''Voluntary Labeling Indicating Whether Foods Have or Have Not Been Derived from Genetically Engineered Plants.'' Commenters considered detection of genetic material in the food immaterial to its exemption from the Standard. Instead, they justified their position based on consumer interest and popular understanding of how common BE agricultural crops are grown, not whether the food or ingredient contains modified genetic material. These

[14] *See* Cheavegatti-Gianotto *et al.* (2018) Lack of Detection of Bt Sugarcane Cry1Ab and NptII DNA and Proteins in Sugarcane Processing Products Including Raw Sugar. Front Bioeng Biotechnology. 27:24 (Cheavegatti-Gianotto study); Joyce *et al.* (2013) Sugar from genetically modified sugarcane: Tracking transgenes, transgene products and compositional analysis. International Sugar Journal. pp. 861–863; Klein *et al.* (1998) Nucleic acid and protein elimination during the sugar manufacturing process of conventional and transgenic sugar beets. J Biotech 60, 145–153; Oguchi *et al.* (2008) Investigation of Residual DNAs in Sugar from Sugar Beet (*Beta vulgaris* L.). J. Food Hyg. Soc. Japan. 50:41–46.

[15] Cullis *et al.* (2014) DNA and Protein Analysis throughout the Industrial Refining Process of Sugar Cane. Science Target 3:1–15.

[16] Gryson *et al.* (2002) Detection of DNA during the refining of soybean oil. JAOCS, Vol. 79, 171–174.

[17] Costa *et al.* (2010) Monitoring GM soybean along the industrial soybean oil extraction and refining processes by PCR techniques. Food Research Intl 43:301–306.

commenters proposed that a narrow focus on the presence of genetic material creates a differentiation based on rDNA that some could use to imply a safety issue with the rDNA. Commenters further suggest such implied issues could lead consumers to believe foods and food ingredients containing genetic material are different in a way that necessitates informing consumers.

AMS Response: AMS appreciates commenters' interest in the new Standard and their efforts to be transparent and build consumer trust. As stated in the previous comment response, AMS has adopted the statutory definition of bioengineering. That definition focuses on the products of technology, rather than the technology itself. For this rule, the presence or absence of detectable modified genetic material in a final food product determines in part whether a food meets the BE food definition and might require disclosure. AMS reiterates that nothing in the disclosure requirements set out in this final rule conveys information about the health, safety, or environmental attributes of BE food as compared to non-BE counterparts. The regulatory oversight by USDA and other Federal government agencies ensures that food, including that produced through bioengineering, meets all relevant Federal health, safety, and environmental standards.

AMS values transparency and consumer interests. AMS recognizes that some regulated entities may wish to disclose that their refined foods (that do not contain modified genetic material and thus are not bioengineered foods) are derived from bioengineering. Accordingly, AMS has provided for voluntary disclosure of such foods.

Comment: One commenter supported Position 2 suggesting that non-BE, identity-preserved, or certified organic crops and products can offer a price premium and new or additional market access—domestic and international—to producers. These commenters maintain that disclosing all BE foods would improve these farmers' market transparency, while exemption will require added costs for coexistence, segregation and detectability testing.

AMS Response: AMS agrees that it is possible that some marketing claims may offer a price premium or new market access. AMS has adopted Position 1 with some modifications. For further details on our rationale for adopting this position, see Section II.C.1 of this rule. With the adoption of Position 1, foods with undetectable modified genetic material are not bioengineered foods. Accordingly, regulated entities need not disclose such foods as bioengineered foods. AMS has determined that regulated entities can establish that their foods do not contain detectable rDNA through their records of the foods on the List of Bioengineered Foods.

Comment: Some commenters suggested a broad interpretation of the BE definition and scope accounting for existing technologies like CRISPR and TALENS, as well as for future developments. The interest of these commenters was to prevent confusion among consumers and in the international marketplace if the NBFDS failed to harmonize the law with existing standards—FDA, Codex Alimentarius, and USDA Certified Organic, all of which include gene editing and gene silencing techniques (*e.g.* sequence-specific nucleases, meganucleases, zinc finger nuclease, CRISPR-Cas system, TALENs, oligonucleotide directed mutagenesis RNAi, RNAi pesticides, and RNA-dependent DNA methylation). Commenters cited USDA's General Counsel Jeffrey M. Prieto, who stated that it is well within USDA's authority under Public Law 114–216 to mandate a broad interpretation. Another commenter was concerned that a failure to further define bioengineering could lead to state preemption concerns. The commenter stated that preemption, as intended by the BE Food Disclosure Act, Sec. 295, was not intended to be limited to the smaller subset of foods now defined as ''bioengineered,'' which, as proposed, excludes highly refined ingredients and products of gene editing.

AMS Response: AMS appreciates commenters' concerns and acknowledges the range of feedback provided. AMS has adopted a modified version of Position 1 and believes that the definition of ''bioengineering'' sets forth the scope of the mandatory disclosure. Although the Jeffrey Prieto letter seemingly advocated an expansive interpretation of the statutory definition of bioengineering along the lines of Position 2, AMS maintains that with the full range of information before it, including additional interpretation of the amended Act and responses to both the 30 questions and the NPRM, Position 1 is more closely aligned with the amended Act's definition of bioengineering. AMS will adopt Position 1 and is incorporating the statutory definition of bioengineering into the regulatory definition of ''bioengineered food.''

AMS does not find it necessary to further define bioengineering. AMS also disagrees with commenters' concerns that failing to further define bioengineering would result in limiting preemption. Subtitle F of the amended Act addresses Federal preemption of State and local genetic engineering labeling requirements. 7 U.S.C. 1639i. The preemption provisions extend beyond bioengineering labeling and include genetic engineering labeling requirements.

Also, as stated earlier, this definition of bioengineered food focuses primarily on the products of technology, not the technology itself. AMS is not making a blanket statement regarding the scope of technologies that are covered by the NBFDS. Finally, AMS agrees the NBFDS should align with some elements of existing standards to the extent possible. In Sections II through IV of this rule, AMS outlines its efforts to align the NBFDS with existing laws.

Comment: Several commenters supporting Position 2 also recommended adopting the Codex Alimentarius definition for Modern Biotechnology: (i) In vitro nucleic acid techniques, including rDNA and direct injection of nucleic acid into cells or organelles, or (ii) fusion of cells beyond the taxonomic family, that overcomes natural, physiological reproductive or recombination barriers, and that are not techniques used in traditional breeding and selection. These commenters state that the Codex Alimentarius definition of bioengineering is internationally recognized by the World Trade Organization as the standard for settling trade disputes, and therefore should serve as a guidepost for the USDA. Additionally, several commenters expressed concern that adopting Position 1 could negatively impact trade. According to these commenters, most countries with BE disclosure standards require that highly refined products be disclosed. They contend that adopting Position 1 and not aligning the NBFDS with existing international standards would create confusion among consumers and in the international marketplace.

AMS Response: In drafting the proposed rule and in finalizing the rule, AMS has reviewed and considered various foreign labeling regimes. To the extent possible, AMS has tried to align the NBFDS with existing domestic and international regimes to reduce burdens on regulated entities, promote consistency for consumers, and limit trade impacts. AMS is bound by the plain language of the amended Act. As described above, based on the language of the amended Act, AMS is incorporating the statutory definition of bioengineering into the regulatory definition of ''bioengineered food.'' As

such, if a food does not contain detectable modified genetic material, it is not a bioengineered food and does not require disclosure.

Comment: Some commenters also cited evidence that the amended Act did not propose the adoption of any ''other factors and conditions under which a food is considered a bioengineered food'' as part of the final rule. These commenters state that this rulemaking may only provide a process to allow any person to petition AMS and request the adoption of specified ''other factors and conditions.''

AMS Response: AMS disagrees with commenters who assert that the amended Act did not provide for factors and conditions under which a food is considered a bioengineered food. The amended Act clearly provides the Secretary with this authority. 7 U.S.C. 1639b(b)(2)(C). AMS has interpreted this statutory provision as one that limits the scope of the definition of ''bioengineered food,'' thus potentially excluding certain products from disclosure. The factors and conditions process, as proposed in the NPRM and adopted in this rule, offers a fair and rational method by which interested persons can petition AMS to consider various proposals. *See* Section II.E of this rule for details of the process.

Additionally, nothing in the amended Act precludes AMS from considering requests for a factor and condition that were submitted as part of responses to the 30 questions as petitions contemplated by 7 U.S.C. 1639b(b)(2)(C) and applying the process in this final rule to consider those petitions. Because the process is a rulemaking process, we believe that it is appropriate and efficient to consider certain petitions that meet the standards for consideration in § 66.202 as part of this rulemaking.

Comment: One commenter stated that because there is no difference chemically between refined and highly refined products and their non-BE counterparts, these products should not be treated differently. Instead, commenters believe refined and highly refined products should be exempt from BE labeling similar to their non-BE counterparts. Several commenters expressed concern that treating these chemically identical products differently could negatively impact the market appeal of highly refined products. Commenters also point out that enzymes produced from bioengineering as sourced from bioengineered crops are not themselves BE food, because enzymes are proteins and do not contain DNA.

AMS Response: AMS recognizes that highly refined foods produced from BE crops are generally chemically identical to the same foods produced from non-BE sources. Under the NBFDS, neither product would be subject to disclosure unless another ingredient triggers the disclosure requirement. However, regulated entities do have the option to voluntarily disclose information about highly refined foods derived from BE sources.

AMS notes that enzymes may be used in a manner that requires them to be labeled on the ingredient statement. Enzymes sometimes qualify as incidental additives that are not required to be labeled as ingredients on a food label. In those instances, they do not require disclosure as BE foods. However, bioengineered enzymes that do not qualify as incidental additives may require disclosure as BE foods, unless they do not have detectable modified genetic material.

Comment: Some commenters feel that mandating disclosure for refined products would disparage biotechnology. They also felt that labeling BE products would impose a burden on them that was not levied upon the non-BE counterpart.

AMS Response: AMS appreciates commenters' concerns about mandatory disclosure and explains the NBFDS seeks to minimize the food industry's implementation and compliance costs while providing a mandatory, uniform disclosure standard for BE food. As noted, AMS has adopted Position 1, in which products that do not contain modified genetic material are not bioengineered foods and are not subject to mandatory disclosure. Such products could be voluntarily disclosed.

Comment: Some commenters provided an economic argument that the number of BE foods covered would not change if refined and highly refined foods where no rDNA is detectable are not covered by the NBFDS. In addition these commenters cite the inconsistency of requested exemptions for (1) incidental additives, processing aids, secondary direct additives; (2) food derived from insects or microorganisms that grow or feed on a bioengineered substrate, such as a bioengineered crop or other substance; (3) enzymes; (4) ingredients derived via fermentation regardless of whether the microorganisms used in the fermentation are derived using rDNA technology, and (5) food products with medicinal or supplementary applications to be excluded from the definition of a BE Food. They stated that exemptions for refined and highly refined products would be no different.

AMS Response: AMS acknowledges the range of comments citing substances that may or may not be subject to disclosure. In establishing this rule, AMS relied on the statutory language in the amended Act in adopting Position 1. Foods with no modified genetic material are not bioengineered food and therefore are not subject to BE disclosure. As stated in the RIA, because AMS has adopted this position, there would be a reduction in the number of products that are labeled BE. Because those foods are not bioengineered food subject to mandatory disclosure under the amended Act, AMS does not have the authority to require BE disclosure for those foods regardless of the number of food products that may be affected.

In addition, AMS sought to align the disclosure requirements of the NBFDS with the ingredient declaration requirements under applicable FDA regulations to simplify compliance and reduce labeling costs for regulated entities. Section II.E.1 of this rule details AMS's position on disclosure of incidental additives, including enzymes and microorganisms used in fermentation. AMS further discusses its position for some of these substances in Section II.E.4 of this rule.

AMS sought to limit inconsistencies to the extent possible and where it had the authority to do so. To the extent that interested persons think that other products should be subject to disclosure, they may submit a petition or request seeking to adopt a factor or condition to potentially modify the definition of ''bioengineered food'' in a future rulemaking.

Comment: Commenters pointed out that the NBFDS is a marketing standard, not a safety standard. Consequently, they feel AMS should aim to determine whether its new labeling system would confuse consumers. These commenters were concerned that consumers who expect food containing raw BE ingredients to be labeled as such may feel misled if AMS adopts Position 1 for the NBFDS. Other commenters suggested that the NBFDS clarify the definition of bioengineering to state that it is synonymous with ''genetic engineering'' or ''GMO.'' These commenters are concerned that the public, which commonly refers to BE products as GMOs, may be confused when using the term bioengineering and that the terminology may be inconsistent with other labeling systems.

Several commenters cited the option in the proposed rule to later petition AMS to include specific factors or conditions not otherwise provided for in the definition of ''bioengineered food''

and provide stakeholders with the freedom to disclose voluntarily additional ingredients/products if they are truthful and consistent with the NBFDS.

AMS Response: AMS acknowledges commenters' concern for potential consumer confusion regarding the new labeling system. As explained in earlier comments, AMS has adopted Position 1 and has incorporated the statutory definition of bioengineering into the regulatory definition of ''bioengineered food.'' We believe this definition of ''bioengineering'' clearly sets forth the scope of the mandatory disclosure. AMS does not believe that the definition of bioengineered food will create consumer confusion. However, AMS does understand that some regulated entities are interested in disclosing that certain products such as refined products are derived from bioengineering; accordingly, regulated entities may voluntarily disclose such products.

AMS considered similar terms to bioengineering as permitted by the amended Act but ultimately determined that bioengineering and bioengineered food accurately reflected the scope of disclosure and the products and potential technology at issue. AMS believes that using other terms such as genetic engineering or genetically modified organisms may create inconsistencies with the preemption provisions or muddy the scope of disclosure.

Comment: Several commenters cited the option in the proposed rule to later petition AMS to include specific factors or conditions not otherwise provided for in the definition of ''bioengineered food'' and provide stakeholders with the freedom to voluntarily disclose additional ingredients/products if it is truthful and consistent with the NBFDS. Many commenters saw this as a basis to exempt refined and highly refined foods from the NBFDS as proposed in Position 1.

Some commenters were concerned with the economic impacts of labeling refined foods as bioengineered and leading consumers to improperly believe refined products contain bioengineered ingredients. A related concern by one commenter maintains that Position 2 contradicts FDA's requirement that labeling be accurate. As an example, the commenter suggested that labeling a package of sugar, a refined food product, with one of the NBFDS disclosure options would falsely imply the product contains modified DNA, and such a claim would not comply with FDA's labeling requirement.

AMS Response: AMS has adopted Position 1 based on the plain language of the amended Act. In addition, we agree that entities can opt to voluntarily disclose information about highly refined foods made from BE sources in accordance with § 66.116.

Comment: Some commenters contend consumer expectations for BE disclosure are driven, in part, by voluntary marketing claims like Non-GMO Project Verified and True North. These voluntary programs label highly refined products derived from bioengineering as GMO's. Commenters suggest using an alternative approach to labeling these products would cause consumer confusion and disrupt the industry. Several commenters expressed concern this potential confusion could impact them personally, as many have experienced health-related issues after consuming products made with GMO ingredients. Others expressed concerns about products made using bioengineered products.

AMS Response: AMS acknowledges that entities may participate in voluntary labeling initiatives such as the non-GMO Project so long as they are in compliance with all applicable Federal regulations. To the degree possible, USDA has tried to minimize the impact the NBFDS will have on these voluntary absence claims. AMS acknowledges that some elements of the NBFDS may differ from requirements of some existing voluntary marketing claims. As explained in earlier comment responses, AMS has adopted the statutory definition of ''bioengineering,'' thereby exempting from disclosure labeling foods such as refined products that have undergone processes to remove modified genetic material.

In establishing this rule, AMS has considered the interest of consumers and seeks to minimize the food industry's implementation and compliance costs—costs that could be passed on to the consumers. That said, as we have stated previously, nothing in this disclosure standard conveys information about the health, safety, or environmental attributes of BE food compared to non-BE counterparts. The NBFDS provides a mandatory, uniform disclosure standard for BE food—as defined in this rule, by which uniform information is provided to consumers.

3. Conventional Breeding

AMS solicited comments on whether to define ''conventional breeding'' and suggestions for what that definition should be.

Comment: Many commenters requested that AMS define conventional breeding within the NBFDS final rule, to better define the scope of NBFDS for regulated entities and consumers. Several commenters stated that conventional breeding should be narrowly defined, opining that the purpose of the NBFDS was to require labeling of bioengineered food. This was in contrast to another commenter who desired a broad definition of the term, stating that the final rule ''should recognize that because a process accelerates what could be accomplished through other, slower processes to achieve the same result, it should not preclude the accelerated process from being deemed ''conventional.''

A few commenters accepted one of the sample definitions included by AMS in the proposed rule, but there were many additional proposed definitions. Some commenters suggested conventional breeding be defined as ''referring to a wide range of modifications obtained through methods that use an organism's potential genetic variability within its gene pool.'' One commenter suggested modifying one of AMS's sample definitions for conventional breeding to state ''protoplast fusion'' rather than ''protoplast,'' ''cell selection'' rather than ''cell'' and ''embryo rescue'' rather than ''embryo fusion.'' Other commenters suggested adopting bioengineered food definitions from the USDA National Organic Standard (see 7 U.S.C. 1639b(f)(2)), by the Food and Drug Administration, or from the Codex Alimentarius. One such commenter believed that doing so would make clear that the techniques of modern biotechnology, such as gene editing and gene silencing, were not conventional breeding.

A few groups of commenters requested the term be defined but did not propose a specific definition. Many of them stated that they disapproved of the use of any definition that includes a list, as breeding techniques are continually evolving. One commenter argued that the definition should be fashioned in such a way that the only products subject to labeling are the ''products that were developed by transferring genetic material between non-sexually compatible species.'' A few other commenters desired that clarity would be achieved by providing a definition and identifying, through examples, those modifications that could be obtained through conventional breeding. Another group of commenters stated that ''this should be done through a supplemental proposed rule that provides the public with an additional opportunity to provide public comments.''

There were, however, several commenters who believed that there was no reason to define conventional breeding. Some stated that the term was commonly understood and therefore unnecessary to define. Others argued that the term was difficult to precisely define and therefore would only sow confusion amongst the regulated if there was any attempt to do so. One commenter worried that a definition would likely not stand the test of time due to the pace of new technology and therefore would not cover newly established processes.

AMS Response: AMS appreciates the wide range of comments received related to defining ''conventional breeding.'' AMS finds ''conventional breeding'' is a commonly understood term within the industry which does not require a definition. Additionally, any ''conventional breeding'' definition could become unworkable or obsolete as technology and techniques evolves. Forgoing defining the term would allow AMS to respond to those challenges in real time.

Comment: Several commenters stated that conventional breeding is a common term which is well understood, therefore the term does not need to be defined. Some of those that did not wish the term to be defined argued that any such attempts would be inherently confusing or misleading to consumers.

AMS Response: AMS agrees that ''conventional breeding'' is a commonly understood term within the industry that does not require definition.

4. Found in Nature

AMS requested comments on whether the term ''found in nature'' should be defined, and if so, what that definition should be. AMS specifically sought comment on whether intellectual property law should be considered as one method for determination.

Comment: Commenters generally did not support defining or including the term ''found in nature'' within the NBFDS. Many of those in opposition believed the term ''found in nature'' itself was nebulous, misleading, and not adequately defined by science. Others argued that agriculture is inherently separate from nature.

Of those that did request the term be defined, two common suggestions were ''spontaneously occurs in nature, such as natural biological evolution, and does not overcome natural physiological reproductive or combination barriers,'' or ''the kinds of genetic modifications which can occur in nature within the genome of an organism, without human intervention.''

One commenter suggested that should definitions be deemed necessary, the definitions avoid setting precedents in other regulatory areas, and be kept as simple and as clear as possible. Another group of commenters stated that ''this should be done through a supplemental proposed rule that provides the public with an additional opportunity to provide public comments.''

AMS Response: AMS finds it unnecessary to define the term ''found in nature.'' AMS received no compelling arguments to define the term and believes that attempting to do so may cause confusion in light of the rapid pace of innovation. In order to incorporate technological changes in industry into this mandatory labeling standard, AMS believes it needs to retain maximum flexibility. That will not be accomplished by narrowly defining found in nature.

5. List of Bioengineered Foods

AMS solicited comments on the option of utilizing a list of foods in an attempt to make it easier for regulated entities to identify what products require disclosure. AMS proposed two lists: One composed of highly adopted foods commercially available in the United States and another of non-highly adopted foods commercially available in the United States. AMS requested comments on maintenance of and revisions to the lists, the threshold for ''highly adopted,'' and list composition. AMS also requested comments on using list maintenance to evaluate whether a particular crop meets the definition of ''bioengineering'' in light of emerging technologies; on whether enzymes, yeasts, and other foods produced in a controlled environment should be included on the lists; and on the treatment of foods produced in other countries.

Comment: While some commenters suggested that a list should not be used as a tool to help identify potential BE foods, most commenters generally supported the use of a list method to identify foods subject to disclosure, noting a readily available list of such foods would make compliance less costly. A few commenters acknowledged the usefulness of the proposed lists as a reference tool but recommended that the presence of BE ingredients in a food trigger the disclosure requirement even if those foods do not appear on the lists.

AMS Response: AMS agrees that the List of Bioengineered Foods is an important part of the rule that will facilitate compliance with the NBFDS. AMS also agrees that foods should be subject to disclosure to the extent regulated entities have actual knowledge such foods are bioengineered. Disclosure decisions are based on entities' records. Nevertheless, entities that have actual knowledge that a food is bioengineered must make appropriate disclosure of that food, even if that food does not appear on the List. AMS believes, however, that it would be unduly burdensome to hold regulated entities responsible for failing to make BE disclosures for foods that do not appear on the List and for which regulated entities have no actual knowledge of bioengineered status. Disclosure and recordkeeping for unlisted foods is therefore required only when regulated entities have actual knowledge of the bioengineered status of the food in question. AMS notes that it intends its List to be as complete as possible, aiming to capture any BE foods that meet the definition of bioengineered food and that could potentially be offered for sale in the United States.

Comment: While some commenters supported the use of separate lists for highly adopted and non-highly adopted BE foods, many suggested that using two lists with different labeling requirements would be confusing and burdensome, and recommended the final rule call for the use of a single list. A few commenters noted that using a single list could make enforcement and list revision less burdensome for AMS. Others recommended using a single list because the adoption rates forming the basis of the two-list approach do not necessarily correspond to the rates at which the listed crops are used in foods commercially available for human consumption in the United States. Several commenters recommended the single list be comprised of all commercially available crops, while a few industry commenters asked that the single list include only crops with a high (85%) BE adoption rate.

AMS Response: In the interest of simplifying compliance with the NBFDS, AMS has consolidated the two lists proposed in the NPRM into one List of Bioengineered Foods and has expanded that List to include foods that may be produced internationally.

AMS has also determined that the purposes of the NBFDS are best served by maintaining a list that, to the extent possible, captures all foods meeting the regulatory definition of a ''bioengineered food'' that could potentially be offered for sale in the United States, regardless of U.S. adoption rate. AMS has therefore expanded the List beyond foods that are commercially available domestically. The initial List, in § 66.6, is comprised

of foods that, to the best of AMS's knowledge, are authorized for production somewhere in the world and are currently in commercial production somewhere in the world. AMS has considered information and data from several sources, including, but not limited to USDA reports and databases, ISAAA reports and databases, and reports and databases produced by other Federal government agencies. Foods that AMS believes are not currently in commercial production do not appear on the initial List, even if such foods are authorized for production in the U.S. or elsewhere. AMS may add those foods to the List through the process prescribed for list maintenance and revision when available information suggests it would be appropriate to do so. In any event, even if a food is not on the List, regulated entities knowingly using a bioengineered product are required to make disclosures for that food.

Comment: Several commenters recommended using an ingredients-based list rather than a crops-based list. A few commenters stated that presuming BE material is present in food derived from crops on the list would frequently be unwarranted, as many such foods derive from listed crops only because they contain certain highly refined ingredients that lack BE material; these commenters explained that using an ingredients-based list (such as a modified version of the lists in Exhibit 2 or Table 5 from the Regulatory Impact Analysis) instead would avoid creating that misleading presumption. Other commenters stated that an ingredients-based list would make compliance easier for regulated entities, which are often unsure which crops a food's ingredients derive from. Some commenters, however, thought a crops-based list would be easier for regulated entities to use and noted that a crops list, unlike an ingredients list, could be updated and verified using adoption rates and field data. A few commenters also expressed a need for a list containing BE microorganisms or other BE species, such as BE salmon.

AMS Response: AMS believes that regulated entities are in the best position to know the source, origin, and type of food products they are procuring, sourcing, refining, and potentially labeling. AMS developed the List of Bioengineered Foods to reduce potential recordkeeping burden of regulated entities while also providing information about the scope of potentially available bioengineered foods. The List has been expanded to include bioengineered foods that may not be produced in the United States and non-crop bioengineered foods, for example salmon. AMS acknowledges that the List may not be complete and may require periodic updates. The rule provides for annual review of the List and provides a mechanism for public input into list population, including rulemaking as necessary, as well as consultation with other government agencies.

AMS anticipates that maintaining an ingredients-based list would be resource-intensive, difficult to maintain, and would likely become obsolete in short order. As stated, AMS believes that regulated entities have more knowledge than AMS regarding the ingredients they are sourcing. Entities who knowingly use bioengineered foods are responsible for making appropriate disclosures, even if the food is not on the List.

Comment: A few commenters requested that AMS establish a list of Excluded Ingredients identifying ingredients or substances AMS ultimately deems not to trigger the disclosure requirement. These commenters noted that such a list could reduce compliance and recordkeeping costs for regulated entities and suggested AMS could periodically amend the list as appropriate without going through formal notice and comment rulemaking. These commenters requested that AMS set forth the process for creating and updating a list of Excluded Ingredients in the final rule.

AMS Response: As explained in the Preamble, AMS cannot at this time establish and maintain a list of ingredients excluded from the scope of the disclosure requirement. Regulated entities are in the best position to know whether disclosure is not required for the ingredients in their products, including, for example, because records verify the products are sourced from non-bioengineered crops or other sources, the ingredients have been subjected to refinement processes validated to remove genetic material, or analytical testing results demonstrate the absence of modified genetic material.

Comment: Several commenters supported the proposed rule's exclusion of enzymes, yeasts, and other non-crop foods created in controlled environments from the proposed lists on the grounds that such foods contain no genetic material and thus should not trigger the BE disclosure requirement. Some commenters, however, recommended the lists be expanded to include those products and all other BE-derived substances in commercially available foods. Several of these commenters explained that such substances, if ultimately deemed to meet the NBFDS definition of BE food, should be included in the final lists to facilitate compliance with the disclosure rule.

AMS Response: AMS notes that if regulated entities have actual knowledge that enzymes, yeasts, and other similar foods produced in controlled environments are bioengineered foods, then regulated entities are obligated to disclose accordingly. AMS has decided not to include on the List of Bioengineered Foods enzymes, yeasts, and other similar foods produced in controlled environments. AMS believes that such substances often do not meet the definition of a ''bioengineered food'' because they may be incidental additives with no technical or functional effect in the food under § 66.1 and 21 CFR 101.100(a)(3) (see Section E.1 of the Preamble, adopting the ''incidental additive'' factor or condition). Similarly, in many instances, a regulated entity may be able to demonstrate that such foods do not contain modified genetic material, such that they are not bioengineered foods. AMS believes categorical inclusion of such substances on the List of Bioengineered Foods would create confusion and complicate regulated entities' efforts to comply with the NBFDS's disclosure requirement. Regulated entities must determine whether recordkeeping and, ultimately, disclosure of those substances are required on a case-by-case basis.

Comment: Some commenters supported the proposed approach of listing crops or foods generally by type rather than creating a more cumbersome list identifying specific derivatives or varieties of listed crops. Other commenters recommended that the final lists refer to crops with greater specificity than the lists proposed—such as by specific cultivars for each crop, brand name, variety, or narrowly-defined product characteristic—to avoid burdening too many producers of non-BE crops with the NBFDS recordkeeping requirement. For example, one comment suggested listing ''Arctic® apple'' instead of ''Apple, Non-browning cultivars,'' since the only commercially available version of BE apples uses the Arctic® brand name. A few commenters also requested clarification on which types of corn constitute ''sweet corn'' and which types constitute ''field corn.''

AMS Response: AMS recognizes that listing foods broadly by type, rather than by bioengineered derivatives or varieties of particular foods, may impose disclosure or recordkeeping burdens on overbroad segments of

producers or sellers of non-bioengineered foods. To address that concern while maintaining a list of bioengineered foods that is not overly cumbersome, AMS has decided to list foods broadly by type while providing more details regarding specific varieties and characteristics, where possible. With respect to apples, AMS understands that most apple varieties are not known to be bioengineered. AMS has modified the List to identify the specific apples that are known to be bioengineered. As other BE versions of foods that are listed by variety are approved and become legally available, AMS will revise such listings to be more generic during the annual update process.

Additional information will be provided on AMS's website about specific varieties of foods that have been bioengineered, where that information is available to AMS. To the extent possible, the AMS website will also provide additional information about the traits for which the foods have been bioengineered. The information on the AMS website should aid regulated entities in determining which foods must bear a BE disclosure. As part of the annual review process, AMS will solicit information from the public to ensure that the List and the additional information maintained on the AMS website are complete, accurate, and as detailed, as possible.

Comment: Some commenters asked AMS to expand the proposed lists of BE products to include any BE foods that have undergone an FDA pre-market consultation, noting that such foods would be free to enter the market in the United States. However, other commenters pointed out that FDA pre-market consultation is not necessarily a reliable indicator that commercial availability is imminent, and they supported limiting the lists to products that are commercially available. Some commenters also requested clarification in the final rule on the definition of commercial availability, with a few commenters suggesting a market threshold of 10% for deeming a product commercially available.

AMS Response: As previously discussed, AMS has replaced the two lists of commercially available bioengineered foods proposed in the NPRM with a consolidated List of Bioengineered Foods that includes, to the best of AMS's knowledge, all foods that may meet the regulatory definition of a ''bioengineered food'' that could potentially be offered for retail sale in the United States. The consolidated List, which can be found in § 66.6, is comprised of foods that meet the following criteria: (1) They are authorized for production somewhere in the world and (2) they are believed to be in legal commercial production somewhere in the world. AMS believes this approach is consistent with the regulatory definition of ''bioengineered food'' and avoids potential confusion on the meaning of or threshold for the term ''commercial availability,'' that was proposed in the NPRM.

Comment: Many commenters supported expanding the lists to encompass BE crops grown in and imported from other countries, as large quantities of foods containing or derived from such crops are commercially available in the United States. Several commenters acknowledged that assembling international food lists and ensuring NBFDS compliance by foreign suppliers may be complicated, but that AMS might accomplish those ends by, for example, collaborating with international trade partners, using data published by organizations like the ISAAA and setting forth specific recordkeeping and/or testing requirements for foods imported from other countries.

AMS Response: Because bioengineered foods produced abroad are imported and offered for sale (or incorporated into products offered for sale) in the United States, AMS has decided to expand the list to include bioengineered foods that are in commercial production internationally. AMS has assembled that list by gathering information from several sources, including data published by ISAAA, FDA's list of completed voluntary premarket biotechnology consultations, and information published by ERS. AMS believes ongoing maintenance of the list may appropriately involve consideration of information from these and similar sources, as well as information supplied by the United States' trade partners. During the annual process to review and update the lists, AMS will consider information from interested parties, including importers and trade partners.

Comment: Several commenters agreed that if a food contains an ingredient appearing on the List, the entity should make a BE disclosure unless it keeps records verifying it is not a BE food and does not contain BE ingredients. Other comments criticized basing the disclosure requirement on whether foods were among the listed crops, explaining that the presumption created by a food's inclusion on the lists would place the rule's recordkeeping burden primarily on those who use non-BE commodity varieties in their foods—a result these comments viewed as at odds with congressional intent. Similarly, another commenter suggested that AMS should be tasked with keeping track of records supporting disclosure, allowing entities to challenge their appearance on the list directly to USDA.

AMS Response: AMS has determined that all food manufacturers, importers, and retailers offering for retail sale foods on the List of Bioengineered Foods are regulated entities and must maintain records related to those foods. The records can be used to verify disclosure or non-disclosure decisions. AMS does not believe this approach places an undue recordkeeping burden on entities that do not handle bioengineered foods; the NBFDS requires all regulated entities to maintain customary business records on foods they handle that appear on the List of Bioengineered Foods, and AMS anticipates those customary business records will be sufficient to demonstrate whether or not a food is bioengineered or contains bioengineered ingredients.

It would be expensive and very difficult, if not impossible, for AMS to keep track of records that support disclosure. AMS believes that regulated entities are in the best position to know the foods they are sourcing, distributing, using, and labeling, and the amended Act requires them to maintain usual and customary records. Because regulated entities must provide AMS with access to those records, it would be unnecessary to keep track of those records.

Comment: While some commenters favored annual review and revision of the lists, others found annual updates too infrequent to keep consumers effectively apprised of the BE status of their foods, and asked AMS to update the lists on a quarterly, monthly, or continuous basis instead. Some commenters, by contrast, suggested annual updates would be too frequent and unduly burdensome to AMS, particularly in light of the delay potentially associated with seeking public input before list revision, as proposed in the NPRM.

Commenters nevertheless generally approved of employing an open, clear, and transparent revision process. A few commenters warned against overreliance on the views of interested stakeholders in the proposed revision process, encouraging AMS to rely primarily on evidence-based criteria for list updates. Some commenters also requested that AMS disclose the potential environmental impact of the BE products recommended for inclusion on the lists.

AMS Response: AMS recognizes the brisk rate at which bioengineering

technology is advancing and new bioengineered food products are entering the marketplace. Accordingly, and because of the role of the List of Bioengineered Foods in determining whether specific foods require BE disclosure, AMS believes the List should be reviewed and updated on a regular basis. At the same time, AMS is mindful of the need to ensure the process for updating the list is transparent and allows for careful consideration of all relevant information on the appropriateness of proposed revisions. AMS has determined that updating the list on an annual basis through the notice process strikes the most appropriate balance among these considerations.

The Preamble and § 66.7(a) of the NBFDS describe the process by which AMS will seek recommendations and conduct an annual notice process through the **Federal Register** to review proposals regarding updates to the List of Bioengineered Foods. If indicated, AMS will conduct rulemaking to address proposed changes to the List. AMS believes this process will supply it with a wide range of pertinent information, including but not limited to scientific evidence, to allow the agency to make an informed decision whether certain foods should be added to or deleted from the list. The list review and update process will include consultation with other U.S. Federal government agencies with oversight of the use of bioengineered foods, including on the environmental impacts of using bioengineered foods. AMS, however, does not plan to attempt disclosure of potential environmental impacts as part of the list maintenance and revision process, as the NBFDS is not intended to convey information about the environmental attributes of BE food. AMS will instead revise the list based on whether a food meets the definition of a ''bioengineered food.''

Comment: Many of those who commented requested that the lists reflect the use of new and emerging technologies such as CRISPR, Synbio, and Talens. Those commenters recommended the lists remain consistent with the standards set forth in other Federal regulations, as well as the Codex Alimentarius, in order to facilitate compliance with applicable requirements and avoid conflicts with trade partners. Other commenters maintained that some existing or future genetic engineering techniques may not produce foods falling within the statutory definition of BE food and that such products should not appear on the proposed lists.

AMS Response: As previously noted, AMS believes that the characteristics of the biotechnology product itself, rather than the particular technological process by which the product was created, should determine whether a product is included on the List of Bioengineered Foods. AMS considers this approach more compatible with the text of the amended Act and Congressional intent. As part of the process for list maintenance and revision, AMS will, in consultation with the U.S. Government agencies responsible for the oversight of biotechnology products, consider new and emerging technologies and whether foods resulting from those technologies meet the definition of ''bioengineered food.''

Comment: Comments reflected a wide range of opinion on the appropriate timeframe for regulated entities to attain compliance after the BE food lists are revised. Many commenters supported the proposed 18-month compliance period. Others, concerned that the proposed period would allow new BE products to remain undisclosed to consumers for too long, recommended a 12-month period instead. Several industry commenters recommended a 24-month period, explaining that labeling costs rise and packaging waste results each time relabeling and repackaging are required, so those processes should occur as infrequently as reasonably possible. A few commenters suggested taking a more flexible approach, which would allow interested parties to submit comments on an appropriate time period as part of the list revision process. These commenters stated that a more contracted or extended compliance period might be appropriate, depending on the foods proposed to be added to the lists and impacts of the proposed changes on supply chains.

AMS Response: AMS acknowledges the burden frequent relabeling and repackaging would place on regulated entities. We believe the proposed 18-month compliance period allows regulated entities sufficient time to exhaust existing supplies and make necessary revisions to labels, and strikes the most appropriate balance with the countervailing need for consumer-facing labels to reflect accurate and updated BE information. In addition, AMS believes using a fixed 18-month compliance period for all changes to the list will prove more workable than setting applicable compliance periods on an ad hoc basis as part of the annual notice process for list revision.

6. Factors and Conditions

AMS solicited comments on whether one or both of the following should constitute factors or conditions under which a food is considered a BE food: (1) Whether incidental additives should be considered a BE food and labeled accordingly; and (2) whether the modified genetic material in a highly refined food may be detected. The proposed definition of BE food in the NPRM included the first factor or condition (incidental additives) but did not include the second (detection). AMS sought comment on whether the final rule should incorporate one or both of those factors or conditions into the definition. The proposed rule also sought comment on the process for seeking a determination on the adoption of other factors or conditions.

Comment: Commenters were generally supportive of the proposed process for adopting factors or conditions under which a food is considered a BE food. Some commenters, however, requested AMS to clarify in the final rule the parameters for submitting petitions to adopt factors or conditions. A few commenters asked AMS to establish a specific time period within which the agency would respond to requests for adoption of factors or conditions, as well as a time period for regulated entities to attain compliance with adopted factors or conditions. Other commenters asked AMS to allow the adoption of factors or conditions under which food produced through new technologies falls within the definition of BE food.

AMS Response: As noted above, AMS has determined to adopt the process proposed in the NPRM for adopting factors and conditions under which a food is considered a BE food. AMS believes that process as outlined in the NPRM and this final rule is clear and transparent, and the agency has thus declined to alter the proposed submission parameters for petitions to adopt factors and conditions. AMS has also declined to establish a time period within which the agency must respond to requests for adoption of factors and conditions, as the time necessary for responding to such requests will vary depending on available agency resources, the complexity of the requests, and the nature of rulemaking. Similarly, AMS has not established a fixed compliance period within which regulated entities must attain compliance with adopted factors and conditions. To the extent necessary, AMS will address any compliance period in particular rulemakings considering factors or conditions to be

adopted. It is the view of AMS, however, that because adopted factors and conditions operate only to carve out foods from the definition of ''bioengineered food,'' compliance with adopted factors and conditions will not ordinarily be burdensome.

AMS also notes that the text of the amended Act authorizes the Secretary to establish a process for making determinations regarding ''other factors and conditions under which a food is considered a bioengineered food.'' 7 U.S.C. 1639b(b)(2)(C). Although AMS may consider particular technologies as part of the factors and conditions process (as well as in revising and updating the List of Bioengineered Foods), in accordance with the language in the amended Act, AMS believes determinations whether to adopt a proposed factor or condition will primarily focus on the characteristics of the final food products, rather than on the particular technologies used to create the food products. In deciding whether to adopt proposed factors or conditions, AMS will consult with U.S. government agencies responsible for oversight of biotechnology products and consider relevant information that may allow AMS to align the NBFDS with the standards of other Federal agencies or foreign governments.

Comment: A few commenters opposed the adoption of the factors or conditions on which AMS solicited comments on the grounds that all foods derived in any part from BE substances, including incidental additives or foods with no detectable modified genetic material, should be disclosed in the interests of transparency. The commenters added that consumers want to know not only whether the final product contains BE genetic material, but also whether BE substances were used to make the final product.

AMS Response: As explained in the Preamble to this final rule, a food does not fall within the definition of a ''bioengineered food'' simply because a BE substance was used in the process of making the food—to be a ''bioengineered food,'' the food must contain modified genetic material. For that reason, AMS cannot decline to adopt a proposed factor or condition—which, under this final rule, could serve only to exclude foods from the scope of the ''bioengineered food'' definition—solely on the basis that the factor or condition would exclude from disclosure a food derived in part from the use of a BE substance.

Comment: Many commenters agreed that incidental additives should not be subject to disclosure when FDA regulations exempt them from inclusion in the ingredient statement on a food label. These commenters stated that aligning the NBFDS with FDA ingredient labeling requirements would simplify compliance and reduce labeling costs for regulated entities, and would also avoid creating consumer confusion. A few commenters added that excluding incidental additives from disclosure would align the NBFDS with the regulations of international trading partners. Several commenters further noted that incidental additives are present in food at an insignificant level and do not have any technical or functional effect in the final food product.

AMS Response: AMS agrees with the above comments. Exempting incidental additives that are not required to be labeled under FDCA regulations is sensible, aligns the NBFDS with practices of trading partners, avoids consumer confusion that could otherwise result if a substance not appearing on a food label triggered the NBFDS disclosure requirement, and limits the burden on regulated entities without unduly limiting disclosure for consumers. For these reasons, AMS has adopted the proposed factor and condition regarding incidental additives.

Comment: A few commenters recommended that enzymes be excluded from the disclosure requirement even if FDA regulations require their inclusion in the ingredient statement on a food label. These commenters stated this approach would be consistent with how state laws on BE disclosure treated enzymes. Some commenters noted, however, that certain yeasts (unlike enzymes) must be disclosed because they contain DNA and remain active and functional in finished food. One commenter added that if a 5% threshold is selected, it is unlikely that the presence of yeast would trigger disclosure.

AMS Response: AMS anticipates that enzymes, yeasts, and similar organisms will frequently be excluded from the disclosure requirement, either because they will meet the requirements of the incidental additive factor or condition or because they meet some other NBFDS provision permitting nondisclosure (such as §§ 66.1 and 66.9 regarding foods with no detectable genetic material). For organisms present in food that do not meet the requirements of any such provision, however, AMS cannot provide a categorical exclusion from the disclosure requirement. To the extent that interested parties seek a categorical exemption for microorganisms, they may submit a request for such a factor and condition to modify the definition of bioengineered food in a future rulemaking.

Comment: Some commenters in favor of excluding incidental additives from disclosure requested the proposed factor or condition to be modified to expressly include within the meaning of ''incidental additives'' processing aids, secondary direct additives, and substances migrating to food from equipment or packaging. A few commenters further requested AMS to clarify that BE microorganisms (such as those used in fermentation) constitute incidental additives where those microorganisms do not remain active and have no technical or functional effect in the finished food product. One commenter requested that AMS clarify what it considers to be an ''insignificant'' level of an incidental additive present in food, and recommended AMS adopt a meaning of ''insignificant'' consistent with that set forth in the FDA's regulations on labeling ingredients in food.

AMS Response: AMS does not believe the requested modifications or clarifications are necessary. The factor and condition regarding incidental additives is designed to align the NBFDS with the FDA's regulations on labeling food ingredients. Section 66.1's incorporation of the incidental additives factor and condition into the NBFDS thus references the FDA labeling requirement at 21 CFR 101.100(a)(3), which, among other things, outlines the circumstances in which incidental additives need not be labeled as ingredients and describes the types of substances constituting ''incidental additives.'' To the extent that secondary direct additives do not constitute incidental additives not subject to FDCA labeling requirements, then such additives would be subject to BE disclosure. AMS notes that 21 CFR 101.100(a)(4) defines ''insignificant'' levels of additives for certain applications of 21 CFR 101.100(a)(3). As § 66.1 thus incorporates the FDA labeling regulations' conception of ''incidental additives'' into the NBFDS, AMS believes further clarification or modification on the meaning of, or circumstances under which a substance may qualify as, an ''incidental additive'' would be redundant or risk creating the appearance of a conflict between the NBFDS's incidental additives provision and the FDA's labeling requirements.

Comment: Many commenters opposed the factor or condition excluding highly refined foods from disclosure where no modified genetic material can be detected. These commenters suggested that consumers deserve to make informed purchasing decisions and

expect BE disclosure where food or ingredients are derived from BE crops, regardless of whether modified genetic material can be detected in the finished food. Some commenters objected to this factor or condition because it would result in fewer products being subject to disclosure, which in their view would be inconsistent with consumer expectations. Other commenters stated that testing for trace amounts of modified genetic material would be difficult to enforce, impose burdensome compliance and recordkeeping costs on the industry that would then be passed to consumers, and present barriers for international trade as several trade partners do not require testing before permitting nondisclosure for highly refined ingredients. Many regulated entities, these commenters added, would choose to make a BE disclosure rather than undergo testing, resulting in different labeling for similar food products. Some commenters also voiced concerns about the ability of current testing methods and technology to accurately or consistently capture the presence or absence of modified genetic material.

AMS Response: The NPRM sought comment on a second proposed factor and condition, excluding food from the disclosure requirement where modified genetic material in the food cannot be detected. Because this proposed factor and condition would serve a purpose in the NBFDS only if foods without detectable modified genetic material were included within the general definition of ''bioengineered food,'' the NPRM explained that AMS would consider this factor and condition only if AMS decided to proceed with Position 2 on the scope of the regulatory definition of ''bioengineered food.'' As AMS declined to adopt Position 2 for the reasons stated in Section C.1, above, this factor and condition will not be incorporated into the NBFDS.

Comment: One commenter generally supported the exclusion of highly refined foods from the definition of BE food but opposed the undetectable modified genetic material factor or condition as proposed, on the ground that requiring regulated entities to provide the BE disclosure unless they first disprove the presence of modified genetic material by testing is an unconstitutional impingement on those entities' First Amendment rights.

AMS Response: AMS has adopted Position 1. The statutory definition of bioengineering states that food must ''contain[ ] genetic material that has been modified through in vitro recombinant deoxyribonucleic acid (DNA) techniques. . . '', to be labeled as a ''bioengineered food.'' AMS is not compelling regulated entities to label refined foods as ''bioengineered food.'' If the food product at issue is not a bioengineered food, AMS does not require that it be mandatorily labeled.

Comment: Many commenters supported the factor or condition excluding highly refined foods with no detectable modified genetic material from the disclosure requirement, pointing to several scientific studies they viewed as demonstrating an absence of genetic material in such foods. These comments explained that disclosure under the amended Act is triggered by the presence of modified genetic material and that, if no modified genetic material is detectable, Congress did not intend the food to be disclosed as BE. A few commenters also stated that treating highly refined ingredients derived from BE crops differently than their non-BE counterparts would create harmful marketplace impacts with no meaningful benefit to consumers.

AMS Response: As discussed in Section II.C.1, above, AMS agrees that highly refined foods with no detectable modified genetic material should not trigger the disclosure requirement. AMS, however, has decided to permit nondisclosure for such foods by adopting Position 1 on the scope of the regulatory definition of ''bioengineered food,'' and will therefore not incorporate this proposed factor or condition into the NBFDS.

Comment: Some parties in favor of the undetectable modified genetic material factor or condition offered comments on the testing methods and standards to be used to determine the presence or absence of detectable rDNA. One commenter recommended AMS accept a ''de minimis'' level of modified genetic material at or below which ingredients are not subject to mandatory disclosure and set that de minimis level of detection at 0.1% modified genetic material to total DNA. That commenter added that if AMS decides a de minimis detection level is not appropriate, detectability should be defined in accordance with ISO/ICE standards and using a methodology validated by Codex Alimentarius guidelines. A few commenters asked AMS to establish minimal standards regarding the analytical tools used for detecting, identifying, and quantifying modified genetic material. Some commenters also urged AMS to update the NBFDS as scientific detection methods evolve, with a few further recommending that AMS maintain publicly available guidance documents or lists of scientifically validated genetic testing methods to ensure testing consistency in the marketplace.

AMS Response: As mentioned, because AMS has adopted Position 1 on the scope of the regulatory definition of ''bioengineered food,'' the proposed factor or condition regarding undetectable rDNA will not be incorporated into the NBFDS. The methods by which regulated entities may demonstrate that particular foods contain no detectable modified general material, and thus are not bioengineered foods, are discussed in Section II.C.1, above. As stated in the Preamble, AMS will provide instructions to the industry to explain how they can ensure acceptable validation of refining processes in accordance with AMS standards. AMS will also provide instructions regarding acceptable testing methodology used to satisfy that a food does not contain detectable modified genetic material.

Comment: Several commenters requested AMS to establish a list of Excluded Ingredients, identifying ingredients excluded from the scope of the disclosure requirement under the undetectable rDNA factor or condition. Those commenters noted that AMS could periodically amend that list as appropriate without going through formal notice and comment rulemaking, helping to ensure the list is kept current. Those commenters requested AMS to set forth the process for creating and updating a list of Excluded Ingredients in the final rule.

AMS Response: AMS has not adopted the second proposed factor or condition. As discussed in Section II.C.1, above, AMS cannot at this time establish and maintain a list of ingredients excluded from the scope of the disclosure requirement. Regulated entities are in the best position to know the products they are sourcing and the refinement processes those products have undergone. AMS has determined that regulated entities can demonstrate that modified genetic material is not detectable by maintaining records verifying that a food is sourced from a non-bioengineered crop or source, showing that a food has been subjected to a refinement process validated to remove modified genetic material, or maintaining records of analytical testing results demonstrating the absence of modified genetic material.

Comment: Commenters also requested AMS to adopt additional factors or conditions excluding the following substances from triggering the disclosure requirement: microorganisms derived through fermentation; ingredients derived from animals fed with or treated with pharmaceuticals

produced from BE substances; ingredients produced through the chemical transformation of BE foods or ingredients into substantially new ingredients with no present or readily traceable BE source; and dietary supplements and/or food products with medicinal or supplementary applications.

AMS Response: AMS solicited comments only on the two factors and conditions proposed in the NPRM and cannot adopt additional factors and conditions in this final rule. It is possible, however, that some or all of the foregoing factors and conditions may appropriately be adopted through the factors and conditions process in future rulemakings. The process for requesting adoption of factors and conditions is discussed in the Preamble to this final rule and outlined in subpart C of the NBFDS.

7. Exemptions

a. Animals Fed Bioengineered Feed

The amended Act prohibits a food derived from an animal from being considered a BE food solely because the animal consumed feed produced from, containing, or consisting of a BE substance. 7 U.S.C. 1639b(b)(2)(A). Section 66.5(d) incorporates this statutory exemption and exempts products produced from animals fed bioengineered feed from displaying any form of disclosure regarding the presence of bioengineered ingredients or substances.

Comment: Commenters generally support the idea that animals fed with bioengineered feed and their products, including milk and eggs, should be exempt from the NBFDS. Many commenters understood that this provision was statutorily mandated. One commenter suggested that this provision should be framed as an exclusion rather than an exemption. Some commenters stressed that the NBFDS should state that products exempt from disclosure as bioengineered, such as products from animals fed bioengineered animal food, cannot by default qualify for an absence claim.

AMS Response: As commenters recognized, the amended Act prohibits a food derived from an animal from being considered a bioengineered food solely because the animal consumed animal feed produced from, containing, or consisting of a bioengineered substance. 7 U.S.C. 1639b(b)(2)(A). Section 66.5(d) incorporates this statutory exemption. For example, eggs used in a baked good, where the eggs come from a chicken fed feed produced from BE corn and soy, would not be considered bioengineered solely on the basis of the chicken's feed.

AMS has made no changes to this statutory mandate. Although this provision could be framed as an exclusion, AMS believes that it is permissible to frame it as an exemption. Moreover, the regulatory text makes clear that food derived from an animal shall not be considered a bioengineered food solely because the animal consumed feed produced from, containing, or consisting of a bioengineered substance.

AMS agrees that food derived from an animal that consumed feed produced from, containing, or consisting of a bioengineered substance does not automatically qualify for absence claims. *See* 7 U.S.C. 1639c(c). AMS declines to insert this in the regulatory text because the amended Act in this respect is self-executing. In addition, the focus of the NBFDS is on BE claims and not on absence claims. AMS notes that FDA (and FSIS depending on the food at issue) retain authority over absence claims. Entities seeking to use absence claims should ensure that they are in compliance with all pertinent Federal regulations and that such claims are truthful and not misleading.

Comment: Some commenters suggested that AMS should work to align ''Non-GMO'' text claim mandates with the NBFDS disclosure requirements, and that the exemption should also apply to products derived from animals or birds treated with drugs or pharmaceuticals produced through bioengineering.

AMS Response: AMS does not believe the amended Act provides authority to establish or align the NBFDS with a ''non-GMO'' label. Statutory provisions clearly instructed the Secretary to establish a national mandatory bioengineered food disclosure standard with respect to any ''bioengineered food'' and any food that may be ''bioengineered.'' As it pertains to other food labeling programs, the amended Act only acknowledges food certified under the NOP as sufficient to make a claim regarding the absence of bioengineering in the food, such as ''not bioengineered,'' ''non-GMO,'' or another similar claim. As noted above, AMS recognizes that FDA and FSIS retain authority over absence claims. Entities seeking to use absence claims should ensure that such claims comply with all applicable Federal laws and are otherwise truthful and not misleading. Regulated entities would need to ensure that their use of any other third-party standard that establishes and allows use of claims such as ''non-GMO,'' ''non-Bioengineered,'' or other similar claims does not put their product at risk of violating the NBFDS.

With respect to products derived from animals or birds treated with drugs or pharmaceuticals produced with bioengineering, AMS believes that such products, if they do not contain modified genetic material, would not meet the definition of ''bioengineered food.''

Comment: Some commenters requested that AMS define the term ''animal'' to include any animal, fish, insect, or microorganism. One commenter specifically pointed out that bees consuming pollen from bioengineered crops should be included in the definition of animal, and that honey should be exempted from disclosure. Some commenters argued that food ingredients like yeast, rennet, and enzymes should be exempt from disclosure. They explained that because yeast, rennet, and enzymes are typically produced or fed using bioengineered substrates, but may not be bioengineered themselves, they should be treated the same as products derived from animals that consumed bioengineered feed and exempted from the NBFDS. Many commenters agreed that the term ''non-agricultural ingredients'' is an appropriate description for such ingredients.

Another commenter went further to state that ingredients that are produced through the chemical transformation of a bioengineered food or ingredient and substantially transformed into a new ingredient, such as caramel flavoring and color, polydextrose, vitamin C, and sugar alcohols, should also be exempted. Commenters explained how for these kinds of ingredients that undergo significant processing, modified genetic material is rendered undetectable. Alternatively, other commenters argued that these ingredients should be subject to disclosure if they are listed as ingredients on a label.

AMS Response: AMS did not define animal in the regulatory text. AMS's understanding of an animal is based on the common understanding of an ''animal'', which refers to any organism in the biological kingdom Animalia, and would include fish, birds, and insects. ''Products derived from an animal'' would include milk, eggs, honey, rennet and other enzymes derived from animals, and similar products. The common understanding of ''animal'' and ''products derived from an animal'' would not include yeast since yeast is a single celled organism in the Fungi kingdom, or microbial rennet. Exempting yeast, microbial rennet, and

enzymes that are not derived from animals as an extension of the exemption for animal fed with bioengineered feed is beyond AMS's statutory authority. As discussed above, those substances may not be subject to BE disclosure if they qualify as an incidental additive that is not required to be labeled or if the modified genetic material in those products is undetectable.

Similarly, ingredients produced through the chemical transformation of a bioengineered food or ingredient and substantially transformed into a new ingredient, such as caramel flavoring and color, polydextrose, vitamin C, and sugar alcohols are subject to the NBFDS. They are not automatically exempt from disclosure. Based on AMS's understanding, these products would not qualify as products derived from animals that consumed bioengineered feed. However, they may not be subject to disclosure if they qualify as an incidental additive that is not required to be labeled or if the modified genetic material in those products is undetectable.

Comment: One commenter requested that AMS exempt foods produced from conventionally bred plants grafted to bioengineered rootstocks—provided that the plants producing such food have not otherwise been bioengineered. Such an exemption should cover the food and the plant that produced the food, including its bioengineered rootstock.

AMS Response: AMS cannot exempt foods produced from conventionally bred plants grafted to bioengineered rootstocks in this rulemaking. To the extent that these plants produce foods that have otherwise not been bioengineered, the resulting foods would not be bioengineered because they do not contain modified genetic material or for other reasons.

b. Food Served in a Restaurant or Similar Retail Food Establishment

As required by the amended Act, AMS proposed that food served in restaurants or similar retail food establishments should be exempt from the NBFDS. *See* 7 U.S.C. 1639b(b)(2)(G)(i). We received several comments on this exemption and what food establishments should qualify for the exemption.

Comments: Commenters generally supported exempting restaurants and similar retail food establishments from the NBFDS. Commenters explained how if these kinds of establishments were subject to the NBFDS, they would be unnecessarily burdened with maintaining product lists of bioengineered food and ingredients sold on a daily basis. Other comments suggested that the proposed definition was too narrow and should include a list of places as examples, rather than an exclusive list, such as cafeteria, lunch room, food stand, food truck, saloon, tavern, bar, lounge, salad bar, delicatessen, entertainment venue, or other retail business establishment where meals or refreshments constituting food may be purchased. One commenter requested that transportation carriers be added to the list of places exempted from the NBFDS.

Comments were also received that opposed the exemption for restaurants and similar retail prepared food establishments. These comments explained how consumers deserve to know when the food they are buying is bioengineered, regardless of whether it was purchased in a restaurant or in a grocery store.

Another commenter explained how all foods prepared, processed, or packaged in a retail food establishment, including those utilizing ''central kitchen'' locations for certain prepared foods, should also be exempt from the disclosure requirements of the NBFDS.

Others suggested that AMS should consider exempting foods sold by manufacturers to restaurants and similar establishments, and foods marked as ''for institutional use'' or ''not for resale.''

AMS Response: This final rule continues to exempt food served in a restaurant or similar retail food establishment from disclosure under the NBFDS. Based on the comments received, AMS has now modified the definition of ''similar retail food establishment'' to add additional examples, including food truck and transportation carrier: ''Similar retail food establishment means a cafeteria, lunch room, food stand, food truck, transportation carrier (such as a train or airplane), saloon, tavern, bar, lounge, other similar establishment operated as an enterprise engaged in the business of selling prepared food to the public, or salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside the retailer's premises.'' AMS considered including a list of places as examples, rather than an exclusive list, but believes that the reference to ''other similar establishment operated as an enterprise engaged in the business of selling prepared food to the public'' should capture any additional places that are not specifically listed.

AMS has not modified the definition to state ''where meals or refreshments constituting food may be purchased'' as we believe that with this insertion, the exemption would be much broader than the plain meaning of the amended Act. AMS believes that the exemption is intended to cover ready-to-eat or prepared foods. To extend the exemption to all foods prepared, processed, or packaged in a retail food establishment, which would include bulk foods such as granola or packaged apples in a bin, would conflict with the requirement that foods subject to FDCA's labeling requirements are subject to disclosure. AMS notes it does not have statutory authority to extend this exemption to foods sold by manufacturers to restaurants and similar retail food establishments, or to foods marked as ''for institutional use'' or ''not for resale.'' However, AMS anticipates that some of these foods would fall under this exemption because the entities selling or providing such food meet the definition of a similar retail food establishment.

AMS believes that the modified definition provides clarity and flexibility to regulated entities and is in accordance with the plain language of the amended Act. AMS also notes that exempt entities such as restaurants and similar retail food establishments may voluntarily provide disclosures of ''bioengineered food'' in accordance with the NBFDS if they so choose.

c. Very Small Food Manufacturer

As required by the amended Act, AMS proposed that very small food manufacturers be exempt from displaying any form of disclosure regarding the presence of bioengineered ingredients or substances in their products. *See* 7 U.S.C. 1639b(b)(2)(G)(ii).

Comment: Some commenters did not support a disclosure exemption for very small food manufacturers. These commenters stated that the NBFDS should apply equally to all companies regardless of size or revenue. These commenters stated that excluding small companies would undermine the transparency and consistency necessary for building consumer trust.

AMS Response: Section 66.5(b) exempts very small food manufacturers from the disclosure requirement of the NBFDS, as required by the amended Act. Section 66.1 defines ''very small food manufacturer'' as ''any food manufacturer with annual receipts of less than $2,500,000.'' AMS has made no changes to its proposal. In considering this definition, AMS must balance between providing regulatory flexibility for regulated entities and providing information to consumers

regarding the bioengineered status of their foods.

Comment: A few commenters stated that number of employees was an equally if not more suitable criterion than receipts for a small business. For instance, Congress has exempted small employers with 50 or few employees from some other Federal statutory provisions, such as the Affordable Care Act (42 U.S.C. 18024(b)(2)) and the Family and Medical Leave Act (29 U.S.C. 2601). A commenter recommended the agency should revise the definition of ''very small food manufacturer'' to include either those that have less than $2.5 million in annual receipts or 50 or fewer employees.

Understanding that there is a statutory obligation to exclude very small companies from the disclosure requirement, some commenters suggested using the lowest reasonable financial threshold of $500,000 consistent with those exempted from labeling requirements under the FDCA (§ 66.3(b) or limited to only ''cottage foods.''

A few commenters suggested revising the definition of ''very small food manufacturer'' to align with the Food Safety Modernization Act's definition for a ''very small business,'' which is defined as ''a business (including any subsidiaries and affiliates) averaging less than $1,000,000.''

AMS Response: To develop this definition, AMS considered small business definitions under FDA (21 CFR 101.9(j)(1)(i) and 21 CFR 101.36(h)(1)) and U.S. Census Bureau (USCB) regulations. AMS evaluated the impact of applying various definitions of ''very small food manufacturer'' by estimating the number of firms that would be exempted, the number of products that would likely be exempt, and the proportion of annual industry sales that would be exempt under each exemption level. The NPRM and the final rule above included tables showing the cumulative percentage of firms, products (UPCs), and sales that would be exempt if the definition of ''very small food manufacturer'' were set at the top of each of the annual revenue ranges (based on USCB's 2012 *Statistics of U.S. Businesses*).

Applying the FDA exemptions (annual sales of no more than $500,000) at 21 CFR 101.9(j)(1)(i) and 21 CFR 101.36(h)(1) as described above would exempt 45 percent of firms, only one percent of products, and less than 0.5 percent of sales for food manufacturers, and only 17 percent of firms and about 0.1 percent of products and sales for dietary supplement manufacturers. In conducting the Regulatory Impact Analysis, we estimated the impact of applying the USCB definition of very small businesses (fewer than 20 employees), which falls somewhere between the $2.5 million and $5 million annual sales cutoffs. We found that both of these revenue cutoff levels for the definition of ''very small food manufacturer'' would offer significantly greater relief for small manufacturers, while still having a relatively minor impact on the amount of information available to consumers. Exempting manufacturers with annual receipts of less than $2.5 million would provide regulatory relief to 74 percent of food manufacturers and 45 percent of dietary supplement manufacturers, while reducing the number of products covered by four percent (two percent for dietary supplements), and the number of purchases covered by only one percent for both food and dietary supplement manufacturers.

AMS considered other revenue cutoffs, including those above and below $2,500,000 and considered other definitions from various sources. AMS considered number of employees as a criterion by which to determine the threshold and ultimately determined that we do not need to be bound by that methodology. Because food and dietary supplement manufacturers are in the manufacturing sector, they are both defined by number of employees for purposes of SBA size categorization. However, the firms defined as small or very small for purposes of the NBFDS all fall well below the SBA, so we do not feel we need to be bound by that methodology.

In addition, the small food manufacturer definition was defined to be consistent with the FDA definition of small manufacturer under its nutrition labeling standards, which uses annual receipts. AMS believes that the very small food manufacturer definition should be consistent with these other definitions.

AMS believes that annual receipts is a reasonable measure in determining the threshold for small businesses and specifically here, very small food manufacturers. Using total receipts is administratively simpler than tracking and demonstrating revenue by category for purposes of this rule. We do not expect that there are a significant number of firms for which this distinction would make a difference, but it would increase recordkeeping burden for all firms that fall under this exemption if it was based on food sales, rather than annual receipts.

The $2.5 million threshold will provide relief to small businesses but will not markedly decrease the number of products subject to disclosure. By defining ''very small food manufacturers'' as those with annual receipts below $2,500,000, about 74 percent of food manufacturers are exempt from mandatory disclosure, but 96 percent of products will still be subject to disclosure. An increase in revenue cutoff would increase the number of exempt businesses but would also increase the number of products exempt from disclosure. The definition of very small food manufacturer provides flexibility for small entities while providing information to consumers regarding the bioengineered status of their foods.

Comment: Some commenters expressed concern that exemptions did not extend to small retailers that display food for sale in bulk containers, including made-to-order products. Commenters explained how these products often have significant variation day-to-day depending on the ingredients available, and they can be difficult to trace. Several small entities stated that it is nearly impossible to change the labels on a daily basis, and that they would have to consider whether to continue to carry these items if required to label them under the rule. The Small Business Administration (SBA) Office of Advocacy recommended broadening the definition of ''very small food manufacturer'' to allow more small businesses an opportunity to take advantage of the exemption. Similarly, they advocated extending the exemption to small retailers to allow small or very small retailers to be exempt from the bulk container labeling requirement.

Another commenter suggested that these revenue limits should extend to dietary supplement manufacturers, and that AMS should consider exempting foods sold by manufacturers to restaurants and similar establishments, and foods marked as ''for institutional use'' or ''not for resale'' because these foods are not consumer-facing and not required to carry consumer-directed information such as nutrition facts. In addition, medical foods, such as enteral foods, provided under a physician's care should also be exempted from these disclosures.

AMS response: With respect to comments urging AMS to extend this exemption to small retailers, AMS states that this exemption is statutorily mandated and cannot be extended to small retailers. To the extent that a small retailer is also a very small food manufacturer, they may be able to take advantage of the exemption in that instance. Additionally, foreign very small food manufacturers shipping

prepackaged food products intended for U.S. retail sale are exempt from regulation. Importers are ultimately responsible for verifying whether or not foreign food manufacturers are subject to the requirements of the NBFDS.

AMS acknowledges commenters' concerns regarding labeling foods sold by manufacturers to restaurants and similar establishments, foods marked as ''for institutional use'' or ''not for resale,'' and medical foods. AMS notes that if such foods are subject to the labeling requirements of the FDCA, then they are subject to the NBFDS. Such foods may be exempt if they fall under statutory exemptions, but AMS does not have statutory authority to create exemptions for such foods in this rulemaking.

d. Food Certified Under the National Organic Program

AMS proposed that foods certified organic under the National Organic Program shall be exempt from disclosure.

Comment: Many commenters that weighed in on the exemption of foods certified under the National Organic Program (NOP) supported the exemption. Many commenters requested that AMS clarify that the NBFDS shall not: Affect the definition of ''excluded methods'' or any other definition or practice under the NOP, circumvent the letter or intent of the organic standard, or require any amendment to the organic standard, and that organic certification shall be sufficient to claim the absence of bioengineering in the food, such as ''not bioengineered,'' ''not genetically engineered,'' ''non- GMO,'' or another similar claim. A commenter recommended adding language to § 66.3 to state that a food or food ingredient that is not required to bear a BE disclosure does not necessarily mean that the food or food ingredient qualifies for an absence claim such as ''non-GMO.'' The commenter also suggested that food certified under the NOP may bear an absence claim.

Additionally, other commenters stated that food certified under other international organic product regulations with which the NOP has established either recognition or equivalency agreements would be exempt from this rule. These types of agreement are currently in place with nine countries or regional trading partners, including Canada, Mexico, and the European Union.

AMS Response: AMS has ensured that the final rule does not affect the NOP regulation or products certified as organic under the NOP. Subtitle F states that ''In the case of food certified under the national organic program established under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), the certification shall be considered sufficient to make a claim regarding the absence of bioengineering in the food, such as 'not bioengineered', 'non-GMO', or another similar claim.'' 7 U.S.C. 6524. The NPRM stated that implicit in the statutory provision is that certified organic foods are not subject to bioengineering disclosure. This implication, in conjunction with the Secretary's authority to consider establishing consistency between the NBFDS and the Organic Foods Production Act, permits a regulatory exemption for products certified organic under the NOP. See 7 U.S.C. 1639b(f). The NPRM proposed that § 66.5(e) would exempt certified organic foods from bioengineered disclosure, so food manufacturers, retailers, and importers of certified organic food would not be required to maintain additional records to demonstrate that the organic food is not bioengineered for purpose of the NBFDS regulations.

The focus of the NBFDS is on establishing a disclosure standard with respect to any bioengineered food and any food that may be bioengineered. Although the amended Act mentions absence claims, the mandate of the NBFDS is not on absence claims. Therefore, AMS has reframed this provision as a statutory exemption and will not incorporate absence claims in the NBFDS. The amended Act's references to absence claims for foods certified under the NOP are self-executing.

AMS agrees with commenters that a technical correction to this provision is required. This exemption is intended to cover all NOP certified label categories (''100% Organic,'' ''Organic,'' and ''Made with Organic''). Accordingly, § 66.5(e) is revised to read ''Food certified under the National Organic Program.'' In addition, AMS confirms that food certified under other international regulations with which the NOP has established recognition or equivalency agreements would be exempt from the NBFDS.

Comment: Other commenters requested that the NBFDS also exempt from disclosure foods certified/verified to the AMS Processed Verified Program (PVP); non-GMO certification programs or third-party verification programs such as the Non-GMO Project, NSF True North Protocol, or SGS Non-GMO Certification; and other credible schemes. In addition, commenters suggested that AMS should help consumers distinguish among these many claims and standards.

AMS Response: AMS only has authority to exempt food certified under NOP. However, to the extent that these third-party verified programs meet the standards under § 66.9 and/or recordkeeping requirements associated with non-disclosure, then regulated entities employing these external frameworks may use associated paperwork to show that their products are not BE to the extent the scope of such programs align with that of this rule. As discussed previously, regulated entities seeking to use absence claims should ensure that such claims comply with all applicable Federal laws and are otherwise truthful and not misleading.

Comment: Another commenter stresses that the NOP has recognized that ingredients developed with the use of mutagenesis, such as docosahexaenoic acid (DHA) algal oil, may be used as an ingredient in organic foods. Under the NOP, bioengineering is considered an ''excluded method'' that cannot be used. The NBFDS needs to make clear that mutagenesis is excluded from the definition of bioengineering.

AMS Response: AMS agrees that NOP regulations require that no ingredient may be bioengineered. *See* 7 CFR 205.301(f)(1) and 205.105(e) and the definition of ''excluded methods'' in 7 CFR 205.2. In addition, AMS agrees that mutagenesis is a conventional breeding method.

8. Threshold

The NPRM solicited comments on an array of issues pertaining to the threshold exemption. This proposed exemption consists of three alternative threshold options that would exempt products from disclosure depending on the amount of a bioengineered substance that they contain.

a. Alternative 1–A: 5 Percent of Inadvertent or Technically Unavoidable

The first proposed alternative would establish that food in which an ingredient contains a BE substance that is inadvertent or technically unavoidable, and accounts for no more than five percent (5%) of the specific ingredient by weight, would not be subject to disclosure as a result of that one ingredient.

Comment: Many commenters generally agreed with Alternative 1–A. These commenters suggested that this threshold offered adequate disclosure, the most flexibility, and limited impacts on the food supply chain. They stated that many parties throughout the food supply chain use the same manufacturing processes and equipment for both BE and non-BE crops, so a 5 percent threshold would allow for the

continued coexistence of existing supply chains without significantly increasing costs. They also noted that the standard is a marketing standard and not one based on health and safety.

AMS Response: AMS believes that Alternative 1–A provides the right balance between disclosing and minimizing the potential impact on the food supply chain. BE crops and non-BE crops are often grown in close proximity and, depending on the crop, cross-pollination may occur. Similarly, BE and non-BE crops are often harvested and processed using the same equipment, which means trace amounts of BE crops may unintentionally be mixed with non-BE crops. The proximity of bioengineered crops to non-bioengineered crops, and the use of the same production, transportation, and processing equipment allows for the coexistence of different production systems without unnecessarily increasing food production costs. Because the NBFDS is a marketing standard and not related to health or safety, any threshold amount must balance the benefits gained from disclosure with the costs to implement that disclosure. AMS believes Alternative 1–A appropriately identifies that balance.

Comment: Some commenters noted that countries such as Canada, Indonesia, and Japan, have incorporated a 5% threshold into their mandatory and voluntary disclosure regimes. The commenters state that it would be prudent to mirror that level to support regulatory certainty in the international food supply chain.

AMS Response: AMS acknowledges that some U.S. trading partners have adopted a five percent threshold, either on a mandatory or voluntary basis, and that aligning our threshold amount with those countries will facilitate trade.

Comment: Some commenters proposed variations of Alternative 1–A, including hybrid schemes that would adopt Alternative 1–A for the inadvertent and unintentional presence of a bioengineered substance, and then an additional threshold for intentional use of bioengineered substances. These commenters believed such a hybrid method would give food manufacturers flexibility and allow them to intentionally use a de minimis amount of bioengineered ingredients without requiring disclosure.

AMS Response: AMS determined that food containing any amount of a bioengineered substance that is not inadvertent or unintentional is subject to disclosure. Therefore, whenever a regulated entity intentionally uses a food or food ingredient that contains a bioengineered substance, no matter the amount, that food would be subject to disclosure, so long as the food is not otherwise exempt. AMS believes that allowing for the intentional use of food and food ingredients that contain a bioengineered substance without requiring disclosure would undermine consumer trust and confidence in the NBFDS.

AMS also believes that any sort of hybrid or dual threshold scheme unnecessarily complicates compliance for regulated entities and increases the likelihood of confusion among consumers. The agency is not aware of customary or usual business records that would allow a regulated entity to accurately track the percentage of a bioengineered substance that is intentionally used in a food, and any such requirement to create new records unnecessarily increases the cost and complexity of complying with the NBFDS. Similarly, a marketing standard should be designed to clearly communicate information to consumers and a hybrid or dual threshold would unnecessarily complicate the type and amount of information being communicated to consumers.

Comment: Some commenters stated that AMS should not measure the threshold by weight, but by other means, such as a percent of rDNA that is present in the food or food ingredient. They suggested that this approach is more consistent with the BE labeling regimes of other countries and existing industry standards.

AMS Response: AMS agrees that the phrase ''by weight'' should be removed from the threshold exemption. AMS understands that existing industry standards and the BE labeling requirements of other countries do not use weight to calculate the threshold, but typically calculate such threshold amounts as the BE content of an item or ingredient relative to the non-BE content of that same item or ingredient. AMS believes existing industry standards are sufficient.

Comment: A number of commenters suggested that AMS should adopt Alternative 1–A because the NOP allows for up to 5 percent of products that are not certified organic to be used in organic products.

AMS Response: While we recognize that the NOP regulations at 7 CFR 205.301(b) suggest that products labeled as organic may contain 5 percent of ingredients that are not organic, that would be an incomplete understanding of that regulation. That regulation also states that this 5 percent must be organic unless the organic form is not commercially available and must be nonagricultural substances or non-organically produced agricultural products produced consistent with the National List in 7 CFR part 205, subpart G. The NOP regulations further require that this 5 percent not be bioengineered. *See* 7 CFR 205.301(f)(1) and the definition of ''excluded methods'' in 7 CFR 205.2. Thus, the NOP regulations are not an analogous situation that would be a rationale for adopting a 5 percent threshold.

b. Alternative 1–B: 0.9 Percent Inadvertent or Technically Unavoidable

Comment: Many commenters, including consumers, consumer groups, food manufacturers, and some industry trade groups were generally in favor of Alternative 1–B. Commenters noted that this threshold most closely aligns with consumer expectations, the threshold used by many trading partners, and existing domestic standards currently in use for voluntary BE and non-BE labeling programs. Additionally, a commenter stated that farmers, testing organizations, and food manufacturers have used 0.9% as the maximum threshold since 2003. The commenters argued that adopting the 0.9% threshold would avoid confusion into the marketplace and would ease the process of negotiating and executing mutual recognition agreements which would help stimulate trade between countries.

AMS Response: AMS recognizes that uniformity and consistency promote efficiency and lessen confusion. We note, however, that there is not one consistent threshold used for all foods and inputs domestically or by all trading partners. When determining whether the absence or presence of a bioengineered food or substance requires disclosure, domestic voluntary standards and/or foreign governments use thresholds greater than 0.9%, including 5%, under specified circumstances. AMS, however, must balance the costs and benefits for regulated entities and consumers in the United States when establishing thresholds for the NBFDS. A threshold substantially lower than 5% per ingredient may not be practical or achievable in production systems across a range of commodity groups. Furthermore, the requirements to attempt to meet a 0.9% threshold would be overly burdensome in proportion to the goal of providing consumers with a suitable amount of information on the presence of bioengineered substances in food products. AMS believes a threshold of 5% per ingredient does the best job in balancing the costs and benefits for regulated entities and consumers in the United States.

Comment: Consumer transparency is another reason commenters give for supporting Alternative 1–B. They suggest that the relatively wide use of Alternative 1–B internationally and domestically promotes consumer transparency, and that adopting Alternative 1–B would ensure that the greatest number of products are subject to disclosure while still allowing for co-existence of BE and non-BE foods. A food manufacturer states that consumers recognize the potential for inadvertent and technologically unavoidable commingling of BE substances and accept standards in use today that allow for the presence of a BE substance up to the 0.9% level, including companies that voluntarily disclose and voluntary standards established by third-party organizations for non-BE labels. Some commenters suggested that any higher threshold amount would negate the purpose of labeling and not match consumer expectations for transparency. Commenters also said that Alternative 1–B would promote good practices by companies because they would be able to segregate ingredient streams, while still allowing for some inadvertent or unavoidable introduction of BE material.

AMS Response: AMS understands that a lower threshold would likely result in a larger number of products being subject to disclosure. AMS also understands that if a threshold is set too low, regulated entities may have to label almost everything and the information may become less meaningful to consumers. Ensuring each ingredient stream remains below the threshold of 0.9% may not always be practical or achievable for all commodity groups, or the processes and equipment required to do so may increase food production costs. AMS believes a threshold of 5% per ingredient provides the best balance between reducing costs for regulated entities and maximizing information conveyed to consumers.

Comment: Several comments propose hybrid alternatives. A few commenters suggested combining the requirements of Alternative 1–A allowing for the inadvertent or technically unavoidable presence of a BE substance up to 5% in any ingredient with the requirements of Alternative 1–C to also allow for the intentional use of a bioengineered substance up to 0.9% in the finished product by weight. Another commenter suggested allowing a product to contain up to 0.9% total ingredients that had not been tested for BE substances, and requiring each such ingredient to comprise no more than 0.5% of the finished weight of the product, minus added water and salt. Other commenters were opposed to a hybrid approach. They argue that this would be more confusing and difficult to explain to consumers and would suggest a lack of transparency.

AMS Response: AMS understands the desire for flexibility that a hybrid approach might create. However, AMS believes the threshold is intended to recognize the complexities of the supply chain, not necessarily create a mechanism to avoid BE food disclosure. A simple, straight forward threshold that allows for the unintentional or technically unavoidable presence of a BE substance acknowledges the complexities of the supply chain while increasing transparency. A hybrid or dual threshold scheme would add an unnecessary degree of complexity that would confuse to consumers and increase the administrative burden on regulated entities. The additional sampling, testing, and recordkeeping requirements of a multi-pronged threshold scheme would likely go beyond the customary business records currently kept by regulated entities and AMS does not intend to unnecessarily increase the administrative burden of the rule on regulated entities.

Comment: A small number of commenters in response to Alternatives 1–A and 1–B suggested making two minor changes to clarify how the threshold would be applied and how it would be calculated. The first recommendation was to change ''an'' to ''any'' to clarify that the threshold applied to all ingredients. The second recommendation was to remove ''by weight'' because some methods of testing for threshold amounts do not calculate by weight, but rather as a percent of DNA.

AMS Response: AMS has changed the language used to define the threshold to make it clear that it applies to all ingredients. AMS also removed the reference to ''by weight'' to clarify that existing industry standards for determining the amount of a BE substance that is present in a food or food ingredient would be appropriate for purposes of applying the threshold exemption.

Comment: A number of comments supported Alternative 1–B but called on AMS to establish very specific testing requirements to guarantee manufacturers applied 0.9% thresholds meaningfully. They state that the testing should be conducted using the real-time or digital polymerase chain reaction (PCR) method conducted by an ISO 17025 accredited laboratory, conducted on samples where laboratory controls indicate the DNA input is sufficiently intact to allow for valid quantitative analysis, and follow a meaningful sampling plan in accordance with industry standards. Regulated entities would be required to adhere to these testing standards.

A commenter who was a food manufacturer stated that many food manufacturers do not test food products for BE substances. They rely instead on certifications of food ingredients from suppliers. The commenter stated that food importers in Europe are not required to test imported products. They stated that checking certifications from suppliers in place of testing was reasonable because suppliers are more familiar with ingredients, they already test their products, and there is no requirement that food manufacturers conduct further testing.

AMS Response: AMS understands the desire for uniform application of the threshold and a regimented approach to ensure that regulated entities are complying with all aspects of the NBFDS, including the threshold. However, AMS is aware that strict requirements on methodologies, processes, testing, and recordkeeping all increase the cost of compliance with the NBFDS. Because this is a marketing standard that provides additional food information to consumers, there is little benefit to highly prescriptive testing and recordkeeping requirements. AMS has the authority to enforce compliance with the NBFDS and believes the best way to ensure compliance is through the enforcement process described in the final rule, not through strict, burdensome regulations.

Comment: Those opposed to Alternative 1–B suggested that this alternative is overly restrictive, especially for a marketing standard. A few noted that Alternative 1–B would lead to over-disclosure because some companies would likely consider any commingled food as BE food. They said this could discourage consumers from purchasing products with BE labels. Others suggested that a 0.9% threshold would denigrate biotechnology and reduce choices for both farmers and consumers. Similarly, some commenters state that they believe Alternative 1–B treated BE substance as a contaminant. A few commenters believe that any threshold below 5% is not practical or achievable for many commodities. They state that traceability requirements would be overly burdensome in relation to the benefits derived from providing additional information to consumers. They believe that this would result in technology avoidance and a stifling of innovation. A few comments suggested that recordkeeping burdens would be costly at a 0.9% threshold because

regulated entities would have to account for traces of BE substance down to a very small degree throughout the entire supply chain. Although food manufacturers keep records now, these commenters believe such records are usually on a finished product basis and not by ingredient.

AMS Response: AMS understands the concerns raised by these comments. AMS is aware that setting a threshold too low may have practical limitations on the supply chain and could increase costs as entities throughout the supply chain implement additional measures to maintain a lower threshold on the food and ingredients they produce. While AMS understands that some supply chains and some countries currently produce food and ingredients that contain a BE substance below 0.9 percent, AMS does not want to unnecessarily increase the regulatory burden and costs on supply chains that may not currently be meeting that threshold. Moreover, those who are currently meeting the threshold for 0.9 would still be in compliance with Alternative 1–A, because ingredients that contain an inadvertent or technically unavoidable BE substance below 0.9 percent are still below the 5 percent threshold in Alternative 1–A.

Comment: A few comments questioned how AMS would interpret Alternatives 1–A and 1–B with respect to what is inadvertent or technically unavoidable, and whether such a definition would require any intentional use of a BE substance to be disclosed.

AMS Response: AMS has clarified in the final rule that any intentional use of a BE substance requires disclosure.

c. Alternative 1–C: 5 Percent of Intentional Use

One of the exemptions from food labeling proposed by AMS was Alternative 1–C. Alternative 1–C would exempt food from disclosure if the ingredient or ingredients in the food containing a BE substance accounted for no more than five percent (5%) of the total weight of the food in final form. AMS also sought comments on whether the specific threshold amount of 5% should be increased or decreased.

Comment: Comments in favor of Alternative 1–C suggest that this approach would allow for the de minimis use of BE food ingredients without requiring disclosure. They also indicate that this approach would align with that used in some other countries. Supporters of this alternative also suggest that this approach is the most supportive of bioengineering. Some commenters also believe this alternative would have the least impact on domestic and international value chains and international trade. Similarly, they suggest this would also be the option most compatible with our North American trading partners, Mexico and Canada, neither of which mandate labeling.

AMS Response: AMS understands that for some commenters, Alternative 1–C would increase the amount of flexibility under the standard and allow for the de minimis use of a BE substance without requiring disclosure. Although Alternative 1–C could be used in other countries, AMS is aware that there is no universal threshold level and that any choice of threshold will have implications on trade. While some have suggested that Alternative 1–C could cost less to implement because fewer products are labeled, AMS believes that current industry practices track the presence of absence of BE substances in an ingredient and not necessarily the specific amount. Adding the requirement to track the amount of a BE substance in each ingredient, and subsequently the final product, could unnecessarily increase costs for regulated entities, even though the number of products subject to disclosure may ultimately be less.

Comment: Some commenters suggested that Alternative 1–C would reduce consumer confusion.

AMS Response: AMS does not agree with those suggesting that a 5% threshold as proposed in Alternative 1–C would reduce consumer confusion. AMS believes it will lead to the exemption of a wider array of foods from labeling and cause consumers to have less confidence and trust in the NBFDS. AMS believes that providing more information and not creating an exemption for the intentional use of a BE substance is likely to provide more BE food information to consumers.

Comment: Several commenters suggested Alternative 1–C but with an amount lower than 5 percent—such as 0.9 percent. One commenter said that such an approach would exempt most fermentation/probiotic, viable enzymes, and defining/characterizing ingredients.

AMS Response: A threshold substantially lower than 5% per ingredient may not be practical or achievable in production systems across a range of commodity groups. Furthermore, the traceability requirements to attempt to meet a 0.9% threshold would be overly burdensome in proportion to the goal of providing consumers with a suitable amount of information on the presence of bioengineered substances in food products. AMS believes a threshold of 5% per ingredient does the best job in balancing the costs and benefits for regulated entities and consumers in the United States. AMS is allowing regulated entities to voluntarily disclose (§ 66.116) the presence of bioengineered substances even when not otherwise required to do so. This will help regulated entities to meet demands on their food products to conform to standards used in other programs. AMS will also work to develop mutual recognition arrangements so that countries might agree to recognize each other's standards as comparable.

AMS understands that some food products may include only a very small amount of a BE substance, such as enzymes or other products created in a controlled environment. Similarly, if there are other products that people believe should be exempted from disclosure, AMS has established a process to exclude them under factors and conditions. For reasons stated above, AMS believes that Alternative 1–A is the appropriate threshold and that any intentional use of a bioengineered substance should be disclosed.

Comment: One commenter supports the 5% threshold, but believes it should be measured using the percent based on volume of the BE substance in the ingredient, rather than ingredient weight. They state that other countries quantify the threshold by the volume of BE substance present in ingredients. They assert that a BE threshold defined by weight is not enforceable.

AMS Response: AMS has determined Alternative 1–A is the best approach, but has removed the phrase ''by weight'' from the regulatory text reflecting that option.

Comment: A majority of comments received regarding Alternative 1–C are opposed to this alternative. Many believe that this alternative is not transparent enough and that it would exempt wide amounts of food items from labeling. They suggest this would undermine consumer expectations, and possibly damage consumer confidence and trust in the labeling program. Commenters expressed the opinion that consumers wanting to avoid BE substances would not support Alternative 1–C because they would believe it was not low enough to be meaningful. A number of comments suggested that Alternative 1–C subverted the amended Act by allowing the intentional use of a BE substance into food products without requiring labeling.

Another large group of comments state that the 5% threshold amount will result in the rejection of our exports by countries with lower threshold amounts, damaging our ability to trade

food products in foreign markets. A food exporter expressed concern with the lack of conformity between Alternative 1–C and disclosure requirements in other countries. The exporter said that this lack of conformity would add complexity to their efforts to export their products because they would have to make disclosure adjustments for each country with differing disclosure laws.

AMS Response: AMS understands the concerns raised by Alternative 1–C, AMS has not chosen this alternative. AMS will not allow an exemption from labeling when a regulated entity intentionally introduces a bioengineered substance into a food product.

AMS believes that exporters are already complying with the laws of the countries into which they import their products and to the degree possible, AMS has tried to minimize any potential impacts on international trade. If other countries have a BE labeling program, AMS is also working to develop mutual recognition agreements where the requirements of countries with similar labeling requirements may be recognized in the United States.

Comment: A commenter stated that the EU uses ''accidental'' and ''technologically unavoidable'' instead of inadvertent and technically unavoidable. The exporter states that the EU defines accidental to include BE adulteration occurring during cultivation, transportation, or processing. AMS interprets inadvertent or technologically unavoidable as ''insignificant amounts of a BE substance in food that resulted from the coexistence of BE and non-BE foods in the supply chain'' [83 FR 19869]. This commenter presses AMS to interpret inadvertent in a manner identical to EU's ''accidental,'' or in a way that was consistent with the EU definition for ''accidental.''

AMS Response: AMS is not in a position to interpret how the EU implements their BE labeling law, but does intend to interpret AMS regulations in a manner that minimizes the impact on international trade.

Comment: Several commenters questioned how AMS will treat ingredients that are not considered bioengineered foods, such as incidental additives, for purposes of determining whether a food is exempt from labeling under the threshold.

AMS Response: If an ingredient is not considered a bioengineered food under another section of the NBFDS, such as an incidental additive, a regulated entity does not need to apply the threshold exemption to that ingredient to determine whether a food is disclosed as BE. If an ingredient is otherwise not a bioengineered food, it will not trigger labeling due to the presence of a bioengineered substance.

Comment: A commenter suggested that for Alternative 1–A and 1–B, any intentional use of a BE substance would require labeling even if the threshold limit is not exceeded. They then pointed out that to avoid this, food manufacturers would have to establish records to show that any BE substance in the food came only from inadvertent and technically unavoidable sources. This may require the manufacturer to keep additional records than those currently generated.

AMS Response: AMS intends to require only customary business records. For purposes of ensuring compliance with the threshold, AMS will look to the records to determine whether a regulated entity intended to purchase non-BE ingredients and the documentation they have from their suppliers indicating as much.

Comment: A commenter suggested that AMS should not require the exclusion of water and salt from the threshold calculation. This commenter stated that the finished product should be in the same form as it would be when presented to the consumer and excluding the weight of the water and salt from the calculation of the amount of BE would add complexity. The manufacturers would have to adjust their calculations to account for only the amount of a BE substance in the dry ingredients in the absence of water or salt.

AMS Response: AMS did not choose Alternative 1–C and this comment is inapplicable to Alternative 1–A. Water and salt do not contain DNA and would therefore, as individual ingredients under Alternative 1–A, never trigger disclosure.

Comment: A few commenters stressed that testing for BE content should not be a requirement. They emphasized the use of proper documentation, supplier assurances, along with existing controls should suffice. One commenter stated that in some cases statistical and qualitative tests could be used to obtain qualitative results and provide adequate verification of BE content. The commenters suggest that testing, such as PCR testing, would drive up costs significantly, decrease efficiencies in the handling and distribution systems, introduce new market risks, and disrupt global trade.

AMS Response: AMS does not intend to prescribe specific tests or methodologies for verifying compliance with the threshold. AMS intends to rely on customary business records.

9. Appearance and Placement of Disclosure

The NPRM solicited comments on the size, legibility, appearance, and location under ordinary shopping conditions for the BE food disclosure. The NPRM also solicited comments on the placement of the BE disclosure. AMS received several comments on those topics.

Comment: Many commenters supported the NPRM goal of ensuring that the BE food disclosure was likely to be read and understood under ordinary shopping conditions. Commenters suggested that the disclosure be concise, large enough to read, easily located, and intelligible. One commenter recommended the BE food disclosure size be consistent with FDA regulations at 21 CFR 101.2(c) governing ''customary conditions of purchase.''

AMS Response: AMS agrees that the BE food disclosure should appear prominently and conspicuously on the label, such that it can be read and understood under ordinary shopping conditions. This position aligns with other mandatory food labeling requirements, including the FDA regulations at 21 CFR 101.15.

Comment: Several commenters felt that the term BE was misleading and confusing to consumers. Commenters suggested that a disclosure using GMO would be simple, clear and suffice.

AMS Response: AMS understands and appreciates commenters request for clear, understandable disclosure language that references a familiar term like ''genetically modified organism.'' However, the amended Act clearly sets forth use of the term bioengineering. AMS acknowledges that the amended Act authorizes the Secretary to determine other terms that are similar to ''bioengineering.'' 7 U.S.C. 1639(1). But, for purposes of ensuring disclosure consistency and minimizing marketplace confusion, AMS has chosen not to adopt other similar terms and to require the use of the term ''bioengineered.'' AMS will engage in outreach and education to provide information about the new disclosure term.

Comment: Some commenters recommended AMS implement strong guidelines for the type size used for the BE disclosure. One commenter recommended that size requirements be defined with a minimum letter height and logo size. Another commenter requested that AMS provide uniform requirements for the disclosure location and size. Others suggested that the disclosure be similar in size of the product/brand name or at least 75 percent of the font size.

Several commenters requested flexibility in determining the disclosure's size and placement. One stated that AMS should give regulated entities flexibility in selecting the size and placement options that provide the best proportions for displaying the disclosure while also complying with the requirement for maintaining high visibility. Commenters also proposed if AMS specifies a disclosure size that it should range from 0.5–1 inch in diameter.

AMS Response: AMS acknowledges that font and type size contribute significantly to the consumers' ability to access information provided on food labels. As such, AMS considered prescribing specific type sizes for different disclosure options. After considering comments, however, AMS determined that the number and type of disclosure options, combined with the variety of food package sizes, shapes, and colors, would make prescriptive requirements too difficult to implement. Therefore, AMS is allowing regulated entities responsible for the disclosure to have flexibility in implementing the disclosure requirements. The NBFDS requires that disclosure text ''. . . be of sufficient size and clarity to appear prominently and conspicuously on the label, making it likely to be read and understood by the consumer under ordinary shopping conditions.''

Comment: Most commenters supported AMS's proposal for placement of the BE disclosure. One commenter recommended that the disclosure had to be placed on the information panel if room allowed. The commenter recommended that the disclosure needed to be consistent, and not at the discretion of the manufacturer.

AMS Response: AMS acknowledges commenters' support for the NPRM's proposed placement of the BE disclosure. AMS also agrees that the information panel is an appropriate location for the BE disclosure because consumers who are interested in additional information on food products will generally look for it on the information panel. Section III.A.4 of this rule provides a more detailed rationale regarding AMS's position on placement of the BE disclosure.

Comment: One commenter recommended that manufacturers be given greater flexibility in determining the disclosure placement and size. Another commenter also stated that there should be the option of placement and size of disclosure on the package. One commenter recommended that the disclosure be placed on any of the panels of the food package provided the disclosure is displayed prominently on the label and does not interfere with mandatory nutrition labeling requirements.

AMS Response: AMS agrees that manufacturers may need some flexibility when determining the size and placement of a BE disclosure. Based on its review of comments, AMS will allow manufacturers to include the disclosure on an alternate panel likely to be seen by a consumer under ordinary shopping conditions if there is insufficient space on either the principal display or information panels. Similarly, the NBFDS allows flexibility in the disclosure size. For a detailed explanation of AMS's position regarding the appearance and placement of the BE disclosure, refer to Section III.A.3 and Section III.A.4 of this rule, respectively.

10. Text Disclosure

AMS solicited comments on adoption of the text disclosures: ''Bioengineered Food,'' ''Contains Bioengineered Food Ingredients,'' ''May Contain Bioengineered Food Ingredients,'' and ''May Be Bioengineered.''

Comment: Several commenters believe the phrases ''may contain a bioengineered food ingredient'' and ''may be a bioengineered food'' would lead to more confusion for consumers who want to know the exact nature of the ingredients being consumed by their families. Some comments noted that many of the countries with mandatory disclosure requirements do not allow the use of a ''may'' statement. Some commenters stated that a ''may'' claim should be permissible to describe foods that contain ingredients where the sourcing may change from a bioengineered to a non-bioengineered source. Other comments suggested that regulated entities know and have records to demonstrate the bioengineered status of their foods and should not be permitted to use ''may'' claims when they know with certainty that their foods are bioengineered.

Commenters suggested that a symbol, such as an asterisk, could be used to denote an ingredient that was BE. Commenters also suggested that the disclosure statement should provide a declarative statement designating the BE information.

AMS Response: AMS appreciates commenters' desire for USDA to implement clear standards for disclosing bioengineered food products using on-package text. We recognize that consumers want additional information about the food they eat and may see the use of the word ''may'' in the text disclosure as ambiguous. As a result, AMS has removed the ''may'' disclosure option and will only allow regulated entities to make affirmative BE food disclosures.

Comment: Commenters requested straightforward labeling that would not confuse consumers by using unfamiliar terms. Many commenters suggested allowing or mandating other phrases such as ''genetically modified organism,'' ''GMO'' or ''genetic engineering.'' Another commenter suggested using the phrase ''includes'' rather than ''contains.'' Some commenters also requested clarification regarding whether regulated entities could provide additional statements regarding bioengineered foods as part of their disclosures.

AMS Response: AMS understands and appreciates the desire for clear, straightforward text disclosure language. The Secretary believes that the language used by Congress in the amended Act clearly and accurately describes the technology and provides consumers with the information they desire. AMS will engage in outreach and education to provide information about the new disclosure term. AMS also notes that, pursuant to § 66.118, nothing in the final rule prohibits regulated entities from providing additional statements or other claims regarding bioengineered foods and bioengineered food ingredients, so long as such statements are consistent with all other applicable laws and regulations.

Comment: Some commenters expressed concern about the disclosure options for foods contained on the proposed non-high adoption list of bioengineered foods. One commenter was concerned about the possibility that manufacturers could use loopholes to avoid having to say a food is bioengineered.

AMS Response: AMS acknowledges the concerns and notes that, as part of the NBFDS, AMS has developed a List of Bioengineered Foods for human consumption that may be produced anywhere in the world. This list establishes a presumption about what foods might require disclosure under the NBFDS, but does not absolve regulated entities from the requirement to disclose the bioengineered status of food and food ingredients produced with foods not on the list when the regulated entities have actual knowledge that such foods or food ingredients are bioengineered.

AMS also appreciates the concerns about regulated entities complying with the disclosure requirements. As such, subpart E of this rule outlines the enforcement regulations established to ensure compliance with the regulations.

Comment: Many commenters requested the use of the phrase ''bioengineered ingredients used in this product,'' regardless of the amount of bioengineered foods or ingredients contained in the product. Similarly, other commenters stated where trace amounts of bioengineered ingredients are identified, the entire food product should be labeled ''contains BE ingredients.''

AMS Response: The amended Act directs the Secretary to determine the amount of a bioengineered substance that may be present in a food, as appropriate, in order for the food to be a bioengineered food. Requiring a label for food that includes a bioengineered substance that falls below this amount would contravene Congress's intent.

11. Symbol Disclosure

AMS solicited comments on three alternatives for disclosure symbols, each in full color and black and white. All three include some variation of the letters BE, short for ''bioengineered.'' AMS also sought comment on whether the symbol should include the word ''bioengineered.''

Comment: Some comments suggested that none of the three symbols were acceptable. Many of these commenters suggested that the alternatives AMS provided promoted bioengineering or provided the BE food disclosure in a misleading or confusing manner. Some comments provided alternative symbols and others suggested general ideas that AMS should incorporate, such as more neutral colors or images.

AMS Response: AMS appreciates the comments and alternative symbol designs. AMS has chosen a modified version of Alternative 2–A. The modified version removed the letters ''BE'' and instead uses the word ''Bioengineered,'' which AMS believes will better inform consumers than just the letters ''BE.'' AMS believes the modified symbol is an appropriate, non-disparaging way to communicate the information required by the amended Act.

Comment: Some commenters believed adding the word ''bioengineered'' to the symbol was unnecessary and that other symbols used on food (*e.g.* the organic seal, irradiation symbol, and recycling symbol) do not use additional text to convey meaning. Other commenters, including some who conducted research on consumer response to the proposed symbols and text options, said the proposed symbols and text options did not provide clear information to consumers. Conversely, other commenters who also conducted research on consumer response to the proposed symbols and text options, believed adding the word ''bioengineered'' would provide consumers with more information than a symbol with the acronym ''BE.''

AMS Response: AMS has chosen to add the word ''bioengineered'' to the symbol and believes that the combination of the symbol with the additional text will provide consumers with more information about their food. AMS understands that because the symbol has not yet been used in commerce, consumers and those who may have responded to surveys conducted during the comment period that examined the proposed disclosure options may not fully understand the meaning of the symbol and accompanying text. As the NBFDS is implemented, AMS is committed to helping consumers understand the meaning of the new symbol and accompanying text.

Comment: Of those in favor of the proposed symbols, most favored Alternative 2–A. Commenters indicated that Alternative 2–A was the ''best choice of the three provided.'' They found it to be the ''most simple,'' ''most professional,'' and ''most neutral'' of the three proposed.

AMS Response: AMS agrees that Alternative 2–A is the most appropriate choice of the three proposed alternatives and has modified Alternative 2–A in the NPRM to address some of the concerns raised by other commenters, as described above.

Comment: Most commenters did not support the use of Alternatives 2–B or 2–C. Commenters believed the symbols and colors were misleading, not neutral, and that they resembled a smiley face. Conversely, several commenters liked the symbol because they believed they were the ''friendliest'' or ''happy'' option.

AMS Response: AMS appreciates commenters' concerns regarding the use of Alternatives 2–B or 2–C. Based on comments received for all three alternatives and commenter sponsored studies on consumer perceptions of labeling (see footnotes 7 and 8), AMS has chosen a modified version of Alternative 2–A, as discussed above.

12. Electronic or Digital Link Disclosure

AMS solicited comments on the option of an electronic or digital link disclosure including the use of current technology such as QR codes and digital watermark technology. In addition to the use of electronic or digital link technology, AMS solicited comments on language that must accompany the electronic or digital link such as, ''Scan here for more food information'' or equivalent language that reflects technological changes. The proposal would also incorporate a requirement to include a telephone number that provides access to the BE food disclosure and would further require that disclosure be available, regardless of the time of day, and that the telephone number be located in close proximity to the electronic or digital link and state ''Call for more food information.''

Comment: The majority of commenters did not support the use of electronic or digital link disclosure in lieu of on-package labeling. Many commenters cited the USDA study conducted by Deloitte Consulting LLP, *Study of Electronic or Digital Link Disclosure: A Third-Party Evaluation of Challenges Impacting Access to Bioengineered Food Disclosure* (July 2017), and listed concerns with electronic or digital link disclosures. Such commenters stated that reliance on electronic or digital link disclosure would discriminate against those without access to smartphones or other technology, such as reliable high-speed internet access, and would disproportionately have a negative impact on rural, low-income, minority, and elderly consumers. Commenters stated that many consumers are not aware of QR codes or how they work. Many of these commenters also stated that electronic or digital link disclosure should not replace on-package disclosure because even when consumers are aware of QR codes and attempt to access the information through their smartphones, the QR codes do not always work and are not easy for all consumers to use. Some of these commenters also stated that consumers associated digital link disclosures like QR codes with marketing, and would not be inclined to take steps to access the disclosure information. Most of these commenters stated that electronic or digital link disclosure would serve as a barrier between consumers and BE disclosure. Such barriers identified by commenters included additional costs for consumers, such as through increased data plans, and time spent scanning and obtaining information. Some commenters noted that consumers with families or limited windows of time for shopping would find accessing electronic or digital link disclosures difficult and frustrating.

AMS Response: AMS acknowledges that most commenters do not support the use of electronic or digital link disclosure. However, AMS notes that electronic or digital link disclosure is mandated by the amended Act. AMS

also notes that if a regulated entity decides to utilize electronic or digital link technology to convey bioengineered food information, that entity must also provide options for the consumer to access the disclosure by calling a phone number. AMS believes that requiring the option to call a telephone number will provide BE food information in an accessible and understandable manner. AMS also notes that such telephone number disclosure must be available regardless of the time of day.

Comment: Several commenters suggested that the use of electronic or digital disclosures would be acceptable only in conjunction with on-package text or symbol disclosures. Such commenters stated that on-package labeling provided shoppers a way to quickly and easily compare one product to another for BE ingredients and, at the same time, compare prices and nutritional content. These commenters identified many of the same issues as commenters opposed to electronic or digital disclosures. Some of these commenters noted that a store could install its own scanners to allow consumers to access electronic or digital link disclosures, but a subset of such commenters stated that such scanners would need to be installed within easy access to all shelves throughout the store, and not just near check-out counters, in order to be comparable to on-package labeling.

AMS Response: AMS notes that the amended Act mandates the electronic or digital link disclosure without requiring any separate on-package disclosure. AMS acknowledges that in-store scanners could allow consumers to access electronic or digital link disclosures. However, AMS does not believe such a requirement is necessary because any electronic or digital link disclosure must also provide options for the consumer to access the disclosure by calling a phone number.

Comment: Many commenters stated that if digital disclosure is allowed, the rule should account for new developments in technology that would be subject to guidelines to improve readability and ease of access to information. Some commenters stated that AMS should adopt rules to make sure that such disclosures made using electronic or digital technology consistently scan every time, work in all conditions, are optimized for readability and accessibility, and are easily accessible for consumers who do not have smartphones. In addition, commenters stated the need for AMS to ensure that QR code design, packaging material and shape is included in its performance standards. Commenters also stated that AMS should not allow multiple QR codes on the same package to diminish the risk that consumers will not know where to obtain the BE disclosure. Some commenters stated that AMS should use language that alerts the consumers that scanning the QR code or calling the provided number would provide BE information. Other commenters stated that if digital disclosure is allowed, the rule should account for new developments in technology that would be subject to guidelines to improve readability and ease of access to information. They also stated that AMS should use URLs or shortened URLs rather than QR codes as a disclosure method.

AMS Response: AMS recognizes that electronic and digital links currently used on food products in the marketplace take different forms, and are accessible on different devices, which would make certain specific requirements impractical. The amended Act allows for equivalent statements that reflect technological changes. Consequently, AMS has allowed for other alternative statements to direct consumers to the link to the BE food disclosure. Examples of other statements include: ''Scan anywhere on package for more food information,'' or ''Scan icon for more food information.'' AMS acknowledges that some consumers may experience difficulty accessing electronic or digital link disclosures. However, AMS does not believe additional rules mandating standards for QR codes are necessary because any electronic or digital link disclosure must also provide options for the consumer to access the disclosure by calling a phone number. Therefore, consumers experiencing difficulty with any electronic or digital link disclosure methods will have an alternative disclosure method available. AMS notes that the language to accompany any electronic or digital link disclosure is provided in the amended Act, which only allows for changes to the terminology based on technology, not a specific reference to bioengineering. AMS notes that while the amended Act does not allow for the use of URLs or shortened URLs for all manufacturers, website disclosure is allowed for small food manufacturers.

Comment: Many commenters urged that any electronic or digital link disclosure must remain free from any promotional or marketing information on the first product information page, or ''landing page,'' to which consumers are directed. These commenters urged that such disclosure must contain only BE information, as many of these commenters were concerned that QR codes would direct consumers to marketing information before bioengineering disclosure information. Some commenters disagreed with AMS's proposal requiring that the electronic or digital link disclosure provide the bioengineering disclosure on the first product information page.

AMS Response: Based on the amended Act, AMS believes that the electronic or digital link disclosure requires that the bioengineering disclosure be on the first product information page. *See* 7 U.S.C. 1639b(d)(2). AMS does not believe that consumers should have to navigate to other pages to locate the bioengineering disclosure.

AMS agrees that any electronic or digital link disclosure should remain distinct from any promotional or marketing information. While AMS acknowledges that some commenters have urged maximum flexibility in allowing disclosures alongside other information, AMS notes that the amended Act requires the electronic or digital link to provide the bioengineering disclosure on the first product information page accessed through the link, without any marketing and promotional information. Therefore, if a regulated entity wants to provide additional information about BE food to consumers, the information should be provided outside of the landing page that includes the BE food disclosure.

Comment: Some commenters were concerned about the potential liability digital disclosure options could present if they were accessed by unauthorized individuals, such as hackers.

AMS Response: AMS agrees that unauthorized access to personal information is a grave concern to many consumers. AMS notes that the amended Act specifically states that any electronic or digital link disclosure may not collect, analyze, or sell any personally identifiable information about consumers or the devices of consumers and, to the extent that any such information must be collected for the purposes of disclosure, that information must be deleted immediately and not used for any other purpose.

Comment: Many commenters supporting the use of electronic or digital link disclosure also cited the Deloitte study, noting that a vast and growing majority of Americans own smart phones capable of accessing digital disclosures and that wireless internet access is nearly universal in retail establishments. However, several commenters who support the use of electronic or digital link disclosure objected to the proposed requirement

for an additional phone number and call to action statement (''Call for more food information'') in conjunction with the digital disclosure link and digital call to action statement (''Scan here for more food information''). Some commenters stated that such a requirement will be costly to implement and is unnecessary when the regulated entity chooses the digital disclosure option. From their perspective, because existing toll-free numbers already appear on many labels, the package will also bear a link to the digital disclosure, and consumers will have sufficient and growing access to digital disclosure methods. Some of these commenters suggested that when regulated entities choose the digital disclosure option, consumers could access bioengineered food disclosure information through existing phone numbers, with the same placement and call to action to which consumers are accustomed. Commenters stated that by not allowing such flexibility, consumers could face two competing phone numbers on a single package, which would cause confusion. In addition, commenters stated the proposed requirement that phone lines be staffed at all hours would be extremely costly to implement. These commenters request that AMS consider less costly alternatives, such as allowing existing consumer support phone lines to also provide disclosure and specify in the final regulation that phone lines must be available only during normal business hours.

AMS Response: AMS acknowledges that a large number of Americans have smartphones and most national and regional supermarkets provide wireless internet connections. However, as discussed in relation to the study identifying potential technology challenges impacting consumers, the Secretary has determined that many consumers do not have sufficient access to electronic or digital link disclosures under ordinary shopping conditions at this time. AMS notes that the amended Act requires that any electronic or digital link disclosure also includes a telephone number that provides access to the bioengineering disclosure. While AMS acknowledges that a product may bear more than one phone number, AMS believes that any consumer confusion would be minimized because the bioengineering disclosure phone number must be in close proximity to the digital link. AMS believes that access to the disclosure regardless of the time of day is important to provide meaningful disclosure to consumers. AMS further believes that allowing pre-recorded information for such a disclosure lessens any burden on regulated entities.

13. Study on Electronic Disclosure

The amended Act requires the Secretary to conduct a study to identify potential technological challenges that may impact whether consumers would have access to the bioengineering disclosure through electronic or digital disclosure methods and to solicit comment on the study. AMS contracted with Deloitte Consulting LLP (Deloitte) to conduct the study and posted the resulting report, *Study of Electronic or Digital Link Disclosure: A Third-Party Evaluation of Challenges Impacting Access to Bioengineered Food Disclosure,* on its website in September 2017. As part of the NPRM, AMS sought comments on the study, as well as the proposed text message disclosure option, should the Secretary determine, after reviewing the study and comments, that consumers would not have sufficient access to the bioengineering disclosure through electronic or digital disclosure methods.

Comment: Many commenters cited the study in opposition to electronic or digital link disclosure, with several citing the study's finding that consumers may not have smartphones or access to internet speeds capable of downloading BE disclosure content. These commenters stated that this lack of access would disproportionately impact groups such as rural consumers and retailers. Commenters also cited the study's finding that consumers either do not know what digital links are or, if they do recognize them, they typically associate digital links with marketing information and they may not know, or be inclined to use, such methods to obtain a BE disclosure. Commenters further cited the study to note that even when consumers are aware of digital links and attempt to use them, they often run into problems scanning and using such links.

AMS Response: AMS acknowledges that some consumers may lack access to technology required to utilize electronic or digital link disclosure. In fact, after reviewing the study and comments submitted to the NPRM related to the study, the Secretary has determined that consumers would not have sufficient access to the bioengineering disclosure through only electronic or digital means under ordinary shopping conditions at this time. Thus, AMS, in compliance with the amended Act, is adopting a text message disclosure option. *See* 7 U.S.C. 1639b(c)(4). The amended Act does not, however, vest AMS with authority to eliminate the electronic or digital disclosure option. *See id.* The amended Act is clear that it is the food manufacturer that selects the disclosure option that it wants to use to make the required disclosure. *See* 7 U.S.C. 1639b(b)(2)(D).

Comment: Some commenters noted additional disclosure technology cited in the study, such as in-store digital link scanners, and stated that digital disclosure would need to be paired with other such disclosure options to ensure access to all consumers.

AMS Response: AMS agrees that additional technology in the grocery stores may make electronic or digital disclosure more accessible. Grocery stores are welcome to have those technologies in place for consumers. However, the amended Act does not provide AMS with the authority to require grocery stores to make those technologies available to consumers.

Comment: Some commenters cited the study in support of digital disclosure. These commenters noted the study's findings that wireless internet and cellular networks are already widely available, and access to these technologies is increasing.

AMS Response: AMS acknowledges that a large number of Americans have smartphones and many national and regional supermarkets provide wireless internet connections. However, as noted above, the Secretary has determined that many consumers do not have sufficient access to electronic or digital link disclosures under ordinary shopping conditions at this time.

Comment: Numerous commenters, including those representing food manufacturers and retailers, supported the use of text message disclosure. Many of these commenters urged maximum flexibility in disclosure, including text messages. Some commenters supporting text message disclosure noted that it would provide for disclosure without access to a smartphone or the internet. These commenters stated that text message disclosure could serve a broader range of consumers than digital disclosure options, noting the availability of cellular phone coverage throughout the country.

AMS Response: AMS notes that the Deloitte study reported that approximately 5% of Americans do not own mobile phones based on the Pew Research Center's Mobile Fact Sheet. Because text messaging is not dependent on broadband or wireless internet access, it stands to reason that 95% of Americans can receive text messages. Thus, we agree that text message disclosure can serve a broad range of consumers. Additionally, the amended Act requires the Secretary to consult with food retailers and

manufacturers in providing the additional and comparable option. *See* 7 U.S.C. 1639b(c)(4). AMS, therefore, gave significant weight to comments from this group that overwhelmingly supported the text message disclosure option.

Comment: Many commenters opposed the use of text message disclosure. Several argued that the additional need for a phone, even if it is not a smartphone, is a burden on consumers. Many of these commenters cited the study and noted that many consumers, especially rural consumers, do not have access to reliable cellular phone service, making text message disclosure difficult to use. Some of these commenters also noted that text messaging could result in additional charges to consumers who pay for individual text messages or have to pay for an upgraded phone plan. Other commenters stated that the need to text for a disclosure would be time consuming and ineffective, placing unnecessary barriers between consumers and BE disclosures. These commenters stated that text messaging was not comparable to on-package labeling and should not be adopted.

AMS Response: AMS acknowledges that text messaging might require an additional cost for some consumers depending on the consumer's cellular phone data plan. However, AMS notes that consumers must not be charged a fee by the regulated entity to access the disclosure information by text message. We also note that a text message disclosure request sent by a consumer must trigger an immediate response to the consumer's mobile device. Finally, we note that the amended Act requires a comparable option to access the BE disclosure, not that the option be comparable to on-package labeling. Therefore, we conclude that the text message disclosure meets the requirements of the amended Act.

Comment: Some commenters urged that if text message disclosure is allowed, the text message disclosure should not include any marketing information. Other commenters noted that the proposed rule would prohibit charging fees, data collection, and privacy invasions that could be associated with text message disclosure, but they stated that consumers may not know of these prohibitions.

AMS Response: AMS agrees that any text message disclosure must not contain marketing and promotional information and is adopting proposed § 66.108(c) in the final rule to prohibit that information in the text message option. AMS is also adopting § 66.108(d) to protect the privacy of consumers who access BE information through text message. AMS will inform consumers of the privacy protections for text message disclosures on its website and encourages food manufacturers and retailers and consumer advocacy groups to do the same.

14. Disclosures for Certain Circumstances

a. Small Food Manufacturers

AMS solicited comments on two disclosure options for small food manufacturers: (1) A telephone number accompanied by appropriate language to indicate that the phone number provides access to additional information; and (2) an internet website address. In addition, in the case of small food manufacturers, the amended Act provides that the implementation date not be earlier than one year after the implementation date for regulations promulgated in accordance with the NBFDS. AMS proposed to define ''small food manufacturer'' as ''any food manufacturer with less than $10 million in annual receipts but $2,500,000 or more in annual receipts.'' This definition would be similar to FDA's proposed rule to extend the compliance dates for manufacturers with less than $10 million in annual food sales.

Comment: Several commenters recognized a need to give small food manufacturers the flexibility to disclose in a way that is cost effective for a small business, while providing the same level of protection for consumers' personally identifiable information. Several commenters recommended that the annual receipts threshold defining a small food manufacturer be changed to $2,500,000 or less, while other commenters suggested the definition should be based on number of employees, such as 500 or 100, because the measure of annual receipts can become outdated over time. Some commenters requested that the implementation date for small food manufacturers be delayed one additional year. Some commenters said no manufacturers should be exempt from disclosure based on size, with many of those commenters stating that the same reasons for disclosing apply regardless of the size of the manufacturer.

AMS Response: AMS believes that annual receipts are a reasonable measure in determining the threshold for small and very small food manufacturers, and that the definition of ''small food manufacturer'' provides flexibility for small entities while providing information to consumers regarding the bioengineered status of their foods. AMS notes that it considered other revenue cutoffs and other definitions. For instance, AMS considered the number of employees as a criterion, but found that it could be misleading and difficult to administer given the seasonal and part-time nature of some food manufacturing. AMS also believes that using total receipts is administratively simpler. In addition, AMS believes that the small food manufacturer definition should be consistent with the FDA's definition under its nutrition labeling standards, which also uses annual receipts. AMS believes that delaying implementation for small food manufacturers for the statutorily-required 1-year period, but not longer, provides such manufacturers with enough time to ensure compliance. AMS understands the concern of commenters that any exemption will lead to some level of non-disclosure, but notes that the implementation delay for small food manufacturers and the very small food manufacturer exemption are statutorily required. AMS also notes that any electronic or digital link disclosure utilized by small food manufacturers must take the same steps as larger manufacturers to protect personally identifiable information about consumers.

Comment: Several commenters recommended that the text accompanying telephone numbers and websites be clarified to include a reference to bioengineered disclosure so consumers know what type of information the text refers to. Some commenters recommended that companies should be able to use the same phone numbers and websites already on packaging to inform consumers because having a separate phone number or website link for bioengineered disclosure would be redundant.

AMS Response: AMS appreciates that some commenters requested a specific reference to bioengineering on small food manufacturer disclosures. However, AMS notes that the disclosure wording for small food manufacturers matches the statutorily-required on-package language required for electronic or digital link disclosures and any telephone number disclosures. AMS also acknowledges concerns commenters expressed regarding redundant phone numbers or website links. However, AMS believes that the rule provides small food manufacturers flexibility in disclosing bioengineered food information to consumers while ensuring that the manufacturer's chosen disclosure method is consistent with the disclosure required for larger manufacturers.

b. Small and Very Small Packages

AMS solicited comments on three disclosure options for small and very small packages: (1) A modified version of the electronic or digital link disclosure (''scan for info''); (2) a modified version of the text (''text for info''); and (3) a modified version of the phone number (''call for info''). The definition of ''small packages'' and ''very small packages'' was taken from FDA labeling requirements.

Comment: Many commenters supported using the FDA labeling requirement definitions of ''small packages'' and ''very small packages,'' with many of these commenters recognizing the need for flexibility for disclosure as small and very small packages have limited surface area for labels. Several commenters recommended that the disclosures be simplified to include a clear reference to bioengineering. Some commenters recommended that even small packages should fully disclose BE with a symbol or distinct on-package marking, with many such commenters stating that consumers might not have access to technology to access links or QR codes.

AMS Response: AMS appreciates that some commenters requested a specific reference to bioengineering on small and very small packages. However, AMS notes that the disclosure wording for small and very small packages matches the statutorily-required on-package language required for other electronic or digital link disclosures and any telephone number disclosures, but in a shortened form. AMS acknowledges concerns some commenters expressed regarding on-package labeling, even for small packages, and concerns with access to electronic or digital disclosure. However, AMS believes that the disclosure options available to manufacturers utilizing small and very small packages, including electronic or digital disclosure, provides needed flexibility to such manufacturers while providing disclosure to consumers.

c. Food Sold in Bulk Containers

AMS solicited comments on the AMS proposal that retailers would be responsible for complying with the BE food disclosure of bulk food, and that BE food disclosure on bulk foods be allowed to appear using any of the options for on-package disclosure, including text, symbol, electronic or digital link, or text message, if applicable.

Comment: Several commenters supported the proposed disclosure requirements for food sold in bulk containers, stating that such disclosure is necessary to allow consumers to easily identify and understand the bioengineered status of the food. Such commenters stated that the proposal provided retailers flexibility in the form of disclosure. Some commenters expressed that bulk food should not be subject to disclosure. While some other commenters stated the proposed requirements were reasonable if disclosure was required. In some instances, commenters emphasized that retailers should be given maximum disclosure flexibility. Some commenters requested that small and very small retailers and other businesses should be exempt from the bulk container disclosure because the availability and selection of bulk food, and therefore the presence of BE in such food, can change daily, making disclosure burdensome. Other commenters noted that the bulk food disclosure requirements may result in non-BE food being sold or commingled with, and disclosed as, BE food.

AMS Response: AMS agrees that labeling bulk containers is necessary to provide consumers with disclosure information. The final rule is meant to provide retailers with flexibility in choosing a disclosure method. With respect to comments seeking an exemption for small food retailers, such as the exemption for very small food manufacturers, AMS states that the very small food manufacturer exemption is statutorily mandated and cannot be extended to small retailers. To the extent that a small retailer is also a very small food manufacturer, it may be able to take advantage of the exemption in that instance. Although retailers will be required to correctly disclose BE food, AMS believes that retailers are already accustomed to ensuring that bulk food appears with appropriate signage because AMS already requires Country of Origin Labeling on bulk food. Additionally, commingled bulk foods should be disclosed in the same manner as commingled food or ingredients in packaged or processed food.

15. Voluntary Disclosure

AMS solicited comments on voluntary BE disclosure. Recognizing that some entities may want to provide a BE disclosure to consumers even though they are not required to do so, AMS proposed allowing voluntary disclosure for food that meets the definition of ''bioengineering'' in the amended Act to ensure that entities responsible for disclosure would have the option to disclose bioengineering information regarding foods not subject to mandatory disclosure. AMS proposed that voluntary disclosure methods and requirements (for text, symbol, digital or electronic link, or text message disclosure) would be the same as for mandatory disclosure.

Comment: Most commenters agreed that the law allowed voluntary disclosure. However, some commenters expressed concern that voluntary disclosures could potentially be false or misleading, while others stated that voluntary disclosures could lead to a fractured system where individual companies make different choices regarding the exact same ingredients and consumers would not know what such disclosure really means.

AMS Response: AMS agrees that voluntary disclosure is permissible under the amended Act. AMS acknowledges that regulated entities may make different decisions regarding voluntary disclosure. However, AMS has attempted to provide flexibility to the food industry, along with the transparency to consumers that they expect and deserve. Voluntary disclosure is available to exempt entities, as described in § 66.116(a), and to foods in which rDNA material is not detectable but are derived from bioengineered crops or foods, as described in § 66.116(b). AMS believes that the final voluntary disclosure provisions give food manufacturers, retailers, and other entities the ability to provide consumers with the information to make informed choices.

Comment: Some commenters agreed with AMS's proposal to permit voluntary disclosure for food that meets the regulatory definition of ''bioengineered food'' but is not subject to mandatory disclosure, so long as such disclosure is consistent with the Act. Some of these commenters agreed that voluntary text disclosure methods should be identical to mandatory disclosure rules to minimize consumer confusion and unfair competition, while others recommended that AMS offer companies additional flexibility in deciding what language to use for voluntary disclosures. These commenters also stated that voluntary disclosure should not be permitted for a non-bioengineered food that was ''derived from'' or ''sourced from'' a bioengineered crop, and they opposed allowing voluntary disclosure for highly refined ingredients because consumers would find it challenging to make accurate comparisons between similar products where only one bears a voluntary disclosure. A subset of these commenters also requested that AMS prohibit voluntary disclosure terminology that suggests that food derived from animals fed bioengineered feed is therefore considered

bioengineered. Other commenters stated that AMS should permit voluntary disclosure on food from animals consuming feed derived from BE crops. Several commenters stated that voluntary claims such as ''non-bioengineered'' should be prohibited for foods where there is no bioengineered alternative.

AMS Response: AMS agrees that any methods to voluntarily disclose bioengineered food should match the disclosure methods available to regulated entities to ensure consistent disclosure. AMS also notes that food companies and consumers generally agreed that consumers expect as much information as possible on the origin of food ingredients. For this reason, the final voluntary disclosure provisions allow for a food manufacturer, retailer, importer, or other entity to voluntarily disclose a food that originates from a bioengineered crop that they would otherwise not be required to disclose, using the distinct terminology ''derived from bioengineering.'' This terminology includes refined ingredients. As noted above, AMS acknowledges that regulated entities may make different decisions regarding voluntary disclosure. However, AMS believes that allowing voluntary disclosure of these ingredients allows food manufacturers, retailers, importers and other entities to provide the information that consumers expect in a consistent manner. AMS agrees with commenters that stated that voluntary BE disclosure is not permitted for foods derived from animals fed bioengineered feed. Section 66.116 makes clear that voluntary BE disclosure is available in limited circumstances and does not apply to any foods that the amended Act excludes from the requirements for disclosure. AMS notes that the final rule does not prohibit regulated entities from making other claims regarding bioengineered foods. Entities seeking to use absence claims should ensure that such claims are in compliance with all applicable Federal laws and are otherwise truthful and not misleading.

Comment: Many commenters supported voluntary disclosure for products that do not meet the definition of ''bioengineered food,'' with some commenters noting that many manufacturers have already invested resources into systems of voluntary disclosure. Some of these commenters favored the ability to use terminology that is distinctly different from the mandatory disclosure language, provided the claims are truthful, not misleading, and otherwise consistent with applicable Federal law. Some of these commenters favored voluntary disclosure of foods that contain an ingredient ''derived from'' or ''sourced from'' a bioengineered crop, such as ingredients on the Bioengineered Source List. Some of these commenters favored voluntary disclosure of highly refined ingredients that are not required to be disclosed but were derived from a BE crop, especially if AMS excludes refined ingredients from the definition of ''bioengineered food.'' Some commenters recommended voluntary disclosures be standardized in a way that is rigorous but flexible, with some urging inclusion of a non-exclusive list of examples of permitted claims into the rule. A subset of these commenters stated that voluntary disclosure should be permitted below the threshold or amount of a bioengineered ingredient that triggers mandatory disclosure.

Some commenters favored voluntary disclosure of the amount of ingredients that meet the BE food definition, regardless of whether the finished food meets the definition. Some of these commenters favored voluntary disclosure of a food made using genetic engineering, ingredients sourced from gene editing, or use of other technology that may fall outside the definition of bioengineering. Some also stated that AMS should allow voluntary disclosure with crops that do not meet the 85-percent acreage threshold because BE technology has not been widely adopted.

Some of these commenters requested that AMS allow entities to identify individual ingredients that meet the definition of BE food within the ingredient statement by using an asterisk or other symbol next to the ingredient in the ingredient list, regardless of whether the finished food meets the definition of BE food. Another subset of commenters favored voluntary disclosure permitting the use of an asterisk or other symbol to identify ingredients in the ingredient statement that fall outside the definition of ''bioengineered food,'' such as those derived from gene editing.

AMS Response: AMS agrees that voluntary disclosure should be allowed for foods that do not meet the ''bioengineered food'' definition because the rDNA is not detectable, and that such disclosure should utilize distinct terminology. As noted above, the final voluntary disclosure provisions allow a food manufacturer, retailer, importer, or other entity to voluntarily disclose a food that is derived from a bioengineered crop that they would otherwise not be required to disclose, using the statement ''derived from bioengineering.'' AMS has considered comments requesting additional disclosure options and understands that some entities may want to disclose bioengineered crops or ingredients with more specificity. Therefore, when an entity chooses to voluntarily disclose foods derived from bioengineering with the statement ''ingredient(s) derived from a bioengineered source,'' the word ''ingredient(s)'' may be replaced with the name of the specific crops or ingredients that are being disclosed. AMS acknowledges that many entities have invested resources into alternative voluntary disclosure methods or labels, but AMS believes that voluntary disclosure should be consistent to avoid consumer confusion. Therefore, an entity utilizing the voluntary disclosure provisions must comply with the disclosure requirements for text, symbol, digital or electronic link, or text message disclosure, as applicable. Nonetheless, as noted above, the final rule does not prohibit regulated entities from making other claims regarding bioengineered foods, provided that such claims are consistent with applicable Federal law.

Comment: Some commenters favoring voluntary disclosure urged AMS not to limit voluntary claims. They stated that AMS should recognize that entities may want to provide additional information beyond what is required under the disclosure standard, including statements about the safety of bioengineering.

Many commenters stated that AMS's use of the single term ''bioengineered'' for mandatory disclosure should not preclude the use of different terms, including ''genetically engineered'' and ''GMO,'' in additional voluntary statements and symbols about foods. However, these commenters disagreed about whether AMS should consider these terms synonymous and interchangeable with ''bioengineered.'' In addition, one commenter suggested that AMS add a provision about absence claims that would clarify that claims such as ''not bioengineered'' or ''non-GMO'' are permitted on certified organic products by nature of their certification and that a food may not be considered ''not bioengineered'' solely because the food is exempt from mandatory disclosure.

AMS Response: As noted above, AMS acknowledge that entities may want to make additional claims regarding bioengineered foods. However, AMS believes that voluntary disclosure should generally be consistent to avoid consumer confusion. Therefore, an entity utilizing the voluntary disclosure provisions must comply with the disclosure requirements for text, symbol, digital or electronic link, or text

message disclosure, as applicable. Nonetheless, the final rule does not prohibit regulated entities from making other claims regarding bioengineered foods, provided that such claims are consistent with applicable Federal law. With respect to absence claims, NBFDS covers mandatory and voluntary bioengineered and BE-derived claims and 7 U.S.C. 1639b does not provide authority for AMS to establish an absence claims regime as part of the NBFDS. AMS notes that FDA (and FSIS depending on the food at issue) retain authority over absence claims. Entities seeking to use absence claims should ensure that such claims are in compliance with all applicable Federal laws and regulations and are otherwise truthful and not misleading. With respect to organic certification, AMS believes that the amended Act in this respect is self-executing.

16. Recordkeeping

AMS proposed recordkeeping requirements that aligned with the disclosure requirements. Commenters generally supported the proposal, and several commenters submitted suggestions for clarification.

Comment: Many commenters appreciated the flexibility provided to regulated entities by enabling the use of multiple documentation sources. Commenters agreed with the 12 categories of documentation identified as appropriate to verify that foods are not BE, though some asked that examples of appropriate records be incorporated into the final rule. Commenters noted that records should be in any format (hard copy or electronic), with records stored at any business location.

AMS Response: AMS agrees with these comments. Section 66.302(a) includes a non-exhaustive list of examples of customary or reasonable records that demonstrate compliance with the NBFDS's disclosure requirements. That section also clearly states that the records may be maintained in electronic or paper format.

Comment: Many commenters noted that the reasonable or customary records already in use throughout the industry should suffice to comply with the Act and agreed that the recordkeeping requirements would not impose additional costs or burden to existing practices. One commenter, however, noted that implementation could result in significant changes to existing supply chain documentation practices, increasing complexity and cost throughout the value chain.

AMS Response: As the commenters stated, we do believe that many, if not most, regulated entities currently maintain the types of records that will satisfy the NBFDS's recordkeeping requirements. Regulated entities may make changes to their documentation practices for business reasons, but this final rule does not specifically require them to do so.

Comment: A commenter suggested that USDA should require companies to maintain records similar to those required by private certification entities such as the Non-GMO project (*i.e.* for a particular crop or ingredient, companies must have the DNA testing records, certifications by crop suppliers of GE/non-GE content, supply chain documents, purchase orders, bills of sale).

AMS Response: AMS believes that it is efficient to allow companies to determine the records that best fit their business needs while demonstrating compliance with the NBFDS. If a regulated entity maintains one type of records that does so, it serves no purpose to require that entity to maintain additional or redundant records.

Comment: A commenter encouraged AMS to coordinate with other Federal agencies to better understand what recordkeeping and records access is already required and enforced.

AMS Response: AMS agrees that recordkeeping and compliance requirements under the NBFDS should be consistent with those under other AMS programs, such as NOP and PACA, and has incorporated elements from each of those programs into the NBFDS. Accordingly, § 66.302 does not specify the records regulated entities must maintain to demonstrate compliance with the disclosure regulations. Instead, as with other AMS programs, regulated entities are free to determine for themselves which of their customary business records will demonstrate compliance and should be maintained.

Comment: A commenter suggested that bioengineering-specific records should be necessary only to support decisions that disclosure is not required. Manufacturers typically do not test for or maintain documentation on the presence of modified genetic material in food unless they are making a ''non-GMO'' claim. A commenter recommended a regulated entity should only be required to maintain records about foods on the List of Bioengineered Foods for which the regulated entity does not make a bioengineered disclosure, including records demonstrating that the food is below the 5 percent threshold. The commenter also suggested that acceptable records include documentation showing the identity preserved seed was produced and handled throughout the supply chain in a manner to mitigate the potential for cross-contact with BE substances in the supply chain.

AMS Response: To ensure that BE disclosures are consistent with the requirements of the NBFDS, AMS is requiring that customary or reasonable records be maintained when bioengineered food or food ingredients are used.

Comment: Several commenters suggested that requiring testing documentation would be burdensome. Commenters suggested adopting a recordkeeping approach based on traceability and segregation rather than analytical testing. A commenter sought clarification regarding whether regulated entities may entirely rely on traceability records rather than testing results to establish compliance with the Act.

AMS Response: AMS believes that regulated entities should have the flexibility to determine what customary or reasonable records they should maintain to demonstrate compliance with the NBFDS, because each business is different. Section 66.302(a)(4) provides a non-exhaustive list of record types that might be used to verify that foods are or are not bioengineered. Further, § 66.9 provides that, in order to verify that refined foods do not contain modified genetic material, regulated entities can choose to rely on traceability or source records, validated process verifications, or analytical testing results.

Comment: A commenter suggested that if AMS exempts ingredients from disclosure that do not contain modified genetic material, AMS should maintain a list of these kind of ingredients. This list would eliminate the need for testing and maintaining documentation.

AMS Response: The final rule does not exempt any specific ingredient. Rather, if the regulated entity can demonstrate that no modified genetic material may be detected in the food or food ingredient, the regulated entity is not required to include a BE disclosure for that food or food ingredient. Consequently, AMS will not maintain a list of ingredients that do not include modified genetic material.

Comment: A commenter suggested that each BE food manufacturer has an independent duty to comply with the standard and its provisions, including record-keeping, regardless of whether and when USDA puts a food product on its lists. Other commenters argued that

there should be no recordkeeping requirements for foods not on the list.

AMS Response: AMS believes that foods that bear a BE disclosure must have records to verify that disclosure. Regulated entities do not have to maintain records for foods that are not on the List of Bioengineered Foods provided in § 66.6, unless a regulated entity has actual knowledge that a food or food ingredient is bioengineered. Regulated entities must make BE disclosures when their records show that foods or ingredients are bioengineered, regardless of whether those foods or ingredients are on the list. If regulated entities have actual knowledge that the foods or food ingredients are bioengineered § 66.109 requires those foods and foods ingredients to bear a BE disclosure, and § 66.302(b)(2) requires regulated entities to maintain records for those foods.

Comment: A commenter agreed with AMS's proposed 5 days to produce records (except in the event USDA grants an extension). A commenter also suggested that USDA specify business days in its timelines. Several commenters disagreed with the proposed five business days' notice to produce records. As the NBFDS is intended as a marketing standard unrelated to food safety, commenters stated that it is more appropriate for record production requirements to be consistent with other marketing programs (*i.e.* the four to six week notice given to produce records establishing compliance with FDA menu labeling requirements).

AMS Response: AMS agrees that the final rule should specify that the timelines are business days and § 66.304 makes that clear. We also believe the timeframes in the final rule provide reasonable notice to regulated entities to produce records. If a regulated entity requires additional time to provide records, AMS may grant an extension. Additionally, the timelines to produce records are consistent with other marketing labels administered by AMS. *See e.g.* 7 CFR 60.400 (country of origin labeling for fish and shellfish).

Comment: Several commenters supported the timeline of at least three days' notice for an on-site visit, but requested that the final rule permit the entity to determine the location of the audit at the regulated entity's discretion, including the option to conduct an audit at a company's corporate headquarters.

AMS Response: AMS agrees that entities may maintain records at the location that best serves the entity's business needs.

17. Compliance and Enforcement

Several commenters addressed the Enforcement section of the proposed rule, including the complaint process and audit and hearing procedures. Most of the comments broadly back the rule text while emphasizing that the rule should not authorize USDA to recall any food based on whether the food has a BE disclosure or impose civil penalties for violations.

Comment: Several commenters argued that accountability is a key aspect of a meaningful labeling claim, that label misuse must trigger consequences, and that USDA must prioritize and implement a more rigorous audit regimen and make the audit results available to the public. However, other commenters agreed with AMS that conducting unannounced audits or imposing steep fines for non-compliance issues are impractical, and supported the rule on the basis that AMS's enforcement authority remain limited as set forth in the amended Act.

AMS Response: AMS acknowledges various stakeholders' advocacy for more rigorous enforcement provisions. We note, however, that the amended Act prescribes an enforcement program based on records audits, and provides for publicizing the results of an audit after the opportunity for a hearing. The amended Act does not authorize civil penalties or other remedial or punitive measures. We believe that the enforcement process in the final rule that includes a complaint process, investigations, audits, hearings of limited scope, and resulting notifications to both regulated entity and the public sufficiently meets the amended Act's requirement for enforcement.

Comment: Some commenters requested that USDA more clearly state when an audit may occur, so producers are not erroneously subject to audit reviews due to baseless complaints. Several commenters asked that the rule specify what information is required when filing a complaint. One commenter asked that the rule incorporate deadlines for considering complaints.

AMS Response: In response to comments, § 66.402(a) was revised to include a description of the information that must be submitted with a complaint alleging violation of the NBFDS. To ensure that audits are not conducted needlessly, the rule provides that AMS will consider complaints about potential violations of the disclosure requirements and determine whether audits or other further investigations are merited. Complaints will be considered on a case-by-case basis, and depending on the complexity of the complaints, some may require more time than others to consider, so no deadlines for consideration were added. If the complaint merits further investigation, the regulated entity will be given notice regarding access to its records. It should be noted that the results of all investigations will be publicized, and if an audit or investigation finds that the regulated entity is in compliance with the disclosure requirement, such finding will be made public.

Comment: Comments regarding audit procedures suggested that while USDA's proposal is reasonable, if an audit finds a firm out of compliance, then a detailed summary of records should not be released to the public to protect confidential business information. Some input cites public access concerns to confidential business information of product formulations or recipes. Related comments requested the regulated entity set the location where the audit should occur. Some comments stated a labeling duty should arise only if AMS, while conducting audit procedures, determines producer testing is inadequate and/or its products really do contain modified genetic material.

AMS Response: AMS does not release confidential business information, consistent with other applicable Federal regulations. AMS agrees that entities may maintain records at the location that best serves the entity's business needs. Audits can be conducted at the regulated entity's place of business. Regulated entities subject to the NBFDS should make determinations about disclosures based on records. AMS does not intend to test final food products to determine compliance with the rule.

Comment: Several commenters favored notice of non-compliance to regulated entities with a 30-day window to object and request a hearing, then making results public if a hearing is not requested or the Administrator upholds the finding of non-compliance. In addition, when auditing a regulated entity to determine whether the entity is in compliance with the disclosure standard—either on its own initiative or in response to a complaint by a consumer, competitor, state regulator, or another party—some commenters suggested AMS should begin by contacting the regulated entity and providing a 4 to 6-week period for the entity to produce appropriate records. If the company can provide records demonstrating the food is not subject to disclosure, the entity would be deemed in compliance. Another comment addressing timeframes advocated that deadlines for providing records for

review during audit or investigation be ''business days.''

AMS Response: AMS deems the goals of disclosure and minimizing economic burden whenever feasible is best obtained by NBDFS flexibility on maintaining customary business records, while requiring compliance with the specified timeframes for furnishing data access to AMS. Since all regulated entities are required to maintain customary and usual business records to demonstrate compliance, the timeframes provided should give entities adequate time to produce appropriate records. Nevertheless, the rule provides for extending records access deadlines at AMS's discretion. It should also be noted that § 66.304 of the rule specifies records production deadlines in terms of business days. Thus, the rule declines to impose the timeframes suggested by these comments, and provides for an audit process with the more immediate investigative and auditing elements specified.

Comment: Several comments acknowledged the statutory obligation to provide the results of an examination or audit, and further asserted the rule also needs to ensure any trade secrets or confidential commercial information is redacted before providing publicly those results, as required under the Freedom of Information Act (FOIA). One commenter recommended that results only be posted for six months, as afterwards this information has diminishing relevance, but can still be accessed via FOIA requests.

AMS Response: Proprietary business information, including product formulation and recipes, will be kept confidential by AMS, consistent with FOIA, 5 U.S.C. 552(b)(4). Section 66.406 does not specify how long hearing results will be posted. The duration of posting hearing results will be in accordance with relevant departmental policy and FOIA.

Comment: Several commenters suggested that regulated entities making ''may contain'' disclosures should be subject to periodic compliance audits in a separate mode from other regulated entities.

AMS Response: The final NBFDS does not provide for ''may contain'' disclosures.

Comment: Several commenters argued a deadline for agency responses to complaints should be set, and a standard for when and why further investigation is warranted should be established. These comments recommended USDA should audit or examine records of manufacturers and establish fines for non-compliance violations. In addition, comments suggested the audit and hearing process should be undertaken pursuant to deadlines to ensure timely resolution, and all results must be made public.

AMS Response: AMS notes the concern, but determines the optimal balance between expeditious enforcement and associated aspects, including complaints, audit, examination, investigation, hearing and appeal, and the disclosure rule's broad mandate to also facilitate commerce, is best met by the rule's mix of strict record access deadlines with further timeframes for hearing request and appeal. Other response deadlines are deemed impractical, as audits or investigations are case specific, require individual time to complete, and reflect various factors such as extensiveness of a case under review and AMS workload.

Comment: Many commenters recommended that AMS include limitations on recall authority in the final rule.

AMS Response: The amended Act does not authorize product recalls based on compliance with the disclosure requirements of the NBFDS. Thus, establishing limitations on recall authority is unnecessary.

18. Compliance Dates

AMS proposed an initial compliance date of January 1, 2020, for all regulated entities other than small food manufacturers whose initial compliance date would be January 1, 2021. We also proposed allowing regulated entities until January 1, 2022, to use up labels that have been printed by the initial compliance date. We received many comments on this proposal.

Comment: Several commenters argued that manufacturers have had plenty of warning about the NBFDS and that consumers have waited a long time for mandatory bioengineered food labeling and should not have to wait longer. Other commenters suggested extending compliance deadlines for all manufacturers, explaining that label changes are costly and time consuming. Still other commenters agreed with the compliance dates as proposed, finding that they hit a balance between consumer desire for information and industry need for time to make label changes. Other commenters advocated that the compliance dates for the NBFDS should align with the FDA deadlines related to the recently updated Nutrition Facts and Supplement Facts panel.

Several commenters claimed that manufacturers could theoretically continue printing and using non-compliant labels for up to six years after the Act was amended to require mandatory BE food disclosure. Those commenters urged AMS to allow a shorter compliance period for label use-up. Food manufacturer comments generally supported the proposed label use-up provision, but they asked that the final rule provide a two-year compliance period after the compliance date, rather than specifying a hard date, to allow for regulatory delays.

Commenters also urged AMS to allow the use of labels compliant with the preempted State GMO labeling laws during the compliance period. Some commenters recommended that AMS allow entities to apply stickers or ink stamp disclosures to existing labels to reduce waste. Others suggested that AMS incorrectly assumes manufacturers maintain large label inventories, asserting that manufacturers order labels in the smallest batches economically practical.

Several commenters requested additional time for regulated entities to meet the requirements of the NBFDS because complying with the regulatory requirements of the NBFDS will be complex. They explained how regulated entities will need time to determine how their specific business might be impacted by the labeling and recordkeeping requirements of the NBFDS, and the challenges in meeting the proposed January 1, 2020, deadline. Several commenters explained how labeling costs would not be costly as many companies print labels in minimally necessary quantity and print labels themselves using digital equipment. Under this view, the proposed January 1, 2020, compliance date would be more than enough time for affected entities to make necessary changes to achieve compliance.

Other comments supported the proposed compliance dates. Conversely, many commenters felt that the compliance dates and compliance periods proposed in the NPRM were too lenient, and that regulated entities should be required to immediately change their labels to denote the presence of bioengineered food and/or food ingredients. They explained that consumers have a right to know that the food they are buying is bioengineered and should have access to this information as soon as possible.

AMS Response: Because this rule is a major rule, the effective date will be February 19, 2019 to comply with the Congressional Review Act. After consideration of the comments, AMS has decided to adopt implementation dates, a compliance date, and a compliance period. The implementation dates are the same as the proposed

compliance dates: January 1, 2020, for regulated entities other than small food manufacturers and January 1, 2021, for small food manufacturers.

As evaluated in the Regulatory Impact Analysis, AMS recognizes that this final rule will be complicated to implement, requiring regulated entities to modify their existing business practices, and thus, regulated entities will need adequate time to come into compliance. Requiring compliance on the rule's effective date or by January 1, 2020, would be overly burdensome because of the time and cost involved in determining which foods require disclosure, identifying the required records, modifying labels, and providing the appropriate disclosure on the labels. In establishing the compliance dates, AMS determined that regulated entities should have greater flexibility, beyond using existing label inventories, to transition to the mandatory BE disclosure and recordkeeping. Thus, the final rule includes a voluntary compliance period and the mandatory compliance date. As explained above, regulated entities may voluntarily comply with the requirements of part 66 until December 31, 2021. Beginning on January 1, 2022, all regulated entities must comply with the requirements. Those periods are comparable to the extended compliance date of January 1, 2020, for FDA's Nutrition Facts and Supplement Facts Label and Serving Size final rules, which is approximately 3.5 years after FDA published the final rules. We note that many food manufacturers have complied with the FDA's final rules well ahead of the compliance date, and we anticipate the same for the NBFDS.

19. Use of Existing Label Inventories

AMS recognizes that the new NBFDS will require regulated entities to make BE disclosures on their labels. The NPRM included a proposal to allow regulated entities a period of time to use their existing label inventories and AMS received several comments in support and in opposition to this proposal.

Comment: Many commenters supported continuing use of existing label inventories until the compliance deadline. They believed that ongoing use of existing inventories reflects the best economic, environmentally valid option to mitigate waste associated with letting existing label stock go unused if not depleted before the deadline. Such feedback sought an extension of the compliance deadline until existing stock had been exhausted or materially depleted. Several commenters were concerned that by providing a blanket exemption for unused label stock, AMS would be encouraging noncompliance. One commenter expressed concern that the rule has insufficient safeguards to prevent or discourage excess labels being printed merely to escape or unduly extend the compliance deadline.

AMS Response: As explained above, AMS is adopting a voluntary compliance period until December 31, 2021, to allow regulated entities more flexibility. Thus we are not adopting the proposal to allow regulated entities to use existing label inventories because it is unnecessary.

Comment: Commenters suggested an alternative website disclosure option be available until new labels can be printed.

AMS Response: The amended Act does not authorize AMS to require an independent website disclosure. Regulated entities, however, are free to include BE disclosures on their websites.

20. Regulatory Flexibility Analysis

The Agricultural Marketing Service sought public comment on several aspects of the proposed National Bioengineered Food Disclosure Standard rule to guide efforts in creating a final rule for implementation. Though the proposed rule was not predicted to have a significant adverse economic impact on substantial number of small entities, the Agricultural Marketing Service conducted an initial regulatory flexibility analysis and provided suggestions and analysis of measures to reduce the economic effect on small entities. For purposes of the regulatory flexibility analysis, AMS solicited comments regarding suggested standards to define ''very small food manufacturer'' based upon a range of annual receipts. Additionally, AMS sought comments on the defining a ''small food manufacturer'' based upon receipts or upon number of employees to determine what firms should receive additional time to comply with the disclosure requirements of the rule. Comment summaries below represent public input on suggested flexibility provisions in the proposed rule.

Comment: Commenters supported a range of definitions for a ''very small food manufacturer.'' Some commenters suggested that there be no exemption for food manufacturers of any size. Many commenters supported the alternative definition analyzed by AMS to narrow ''very small food manufacturers'' as those with less than $500,000 in annual receipts. Several noted this number would comply with similar standards imposed by the FDA for nutrition labeling requirements. Many of these commenters cited a desire for increased transparency by labeling more products. Some commenters supported the proposed definition of food manufacturers with $2.5 million or less in annual receipts, citing the high costs of bringing their business into compliance with the rule. Several commenters also proposed an alternative definition of food manufacturers with less than $1 million in annual receipts. These commenters cited the FDA's use of this number to define ''very small businesses'' in rules not related to food labeling.

AMS Response: AMS considered a range of definitions for a ''very small food manufacturer'' including the small business definitions under FDA and U.S. Census Bureau (USCB) regulations. AMS evaluated the impact of applying various definitions by estimating the number of firms that would be exempted, the number of products that would likely be exempt, and the proportion of annual industry sales that would exempt under each exemption level. Exempting manufacturers with annual receipts of less than $2.5 million will provide regulatory relief to 74 percent of food manufacturers and 45 percent of dietary supplement manufacturers, while reducing the number of products covered by only one percent for both food and dietary supplement manufacturers.

Comment: To define ''small food manufacturers,'' some commenters expressed interest in aligning the definition with Small Business Administration standards on number of employees rather than the proposed annual receipts definition to promote consistency. Many of these commenters supported the AMS alternative definition of businesses with fewer than 500 employees. Other commenters suggested defining ''small food manufacturers'' as those with less than $2.5 million in annual receipts.

AMS Response: The Small Business Administration uses both the number of employees and annual receipts to describe business size categories. Because food and dietary supplement manufacturers are in the manufacturing sector, they are both defined by number of employees for purposes of SBA size categorization. However, the firms defined as small or very small for purposes of the NBFDS all fall well below the SBA definition of small, so we do not feel we need to be bound by that methodology. The FDA nutrition labeling definition of small is based on sales rather than number of employees, and it is important to remain consistent with that definition. We decided to extend the use of receipts to define very small food manufacturers because we

believe it to be administratively simpler, as it does not require development of an averaging system to track employees over time (especially in firms that may have some degree of seasonality).

Comment: Some commenters specifically suggested that we define very small manufacturer as a manufacturer with annual receipts below $2,500,000 or less than 50 employees.

AMS Response: While we do not have data on manufacturers with less than 50 employees (Census has data cutoffs at 20 employees and 100 employees), we do know that defining very small manufacturers as those with less than 20 employees would exempt the same 74 percent of firms as receipts less than $2,500,000. So, the compound definition would result in significantly more exemptions. When Census uses the term very small enterprise, it refers to 20 employees. The fact that the results of estimating exemptions at 20 employees and $2,500,000 annual receipts are so close gives us confidence that we are not outside of the reasonable norm in using this cutoff.

Comment: Several commenters also sought shorter compliance deadlines and no implementation extensions for small food manufacturers with more than $2.5 million in annual receipts. Several commenters insisted no entities be exempted from the NBFDS, including those defined as very small and small food manufacturers.

AMS Response: AMS appreciates that several commenters insisted no entities be exempted from the NBFDS including those defined as very small and small food manufacturers, however, the very small food manufacturer exemption is a statutory requirement. Congress contemplated some level of undisclosed use of bioengineered foods to avoid undue burden on very small food manufacturers. Our goal is to find a reasonable balance between the number of small firms that are exempted and the number of products for which the consumer may not receive full disclosure of bioengineered content. By defining ''very small food manufacturers'' as those with annual receipts below $2,500,000, about 74 percent of food manufacturers are exempt from mandatory disclosure, but 96 percent of products will still be covered.

Comment: Some comments further suggested the proposed exemption for very small food manufacturers be extended to very small food retailers using the standard in FDA's Menu Labeling Rule applicable only to restaurants and similar retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items.

AMS Response: The exemption for ''very small food manufacturers'' is provided for in the amended Act. The amended Act also provides an exemption for all restaurants and similar food establishments. The amended Act does not contain a similar exemption for retail establishments that are not manufacturers or restaurants. However, the portions of grocery stores and similar retail establishments that prepare food for immediate consumption (*e.g.* deli or prepared food section) fall within the definition of restaurant and are exempt from the disclosure requirement. So unpackaged food in the produce section would be subject to disclosure if it meets the definition of bioengineered food, while the same product used as an ingredient in a sandwich in the deli would not.

21. Regulatory Impact Analysis

AMS provided a Regulatory Impact Analysis (RIA) with the proposed rule that provided details on the expected costs and benefits of the rule, and solicited comments.

Comment: One commenter provided a detailed analysis of the costs and benefits of the NBFDS conducted by John Dunham and Associates (JDA) (National Bioengineered Food Disclosure Standard: A Review of the United States Department of Agriculture's Regulatory Impact Analysis (Brooklyn, NY: June 2018)). The JDA assessment estimated much higher costs than the AMS analysis, though since it also estimated much higher benefits, the JDA analysis concluded that the Federal disclosure standard would be the most cost-effective method to provide information and minimize inefficiencies caused by inconsistent State-level standards. JBA found cost savings of avoiding compliance with twenty separate state rules to be $97.3 billion over twenty years and $129.7 billion cost savings over the same period if all 51 states implemented different labeling provisions.

AMS Response: The JDA assessment provides valuable corroborating evidence of the net benefits of the NBFDS. However, AMS could not adopt JDA's methodology—and higher cost and benefit estimates—for the RIA since this methodology incorporates a broader set of impacts and transfers than recommended by OMB for regulatory impact assessment. OMB Circular A–4 admonishes agencies to focus on opportunity costs, the real expenditure of society's resources, and to avoid counting transfers as benefits or costs. JDA uses a partial equilibrium input-output model (IMPLAN) to estimate the costs of the NBFDS. This model estimates the cost of labeling to specific industries/sectors and then calculates the multiplier effects on other industries and consumers (prices held constant) within the study region. Such an analysis tracks transfers rather than the commitment of real resources to compliance. OMB Circular A–94 states ''Employment or output multipliers that purport to measure the secondary effects of government expenditures on employment and output should not be included in measured social benefits or costs.'' Moreover, the JDA analysis only tracks half of the equation in that it follows the changes in upstream expenditures resulting from decreased expenditures by food manufacturers, but does not track the increased downstream expenditures related to additional income to label printers. While partial equilibrium models can be very useful for evaluating local effects of a specific policy and for other purposes, its results for purposes of evaluating compliance costs tends to inflate the compliance costs by the velocity of money. However, because the velocity of money is constant within the region, the relative attractiveness of individual policy choices would be the same as if those alternatives were evaluated based on opportunity cost alone.

Comment: Many comments addressed the RIA's discussion of signage in stores selling fresh produce. These generally disagreed with the proposal that retailers be responsible for disclosure in any circumstances because manufacturers and suppliers are better equipped to provide labelling information and costs will be too burdensome on retailers. A common concern identified proposed producer requirements regarding modifying contracts for manufacturers to notify end users when a product is reformulated (or otherwise changed) as time consuming and costly. However, these comments agreed with the RIA that if retailers must be responsible for labeling, signage as posted by the retailer may be an appropriate method to help keep costs low for retailers and provide consistency for consumers. Some comments asked the final rule allow retailers to post signage such as a single sign near a produce section listing all BE foods in that section, to further reduce retailer burden.

AMS Response: Retailers should not have to take into account costs associated with modifying contracts to provide for end user notification of

product reformulations since packaged food will be labeled by the manufacturers. For prepared foods sold by grocers in in-store delis or salad bars, § 66.5(a) provides an exemption for food served in a restaurant or similar retail food establishment from disclosure under the NBFDS. Section 66.1 now defines ''similar retail food establishment'' as a cafeteria, lunch room, food stand, food truck, transportation carrier (such as a train or airplane), saloon, tavern, bar, lounge, other similar establishment operated as an enterprise engaged in the business of selling prepared food to the public, or salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

Comment: Some comments further suggested the proposed exemption for very small food manufacturers be extended to very small food retailers using the standard in FDA's Menu Labeling Rule applicable only to restaurants and similar retail food establishments that are part of a chain with 20 or more locations doing business under the same name and offering for sale substantially the same menu items.

AMS Response: The exemption for ''very small food manufacturers'' is provided for in the amended Act. The amended Act also provides an exemption for all restaurants and similar food establishments. The amended Act does not contain a similar exemption for retail establishments that are not manufacturers or restaurants. However, the portions of grocery stores and similar retail establishments that prepare food for immediate consumption (*e.g.* deli or prepared food section) fall within the definition of restaurant and are exempt from the disclosure requirement. So unpackaged food in the produce section would be subject to disclosure if it meets the definition of bioengineered food, while the same product used as an ingredient in a sandwich in the deli would not.

Comment: Some comments noted the RIA does not address all market impacts under a rule that includes products containing highly refined ingredients within the definition of a bioengineered food. The expressed concern was this does not consider price impacts of presuming refined ingredients not containing modified genetic material are BE foods under Position 2, when in fact they are identical to all other refined ingredients from conventional crops. Such input recommended AMS exclude refined ingredients from definition of BE foods because of these unidentified likely significant harmful effects on the agricultural value chain. Related comments addressed economic consequences of presuming beet sugar is a BE food when it is identical to other refined sugar products, noting costs will be greater than the RIA estimates. Citing Vermont's labeling law as an example, such feedback advised there will be significant market consequences resulting from market discrimination resulting in higher consumer prices if refined sugar is included in a BE food definition. Farms will bear the brunt of the economic impact as there are currently no non-bioengineered sugar beets grown for sugar production. A commenter expands this concern and concludes adverse market and agricultural impacts will flow from any RIA presumption that refined food ingredients are presumptive BE foods, and will trigger market discrimination against such entities. Several comments express the broad concern that the RIA and underlying rule presume refined ingredients are BE, resulting in competitive harm and undue costs to the American farmer. Associated comments asserts the RIA significantly understates the costs of the rule to the sugar industry, claiming such industry's product is identical to all other refined sugar products, but would be selectively burdened under BE standards.

AMS Response: The commenter is referring largely to incidence of costs rather than the estimated magnitude. The RIA did not estimate cost increases across the board and does not believe that doing so is consistent with recent real-world experience. What the RIA does do is assume that manufacturers of 20 percent of products will seek to replace BE ingredients with non-BE alternatives. The costs associated with trying to avoid a cost differential is, therefore, accounted for in the RIA. Nevertheless, the final rule would allow manufacturers to demonstrate through records (potentially including test results) that a food or ingredient does not contain modified genetic material and would not be required to disclose the food or ingredient as BE. The concern raised by the commenter has been addressed by the final rule.

Comment: A number of commenters suggested that there could be distributional effects of the NBFDS that were not considered in the RIA, including impacts on farmers through segregation costs and consumers through higher food prices.

AMS Response: Potential impacts on farmers arise in the case where manufacturers and retailers take the marketing decision to replace BE ingredients with their non-BE counterparts. The RIA notes that this decision would entail higher costs stretching back to the farm, including the extra cost to farmers of supplying non-BE commodities and crops include the costs of sourcing non-BE seeds; avoiding cross contamination with BE varieties during planting, harvesting and transporting; driving to an elevator or handler that is farther away than the nearest bulk elevator; and foregoing the benefits of BE production. However, as noted in the RIA, these extra costs are reflected in price premiums paid to farmers for non-BE varieties. The RIA provides current estimates of this price premiums in the United States. AMS does not include estimates of impacts on consumer food prices in the RIA for two reasons. First, in the case of BE labeled products, it is unlikely that manufacturers will pass labeling costs on to consumers (manufacturers will not want to jeopardize demand for these newly labeled products). Second, in the case of non-BE labeled products, there is no evidence that the extra costs for production and segregation are any higher than currently paid by consumers who prefer non-BE products. As a result, while availability of these products could rise as a result of the NBFDS, non-BE prices could remain constant or actually decline in the long run as production expands.

Comment: Some comments found the RIA inadequately assessed societal costs associated with electronic and digital disclosure. Such input asserted these disclosure methods would ultimately burden consumers who would not have sufficient product information, given retailers will be reluctant to purchase expensive scanning equipment. Consumers in low-income rural areas already lacking connective capabilities equivalent to urban areas would be especially burdened.

AMS Response: Potential impact associated with electronic and digital disclosure is more fully addressed by comment responses directly assessing electronic and digital link disclosures herein. AMS strikes a reasonable balance between offering various label disclosure alternatives, realizing stakeholder phone, internet or digital access may vary by locale, customer expertise, income or related factors. Not all BE food packaging and presentation will be amenable to electronic or digital disclosure. By offering several disclosure alternatives, AMS seeks least burdensome commercial impact consistent with the regulatory objective to meet public demand for consistent accurate label information.

Comment: Several comments identified specific burden to small

entities from labeling and associated requirements, asserting food retailers would also be selectively burdened by labelling and other regulatory aspects. Other negative input alleged inconsistency and conflict with international norms, potentially promoting trade disputes.

AMS Response: On analysis of comments and other data, including studies, AMS concludes impacts to producers are mitigated by exemptions for qualifying ''small'' and ''very small'' entities, by offsetting efficiencies of a uniform standard, and by consideration to international norms and trade. The proposed rule subjects importers to the same disclosure and compliance regimen as domestic entities. AMS's interest is to facilitate imports and exports under arrangements where BE labeling is consistent with the NBFDS. Under such arrangements, countries could agree to recognize each other's BE labeling requirements as comparable. This would allow foreign food products with comparable BE labeling to be sold in the US, assuming they meet all other labeling and safety requirements. Overall, AMS's economic analysis indicates it is likely this rule would not have a significant impact on a substantial number of small businesses.

Comment: A number of commenters referred to an assessment conducted by the Grocery Manufacturers Association (GMA) in 2017 that found that the exclusion of refined ingredient would result in 78 percent (78%) fewer products being disclosed, as opposed to USDA's assessment that exclusion of refined ingredients would result in 25 percent (25%) fewer products being disclosed.

AMS Response: The GMA assessment considered a categorical exemption of *all* refined ingredients. In contrast, USDA's estimate for scenario 2 considered an exemption for only sugar and oil and in scenario 3, an exemption for ingredients that test negative for rDNA (not a blanket exemption of all refined ingredients). In both cases, since the exemptions are smaller than assumed in the GMA study, it is reasonable to expect that the number of exempted food products would also be smaller. In addition, the USDA study considered ''nesting'' when calculating the impact of exempting refined ingredients such as sugar. Nesting recognizes that most labeled foods contain more than one ingredient. If products are not required to label due to the presence of sugar, for example, that does not mean that the product itself does not need to be labeled if it contains other ingredients that are not part of the categorical sugar exemption. For example, just looking at the first product that shows up on a search of food products that contain ''sugars'' as an ingredient in LabelInsight, we find a breaded chicken product. The first few ingredients listed on the product label include Salt, Spice, Sugars, Water, Onion Powder, Garlic Powder, Dextrose, and Modified Food Starch. The categorical exemption would apply to Sugars and Dextrose, but the product would still require disclosure to the presence of Spice and Modified Food Starch. Nesting results in fewer products being exempted from labeling than might be assumed from a count of refined ingredients. Since the USDA and GMA assessments are based on two different data sets, it is impossible to directly compare results.

Also, the two estimates are based on different data sources. USDA relied on ingredient data reported on food labels while GMA relied on a survey of its membership. It is not surprising that the two approaches might come up with somewhat different results.

That said, the final version of the RIA takes another look at which ingredients are likely to be exempt under the condition that mandatory disclosure only applies to foods or ingredients that meet the statutory definition of bioengineering. This reevaluation has led us to remove some ingredients that we had assumed would universally require disclosure. This has resulted in an estimate that is closer to the GMA estimate.

Comment: One commenter specifically took issue with the USDA's use of shielding to explain why administrative costs could increase for products still required to disclose in the instance of an exemption of refined products. The commenter argued that since manufacturers look at the BE status of all ingredients when they develop a new product the existence of low administrative costs ingredients does not obviate the need for manufacturers to understand the BE status of administratively higher cost ingredients especially for products seeking non-GMO project certification.

AMS Response: AMS disagrees with the commenter. First, the rule requires a disclosure determination to be made for existing as well as new products and the RIA is based exclusively on the costs associated with making this determination for existing products. As the commenter points out, making this determination for new products is lower because the BE status of ingredients is something that manufacturers do today as a matter of course. However there is no reason to believe that a product that is already on the market looked at the issue in as much detail as new products might. Manufacturers of existing products would therefore need to evaluate their ingredients and would be able to stop doing so as soon as they discovered an ingredient that caused the product to require disclosure. The fact that manufacturers may voluntarily subject themselves to costs beyond what the rule requires is not relevant to the RIA. Also, the RIA assumes that products that have obtained non-GMO project certification incur no costs as a result of this rule.

Comment: One commenter noted that the RIA makes many references to uncertainty in the estimates, and often provides upper and lower estimates to account for some level of uncertainty. The commenter goes on to note, however, that the RIA does not include a formal uncertainty analysis.

AMS Response: As noted by the commenter, in the RIA we provided upper and lower bound estimates where necessary to account for uncertainty. We incorporated more formal uncertainty analysis where distributional information was available, such as for the estimates for printing and label design costs (the upper bound represents the 95th percentile of the distribution of costs estimated by FDA for its Labeling Cost Model while the lower bound represents the 5th percentile) and for the analytical testing costs for bioengineered ingredients (with lower bound estimate set at the 5th percentile of the cost distribution and the upper bound at the 95th percentile, as per FDA's Labeling Cost Model).

Comment: One commenter stated that for the most part, the RIA is based on quality data but that the supporting documentation for the RTI (FDA) labeling cost model was not available to the public.

AMS Response: AMS posted the description of the FDA Labeling Cost Model in the supporting documentation for the rule.

Comment: One commenter stated that OMB requires a discount rate of 0.2 percent and that because AMS used discount rates of three percent and seven percent, the discounting performed for the RIA was not properly conducted.

AMS Response: AMS used the discount rates specified in OMB Circular A–4 that are still commonly used for regulatory analysis. The 0.2 percent discount rate referenced in the comment is from OMB Circular A–94 and represents the cost of money to the Federal Government to be used in cost-effectiveness analysis of Federal projects, not the average before-tax rate

of return to private capital in the U.S. that is appropriate for regulatory analysis.

VI. Rulemaking Analyses and Notices

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), AMS published a 60-day notice on reporting and recordkeeping requirements related to the proposed NBFDS published in the **Federal Register** on May 4, 2018. AMS submitted a request to OMB on May 7, 2018, for approval for a new information collection totaling 7,973,566 hours. OMB subsequently assigned reference number 0581–0315 to the reporting and recordkeeping requirements. As part of the preparation of the final rule, AMS has recalculated the information collection estimates based on the final requirements of the NBFDS. Based on this, AMS is requesting approval of a new information collection totaling 20,512,720 hours. Comments received on the reporting and recordkeeping burden are referenced below.

1. Comments on Information Collection and Recordkeeping

AMS solicited comments concerning the information collection and recordkeeping required as a result of this rule. Specifically, AMS wanted to know if the proposed collection of information had a practical use and if the information would be needed for the agency to properly conduct its functions. AMS requested feedback regarding its estimate of the burden the proposed information collection and process would pose on businesses. The proposed rule also sought comments on ways to enhance the quality, utility, and clarity of the information to be collected, as well as ways to minimize the burden of the information collection on those required to respond.

Comment: Many commenters generally support the required collection of records to demonstrate compliance with the NFBDS, including the requirement for entities to maintain records for two years after a food's distribution for retail sale. Many commenters also agree that required records should rely on existing records that are customary, reasonable, and regularly kept and maintained in the ordinary course of business, and urge AMS to retain these principles in the final rule. One commenter asked for clarification on the rule's definition of ''sufficient detail.''

While many commenters support using the twelve categories of documentation AMS identified as appropriate to verify that foods are not bioengineered and not subject to disclosure, several have requested AMS offer flexibility in the types of records required to document BE status as long as the documentation can sufficiently prove that foods are not subject to mandatory disclosure. A few commenters suggest supplier documentation is the most important recordkeeping component since the disclosure requirement for finished products are based on how the component ingredients are derived. For foods subject to disclosure, some commenters believe that maintaining a record documenting the presence of BE ingredients should be sufficient.

Many commenters support AMS's decision to exempt foods certified under the National Organic Program from BE disclosure so manufacturers of these certified products would not be required to maintain additional records to demonstrate a certified product is not bioengineered. Similarly, a commenter suggests AMS should also exempt from disclosure any foods verified as ''non-GMO'' through commercial verification systems, like the Non-GMO Project, whose standards may meet or exceed the proposed BE standard. The commenter further suggests this type of verification suffices as records that establish a food or ingredient is not bioengineered. For other exempt foods—such as those derived from animals fed BE food—another commenter strongly agrees no records should be required from the entity producing these products.

Some commenters believe BE labeling requirements on BE products on the ''highly adopted'' or ''not highly adopted'' lists are appropriate and what Congress intended. These commenters also believe that, as proposed, the BE recordkeeping requirements inappropriately place the burden of proof on conventional food producers that have chosen not to use or produce BE products. The commenters contend the expense, time and responsibility of additional recordkeeping should fall on the entities that use or produce BE products, not those who have chosen not to use BE products. As such, they suggest the rule provides for an alternate approach to the currently proposed recordkeeping burden. The new approach would allow AMS to challenge foods not properly labeled as BE.

Several commenters support the rule's requirement for imported foods to provide the same recordkeeping documentation as food produced domestically. According to this input, without such requirements, U.S. food manufacturers would be at a profound disadvantage to international food manufacturers. Another commenter suggests the rule may not need to require a mutual recognition agreement when a prior processing agreement exists between the U.S. and a foreign country, unless a BE ingredient is introduced to a product during processing in that foreign country. For example, when products are shipped to a foreign country for further processing, shipped back to the U.S. for secondary processing, and then sold in the U.S. market, the mutual recognition agreement would not be needed.

AMS Response: AMS appreciates the range of comments provided regarding recordkeeping requirements resulting from this rule and notes commenters generally support AMS's need to collect customary business records to establish a regulated entity's compliance with the NBFDS. AMS agrees that regulated entities may need flexibility in the types of records required to document compliance with the NBFDS. As such, AMS does not specify the records that must be maintained, but allows regulated entities discretion in determining what records will demonstrate compliance. AMS also notes that, for the purposes of this rule, any food manufacturer, importer or retailer offering for retail sale foods on the List of Bioengineered Foods is considered a regulated entity. Regulated entities must maintain records on foods that trigger a BE disclosure and to verify food without a disclosure is not bioengineered. Section IV.A.1 further details AMS's position on recordkeeping.

Comment: Commenters suggest, in the final rule, AMS establish an exemption from the NBFDS for raw fruits and vegetables, consistent with the exemption in FDA's traditional nutrition facts panel (NFP) labeling requirements. Commenters contend labeling raw fruits and vegetables is not practical and would be burdensome to the regulated entities. They further explain fruits and vegetables of the same variety may be sourced from different suppliers and are often mixed together in large bins. As such, requiring BE disclosure for these unpackaged foods would be difficult and may lead to consumer confusion.

In addition, commenters suggest AMS should explore other methods of traceability similar to those used by major U.S. trading partners. Because highly refined products may not always have detectable modified genetic material, this input suggests AMS seek recordkeeping, reporting and compliance methods that validate a

food's BE status based on the entire food production process that led to the final product's labeling.

AMS Response: AMS appreciates comments suggesting raw fruits and vegetables be excluded from the BE disclosure requirements. AMS believes that such an exemption would conflict with the statutory requirement that foods subject to FDCA's labeling requirements are subject to disclosure under the NBFDS. We also appreciate that some commenters would like AMS to explore other traceability methods to detect modified genetic material in highly refined products, thereby causing the products to be subject to BE disclosure. However, AMS believes that determinations about what constitutes BE food for the purposes of the NBFDS should focus on the characteristics of the biotechnology product and not on the process by which the product is created. As such, highly refined products remain outside the scope of products subject to mandatory BE disclosure.

Comment: Many commenters did not specifically address accuracy of the estimated cost of compliance. A commenter averred prescriptive requirements such as the mandatory placement of disclosure text or symbol would add significant costs for label redesign or revamping of handling practices. The commenter suggests BE disclosure requirements remain adequately flexible to facilitate practical implementation.

AMS Response: AMS agrees that regulated entities may need some flexibility when determining the size and placement of a BE disclosure. The NBFDS allows flexibility for both. For further details regarding AMS's position on the appearance and placement of the BE disclosure, refer to Section III.A.3 and Section III.A.4 of this rule, respectively.

Comment: Most commenters believe foods on or containing ingredients from either of the proposed lists of commercially available foods are BE or contain BE ingredients, thereby requiring no additional documentation. Many also believe AMS should not create recordkeeping requirements for foods not on nor containing ingredients from either list. Other feedback supports the proposed presumption foods on or containing ingredients from either list are BE or contain BE ingredients, unless the regulated entity maintains records to demonstrate non-disclosure is appropriate.

AMS Response: AMS agrees that regulated entities may be able to demonstrate compliance with the NBFDS for foods on or containing ingredients from the consolidated List of Bioengineered Foods using their customary business records. AMS contends that, for the purposes of this rule, any food manufacturer, importer or retailer offering for retail sale foods on the List of Bioengineered Foods is considered a regulated entity. As stated in an earlier comment response, regulated entities must maintain records on foods that trigger a BE disclosure and must keep records to verify food without a disclosure is not bioengineered. Section IV.A.1 further details AMS's position on recordkeeping.

Comment: In the proposed rule, AMS provided flexibility to responsible record keepers by enabling use of multiple documentation sources. As such, several commenters asked that AMS incorporate examples of appropriate records into final rule text. Suggested examples include identity preserved (IP) certification, supplier affidavits, continuing guarantees, and statements from suppliers. Commenters also requested AMS clarify in the final regulation that appropriate records to support non-disclosure when foods contain ingredients from either list are not limited to testing results and should include traceability records. For example, if a regulated entity does not make a disclosure for a food containing a soy ingredient, it could maintain supplier records demonstrating non-BE soybeans were used in a product or records showing the soy ingredient accounts for less than 0.9% of total product weight. The commenter suggested that by recognizing traceability records are sufficient to support non-disclosure, AMS would help ensure recordkeeping requirements are consistent with records customary or reasonable to maintain in the food industry. The commenter contended food manufacturers generally do not maintain or receive from their suppliers testing records for ingredients or finished foods that demonstrate presence or absence of rDNA.

One commenter asserted AMS should clarify what ''supplier attestations'' refers to when regulated entities opt not to disclose under the rule, but choose to rely on such attestations. This input suggests ''supplier attestations'' is intended to refer to contractual documents, confirmations or other certifications entered into or provided by suppliers, and does not require buyers to engage in supplier verification programs for a marketing rather than food safety standard which would impose significant costs and regulatory burdens.

Some commenters requested AMS clarify disclosure and recordkeeping requirements for foods included on the commercially available, but not highly adopted list, be more narrowly focused on cultivars directly the result of bioengineering. More specifically, several commenters highlighted the need for AMS to avoid consumer confusion and incorrect labeling of certain cultivated varieties of apples by clarifying correct application of the definition of cultivar.

A commenter urged AMS to adopt the 5% total BE food substance option in the final rule as the threshold for exempting foods from BE disclosure. Since records for BE status of ingredients, as well as amounts of any ingredients present in a food already exist as common business practice, this option would not present an excessive recordkeeping or cost burden on regulated entities.

AMS Response: AMS appreciates the range of comments offering ways to improve the information collection and recordkeeping processes. For information regarding recordkeeping flexibilities, see our responses to other comments in the Paperwork Reduction Act section. In addition, Section IV.A.1 further details AMS's position on recordkeeping.

Comment: Commenters generally support many of the proposed rule's recordkeeping and information collection requirements. Some, however, identified requirements that would pose undue burden on entities; others proposed ways AMS could minimize the burden. Several commenters proposed AMS simplify recordkeeping requirements for food manufacturers by establishing one consolidated list of BE foods. Some requested any information necessary for verification of compliance be limited to protect confidential business information like product formulations and recipes. Since organic food processors and manufacturers regularly secure written verification from ingredient suppliers that highly refined sugars and oils are not derived from genetically engineered crops or organisms, commenters from that industry contend stakeholders across the food supply chain have already developed necessary recordkeeping systems to provide this type of verification regarding ingredients. Thus, including these types of ingredients under labeling disclosure requirements would not introduce new burdens or complications for the food industry.

Other commenters suggest it would be burdensome to require entities provide specific attestation or testing

documentation from suppliers to confirm a highly adopted crop is BE based on merely being on the list of highly adopted, commercially available BE foods. Several other commenters believe 5 business days is not a reasonable timeframe for companies to produce records to AMS on the bioengineered status of a food/food ingredient; instead, they suggest AMS should provide businesses four to six weeks to respond to records requests. Some input explains the longer timeframe, consistent with FDA's Menu Labeling requirements, recognizes the Disclosure Standard is a marketing standard not requiring the priority of a health and safety concern. Another commenter states maintaining records for two years is burdensome for regulated entities, and suggests the final rule should establish a one year maintenance period as is the case for COOL.

Some commenters stated analytical testing to detect presence of modified genetic material would present undue financial burden on the industry and unnecessarily increase food prices without significantly increasing reliability of proof in support of non-disclosure. Such input encouraged AMS to allow recordkeeping to focus on traceability and segregation, rather than analytical testing. Another commenter states unless a ''non-GMO''-type claim is made about a food or ingredient, manufacturers do not typically test for, nor maintain documentation about, genetic material content. The testing is costly when performed and it is cost-prohibitive to buy equipment and hire skilled laboratory personnel for in-house testing. According to the commenter, screening tests, which are less expensive, are often unreliable or inappropriate for certain products.

If AMS decides to exempt refined ingredients from disclosure when they do not contain modified genetic material, one commenter suggests AMS establish and maintain a list of refined ingredients considered to be devoid of modified genetic material. This list would significantly reduce the burden on entities and eliminate the need for testing and maintaining documentation to demonstrate an ingredient is refined.

Some commenters believe AMS efforts to align effective date of this rule with compliance date for FDA's Nutrition Facts and Supplement Facts label final rule will have limited effectiveness in reducing cost and burden of this rule. In their view, implementation of this rule will require completely separate cost and burden.

Some commenters request the proposed rule not require complicated calculations to demonstrate if a food falls below the set threshold level to be maintained. The commenters further explain dairy manufacturers were subject to such requirements to demonstrate compliance with Vermont's disclosure law. According to commenters, these records were time-consuming and extremely burdensome to compile.

AMS Response: AMS appreciates the many comments submitted offering ways to minimize the recordkeeping burden resulting from this rule, and we have made changes to the final rule to reflect commenters input. We consolidated the List of Bioengineered Foods to simplify recordkeeping requirements. We agree that recordkeeping requirements under the NBFDS should align with those under other AMS programs to minimize the recordkeeping burden on regulated entities, and we have provided recordkeeping flexibilities, as outlined in responses to previous comments in this section.

B. E-Gov

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

C. Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities that are subject to these regulations.

A 60-day comment period was provided to allow interested persons to respond to the proposed rule. All written comments received in response to the proposed rule by the date specified were considered. A number of commenters expressed concern that the proposed labeling options were discriminatory in some fashion. The major issue expressed was that the lack of a smart phone would inhibit older, more rural, poorer, and/or minority groups from being able to access bioengineering information that is not visible and available directly on the packaging. Some commenters argued that the USDA study, conducted by Deloitte, on access to bioengineering disclosures using electronic and digital link disclosures showed that the alternatives to on-package labeling (QR codes, website URLs, text messaging numbers, and other alternatives) will be ineffective and are discriminatory. A commenter cited a Pew Research Center study from 2015 which purportedly shows that of the U.S. citizens owning a smartphone at the time, 23% had to cancel or suspend service due to financial constraints. The same study, being cited by the same commenter, is said to show that ''African Americans and Latinos are around twice as likely as whites to have canceled or cut off their smartphone service.''

Other commenters argued that there are access problems even for those who have a smartphone. Some asserted that where stores don't provide internet access, it could be difficult for people to access information provided by alternatives to on-package labeling. A commenter pointed to the 2015 Pew Research data alleging that African Americans have disproportionate functionality problems with smartphones, some of which is related to ''running out of data during the month.'' It was also pointed out that the Deloitte report showed certain tribal lands had limited broadband capabilities, thus preventing consumers in those areas from obtaining adequate access to the BE disclosure outside of on-package labels.

This final rule does not require regulated entities to alter their operations in ways that could adversely affect such persons or groups, in a discriminatory fashion. Although the electronic or digital disclosure option is mandated by the amended Act, the amended Act does not require regulated entities to utilize that disclosure option. Rather, the amended Act allows regulated entities to select a disclosure method from among several options (text, symbol, electronic or digital link, or text message). Regulated entities that select the electronic or digital disclosure option must also provide options for the consumer to access the BE disclosure, regardless of time of day, by calling a phone number. Requiring the electronic or digital disclosure to be accompanied by a telephone number that consumers may call to access the BE disclosure provides the disclosure in an accessible manner. Accordingly, this final rule offers several distinct avenues of compliance for regulated entities that can be catered to the needs of their consumers. Applying this approach does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

D. Executive Orders 12866, 13563, and 13771

USDA is issuing this rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, which include potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

USDA estimates that the costs of the NBFDS would range from $569 million to $3.9 billion for the first year, with ongoing annual costs of between $51 million and $117 million. The annualized costs in perpetuity would be $68 million to $234 million at a three percent discount rate and $91 million to $391 million at a seven percent discount rate.

These cost estimates represent the cost of the standard relative to a baseline in which there are no requirements for the labeling of food containing bioengineered foods or ingredients.

The NBFDS is not expected to have any benefits to human health or the environment. Any benefits to consumers from the provision of reliable information about BE food products are difficult to measure. Under some, but not all, potentially informative analytic baselines (see the accompanying regulatory impact analysis for this rule), a more clear-cut benefit of the NBFDS is that it eliminates costly inefficiencies of a state-level approach to BE disclosure. We estimate the size of these benefits by focusing on Vermont's BE labeling law because that law had been signed into law before the NBFDS was passed. The annualized net benefit from replacing the Vermont BE labeling law would be between $40 million and $49 million at a three percent discount rate and between $70 million and $84 million at a seven percent discount rate. This is our best estimate of these potential benefits, but we note that there is uncertainty in these estimates given the difficulty in predicting how implementation of the Vermont BE labeling law would have occurred absent the prospect of a national labeling law.

This rule meets the definition of an economically significant regulatory action under Executive Order 12866, as it is likely to result in a rule that would have an annual effect on the economy of $100 million or more, and thereby triggers the requirements contained in Executive Order 13771. *See* OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

The status of the rule under Executive Order 13771 depends on its costs relative to the regulatory requirements that would have applied to the regulated community before enactment of the new Federal standard. The analysis presented here finds that in comparison to a state-level approach to mandatory BE labeling, the NBFDS would impose less cost on the regulated community and would therefore be deregulatory. While acknowledging the uncertainties associated with estimating the magnitude of the actual reduction in costs, we use the midpoint of the estimated net benefits as an approximation of the primary estimate of annualized savings in perpetuity. This results in an estimated annual savings of $77 million using a discount rate of seven percent ($45 million using a discount rate of three percent).

E. Final Regulatory Flexibility Analysis

1. Introduction

We have examined the economic implications of this rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities consistent with statutory objectives. We have concluded that the rule will not have a significant economic impact on a substantial number of small entities.

2. Economic Effects on Small Entities

Guidance on rulemaking recommends SBA's definition of small business as it applies to the relevant economic sector, which for this rule are NAICS 311, 312, and 325, with indirect effects on sectors 115, 424, 445 and 446. SBA recently revised the definition for small businesses. Under SBA's definition of small firms within the each 6-digit NAICS code expected to be impacted by the rule—164,329, or 98 percent of 166,975 total firms. With the new SBA definitions of small business, the share of potentially affected manufacturers now classified as small is 96 percent (26,213 out of 27,176 total manufacturing firms).

3. Definition of Small Business

The definition of small business for the Regulatory Flexibility Analysis are those codified in 13 CFR 121.201.

4. Coordination of Definition of Small Food Manufacturers With FDA Definition

For the purposes of the implementation of the delay for ''small food manufacturers,'' AMS proposed that USDA adopt a definition of *small food manufacturer* that would align with FDA. AMS has attempted to be as consistent as possible with other similar existing regulations in order to minimize the cost burden on the industry.

The definition of *small food manufacturer* is ''any food manufacturer with annual receipts of at least $2,500,000, but less than $10,000,000.'' This definition would be similar to FDA's criteria for allowing an extended compliance period in its recent revision requirements for food labeling (Docket numbers FDA–2012–N–1210 and FDA–2004–N0258).

The final rule maintains this definition of *small food manufacturer.*

This maintains consistency between the NBFDS and the FDA nutrition labeling requirements. The delay provided to small food manufacturers applies only to the initial compliance date. Where the final rule provides additional time to use up existing label stock the deadline for exercising this additional flexibility is the same for all manufacturers regardless of size.

5. Exemptions for Very Small Food Manufacturers

AMS proposed to define *very small food manufacturer* as ''any food manufacturer with annual receipts of less than $2,500,000.'' We also analyzed the following scenarios for comparison:

Alternative A: A food manufacturer with less than $500,000 in annual receipts.

Alternative B: A food manufacturer with less than $5,000,000 in annual receipts.

Currently, there are roughly 18,530 businesses that would fall into the very small category under the proposed definition; 11,170 businesses that would fall into the very small category under *Alternative A;* and, 20,440 businesses that would fall into the very small category under *Alternative B.* This is out of an estimated 27,176 total firms.

Table 3 presents data showing the number of establishments by size classification according to the different definitions of very small, small, and large manufacturers.

TABLE 3—NUMBER OF MANUFACTURERS FOR ALTERNATIVE SIZE CLASSIFICATIONS

Size classification options for manufacturers	Number of firms		
All manufacturing establishments	27,176		
	Very small	Small	Large
Small Firm Criteria:			
Firms with less than $10 million in annual food sales (FDA definition)	N/A	23,029	4,147
Very Small Firm Alternatives:			
Very small alternative A:			
Firms with less than $500,000 in annual receipts	11,527	11,502	4,147
Very small alternative B:			
Firms with less than $5,000,000 in annual receipts	21,581	1,448	4,147
Very small proposed definition:			
Firms with less than $2,500,000 in annual receipts	19,455	3,574	4,147

6. Costs to Small Entities

We compared the maximum annualized cost in our analysis of the rule to the revenue of firms in each size category (by receipts) using 2012 Census data. There was no covered size category of firms for which costs were greater than one percent of revenues.

7. Summary

Under the Regulatory Flexibility Act (5 U.S.C. 606(b)), we conclude that the rule will not have a significant economic impact on a substantial number of small entities. The statutory exemption of very small food manufacturers further reduces the impact on the entities that are likely to face the highest costs relative to revenue.

F. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implications, including regulations, legislative comments or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

AMS has assessed the impact of this rule on Indian tribes and determined that this rule would not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. AMS hosts a quarterly teleconference with Tribal Leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the congressionally mandated NBFDS was shared during those quarterly calls, and Tribal leaders were invited to provide input into the development of the new national Standard. As well, in the NPRM that was published on May 4, 2018 (83 FR 19860), AMS invited Tribal Leaders to consult on the Tribal implications of the proposed rule. AMS received no requests for a consultation. On June 21, 2018, AMS hosted a quarterly conference call with Tribal representatives to update them on upcoming policies, regulations, programs, and services that could have a substantial effect on or benefit to Tribes. During the call, AMS provided fourteen (14) Tribal representatives with an overview of the proposed rule and extended opportunities for questions or requests for more information. At that time, none were expressed.

On July 3, 2018, the comment period for the proposed rule closed. None of the approximately 14,000 responses received on the NPRM were identified as being submitted from Tribal representatives. AMS did receive public comments in response to the NPRM's request for input about the use of electronic or digital disclosures to convey information about bioengineered food content to consumers. Commenters asserted that Native Americans, along with elderly Americans and other U.S. minority populations, may lack adequate access to smartphone technology that would enable them to use electronic or digital disclosures. The Secretary acknowledged this potential lack and determined to provide a comparable bioengineered food disclosure option to allow greater access to food information for all consumers. Such provision is made in § 66.108 of the final rule.

Based on the above, AMS has concluded that this final rule will not have Tribal implications that require a consultation. In implementing the final rule, AMS will develop and deliver outreach and education for and to all regulated entities. In addition, AMS will work with the Office of Tribal Relations to ensure ongoing meaningful consultation is provided, where needed or requested. If a tribe requests consultation, AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

G. Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The final rule is not intended to have retroactive effect. The amended Act specifies that no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food or seed in interstate commerce any requirement relating to the labeling or disclosure of whether a food is bioengineered or was developed or produced using bioengineering for a food subject to the national bioengineered food disclosure standard that is not identical to the mandatory disclosure requirements under that standard. With regard to other Federal statutes, all labeling claims made in conjunction with this regulation must be consistent with other applicable Federal requirements. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

H. Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. Executive Order 13132 directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence to conclude that Congress

intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute. The amended Act includes an express preemption of State law. Sections 293(e) and 295(b) provide that no State may directly or indirectly establish or continue with any food or seed requirement relating to the labeling or disclosure of whether the food or seed is bioengineered or was developed or produced using bioengineering, including any requirement for claims that a food or seed is or contains an ingredient that was developed by or produced using bioengineering.

Upon establishment of the NBFDS, States may adopt standards that are identical to the NBFDS, and States may impose remedies for violations of their standards, such as monetary damages and injunctive relief.

With regard to consultation with States, as directed by Executive Order 13132, USDA notified the governors of each U.S. State of the amended Act's purpose and preemption provisions by letter in August 2016. Copies of the letters may be viewed at *https://www.ams.usda.gov/rules-regulations/be.*

List of Subjects in 7 CFR Part 66

Agricultural commodities, Bioengineering, Food labeling, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR chapter I is amended by adding part 66 to read as follows:

PART 66—NATIONAL BIOENGINEERED FOOD DISCLOSURE STANDARD

Subpart A—General Provisions

Sec.

Subpart B—Bioengineered Food Disclosure

Subpart C—Other Factors and Conditions for Bioengineered Food

Subpart D—Recordkeeping

Subpart E—Enforcement

Authority: 7 U.S.C. 1621 *et seq.*

Subpart A—General Provisions

§ 66.1 Definitions.

Act means the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), as amended to include Subtitle E—National Bioengineered Food Disclosure Standard and Subtitle F—Labeling of Certain Food.

Administrator means the Administrator of the Agricultural Marketing Service, United States Department of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

AMS means the Agricultural Marketing Service of the United States Department of Agriculture.

Bioengineered food means—

(1) Subject to the factors, conditions, and limitations in paragraph (2) of this definition:

(i) A food that contains genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature; *provided that*

(ii) Such a food does not contain modified genetic material if the genetic material is not detectable pursuant to § 66.9.

(2) A food that meets one of the following factors and conditions is not a bioengineered food.

(i) An incidental additive present in food at an insignificant level and that does not have any technical or functional effect in the food, as described in 21 CFR 101.100(a)(3).

(ii) [Reserved]

Bioengineered substance means substance that contains genetic material that has been modified through *in vitro* recombinant deoxyribonucleic acid (rDNA) techniques and for which the modification could not otherwise be obtained through conventional breeding or found in nature.

Compliance date means—

(1) *Mandatory compliance date.* Entities responsible for bioengineered food disclosure must comply with the requirements of this part by January 1, 2022.

(2) *Updates to the List of Bioengineered Foods.* When AMS updates the List of Bioengineered Foods pursuant to § 66.7, entities responsible for bioengineered food disclosures must comply with the updates no later than 18 months after the effective date of the update.

Food means a food (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)) that is intended for human consumption.

Food manufacturer means an entity that manufactures, processes, or packs human food and labels the food or food product for U.S. retail sale.

Importer means the importer of record, as determined by U.S. Customs and Border Protection (19 U.S.C. 1484(a)(2)(B)), who engages in the importation of food or food products labeled for retail sale into the United States.

Information panel means that part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes (*e.g.* irregular shape with one usable surface).

Label means a display of written, printed, or graphic matter upon the immediate container or outside wrapper of any retail package or article that is easily legible on or through the outside container or wrapper.

Labeling means all labels and other written, printed, or graphic matter:

(1) Upon any article or any of its containers or wrappers; or

(2) Accompanying such article.

List of Bioengineered Foods means a list, maintained and updated by AMS and provided in § 66.6, of foods for which bioengineered versions have been developed.

Marketing and promotional information means any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs that are distributed, broadcast, or made available to assist in the sale or promotion of a product.

Predominance means an ingredient's position in the ingredient list on a product's label. Predominant ingredients are those most abundant by weight in the product, as required under 21 CFR 101.4(a)(1).

Principal display panel means that part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

Processed food means any food other than a raw agricultural commodity, and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration, or milling.

Raw agricultural commodity means any agricultural commodity in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

Regulated entity means the food manufacturer, importer, or retailer that is responsible for making bioengineered food disclosures under § 66.100(a).

Secretary means the United States Secretary of Agriculture or a representative to whom authority has been delegated to act in the Secretary's stead.

Similar retail food establishment means a cafeteria, lunch room, food stand, food truck, transportation carrier (such as a train or airplane), saloon, tavern, bar, lounge, other similar establishment operated as an enterprise engaged in the business of selling prepared food to the public, or salad bars, delicatessens, and other food enterprises located within retail establishments that provide ready-to-eat foods that are consumed either on or outside of the retailer's premises.

Small food manufacturer means any food manufacturer with annual receipts of at least $2,500,000, but less than $10,000,000.

Small package means food packages that have a total surface area of less than 40 square inches.

Very small food manufacturer means any food manufacturer with annual receipts of less than $2,500,000.

Very small package means food packages that have a total surface area of less than 12 square inches.

§ 66.3 Disclosure requirement and applicability.

(a) *General.* (1) A label for a bioengineered food must bear a disclosure indicating that the food is a bioengineered food or contains a bioengineered food ingredient consistent with this part.

(2) Except as provided in § 66.116 for voluntary disclosure, a label shall not bear a disclosure that a food is a bioengineered food or contains a bioengineered food ingredient if the records maintained in accordance with § 66.302 demonstrate that the food is not a bioengineered food or does not contain a bioengineered food ingredient.

(b) *Application to food.* This part applies only to a food subject to:

(1) The labeling requirements under the Federal Food, Drug, and Cosmetic Act (''FDCA''); or

(2) The labeling requirements under the Federal Meat Inspection Act, the Poultry Products Inspection Act, or the Egg Products Inspection Act only if:

(i) The most predominant ingredient of the food would independently be subject to the labeling requirements under the FDCA; or

(ii) The most predominant ingredient of the food is broth, stock, water, or a similar solution and the second-most predominant ingredient of the food would independently be subject to the labeling requirements under the FDCA.

§ 66.5 Exemptions.

This part shall not apply to the food and entities described in this section.

(a) Food served in a restaurant or similar retail food establishment.

(b) Very small food manufacturers.

(c) A food in which no ingredient intentionally contains a bioengineered (BE) substance, with an allowance for inadvertent or technically unavoidable BE presence of up to five percent (5%) for each ingredient.

(d) A food derived from an animal shall not be considered a bioengineered food solely because the animal consumed feed produced from, containing, or consisting of a bioengineered substance.

(e) Food certified under the National Organic Program.

§ 66.6 List of Bioengineered Foods.

The List of Bioengineered Foods consists of the following: Alfalfa, apple (Arctic™ varieties), canola, corn, cotton, eggplant (BARI Bt Begun varieties), papaya (ringspot virus-resistant varieties), pineapple (pink flesh varieties), potato, salmon (AquAdvantage®), soybean, squash (summer), and sugarbeet.

§ 66.7 Updates to the List of Bioengineered Foods.

(a) *Updates to the List.* AMS will review and consider updates to the List on an annual basis and will solicit recommendations regarding updates to the List through notification in the **Federal Register** and on the AMS website.

(1) Recommendations regarding additions to and subtractions from the List may be submitted to AMS at any time or as part of the annual review process.

(2) Recommendations should be accompanied by data and other information to support the recommended action.

(3) AMS will post public recommendations on its website, along with information about other revisions to the List that the agency may be considering, including input based on consultation with the government agencies responsible for oversight of the products of biotechnology: USDA's Animal and Plant Health Inspection Service (USDA–APHIS), the U.S. Environmental Protection Agency (EPA), and the Department of Health and Human Services' Food and Drug Administration (FDA), and appropriate members of the Coordinated Framework for the Regulation of Biotechnology or a similar successor.

(4) AMS will consider whether foods proposed for inclusion on the List have been authorized for commercial production somewhere in the world, and whether the food is currently in legal commercial production for human food somewhere in the world.

(5) If AMS determines that an update to the List is appropriate following its review of all relevant information provided, AMS will modify the List.

(b) *Compliance period.* Regulated entities will have 18 months following the effective date of the updated List of Bioengineered Foods to revise food labels to reflect changes to the List in accordance with the disclosure requirements of this part.

§ 66.9 Detectability.

(a) *Recordkeeping requirements.* Modified genetic material is not detectable if, pursuant to the recordkeeping requirements of § 66.302, the entity responsible for making a BE food disclosure maintains:

(1) Records to verify that the food is sourced from a non-bioengineered crop or source; *or*

(2) Records to verify that the food has been subjected to a refinement process validated to make the modified genetic material in the food undetectable; *or*

(3) Certificates of analysis or other records of testing appropriate to the specific food that confirm the absence of modified genetic material.

(b) *Validated refining process.* (1) Analytical testing that meets the standards described in paragraph (c) of this section must be used to validate that a refining process renders modified genetic material in a food undetectable.

(2) Once a refining process has been so validated, additional testing is not necessary to confirm the absence of detectable modified genetic material in food subsequently refined through that process, provided that no significant changes are made to the validated

process and provided that records are maintained to demonstrate that the refining process has been validated and that the validated refining process is followed.

(c) *Standards of performance for detectability testing.* Analytical testing for purposes of detecting the presence of modified genetic material in refined foods pursuant to paragraph (a) of this section shall meet the following standard:

(1) Laboratory quality assurance must ensure the validity and reliability of test results;

(2) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;

(3) The demonstration of testing validity must ensure consistent accurate analytical performance; and

(4) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part.

§ 66.11 Severability.

If any provision of this part is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this part or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 66.13 Implementation and compliance.

(a) *Implementation.* Except for small food manufacturers, the implementation date for this part is January 1, 2020. For small food manufacturers, the implementation date is January 1, 2021.

(b) *Voluntary compliance.* (1) Regulated entities may voluntarily comply with the requirements in this part until December 31, 2021.

(2) During this period, regulated entities may use labels that meet requirements of preempted State labeling regulations for genetically engineered food. Stickers or ink stamps may be applied to existing labels to provide appropriate bioengineered food disclosures provided that the stickers or ink stamps do not obscure other required label information.

(c) *Mandatory compliance.* All regulated entities must comply with the requirements of this part beginning on January 1, 2022.

Subpart B—Bioengineered Food Disclosure

§ 66.100 General.

(a) *Responsibility for disclosure.* (1) For a food that is packaged prior to receipt by a retailer, the food manufacturer or importer is responsible for ensuring that the food label bears a bioengineered food disclosure in accordance with this part.

(2) If a retailer packages a food or sells a food in bulk, that retailer is responsible for ensuring that the food bears a bioengineered food disclosure in accordance with this part.

(b) *Type of disclosure.* If a food must bear a bioengineered food disclosure under this part, the disclosure must be in one of the forms described in this paragraph (b), except as provided in §§ 66.110 and 66.112.

(1) A text disclosure in accordance with § 66.102.

(2) A symbol disclosure in accordance with § 66.104.

(3) An electronic or digital link disclosure in accordance with § 66.106.

(4) A text message disclosure in accordance with § 66.108.

(c) *Appearance of disclosure.* The required disclosure must be of sufficient size and clarity to appear prominently and conspicuously on the label, making it likely to be read and understood by the consumer under ordinary shopping conditions.

(d) *Placement of the disclosure.* Except as provided in § 66.114 for bulk food, the disclosure must be placed on the label in one of the manners described in this paragraph (d).

(1) The disclosure is placed in the information panel directly adjacent to the statement identifying the name and location of the handler, distributor, packer, manufacturer, importer, or any statement disclosing similar information.

(2) The disclosure is placed in the principal display panel.

(3) The disclosure is placed in an alternate panel likely to be seen by a consumer under ordinary shopping conditions if there is insufficient space to place the disclosure on the information panel or the principal display panel.

(e) *Uniform Resource Locator (URL).* Except for disclosures made by small manufacturers and for disclosures on very small packages, a bioengineered food disclosure may not include an internet website URL that is not embedded in an electronic or digital link.

§ 66.102 Text disclosure.

A text disclosure must bear the text as described in this section. A text disclosure may use a plural form if applicable, *e.g.* if a food product includes more than one bioengineered food, then ''bioengineered foods'' or ''bioengineered food ingredients'' may be used.

(a) *Bioengineered foods.* If a food (including any ingredient produced from such food) is on the List of Bioengineered Foods, and records maintained by a regulated entity demonstrate that the food is bioengineered, the text disclosure must be one of the following, as applicable:

(1) ''Bioengineered food'' for bioengineered food that is a raw agricultural commodity or processed food that contains only bioengineered food ingredients; or

(2) ''Contains a bioengineered food ingredient'' for multi-ingredient food that is not described in paragraph (a)(1) of this section but contains one or more bioengineered food ingredients.

(b) *Predominant language in U.S.* Food subject to disclosure that is distributed solely in a U.S. territory may be labeled with statements equivalent to those required in this part, using the predominant language used in that territory.

§ 66.104 Symbol disclosure.

A symbol disclosure must replicate the form and design of Figure 1 to this section.

(a) The symbol is a circle with a green circumference, and a white outer band. The bottom portion of the circle contains an arch, filled in green to the bottom of the circle. The arch contains two light green terrace lines, sloping downward from left to right. On the left side of the arch is a stem arching towards the center of the circle, ending in a four-pointed starburst. The stem contains two leaves originating on the upper side of the stem and pointing towards the top of the circle. In the background of the leaves, at the top of the circle and to the left of center, is approximately one-half of a circle filled in yellow. The remainder of the circle is filled in light blue. The symbol must contain the words ''BIOENGINEERED.''

(b) If a food (including any ingredient produced from such food) is on the List of Bioengineered Foods, and records maintained by a regulated entity demonstrate that the food is bioengineered, or do not demonstrate whether the food is bioengineered, the symbol disclosure must be the following:

Figure 1 to § 66.104

(c) The symbol may be printed in black and white.

(d) Nothing can be added to or removed from the bioengineered food symbol design except as allowed in this part.

§ 66.106 Electronic or digital link disclosure.

If a required bioengineered food disclosure is made through an electronic or digital link printed on the label, the disclosure must comply with the requirements described in this section.

(a) *Accompanying statement.* (1) An electronic or digital disclosure must be accompanied by, and be placed directly above or below, this statement: ''Scan here for more food information'' or equivalent language that only reflects technological changes (*e.g.,* ''Scan anywhere on package for more food information'' or ''Scan icon for more food information'').

(2) The electronic or digital disclosure must also be accompanied by a telephone number that will provide the bioengineered food disclosure to the consumer, regardless of the time of day. The telephone number instructions must be in close proximity to the digital link and the accompanying statement described in paragraph (a)(1) of this section, must indicate that calling the telephone number will provide more food information, and must be accompanied by the statement ''Call [1–000–000–0000] for more food information.''

(b) *Product information page.* When the electronic or digital link is accessed, the link must go directly to the product information page for display on the electronic or digital device. The product information page must comply with the requirements described in this paragraph (b).

(1) The product information page must be the first screen to appear on an electronic or digital device after the link is accessed as directed.

(2) The product information page must include a bioengineered food disclosure that is consistent with § 66.102 or § 66.104.

(3) The product information page must exclude marketing and promotional information.

(4) The electronic or digital link disclosure may not collect, analyze, or sell any personally identifiable information about consumers or the devices of consumers; however, if this information must be collected to carry out the purposes of this part, the information must be deleted immediately and not used for any other purpose.

§ 66.108 Text message disclosure.

The regulated entity must not charge a person any fee to access the bioengineered food information through text message and must comply with the requirements described in this section.

(a) The label must include this statement ''Text [command word] to [number] for bioengineered food information.'' The number must be a number, including a short code, that sends an immediate response to the consumer's mobile device.

(b) The response must be a one-time response and the only information in the response must be the appropriate bioengineered food disclosure described in § 66.102 or § 66.116.

(c) The response must exclude marketing and promotional information.

(d) A regulated entity that selects the text message option must comply with the requirements of this paragraph (d).

(1) The regulated entity must not collect, analyze, or sell any personally identifiable information about consumers or the devices of consumers.

(2) The regulated entity must not use any information related to the text message option for any marketing purposes.

(3) If any information must be collected to carry out the purposes of this part, the information must be deleted as soon as possible and not be used for any other purpose.

§ 66.109 Required disclosure with actual knowledge.

Notwithstanding any provision in this subpart, if a food manufacturer (other than a very small food manufacturer), a retailer, or an importer has actual knowledge that the food is a bioengineered food or contains a bioengineered food ingredient, it must disclose that the food is bioengineered or contains a bioengineered food ingredient, as applicable, using appropriate text, symbol, electronic or digital link disclosure, or text message.

§ 66.110 Small food manufacturers.

A small food manufacturer must make the required bioengineered food disclosure using one of the bioengineered food disclosure options permitted under §§ 66.102, 66.104, 66.106, and 66.108 or as described in this section.

(a) The label bears the statement: ''Call for more food information,'' which accompanies a telephone number that will provide the bioengineered food disclosure to the consumer, regardless of the time of day. Disclosure via telephone number must include a bioengineered food disclosure that is consistent with § 66.102 in audio form and may be pre-recorded.

(b) The label bears the statement: ''Visit [URL of the website] for more food information,'' which accompanies a website that meets the requirements of § 66.106(b). Disclosure via website must include a bioengineered food disclosure that is consistent with § 66.102 or § 66.104 in written form.

§ 66.112 Small and very small packages.

In addition to the disclosures described in this subpart, for food in small and very small packages, the required disclosure may be in the form described in paragraph (a), (b), or (c) of this section.

(a) The label bears the electronic or digital disclosure described in § 66.106, and replaces the statement and phone number required in § 66.106(a) with the statement ''Scan for info.''

(b) The label bears a number or short code as described in § 66.108(a), and replaces the statement with ''Text for info.''

(c) The label bears a phone number as described in § 66.110(a), and replaces the statement with ''Call for info.''

(d) For very small packages only, if the label includes a preexisting Uniform Resource Locator for a website or a telephone number that a consumer can use to obtain food information, that website or telephone number may also be used for the required bioengineered food disclosure, provided that the disclosure is consistent with § 66.102 or § 66.104 in written or audio form, as applicable.

§ 66.114 Food sold in bulk containers.

(a) Bioengineered food sold in bulk containers (*e.g.,* display case, bin, carton, and barrel), used at the retail level to present product to consumers, including a display at a fresh seafood counter, must use one of the disclosure options described in § 66.102, § 66.104, § 66.106, or § 66.108.

(b) The disclosure must appear on signage or other materials (*e.g.,* placard, sign, label, sticker, band, twist tie, or other similar format) that allows consumers to easily identify and understand the bioengineered status of the food.

§ 66.116 Voluntary disclosure.

(a) *Disclosure of bioengineered food by exempt entities.* If a food on the List of Bioengineered Foods is subject to

disclosure, a very small food manufacturer, restaurant, or similar retail food establishment may voluntarily provide that disclosure. The disclosure must be in one or more of the forms described in this paragraph (a).

(1) A text disclosure, in accordance with § 66.102.

(2) A symbol disclosure, in accordance with § 66.104.

(3) An electronic or digital link disclosure, in accordance with § 66.106.

(4) A text message disclosure, in accordance with § 66.108.

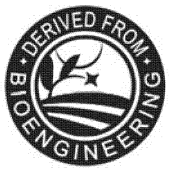
(5) Appropriate small manufacturer and small and very small package disclosure options, in accordance with §§ 66.110 and 66.112.

(b) *Disclosure of foods derived from bioengineering.* For foods or food ingredients that do not meet paragraph (1) of the definition of bioengineered food in § 66.1, that do not qualify as a factor or condition under paragraph (2) of the definition of bioengineered food in § 66.1, that are not exempt from disclosure under § 66.5, and that are derived from a food on the List of Bioengineered Foods, regulated entities may disclose such foods with one of the disclosures described in this paragraph (b).

(1) A text disclosure with the following statement: ''derived from bioengineering'' or ''ingredient(s) derived from a bioengineered source.'' The word ''ingredient(s)'' may be replaced with the name of the specific crop(s) or food ingredient(s).

(2) A symbol disclosure using the following symbol:

Figure 1 to § 66.116



(3) An electronic or digital link disclosure, in accordance with § 66.106, provided that the disclosure is the text described in paragraph (b)(1) of this section or the symbol in Figure 1 to this section.

(4) A text message disclosure, in accordance with § 66.108, provided that the response is the text described in paragraph (b)(1) of this section or the symbol in Figure 1 to this section.

(5) Appropriate small manufacturer and small and very small package disclosure options, in accordance with §§ 66.110 and 66.112, provided that the disclosure is the text described in paragraph (b)(1) of this section or the symbol in Figure 1 to this section.

(c) *Appearance of disclosure.* The disclosure should be of sufficient size and clarity to appear prominently and conspicuously on the label, making it likely to be read and understood by the consumer under ordinary shopping conditions.

(d) *Recordkeeping.* Reasonable and customary records should be maintained to verify disclosures made under this section, in accordance with § 66.302.

§ 66.118 Other claims.

Nothing in this subpart will prohibit regulated entities from making other claims regarding bioengineered foods, provided that such claims are consistent with applicable Federal law.

Subpart C—Other Factors and Conditions for Bioengineered Food

§ 66.200 Request or petition for determination.

(a) Any person may submit a request or petition for a determination by the Administrator regarding other factors and conditions under which a food is considered a bioengineered food. A request or petition must be submitted in accordance with § 66.204.

(b) The request or petition may be supplemented, amended, or withdrawn in writing at any time without prior approval of the Administrator, and without affecting resubmission, except when the Administrator has responded to the request or petition.

(c) If the Administrator determines that the request or petition satisfies the standards for consideration in § 66.202, AMS will initiate a rulemaking that would amend the definition of ''bioengineered food'' in § 66.1 to include the requested factor or condition.

(d) The Administrator's determination that the request or petition does not satisfy the standards for consideration in § 66.202 constitutes final agency action for purposes of judicial review.

§ 66.202 Standards for consideration.

In evaluating a request or petition, the Administrator must apply the applicable standards described in this section.

(a) The requested factor or condition is within the scope of the definition of ''bioengineering'' in 7 U.S.C. 1639(1).

(b) The Administrator must evaluate the difficulty and cost of implementation and compliance related to the requested factor or condition.

(c) The Administrator may consider other relevant information, including whether the requested factor or condition is compatible with the food labeling requirements of other agencies or countries, as part of the evaluation.

§ 66.204 Submission of request or petition.

(a) *Submission procedures and format.* A person must submit the request to the Agricultural Marketing Service in the form and manner established by AMS.

(b) *Required information.* The request or petition must include the information described in this paragraph (b).

(1) Description of the requested factor or condition.

(2) Analysis of why the requested factor or condition should be included in considering whether a food is a bioengineered food, including any relevant information, publications, and/or data. The analysis should include how the Administrator should apply the standards for consideration in § 66.202.

(3) If the request or petition contains Confidential Business Information (CBI), the submission must comply with the requirements of this paragraph (b)(3).

(i) The requester or petitioner must submit one copy that is marked as ''CBI Copy'' on the first page and on each page containing CBI.

(ii) The requester or petitioner must submit a second copy with the CBI deleted. This copy must be marked as ''CBI Redacted'' on the first page and on each page where the CBI was deleted.

(iii) The submission must include an explanation as to why the redacted information is CBI.

Subpart D—Recordkeeping

§ 66.300 Scope.

This subpart applies to records regarding mandatory and voluntary disclosures under this part for foods offered for retail sale in the United States.

§ 66.302 Recordkeeping requirements.

(a) *General.* (1) Regulated entities must maintain records that are customary or reasonable to demonstrate compliance with the disclosure requirements of this part.

(2) The records must be in electronic or paper formats and must contain sufficient detail as to be readily understood and audited by AMS.

(3) Records must be maintained for at least two years beyond the date the food or food product is sold or distributed for retail sale.

(4) Examples of customary or reasonable records that could be used to demonstrate compliance with the disclosure requirements of this part include, but are not limited to: Supply chain records, bills of lading, invoices, supplier attestations, labels, contracts,

brokers' statements, third party certifications, laboratory testing results, validated process verifications, and other records generated or maintained by the regulated entity in the normal course of business.

(b) *Recordkeeping requirements.* (1) If a food (including an ingredient produced from such food) is on the List of Bioengineered Foods, the regulated entity must maintain records regarding that food or food ingredient.

(2) If a food (including an ingredient produced from such food) bears a bioengineered food disclosure based on actual knowledge and is not on the List of Bioengineered Foods, regulated entities must maintain records for such food or food ingredient.

§ 66.304 Access to records.

(a) *Request for records.* When AMS makes a request for records, the entity must provide the records to AMS within five (5) business days, unless AMS extends the deadline.

(b) *On-site access.* If AMS needs to access the records at the entity's place of business, AMS will provide prior notice of at least three (3) business days. AMS will examine the records during normal business hours, and the records will be made available during those times. Access to any necessary facilities for an examination of the records must be extended to AMS.

(c) *Failure to provide access.* If the entity fails to provide access to the records as required under this section, the result of the audit or examination of records will be that the entity did not comply with the requirement to provide access to records and that AMS could not confirm whether the entity is in compliance with the bioengineered food disclosure standard for purposes of § 66.402.

Subpart E—Enforcement

§ 66.400 Prohibited act.

It is a violation of 7 U.S.C. 1639b for any person to knowingly fail to make a bioengineered food disclosure in accordance with this part.

§ 66.402 Audit or examination of records.

(a) Any interested person who has knowledge of or information regarding a possible violation of this part may file a written statement or complaint with the Administrator.

(1) Written statements or complaints filed with the Administrator must include the following:

(i) Complete identifying information about the product in question;

(ii) A detailed explanation of the alleged regulatory violation; and

(iii) Name and contact information of the person filing the statement or complaint.

(2) Written statements or complaints should be addressed to Director, Food Disclosure and Labeling Division, AMS Fair Trade Practices Program, 1400 Independence Avenue SW, Washington, DC 20250; or submitted through the NBFDS Compliance Portal on the AMS website at *https://www.ams.usda.gov/be.*

(3) The Administrator will determine whether reasonable grounds exist for an investigation of such complaint.

(b) If the Administrator determines that further investigation of a complaint is warranted, an audit, examination, or similar activity may be conducted with respect to the records of the entity responsible for the disclosures.

(c) Notice regarding records audits or examinations or similar activities will be provided in accordance with § 66.304(a) and (b).

(d) At the conclusion of the audit or examination of records or similar activity, AMS will make the findings available to the entity that was the subject of the investigation.

(e) If the entity that is the subject of the audit or examination of records or similar activity objects to any findings, it may request a hearing in accordance with § 66.404.

§ 66.404 Hearing.

(a) Within 30 days of receiving the results of an audit or examination of records or similar activity to which the entity that was the subject of the investigation objects, the entity may request a hearing by filing a request, along with the entity's response to the findings and any supporting documents, with AMS.

(b) The response to the findings of the audit or examination of records or similar activity must identify any objection to the findings and the basis for the objection.

(c) The AMS Administrator or designee will review the findings of the audit or examination of records or similar activity, the response, and any supporting documents, and may allow the entity that was the subject of the investigation to make an oral presentation.

(d) At the conclusion of the hearing, the AMS Administrator or designee may revise the findings of the audit or examination of records or similar activity.

§ 66.406 Summary of results.

(a) If the entity that was the subject of the audit or examination of records or similar activity does not request a hearing in accordance with § 66.404, or at the conclusion of a hearing, AMS will make public the summary of the final results of the investigation.

(b) AMS's decision to make public the summary of the final results constitutes final agency action for purposes of judicial review.

Dated: December 12, 2018.

Erin Morris,

Associate Administrator.

[FR Doc. 2018–27283 Filed 12–20–18; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 52
Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2018–0225; FRL–9987–86–OAR]

RIN 2060–AT92

Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the Environmental Protection Agency's (EPA) determination that the existing Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) (CSAPR Update) fully addresses certain states' obligations under the good neighbor provision of the Clean Air Act (CAA) regarding interstate pollution transport for the 2008 ozone NAAQS. The CSAPR Update, published on October 26, 2016, promulgated Federal Implementation Plans (FIPs) for 22 states in the eastern U.S. In the final CSAPR Update, based on information available at that time, the EPA could not conclude that the rule fully addressed these CAA section obligations for 21 of the 22 CSAPR Update states. As a result, the EPA has an outstanding obligation to fully address the requirements of this Clean Air Act provision for these states. Based on information and analysis that became available after the CSAPR Update was finalized, this action finalizes a determination that the existing CSAPR Update fully addresses the CAA's good neighbor provision for the 2008 ozone NAAQS for all remaining CSAPR Update states. Specifically, EPA is finalizing a determination that 2023 is an appropriate future analytic year to evaluate remaining good neighbor obligations and that, for the purposes of addressing good neighbor obligations, there will be no remaining nonattainment or maintenance receptors with respect to the 2008 ozone NAAQS in the eastern U.S. in that year. Therefore, with the CSAPR Update fully implemented, these remaining CSAPR Update states are not expected to contribute significantly to nonattainment in, or interfere with maintenance of, any other state with regard to the 2008 ozone NAAQS. In accord with this finding, the EPA has no outstanding, unfulfilled obligation to establish additional requirements for emission sources in these states to further reduce transported ozone pollution under the good neighbor provision for the 2008 ozone NAAQS. As a result of this finding, this action finalizes minor revisions to the existing CSAPR Update regulations to reflect that the CSAPR Update FIPs fully address this CAA provision. This determination applies to states currently subject to CSAPR Update FIPs as well as any states for which EPA has approved replacement of CSAPR Update FIPs with CSAPR Update state implementation plans (SIPs).

DATES: This final rule is effective on February 19, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0225. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David Risley, Clean Air Markets Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, MC 6204M, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 343–9177; email address: *Risley.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated under the CSAPR Update are fossil fuel-fired boilers and stationary combustion turbines that serve generators producing electricity for sale, including combined cycle units and units operating as part of systems that cogenerate electricity and other useful energy output. Regulated categories and entities include:

Category	NAICS* code	Examples of potentially regulated industries
Industry	221112	Fossil fuel-fired electric power generation

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated. To determine whether your facility is affected by this action, you should carefully examine the applicability provisions in 40 CFR 97.804. If you have questions regarding the applicability of the CSAPR Update to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Outline. The following outline is provided to aid in locating information in this preamble.

I. General Information

Within this document ''we,'' ''us,'' or ''our'' should be interpreted to mean the U.S. EPA.

Where can I get a copy of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0225 (available at *http://www.regulations.gov*). Information related to this final action is available at the website: *https://www.epa.gov/airtransport.*

A. Summary of Proposal in Relation to the Final Determination

On July 10, 2018, the EPA issued its proposed Determination Regarding Good Neighbor Obligations for the 2008 Ozone National Ambient Air Quality Standard. 83 FR 31915 (July 10, 2018). In that action, the agency proposed to determine that the existing CSAPR Update fully addressed certain states' obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. The proposed determination was based upon a finding that 2023 was a reasonable future analytic year in which to further evaluate air quality with respect to remaining good neighbor obligations, considering relevant attainment dates for the 2008 ozone NAAQS and the time necessary to further mitigate nitrogen oxide (NO_X) emissions through regional assessment of state-of-the-art post-combustion controls within the CSAPR Update region. The agency's analysis of projected 2023 ozone concentrations indicated that there would be no remaining monitors expected to have difficulty attaining or maintaining the 2008 ozone NAAQS, and the EPA therefore proposed to determine that the existing regulation—the CSAPR Update—fully addressed states' obligations under this Clean Air Act provision for this NAAQS. The agency solicited comment on that proposal with the comment period ending on August 31, 2018. The agency also held a public hearing on August 1, 2018. This final action was developed considering comments received on the proposal. Generally, the agency's final action herein remains consistent with the proposal with respect to its determination regarding good neighbor obligations for the 2008 ozone NAAQS and its underlying rationale.

B. States Covered by This Action

In the CSAPR Update, 81 FR 74504 (Oct. 26, 2016), the EPA promulgated FIPs affecting 22 eastern states that at least partially addressed obligations under CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' with respect to the 2008 ozone NAAQS. The good neighbor provision requires upwind states to control their emissions that significantly contribute to air quality problems in downwind states. Based on information available when the CSAPR Update was finalized, the EPA was unable to determine at that time that the FIPs fully addressed good neighbor obligations under this NAAQS for 21 of the 22 states.[1] The EPA has subsequently finalized approval of a SIP that fully addresses the good neighbor obligation for one of these states—Kentucky. 83 FR 33730 (July 17, 2018). Consistent with the EPA's July 2018 proposed determination, in this action, the EPA finalizes a determination that with CSAPR Update implementation the 20 remaining states' good neighbor obligations for the 2008 ozone NAAQS are fully addressed. In accord with this determination, the EPA has no further obligation under CAA section 110(c) to establish requirements for power plants or any other emission sources in these states to further reduce transported ozone pollution under CAA section 110(a)(2)(D)(i)(I) with regard to this NAAQS. See Table I.A–1 for a list of states covered by this final action.

TABLE I.A–1—STATES COVERED BY THIS FINAL DETERMINATION REGARDING GOOD NEIGHBOR OBLIGATIONS FOR THE 2008 OZONE NAAQS

State	
Alabama	Missouri
Arkansas	New Jersey
Illinois	New York
Indiana	Ohio
Iowa	Oklahoma
Kansas	Pennsylvania
Louisiana	Texas
Maryland	Virginia
Michigan	West Virginia
Mississippi	Wisconsin

II. Background and Legal Authority

A. Ground-level Ozone Pollution and Public Health

Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and a number of morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure causes visible foliar injury in some plants, decreases growth in some plants, and affects ecosystem community composition.[2]

In this final action, consistent with EPA's proposal and with previous rulemakings described in section II.B, the EPA relies on analysis that reflects the regional nature of transported ground-level ozone pollution. Ground-level ozone is not emitted directly into the air, but is a secondary air pollutant created by chemical reactions between NO_X, carbon monoxide (CO), methane (CH_4), and non-methane volatile organic compounds (VOCs) in the presence of sunlight. Emissions from mobile sources, electric generating units (EGUs), industrial facilities, gasoline vapors, and chemical solvents are some of the major anthropogenic sources of ozone precursors. The potential for ground-level ozone formation increases during periods with warmer temperatures and stagnant air masses. Therefore, ozone levels are generally higher during the summer months.[3] [4] Ground-level ozone concentrations and temperature are highly correlated in the eastern U.S., with observed ozone increases of 2–3 parts per billion (ppb) per degree Celsius reported.[5]

Precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. Studies have established that ozone formation, atmospheric residence, and transport occur on a regional scale (*i.e.,* hundreds of miles) over much of the eastern U.S. As a result of ozone transport, in any given location, ozone pollution levels are affected by a combination of local emissions and

[1] The EPA determined in the final CSAPR Update that implementation of the emissions budget for Tennessee would fully eliminate the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved after implementation of the CSAPR Update. 81 FR 74540.

[2] For more information on the human health and welfare and ecosystem effects associated with ambient ozone exposure, see the EPA's October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007) in the docket for this action and also found in the docket for the 2015 ozone NAAQS, Docket No. EPA–HQ–OAR–2013–0169–0057.

[3] Rasmussen, D.J. et al. (2011). Ground-level ozone-temperature relationships in the eastern US: A monthly climatology for evaluating chemistry-climate models. Atmospheric Environment 47: 142–153.

[4] High ozone concentrations have also been observed in cold months, where a few areas in the western U.S. have experienced high levels of local VOC and NO_X emissions that have formed ozone when snow is on the ground and temperatures are near or below freezing.

[5] Bloomer, B.J., J.W. Stehr, C.A. Piety, R.J. Salawitch, and R.R. Dickerson (2009). Observed relationships of ozone air pollution with temperature and emissions, Geophys. Res. Lett., 36, L09803.

emissions from upwind sources. Numerous observational studies have demonstrated the transport of ozone and its precursors and the impact of upwind emissions on high concentrations of ozone pollution. [6]

The EPA concluded in several previous rulemakings (summarized in section II.B) that interstate ozone transport can be an important component of peak ozone concentrations during the summer ozone season and that NO_X control strategies are effective for reducing regional-scale ozone transport. Model assessments have looked at impacts on peak ozone concentrations after potential emission reduction scenarios for NO_X and VOCs for NO_X-limited and VOC-limited areas. For example, Jiang and Fast concluded that NO_X emission reduction strategies are effective in lowering ozone mixing ratios in urban areas and Liao et al. showed that NO_X reductions result in lower peak ozone concentrations in non-attainment areas in the Mid-Atlantic.[7] [8] Assessments of ozone conducted for the October 2015 Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (EPA–452/R–15–007) also show the importance of NO_X emissions on ozone formation. This analysis is in the docket for this action and also can be found in the docket for the 2015 ozone NAAQS regulatory impact analysis, Docket No. EPA–HQ–OAR–2013–0169 (document ID EPA–HQ–OAR–2013–0169–0057).

Studies have found that NO_X emission reductions can be effective in reducing ozone pollution as quantified by the form of the 2008 ozone standard, 8-hour peak concentrations. Specifically, studies have found that NO_X emission reductions from EGUs, mobile sources, and other source categories can be effective in reducing the upper-end of the cumulative ozone distribution in the summer on a regional scale.[9] Analysis of air quality monitoring data trends shows reductions in summertime ozone concurrent with implementation of NO_X reduction programs.[10] Gilliland et al. examined the NO_X SIP Call, discussed in more detail later, and presented reductions in observed versus modeled ozone concentrations in the eastern U.S. downwind from major NO_X sources.[11] The results showed significant reductions in ozone concentrations (10–25 percent) from observed measurements (CASTNET and AQS) [12] between 2002 and 2005, linking reductions in EGU NO_X emissions from upwind states with ozone reductions downwind of the major source areas.[13] Additionally, Gégo et al. showed that ground-level ozone concentrations were significantly reduced after implementation of the NO_X SIP Call.[14] Thus, these studies support the EPA's continued focus on regional and seasonal NOx control strategies to address regional interstate ozone pollution transport.

B. The EPA's Statutory Authority for This Final Action

The statutory authority for this final action is provided by the CAA as amended (42 U.S.C. 7401 *et seq.*). Specifically, sections 110 and 301 of the CAA provide the primary statutory underpinnings for this action. The most relevant portions of section 110 are subsections 110(a)(1), 110(a)(2) (including 110(a)(2)(D)(i)(I)), and 110(c)(1).

Section 110(a)(1) provides that states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and that these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS.[15] The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS.[16]

The EPA has historically referred to SIP submissions made for the purpose of satisfying the applicable requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required content of these submissions. It includes a list of specific elements that ''[e]ach such plan'' submission must address.[17] All states, regardless of whether the state includes areas designated as nonattainment for the relevant NAAQS, must have SIPs that meet the applicable requirements of section 110(a)(2), including provisions of section 110(a)(2)(D)(i)(I), described later, that are the focus of this action.

Section 110(c)(1) requires the Administrator to promulgate a FIP at any time within two years after the Administrator: (1) Finds that a state has failed to make a required SIP submission; (2) finds a SIP submission to be incomplete pursuant to CAA section 110(k)(1)(C); or (3) disapproves a SIP submission. This obligation applies unless the state corrects the deficiency through a SIP revision that the Administrator approves before the FIP is promulgated.[18]

Section 110(a)(2)(D)(i)(I), also known as the ''good neighbor provision,'' provides the primary basis for this action. It requires that each state SIP include provisions sufficient to ''prohibit[ ], consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any [NAAQS].'' [19] The EPA

[6] For example, Bergin, M.S. et al. (2007). Regional air quality: local and interstate impacts of NO_X and SO_2 emissions on ozone and fine particulate matter in the eastern United States. Environmental Sci & Tech. 41: 4677–4689.

[7] Jiang, G.; Fast, J.D. (2004). Modeling the effects of VOC and NO_X emission sources on ozone formation in Houston during the TexAQS 2000 field campaign. Atmospheric Environment 38: 5071–5085.

[8] Liao, K. et al. (2013) Impacts of interstate transport of pollutants on high ozone events over the Mid-Atlantic United States. Atmospheric Environment 84, 100–112.

[9] Hidy, G.M. and Blanchard C.L. (2015). Precursor reductions and ground-level ozone in the Continental United States. J. of Air & Waste Management Assn. 65, 10.

[10] Simon, H. et al. (2015). Ozone trends across the United States over a period of decreasing NO_X and VOC emissions. Environmental Science & Technology 49, 186–195.

[11] Gilliland, A.B. et al. (2008). Dynamic evaluation of regional air quality models: Assessing changes in O_3 stemming from changes in emissions and meteorology. Atmospheric Environment 42: 5110–5123.

[12] CASTNET is the EPA's Clean Air Status and Trends Network. AQS is the EPA's Air Quality System.

[13] Hou, Strickland & Liao. ''Contributions of regional air pollutant emissions to ozone and fine particulate matter-related mortalities in eastern U.S. urban areas''. Environmental Research, Feb. 2015. Available at *https://ac.els-cdn.com/S0013935114004113/1-s2.0–S0013935114004113-main.pdf?_tid=78c88101-fa6e-4e75-a65c-f56746905e7d&acdnat=1525175812_0e62553b83c9ffa1105aa306a478e8bb.*

[14] Gégo et al. (2007). Observation-based assessment of the impact of nitrogen oxides emission reductions on O_3 air quality over the eastern United States. J. of Applied Meteorology and Climatology 46: 994–1008.

[15] 42 U.S.C. 7410(a)(1).

[16] *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1601 (2014).

[17] The EPA's general approach to infrastructure SIP submissions is explained in greater detail in individual notices acting or proposing to act on state infrastructure SIP submissions and in guidance. *See, e.g.,* Memorandum from Stephen D. Page on Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[18] 42 U.S.C. 7410(c)(1).

[19] 42 U.S.C. 7410(a)(2)(D)(i)(I).

often refers to the emission reduction requirements under this provision as ''good neighbor obligations'' and submissions addressing these requirements as ''good neighbor SIPs.''

The EPA has previously issued four rules interpreting and clarifying the requirements of section 110(a)(2)(D)(i)(I) for states in the eastern United States. These rules, and the associated court decisions addressing these rules, summarized here, provide important direction regarding the requirements of section 110(a)(2)(D)(i)(I).

The NO_X SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS.[20] The rule required 22 states and the District of Columbia to amend their SIPs to reduce NO_X emissions that contribute to ozone nonattainment in downwind states. The EPA set ozone season NO_X budgets for each state, and the states were given the option to participate in a regional allowance trading program, known as the NO_X Budget Trading Program (NBP), to achieve all or most of the required emission reductions.[21] The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) largely upheld the NO_X SIP Call in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. cir. 2000), *cert. denied,* 532 U.S. 904 (2001).

The EPA's next rule addressing the good neighbor provision, the Clean Air Interstate Rule (CAIR), was promulgated in 2005 and addressed both the 1997 fine particulate matter ($PM_{2.5}$) NAAQS and 1997 ozone NAAQS.[22] CAIR required SIP revisions in 28 states and the District of Columbia to reduce emissions of sulfur dioxide (SO_2) and/or NO_X—important precursors of regionally transported $PM_{2.5}$ (SO_2 and annual NO_X) and ozone (summer-time NO_X). As in the NO_X SIP Call, states were given the option to participate in regional allowance trading programs to achieve the reductions. When the EPA promulgated the final CAIR in 2005, the EPA also issued findings that states nationwide had failed to submit SIPs to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 1997 $PM_{2.5}$ and 1997 ozone NAAQS.[23] The states were required by the CAA to have submitted good neighbor SIPs for those standards by July 2000 (*i.e.,* three years after the standards were finalized).[24] These findings of failure to submit triggered a two-year clock for the EPA to issue FIPs to address interstate transport,[25] and on March 15, 2006, the EPA promulgated FIPs to implement the emission reductions required by CAIR.[26] CAIR was remanded to the EPA by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. For more information on the legal issues underlying CAIR and the D.C. Circuit's holding in *North Carolina,* refer to the preamble of the original CSAPR.[27]

In 2011, the EPA promulgated the original CSAPR to address the issues raised by the remand of CAIR. CSAPR addressed the two NAAQS at issue in CAIR and additionally addressed the good neighbor provision for the 2006 $PM_{2.5}$ NAAQS.[28] CSAPR, as revised, required 28 states to reduce SO_2 emissions, annual NO_X emissions, and/or ozone season NO_X emissions that significantly contribute to other states' nonattainment or interfere with other states' abilities to maintain these air quality standards.[29] To align implementation with the applicable attainment deadlines, the EPA promulgated FIPs for each of the 28 states covered by CSAPR. The FIPs implement regional allowance trading programs to achieve the necessary emission reductions. Each state can submit a good neighbor SIP at any time that, if approved by the EPA, would replace the CSAPR FIP for that state.[30] CSAPR was the subject of an adverse decision by the D.C. Circuit in August 2012.[31] However, this decision was reversed in April 2014 by the Supreme Court,[32] which largely upheld the rule, including EPA's approach to addressing interstate transport in CSAPR. The rule was remanded to the D.C. Circuit to consider other claims not addressed by the Supreme Court. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014) (*EME Homer City*). In July 2015 the D.C. Circuit affirmed the EPA's interpretation of various statutory provisions and the EPA's technical decisions. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (2015) (*EME Homer City II*). However, the court also remanded the rule without vacatur for reconsideration of the EPA's emissions budgets for certain states, which the court found may over-control those states' emissions with respect to the downwind air quality problems to which the states were linked. *Id.* at 129–30, 138. For more information on the legal considerations of CSAPR and the court's decisions in the *EME Homer City* litigation, refer to the preamble of the CSAPR Update.[33]

In 2016, the EPA promulgated the CSAPR Update to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS.[34] The final rule generally updated the CSAPR ozone season NO_X emissions budgets for 22 states to achieve cost-effective and immediately feasible NO_X emission reductions from EGUs within those states.[35] To align implementation with relevant attainment dates, the CSAPR Update implemented these budgets through FIPs requiring sources to participate in a revised CSAPR ozone season NO_X allowance trading program beginning with the 2017 ozone season. As discussed in more detail later in this preamble, the 2017 deadline was intended to ensure that the emission reductions from the rule would be made prior to the July 20, 2018 moderate attainment deadline. As under the

[20] 63 FR 57356 (Oct. 27, 1998). As originally promulgated, the NO_X SIP Call also addressed good neighbor obligations under the 1997 8-hour ozone NAAQS, but the EPA subsequently stayed the rule's provisions with respect to that standard. 40 CFR 51.121(q).

[21] ''Allowance Trading'' sometimes referred to as ''cap and trade'' is an approach to reducing pollution that has been used successfully to protect human health and the environment. Allowance trading programs have two key components: Emissions budgets (the sum of which provide a cap on emissions), and tradable allowances equal to the budgets that authorize allowance holders to emit a specific quantity (*e.g.,* one ton) of the pollutant. This approach ensures that the environmental goal is met while the tradable allowances provide flexibility for individual participants to establish and follow their own compliance path. Because allowances can be bought and sold in an allowance market, these programs are often referred to as ''market-based.''

[22] 70 FR 25162 (May 12, 2005).

[23] 70 FR 21147 (April 25, 2005).

[24] *See* n.14 and main text, *supra.*

[25] *See* n.17 and main text, *supra.*

[26] 71 FR 25328 (April 28, 2006).

[27] 76 FR 48208, 48217 (Aug. 8, 2011).

[28] 76 FR 48208.

[29] CSAPR was revised by several rulemakings after its initial promulgation in order to revise certain states' budgets and to promulgate FIPs for five additional states addressing the good neighbor obligation for the 1997 ozone NAAQS. 76 FR 80760 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012).

[30] The EPA has already approved SIPs fully replacing the original CSAPR FIPs for Alabama, 81 FR 59869 (Aug. 31, 2016); Georgia, 82 FR 47930 (Oct. 13, 2017); South Carolina, 82 FR 47936 (Oct. 13, 2017); and Indiana (signed Nov. 27, 2018; publication in the **Federal Register** forthcoming).

[31] On August 21, 2012, the D.C. Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012) (*EME Homer City I*), vacating CSAPR. The EPA sought review with the D.C. Circuit *en banc* and the D.C. Circuit declined to consider the EPA's appeal *en banc. EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir. January 24, 2013), ECF No. 1417012 (denying the EPA's motion for rehearing en banc).

[32] On January 23, 2013, the Supreme Court granted the EPA's petition for certiorari. *EPA* v. *EME Homer City Generation, L.P.,* 133 S. Ct. 2857 (2013) (granting the EPA's and other parties' petitions for certiorari).

[33] 81 FR 74511.

[34] 81 FR 74504.

[35] One state, Kansas, was made newly subject to a CSAPR ozone season NO_X requirement by the CSAPR Update. All other CSAPR Update states were already subject to ozone season NO_X requirements under the original CSAPR.

original CSAPR, each state can submit a good neighbor SIP at any time that, if approved by the EPA, would replace the CSAPR Update FIP for that state.[36] The final CSAPR Update also addressed the remand by the D.C. Circuit of certain states' original CSAPR phase 2 ozone season NO_X emissions budgets in *EME Homer City II.* The CSAPR Update is subject to pending legal challenges in the D.C. Circuit. *Wisconsin* v. *EPA,* No. 16–1406 (D.C. Cir. argued Oct. 3, 2018). Further information about the CSAPR Update can be found in section II.D of this notice.

Section 301(a)(1) of the CAA also gives the Administrator the general authority to prescribe such regulations as are necessary to carry out functions under the Act.[37] Pursuant to this section, the EPA has authority to clarify the applicability of CAA requirements. In this action, among other things, the EPA is clarifying the applicability of section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. In particular, the EPA is using its authority under sections 110 and 301 to make a determination that no further enforceable reductions in emissions of NO_X are required under this provision with respect to the 2008 ozone NAAQS for the states covered by this rule. The EPA is making minor revisions to the existing state-specific sections of the CSAPR Update regulations for all states covered by this action.

C. Good Neighbor Obligations for the 2008 Ozone NAAQS

On March 12, 2008, the EPA promulgated a revision to the NAAQS, lowering both the primary and secondary standards to 75 ppb. *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008). Specifically, the standards require that an area may not exceed 0.075 ppm (75 ppb) using the 3-year average of the fourth highest 24-hour maximum 8-hour rolling average ozone concentration. These revisions of the NAAQS, in turn, triggered a 3-year deadline for states to submit SIP revisions addressing infrastructure requirements under CAA sections 110(a)(1) and 110(a)(2), including the good neighbor provision. Several events affected the timely application of the good neighbor provision for the 2008 ozone NAAQS, including reconsideration of the 2008 ozone NAAQS and legal developments pertaining to the EPA's original CSAPR, which created uncertainty surrounding the EPA's statutory interpretation and implementation of the good neighbor provision.[38] Notwithstanding these events, the EPA ultimately affirmed that states' good neighbor SIPs were due on March 12, 2011.

The EPA subsequently took several actions that triggered the EPA's obligation under CAA section 110(c) to promulgate FIPs addressing the good neighbor provision for several states.[39] First, on July 13, 2015, the EPA published a rule finding that 24 states failed to make complete submissions that address the requirements of section 110(a)(2)(D)(i)(I) related to the interstate transport of pollution as to the 2008 ozone NAAQS. *See* 80 FR 39961 (effective August 12, 2015). This finding triggered a two-year deadline for the EPA to issue FIPs to address the good neighbor provision for these states by August 12, 2017. The CSAPR Update finalized FIPs for 13 of these states (Alabama, Arkansas, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia), requiring their participation in a NO_X emission trading program. The EPA also determined in the CSAPR Update that the agency had no further FIP obligation as to nine additional states identified in the finding of failure to submit because these states did not contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. 81 FR 74506.[40] [41] On June 15, 2016, and July 20, 2016, the EPA published additional rules finding that New Jersey and Maryland, respectively, also failed to submit transport SIPs for the 2008 ozone NAAQS. *See* 81 FR 38963 (June 15, 2016) (New Jersey, effective July 15, 2016); 81 FR 47040 (July 20, 2016) (Maryland, effective August 19, 2016). The finding actions triggered two-year deadlines for the EPA to issue FIPs to address the good neighbor provision for Maryland by August 19, 2018, and for New Jersey by July 15, 2018. The CSAPR Update also finalized FIPs for these two states.

In addition to these findings, the EPA finalized disapproval or partial disapproval actions for good neighbor SIPs submitted by Indiana, Kentucky, Louisiana, New York, Ohio, Texas, and Wisconsin.[42] These disapprovals triggered the EPA's obligation to promulgate FIPs to implement the requirements of the good neighbor provision for those states within two years of the effective date of each disapproval. The EPA promulgated CSAPR Update FIPs for each of these states.

As discussed in more detail in the next section, in issuing the CSAPR Update, the EPA did not determine that it had entirely addressed the EPA's outstanding CAA obligations to implement the good neighbor provision with respect to the 2008 ozone NAAQS for 21 of 22 states covered by that rule. Accordingly, the CSAPR Update did not fully satisfy the EPA's obligation under section 110(c) to address the good neighbor provision requirements for those states by approving SIPs, issuing FIPs, or some combination of those two actions. The EPA found that the CSAPR Update FIP fully addressed the good neighbor provision for the 2008 ozone NAAQS only with respect to Tennessee.

The EPA notes that it has separately finalized an action to fully address Kentucky's good neighbor obligation for the 2008 ozone NAAQS. On May 23, 2017, the U.S. District Court for the Northern District of California issued an order requiring the EPA to take a final action fully addressing the good neighbor obligation for the 2008 ozone NAAQS for Kentucky by June 30, 2018. *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal.), ECF No. 73. On May 10, 2018, Kentucky submitted a final SIP to EPA, which the agency finalized approval of consistent with the court-ordered deadline. 83 FR 33730 (July 17, 2018).

Subsequent to the promulgation of the CSAPR Update, the EPA approved SIPs fully replacing the CSAPR Update FIPs for Alabama, 82 FR 46674 (October 6, 2017), and Indiana (signed November 27, 2018; publication in the **Federal Register** forthcoming). In those SIP approvals and consistent with the conclusions of the CSAPR Update, the EPA found that the SIPs partially satisfy

[36] EPA has already approved SIPs fully replacing the CSAPR Update FIPs for Alabama, 82 FR 46674 (Oct. 6, 2017), and Indiana (signed Nov. 27, 2018; publication in the **Federal Register** forthcoming).

[37] 42 U.S.C. 7601(a)(1).

[38] These events are described in detail in section IV.A.2 of the CSAPR Update. 81 FR 74515.

[39] This section of the preamble focuses on SIP and FIP actions for those states addressed in the CSAPR Update. The EPA has also acted on SIPs for other states not mentioned in this action. The memorandum, ''Final Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' more fully describes the good neighbor SIP status for the 2008 ozone NAAQS and is available in the docket for this action.

[40] The nine states were Florida, Georgia, Maine, Massachusetts, Minnesota, New Hampshire, North Carolina, South Carolina, and Vermont.

[41] The two remaining states addressed in the findings of failure to submit (California and New Mexico) were not part of the CSAPR Update analysis and are not addressed in this action.

[42] *See* the following actions: Indiana (81 FR 38957, June 15, 2016); Kentucky (78 FR 14681, March 7, 2013); Louisiana (81 FR 53308, August 12, 2016); New York (81 FR 58849, August 26, 2016); Ohio (81 FR 38957, June 15, 2016); Texas (81 FR 53284, August 12, 2016); and Wisconsin (81 FR 53309, August 12, 2016).

Alabama's and Indiana's good neighbor obligations for the 2008 ozone NAAQS. Thus, the EPA continues to have an obligation to fully address the good neighbor provision requirements for the 2008 NAAQS with respect to Alabama, stemming from the July 13, 2015 findings notice, and Indiana, due to the June 15, 2016 disapproval of the state's good neighbor SIP. Other states have also submitted SIPs, some of which the EPA has approved and some of which still remain pending. However, these states are not the subject of this rulemaking and these actions are therefore not described in detail in this section.

Table II.C–1 summarizes the statutory deadline for the EPA to address its FIP obligation under CAA section 110(c) and the event that activated the EPA's obligation for each of the 20 CSAPR Update states that are the subject of this final action. For more information regarding the actions triggering the EPA's FIP obligation and the EPA's action on SIPs addressing the good neighbor provision for the 2008 ozone NAAQS, see the memorandum, ''Final Action, Status of 110(a)(2)(D)(i)(I) SIPs for the 2008 Ozone NAAQS,'' in the docket for this action.

TABLE II.C–1—ACTIONS THAT ACTIVATED EPA'S STATUTORY FIP DEADLINES

State	Type of action (**Federal Register** citation, publication date)	Statutory FIP deadline [43]
Alabama	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Arkansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Illinois	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Indiana	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Iowa	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Kansas	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Louisiana	SIP disapproval (81 FR 53308, 8/12/2016)	9/12/2018
Maryland	Finding of Failure to Submit (81 FR 47040, 7/20/2016)	8/19/2018
Michigan	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Mississippi	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Missouri	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
New Jersey	Finding of Failure to Submit (81 FR 38963, 6/15/2016)	7/15/2018
New York	SIP disapproval (81 FR 58849, 8/26/2016)	9/26/2018
Ohio	SIP disapproval (81 FR 38957, 6/15/2016)	7/15/2018
Oklahoma	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Pennsylvania	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Texas	SIP disapproval (81 FR 53284, 8/12/2016)	9/12/2018
Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
West Virginia	Finding of Failure to Submit (80 FR 39961, 7/13/2015)	8/12/2017
Wisconsin	Partial SIP disapproval as to prong 2 (81 FR 53309, 8/12/2016)	9/12/2018

An August 12, 2017 statutory deadline has passed for the EPA to act with respect to good neighbor obligations under the 2008 ozone NAAQS for 12 CSAPR Update states. The EPA is subject to a court-ordered deadline to promulgate a final action fully addressing the good neighbor obligations under the 2008 ozone NAAQS for five of these states by no later than December 6, 2018.[44] The statutory deadlines for the EPA to act with respect to good neighbor obligations under the 2008 ozone NAAQS for eight other CSAPR Update states passed between July 15, 2018, and September 26, 2018.

D. Summary of the CSAPR Update

On October 16, 2016, the EPA finalized the CSAPR Update. The purpose of the CSAPR Update was to protect public health and welfare by reducing interstate pollution transport that will significantly contribute to nonattainment, or interfere with maintenance, of the 2008 ozone NAAQS in the eastern U.S. As discussed in section II.C, the EPA finalized a FIP for each of the 22 states subject to the rule,[45] either having previously found that those states failed to submit a complete good neighbor SIP (15 states) or having issued a final rule disapproving their good neighbor SIP submittals (seven states). For the 22 states covered by the CSAPR Update, the EPA promulgated EGU ozone season NO_X emissions budgets, implemented through a regional allowance trading program, to reduce interstate ozone transport for the 2008 ozone NAAQS during the ozone season (May–September), beginning with the 2017 ozone season.

To establish and implement the CSAPR Update emissions budgets, the EPA followed a four-step analytic process that has been used in each of the agency's regional interstate transport rulemakings. The four-step interstate transport framework is described in more detail in section III.A. To summarize, in step 1, the agency identified downwind locations, referred to as receptors, that were expected to have problems attaining or maintaining the NAAQS. In step 2, the EPA examined, using a contribution threshold of one percent of the NAAQS, which upwind states contributed to the nonattainment or maintenance receptors identified in step 1. In step 3, the EPA quantified the upwind emissions that significantly contributed to nonattainment or interfered with maintenance and established emission budgets that reflected removal of those emissions. Finally, in step 4, the agency provided for implementation of the budgets through an allowance trading program.

The EPA aligned its analysis of air quality and upwind state contributions in steps 1 and 2, as well as implementation of the trading program in step 4 with relevant attainment dates for the 2008 ozone NAAQS. The EPA's final 2008 Ozone NAAQS SIP Requirements Rule established the attainment deadline of July 20, 2018, for ozone nonattainment areas classified as

[43] The FIP deadline is two years from the effective date of the SIP disapproval or Finding of Failure to Submit, which generally trails the publication date by 30 days.

[44] Order, *New York* v. *Pruitt,* No. 1:18–cv–00406–JGK (S.D.N.Y. June 12, 2018), ECF No. 34. The five states are Illinois, Michigan, Pennsylvania, Virginia, and West Virginia.

[45] Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

Moderate.[46] Because the attainment date fell during the 2018 ozone season, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by that date. Therefore, consistent with the court's instruction in *North Carolina* to harmonize implementation of emission reductions under the good neighbor provision with downwind attainment dates, 531 F.3d at 912, the EPA established and implemented emissions budgets starting with the 2017 ozone season. 81 FR 74507. The establishment of 2017 as the CSAPR Update's analytic year and compliance timeframe was further supported by an assessment that certain control strategies to mitigate ozone pollution transport were feasible in that timeframe.

As to step 3, in particular, the EPA quantified emissions from upwind states that would significantly contribute to nonattainment or interfere with maintenance by first evaluating various levels of uniform NO_X control stringency, each represented by an estimated marginal cost per ton of NO_X reduced. The EPA then applied a multi-factor test to evaluate cost, available emission reductions, and downwind air quality impacts to determine the appropriate level of uniform NO_X control stringency that addressed the impacts of interstate transport on downwind nonattainment or maintenance receptors. The EPA used this multi-factor assessment to gauge the extent to which emission reductions should be implemented in the future compliance year (*i.e.,* 2017) and to evaluate the potential for over- and under-control of upwind state emissions.

Within the multi-factor test, the EPA identified a ''knee in the curve,'' *i.e.,* a point at which the cost-effectiveness of the emission reductions was maximized, so named for the discernable turning point observable in a multi-factor (*i.e.,* multi-variable) curve. *See* 81 FR 74550. The EPA concluded that this was at the point where emissions budgets reflected a uniform NO_X control stringency represented by an estimated marginal cost of $1,400 per ton of NO_X reduced. In light of this multi-factor test, EPA determined this level of stringency in emissions budgets represented the level at which incremental EGU NO_X reduction potential and corresponding downwind ozone air quality improvements were maximized—relative to other control stringencies evaluated—with respect to marginal cost. That is, the ratio of emission reductions to marginal cost and the ratio of ozone improvements to marginal cost were maximized relative to the other levels of control stringency evaluated. The EPA found that feasible and cost-effective EGU NO_X reductions were available to make meaningful and timely improvements in downwind ozone air quality to address interstate ozone transport for the 2008 ozone NAAQS for the 2017 ozone season. 81 FR 74508. Further, the agency's evaluation showed that emissions budgets reflecting the $1,400 per ton cost threshold did not over-control upwind states' emissions relative to either the downwind air quality problems to which they were linked or the one percent contribution threshold in step 2 that triggered their further evaluation in step 3. *Id.* at 74551–52. As a result, the EPA finalized EGU ozone season NO_X emissions budgets developed using uniform control stringency represented by $1,400 per ton. These budgets represented emissions remaining in each state after elimination of the amounts of emissions that the EPA identified would significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states.

To implement the CSAPR Update's emission budgets, the EPA promulgated FIPs requiring power plants in covered states to participate in the CSAPR NO_X Ozone Season Group 2 allowance trading program starting in 2017.[47] CSAPR's trading programs and the EPA's prior emissions trading programs (*e.g.,* CAIR and the NO_X Budget Trading Program) have provided a proven implementation framework for achieving emission reductions. In addition to providing environmental certainty (*i.e.,* a cap on emissions), these programs also provide regulated sources with flexibility in choosing compliance strategies. By using the CSAPR allowance trading programs, the EPA applied an implementation framework that was shaped by notice and comment in previous rulemakings and reflected the evolution of these programs in response to court decisions and practical experience gained by states, industry, and the EPA.

Based on information available at the time of its promulgation, the EPA was unable to conclude that the CSAPR Update fully addressed most of the covered states' good neighbor obligations for the 2008 ozone NAAQS. 81 FR 74521. Information available at the time indicated that, even with CSAPR Update implementation, several downwind receptors were expected to continue having problems attaining and maintaining this NAAQS and that emissions from upwind states were expected to continue to contribute greater than or equal to one percent of the NAAQS to these areas during the 2017 ozone season. *Id.* at 74551–52. Further, the EPA could not conclude at that time whether additional EGU and non-EGU reductions implemented on a longer timeframe than 2017 would be necessary, feasible, and cost-effective to address states' good neighbor obligations for this NAAQS.

As noted, the EPA premised its conclusion that the CSAPR Update may not fully address states' good neighbor obligations in part on the agency's assessment that air quality problems would persist at downwind receptors in 2017 even with CSAPR Update implementation. The EPA's assessment of CSAPR Update implementation using the Air Quality Assessment Tool (AQAT) indicated that certain eastern air quality monitors would continue to have problems attaining and maintaining the 2008 ozone NAAQS in 2017. 81 FR 74550–52. Specifically, projected nonattainment receptors remained in Connecticut, Texas, and Wisconsin, while projected maintenance-only receptors remained in Connecticut, Maryland, Michigan, New York, and Texas.[48] *See* Table II.D–1 for a list of remaining nonattainment receptors and Table II.D–2 for a list of remaining maintenance-only receptors. (The EPA's approach to defining nonattainment and maintenance-only receptors is explained in section III.C.1 below.)

[46] 80 FR 12264, 12268 (Mar. 6, 2015); 40 CFR 51.1103. Ozone nonattainment areas are classified as either Marginal, Moderate, Serious, Severe, or Extreme, based on the severity of the air quality problem in the area. Areas with more acute air quality problems are required to implement more stringent control requirements and are provided additional time to attain the NAAQS. See CAA sections 181 and 182, 42 U.S.C. 7511, 7511a.

[47] The ozone season NO_X allowance trading program created under the original CSAPR was renamed the CSAPR NO_X Ozone Season Group 1 Trading Program and now applies only to sources in Georgia. In the CSAPR Update, the EPA found that Georgia did not contribute to interstate transport with respect to the 2008 ozone NAAQS, but the state has an ongoing ozone season NO_X requirement under the original CSAPR with respect to the 1997 ozone NAAQS.

[48] Projected AQAT design values for the $1400/ton policy case are available in Tables D–6 and D–7 of the CSAPR Update ''Ozone Transport Policy Analysis Final Rule TSD'' (August 2016), Docket ID No. EPA–HQ–OAR–2015–0500–0555.

TABLE II.D–1—REMAINING 2017 PROJECTED NONATTAINMENT RECEPTORS IN THE EASTERN U.S.

Monitor ID	State	County
090019003	Connecticut	Fairfield.
090099002	Connecticut	New Haven.
480391004	Texas	Brazoria.
484392003	Texas	Tarrant.
484393009	Texas	Tarrant.
551170006	Wisconsin	Sheboygan.

TABLE II.D–2—REMAINING 2017 PROJECTED MAINTENANCE-ONLY RECEPTORS IN THE EASTERN U.S.

Monitor ID	State	County
090010017	Connecticut	Fairfield.
090013007	Connecticut	Fairfield.
240251001	Maryland	Harford
260050003	Michigan	Allegan.
360850067	New York	Richmond.
361030002	New York	Suffolk.
481210034	Texas	Denton.
482010024	Texas	Harris.
482011034	Texas	Harris.
482011039	Texas	Harris.

The EPA's analysis also showed that 21 of the 22 CSAPR Update states would continue to contribute equal to or greater than one percent of the 2008 ozone NAAQS to at least one remaining nonattainment or maintenance receptor in 2017.[49] The EPA did not, at that time, evaluate whether the projected air quality problems would persist and whether upwind states would continue to contribute to these receptors in years beyond 2017. Thus, for those 21 states, the EPA could not, based on information available in the CSAPR Update rulemaking, make an air quality-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS. (For one state, Tennessee, the EPA determined that the CSAPR Update fully resolved its good neighbor obligation.)

Further, it was not feasible for the EPA to complete an emissions control analysis that may otherwise have been necessary to evaluate full elimination of each state's significant contribution to nonattainment or interference with maintenance and also ensure that emission reductions already quantified in the rule would be achieved by 2017. 81 FR at 74522. Specifically, the EPA was unable to fully consider both non-EGU ozone season NO_X reductions and further EGU reductions that may have been achievable after 2017. *Id.* at 74521. The EPA did not quantify non-EGU stationary source emission reductions to address interstate ozone transport for the 2008 ozone NAAQS in the CSAPR Update for two reasons. First, the EPA explained that there was greater uncertainty in the EPA's assessment of non-EGU NO_X mitigation potential, and that more time would be required for states and the EPA to improve non-EGU point source data and pollution control assumptions before we could develop emission reduction obligations based on that data. *Id.* at 74542. Second, the EPA explained that we did not believe that significant, certain, and meaningful non-EGU NO_X reductions were feasible for the 2017 ozone season. *Id.* Many commenters on the CSAPR Update generally agreed with the EPA that non-EGU emission reductions were not readily available for the 2017 ozone season, but some advocated that such reductions should be included as appropriate in future mitigation actions. *Id.* at 74521–22. With respect to EGUs, the EPA concluded that additional control strategies, such as the implementation of new post-combustion controls, would take several years to implement, which was beyond the 2017 ozone season targeted in the CSAPR Update. *Id.* at 74541. Thus, the EPA also could not make an emission reduction-based conclusion that the CSAPR Update would fully resolve states' good neighbor obligations with respect to the 2008 ozone NAAQS because the reductions evaluated and required by the CSAPR Update were limited in scope (both by technology and sector). Specifically, EPA focused the policy analysis for the CSAPR Update on reductions available by the beginning of the 2017 ozone season from EGUs.

Regardless of these limitations, in promulgating the CSAPR Update the EPA stated its belief that it was beneficial to implement, without further delay, EGU NO_X reductions that were achievable in the near term, particularly before the Moderate area attainment date of July 20, 2018. Notwithstanding that additional reductions may be required to fully address the states' interstate transport obligations, the EPA concluded that the EGU NO_X emission reductions implemented by the final rule were needed for upwind states to eliminate their significant contribution to nonattainment or interference with maintenance of the 2008 ozone NAAQS and to assist downwind states with ozone nonattainment areas that were required to attain the standard by July 20, 2018.

As a result of the remaining air quality problems and the limitations on the EPA's analysis, for all but one of the 22 affected states, the EPA did not determine in the CSAPR Update that the rule fully addressed those states' downwind air quality impacts under the good neighbor provision for the 2008 ozone NAAQS. *Id.* at 74521. For one state, Tennessee, the EPA determined in the final CSAPR Update that Tennessee's emissions budget fully eliminated the state's significant contribution to downwind nonattainment and interference with maintenance of the 2008 ozone NAAQS because the downwind air quality problems to which the state was linked were projected to be resolved with implementation of the CSAPR Update. *Id.* at 74552.

III. Final Determination Regarding Good Neighbor Obligations for the 2008 Ozone NAAQS

As described in section II.D, in the CSAPR Update the EPA promulgated FIPs intended to address the good neighbor provision for the 2008 ozone NAAQS, but could not at that time determine, based on information available when the rule was finalized, that those FIPs would fully address 2008 ozone NAAQS good neighbor obligations for 21 of the 22 CSAPR Update states. As a result, the EPA could not conclude that the CSAPR Update fully satisfied its obligation to issue FIPs, nor had the agency otherwise approved SIPs at that time, to address those states' good neighbor obligations for the 2008 ozone NAAQS. Since the CSAPR Update, the EPA has approved a SIP revision fully resolving the remaining 2008 ozone NAAQS good neighbor obligations for Kentucky.[50] In this notice, the EPA finalizes a determination that, based on additional information and analysis that has subsequently become available, the CSAPR Update fully addresses the remaining 20 affected states' good neighbor obligations for the 2008 ozone NAAQS.

In particular, the EPA is finalizing a determination that 2023 is an appropriate future analytic year considering relevant attainment dates and the time necessary to implement further NO_X controls. This rationale is described within this section, starting with Section III.A, which provides the EPA's analytic approach. Section III.B discusses the agency's selection of 2023 as its future analytic year and Sections III.B.2 provides the EPA's assessment of feasibility (*e.g.,* timing) to implement further regional NO_X control strategies for EGUs (Section III.B.2.a) and non-EGUs (Section III.B.2.b). Further, based on the EPA's analysis of projected air

[49] *See* EPA's Air Quality Assessment Tool from the CSAPR Update in the docket for this action.

[50] 83 FR 33730 (July 17, 2018).

quality in that year, the EPA has determined that, for the purposes of addressing good neighbor obligations for the 2008 ozone NAAQS, there will be no remaining nonattainment or maintenance receptors in the eastern U.S. in the future analytic year of 2023. The agency's analysis is described in Section III.C. As a result of these determinations, the EPA finds that, with CSAPR Update implementation, these states will no longer contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to the 2008 ozone NAAQS. This rationale is described in Section III.D. The agency includes a summary of comments and the EPA's response to those comments at the conclusion of certain sections and subsections therein. The comments summarized in these sections and the EPA's responses are further supplemented by the EPA's Response to Comment document in the docket for this action.

A. Analytic Approach

Through the development and implementation of several previous rulemakings, including most recently the CSAPR Update, the EPA, working in partnership with states, established the following four-step framework to address regional interstate transport of ozone pollution under the Clean Air Act's good neighbor provision.[51] The agency is evaluating its determination regarding CSAPR Update states' remaining good neighbor obligations for the 2008 ozone NAAQS by applying this same approach.[52] The steps are summarized in the following four paragraphs.

Step 1: Identify downwind air quality problems relative to the 2008 ozone NAAQS. The EPA historically (including in the CSAPR Update) identified downwind areas with air quality problems, or receptors, using air quality modeling projections for a future analytic year and, where appropriate, considering monitored ozone data. In the CSAPR Update, the agency relied on modeled and monitored data to identify receptors expected to be in nonattainment with the ozone NAAQS in the future analytic year, and relied on modeled data to identify additional receptors that may have difficulty maintaining the NAAQS in the future analytic year, notwithstanding clean monitored data or projected attainment.

Step 2: Determine which upwind states contribute to these identified downwind air quality problems sufficiently to warrant further analysis to determine whether their emissions violate the good neighbor provision. These states are referred to as ''linked'' states. In the CSAPR Update, the EPA identified such upwind states as those modeled to impact a downwind receptor in the future analytic year at or above an air quality threshold equivalent to one percent of the 2008 ozone NAAQS.

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

Step 4: For upwind states that are found to have emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, implement the necessary emission reductions within the state. In the CSAPR Update, the EPA implemented the emission budgets for upwind states found to have good neighbor obligations by requiring EGUs in those states to participate in the CSAPR NO_X Ozone Season Group 2 Trading Program. In virtually all respects other than the budgets and the starting year, the program is identical to allowance trading programs used to implement the emission reductions quantified in the original CSAPR, and it builds on the experience of both the EPA and states using emission trading programs to implement other earlier rules.[53]

Because this framework provides a reasonable and logical structuring of the key elements that should be considered in addressing the requirements of the good neighbor provision and because this action is evaluating outstanding obligations that remain following the EPA's application of this framework with respect to the 2008 ozone NAAQS in the CSAPR Update, the agency believes it is reasonable to apply the same framework in this final action.

Within this four-step interstate transport framework, the EPA would only proceed to higher enumerated (*i.e.,* downstream) steps if states meet the criteria applied in lower enumerated (*i.e.,* upstream) steps. For example, the EPA would only proceed to step 4, in which sources in upwind states are subject to enforceable emissions limitations, if downwind air quality problems are identified at step 1, an upwind state is found to be linked to a downwind air quality problem at step 2, and sources in the linked upwind state are identified at step 3 as having emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS considering multiple cost, emissions, and air-quality factors. For the reasons described in the following paragraphs, the EPA believes this approach is a reasonable interpretation of the good neighbor provision.

The good neighbor provision instructs the EPA and states to apply its requirements ''consistent with the provisions of'' title I of the CAA. The EPA is therefore interpreting the requirements of the good neighbor provision, and the elements of its four-step interstate transport framework, to apply in a manner consistent with the designation and planning requirements in title I that apply in downwind states. *See North Carolina,* 531 F.3d at 912 (holding that the good neighbor provision's reference to title I requires consideration of both procedural and substantive provisions in title I). The EPA notes that this consistency

[51] *See* Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone (also known as the NO_X SIP Call), 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR) Final Rule, 70 FR 25162 (May 12, 2005); CSAPR Final Rule, 76 FR 48208 (August 8, 2011); CSAPR Update for the 2008 Ozone NAAQS Final Rule, 81 FR 74504 (October 26, 2016).

[52] With respect to the 2015 ozone NAAQS, which is not addressed in this action, the EPA recently provided information to states to inform their development of SIPs to address CAA section 110(a)(2)(D)(i)(I). In a memorandum dated March 27, 2018, the agency noted that, in developing their own plans, states have flexibility to follow the familiar four-step transport framework (using the EPA's analytical approach or somewhat different analytical approaches within these steps) or alternative frameworks, so long as their chosen approach has adequate technical justification and is consistent with the requirements of the CAA.

[53] Affected sources have participated in EPA-administered allowance trading programs under both SIPs and FIPs.

instruction follows the requirement that plans ''contain adequate provisions prohibiting'' certain emissions in the good neighbor provision. The following paragraphs will therefore explain how the EPA's interpretation of the circumstances under which the good neighbor provision requires that plans ''prohibit'' emissions through enforceable measures is consistent with the circumstances under which downwind states are required to implement emissions control measures in nonattainment areas.

For purposes of this analysis, the EPA notes specific aspects of the title I designations process and attainment planning requirements for the ozone NAAQS that provide relevant context for evaluating the consistency of the EPA's approach to implementing the good neighbor provision in upwind states. The EPA notes that this discussion is not intended to suggest that the specific requirements of designations and attainment planning for downwind states apply to upwind states pursuant to the good neighbor provision, but rather to explain why the EPA's approach to interpreting the good neighbor provision is reasonable in light of relevant, analogous provisions found elsewhere in title I. *Cf. EDF* v. *EPA,* 82 F.3d 451, 457 (D.C. Cir. 1996) (per curiam) (describing the phrase ''consistent with'' as ''flexible statutory language'' which does not require ''exact correspondence . . . but only congruity or compatibility,'' thus requiring a court to defer to reasonable agency determinations), *amended by* 92 F.3d 1209 (D.C. Cir. 1996). In particular, these provisions demonstrate that the EPA's approach is consistent with other relevant provisions of title I with respect to what data is considered in the EPA's analysis and when states are required to implement enforceable measures.

First, areas are initially designated attainment or nonattainment for the ozone NAAQS based on actual measured ozone concentrations. *See* CAA section 107(d), 42 U.S.C. 7407(d) (noting that an area shall be designated attainment where it ''meets'' the NAAQS and nonattainment where it ''does not meet'' the NAAQS (including certain ''nearby'' areas, as explained below)). If an area measures a violation of the relevant ozone NAAQS, then the area is generally designated nonattainment, regardless of what specific factors have influenced the measured ozone concentrations or whether such levels are due to enforceable emissions limits.[54] In such cases where the an ozone nonattainment area is classified as Moderate or higher, the state is then required to develop an attainment plan, which generally includes the application of various enforceable control measures to sources of emissions located in the nonattainment area, consistent with the requirements in Part D of title I of the Act.[55] *See generally* CAA section 182, 42 U.S.C. 7511a. If, however, an area measures compliance with the ozone NAAQS, the area is designated attainment (unless it is included in the boundaries of a nearby nonattainment area due to its contribution to that area's nonattainment, as discussed below), and sources in that area generally are not subject to any new enforceable control measures under Part D.[56]

In determining the boundaries of an ozone nonattainment area, the CAA requires the EPA to consider whether ''nearby'' areas ''contribute'' to ambient air quality in the area that does not meet the NAAQS. 42 U.S.C. 7407(d). For each monitor or group of monitors indicating a violation of the ozone NAAQS, the EPA assesses information related to various factors, including current emissions and emissions-related data from the areas near the monitor(s), for the purpose of establishing the appropriate geographic boundaries for the designated ozone nonattainment areas. A nearby area may be included within the boundary of the ozone nonattainment area only after assessing area-specific information, including an assessment of whether current emissions from that area contribute to the air quality problem identified at the violating monitor.[57] If such a determination is made, sources in the nearby area are also subject to the applicable Part D control requirements. However, if the EPA determines that the nearby area does not contribute to the measured nonattainment problem, then the nearby area is not part of the designated nonattainment area and sources in that area are not subject to such control requirements.

The EPA's historical approach to addressing the good neighbor provision via the four-step interstate transport framework, and the approach the EPA continues to apply here, is consistent with these title I requirements. That is, in steps 1 and 2 of the framework, the EPA evaluates whether there is a downwind air quality problem (either nonattainment or maintenance), and whether an upwind state impacts the downwind area such that it contributes to and is therefore ''linked'' to the downwind area. The EPA's determination at step 1 of the good neighbor analysis (that it has not identified any downwind air quality problems to which an upwind state could contribute) is analogous to the EPA's determination in the designation analysis that an area should be designated attainment. Similarly, EPA's determination at step 2 of the good neighbor analysis (that, while it has at step 1 identified downwind air quality problems, an upwind state does not sufficiently impact the downwind area such that the state contributes to that area's air quality problems and is therefore linked to that area) is analogous to the EPA's determination in the designation analysis that a nearby area does not contribute to a NAAQS violation in another area. Under the good neighbor provision, the EPA can determine at either step 1 or 2, as appropriate, that the upwind state will not contribute to air quality problems in downwind areas and, thus, that the upwind state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in other states. *See, e.g.,* CSAPR Update, 81 FR 74506 (determining that emissions from 14 states do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS); CSAPR, 76 FR 48236 (finding that states whose impacts on downwind receptors are below the air quality threshold do not significantly contribute to nonattainment or interfere with maintenance of the relevant NAAQS). Under such circumstances, sources in the upwind state are not required to implement any control measures under the good neighbor provision, which is analogous to the fact that under the designation and attainment regime,

[54] Policy tools are available to apply to areas experiencing exceedances of ozone NAAQS that are appreciably impacted by U.S. background ozone. The tools available for each affected location will depend on the specific nature of U.S. background ozone in each area. Some tools would provide relief from a nonattainment designation; others would only provide relief from some of the CAA-prescribed nonattainment area requirements.

[55] Areas classified as Marginal nonattainment areas are required to submit emission inventories and implement a nonattainment new source review permitting program, but are not generally required to implement controls at existing sources. *See* CAA section 182(a), 42 U.S.C. 7511a(a).

[56] Clean Air Act section 184 contains the exception to this general rule: States that are part of the Ozone Transport Region are required to provide SIPs that include specific enforceable control measures, similar to those for nonattainment areas, that apply to the whole state, even for areas designated attainment for the ozone NAAQS. *See generally* 42 U.S.C. 7511c.

[57] *See* Attachment 2 to *Area Designations for the 2008 Ozone National Ambient Air Quality Standards.* Memorandum from Robert J. Meyers, Principal Deputy Assistant Administrator, U.S. EPA to Regional Administrators. December 4, 2008. Available at *https://archive.epa.gov/ozonedesignations/web/pdf/area_designations_for_the_2008_revised_ozone_naaqs.pdf.*

sources located in areas that are designated attainment (because the area is attaining the NAAQS and not contributing to any nearby nonattainment areas) generally are not required to implement the control measures found in Part D of the Act. *Cf. EME Homer City II,* 795 F.3d at 130 (determining that CSAPR ozone-season NO_X budgets for 10 states were invalid based on determination that modeling showed no future air quality problems); CSAPR Update, 81 FR 74523–24 (removing three states from CSAPR ozone season NO_X program based on determination that states are not linked to any remaining air quality problems for the 1997 ozone NAAQS).

The EPA acknowledges one distinction between the good neighbor and designation analyses: The good neighbor analysis relies on *future-year* projections of emissions to calculate ozone concentrations and upwind state contributions, compared to the use of *current* measured data in the designation analysis. As described in more detail in section III.B, this approach is a reasonable interpretation of the term ''will'' in the good neighbor provision, *see North Carolina,* 531 F.3d at 913–14, and interpreting language specific to that provision does not create an impermissible inconsistency with other provisions of title I. Moreover, the EPA's approach to conducting future-year modeling in the good neighbor analysis to identify downwind air quality problems and linked states is consistent with its use of current measured data in the designations process. The EPA's future-year air quality projections consider a variety of factors, including current emissions data, anticipated future control measures, economic market influences, and meteorology. These same factors, *e.g.,* current control measures, economic market influences, and meteorology, can affect the NO_X emissions levels and consequent measured ozone concentrations that inform the designations process. Like the factors that affect measured ozone concentrations used in the designations process, not all of the factors influencing the EPA's modeling projections are or can be subject to enforceable limitations on emissions or ozone concentrations. However, the EPA believes that consideration of these factors contributes to a reasonable estimate of anticipated future ozone concentrations. *See EME Homer City II,* 795 F.3d at 135 (declining to invalidate the EPA's modeling projections ''solely because there might be discrepancies between those predictions and the real world''); *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (D.C. Cir. 1994) (''a model is meant to simplify reality in order to make it tractable''). Thus, the EPA's consideration of these factors in its future-year modeling projections used at steps 1 and 2 of the good neighbor analysis is reasonable and consistent with the use of measured data in the designation analysis.[58]

The EPA notes that there is a further distinction between the section 107(d) designations provision and the section 110(a)(2)(D)(i) good neighbor provision in that the latter provision uses different terms to describe the threshold for determining whether emissions in an upwind state should be regulated (''contribute significantly'') as compared to the standard for evaluating the impact of nearby areas in the designations process (''contribute''). Thus, at step 3 of the good neighbor analysis the EPA evaluates additional factors, including cost and air-quality considerations, to determine whether emissions from a linked upwind state would violate the good neighbor provision. Only if the EPA at step 3 determines that the upwind state's emissions would violate the good neighbor provision will it proceed to step 4 to require emissions in the upwind state to be controlled so as to address the identified violation. This approach to steps 3 and 4 is analogous to the trigger for the application of Part D requirements to sources upon designation of an area to nonattainment. Thus, the EPA reasonably interprets the good neighbor provision to not require it or the upwind state to proceed to step 4 and implement any enforceable measures to ''prohibit'' emissions unless it identifies a violation of the provision at step 3. *See, e.g.,* 76 FR 48262 (finding at step 3 that the District of Columbia is not violating the good neighbor provision, and therefore will not at step 4 be subject to any control requirements in CSAPR, because no cost-effective emission reduction opportunities were identified in the District).

Comment: Several comments received on the EPA's proposal addressed the EPA's approach to identifying downwind air quality problems at step 1 of the framework. These comments contend that the agency's analysis relies on projected future emission levels that are not based on enforceable mechanisms that ensure those emission levels will actually occur or remain in place in a future year and thus improve air quality as modeled. The commenters contend that the Act requires that these emission levels be enforceable in order for modeling relying on such assumptions to be used to support any determination under the good neighbor provision.

One commenter states that the EPA's approach is contrary to the fundamental principle behind the statutory obligation that SIPs must ''include enforceable emission limitations'' and ''contain adequate provisions prohibiting'' emissions that unlawfully impact other states, citing CAA sections 110(a)(2)(A) and (D). The commenter contends that the EPA subverts the text and meaning of section 110(a)(2) by declaring that future air quality will attain the NAAQS without ensuring that the emission levels that informed that prediction are enforceable. The commenter further contends that enforceability of control measures is a consistent requirement throughout the CAA, including for redesignation to attainment under section 107(d)(3)(E)(iii) and for attainment SIPs under section 172(c)(6).

In support of this argument, another commenter cites CAA section 110(a)(2)(A), which indicates that SIPs must ''include enforceable emission limitations and other control measures, means, or techniques . . . as well as schedules and timetables for compliance.'' The commenter further cites CAA section 110(a)(2)(C), which indicates that SIPs must ''include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program. . . .''

Response: As explained in this section, the EPA does not agree that all assumptions in a model that inform future-year projections must be subject to enforceable commitments before the EPA can rely on the modeling for purposes of identifying downwind air quality problems.

As discussed earlier, within the four-step framework, the EPA interprets the good neighbor provision to require sources in upwind states to implement enforceable emission limitations only if: (1) Downwind air quality problems are identified at step 1, (2) emissions from an upwind state are linked to a

[58] The EPA notes that the consideration of projected *actual* emissions in the future analytic year—as opposed to *allowable* levels—is also consistent with the statute's instruction that states in their SIPs (or the EPA when promulgating a FIP) prohibit emissions that ''will'' impermissibly impact downwind air quality. This term is reasonably interpreted to mean that the EPA should evaluate anticipated emissions (based on what sources *will* emit) rather than potential emissions (based on what sources *could* emit).

downwind air quality problem at step 2, and (3) sources in the linked upwind state are identified at step 3 as having emissions that significantly contribute to nonattainment and interfere with maintenance of the NAAQS, considering cost- and air-quality-based factors. If all three of these steps are not satisfied, then the state is not required at step 4 to include provisions in its SIP prohibiting any level of reductions because the EPA has determined that emissions from the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind and accordingly there are no emissions the state is obligated to ''prohibit'' under the good neighbor provision. Thus, the EPA does not agree that modeling used to evaluate ozone concentrations at step 1 must only consider enforceable emission levels. Rather, as explained in detail earlier, the EPA's approach is consistent with other applicable provisions of title I regarding the designations and planning requirements applicable in nonattainment areas.

The fact that certain statutory provisions require imposition of enforceable measures does not contradict the EPA's interpretation regarding when the good neighbor provision requires such measures. In fact, the requirement at section 172(c)(6), which commenters cite, that attainment plans for designated nonattainment areas include enforceable measures to bring the area into attainment is consistent with the EPA's interpretation of the good neighbor provision, because that requirement only applies once an area has been designated nonattainment. Similarly, in the EPA's four-step framework, if the EPA identifies a downwind air quality problem and determines that an upwind state significantly contributes to nonattainment or interferes with maintenance of the NAAQS in that downwind area, the EPA would also require, at step 4, the imposition of enforceable measures to address the upwind state's impact on the downwind area. Thus, consistent with the terms of the good neighbor provision, the EPA requires states to ''prohibit'' emissions upon a determination that such emissions are having the requisite impact on downwind areas. However, the requirement of section 172(c)(6) is not a predicate for an attainment designation, as would be the case by analogy to commenters' suggestion that enforceable limits are a required predicate for a determination that sources do not violate the good neighbor provision.

The citation to the requirements for the redesignation of areas to attainment under section 107(d)(3) is inapposite. Such requirements only apply in areas that have at one point been designated nonattainment under section 107(d)(1). The commenter has not explained why the requirements for redesignation, which apply at the end of a process for nonattainment areas that is well after initial area designations, should be considered relevant to interpreting initial obligations under the good neighbor provision. For the reasons described earlier, the EPA believes it is more reasonable to liken the process for identifying downwind air quality problems under the good neighbor provision to initial designations, which do not turn on evaluations of whether or not the measured emission levels informing the designation are due to enforceable reductions.

The EPA also does not agree that either section 110(a)(2)(A) or section 110(a)(2)(C) require the state to include measures to make the projected emission limitations enforceable in order to address the good neighbor provision. Section 110(a)(2)(A) states that a SIP should ''include enforceable emission limitations and other control measures, means, or techniques . . . *as may be necessary or appropriate* to meet the applicable requirements'' of the CAA (emphasis added). As described earlier, a finding at step 1 that there is no downwind air quality problem supports a conclusion that a state simply will not contribute significantly or interfere with maintenance of the NAAQS in another state, and thus that the state need not prohibit any particular level of emissions under the good neighbor provision. Accordingly, under section 110(a)(2)(A), no emission limitations would be ''necessary or appropriate'' to meet the good neighbor provision. Section 110(a)(2)(C) similarly indicates that SIPs should provide for the enforcement of measures cited to support the requirements of section 110(a)(2)(A), but it does not independently require the imposition of additional control measures.

For these reasons, the EPA does not agree with the commenters' conclusion that the statute requires the imposition of enforceable emission limitations even where the agency has determined that an upwind state does not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in a downwind state. See section III.C.2 of this notice for further discussion regarding the EPA's air quality analysis used to support this final determination.

B. Selection of a Future Analytic Year

In this action, consistent with its practice in previous rulemakings addressing ozone transport, the EPA focuses its analysis on a future analytic year in light of the forward-looking nature of the good neighbor obligation in section 110(a)(2)(D)(i)(I) and in consideration of prior court decisions. With respect to the statutory language of the good neighbor provision, the statute requires that states prohibit emissions that ''will'' significantly contribute to nonattainment or interfere with maintenance of the NAAQS in any other state. The EPA reasonably interprets this language as permitting states and the EPA in implementing the good neighbor provision to prospectively evaluate downwind air quality problems and the need for further upwind emission reductions. In the EPA's prior regional transport rulemakings, the agency generally evaluated whether upwind states ''will'' significantly contribute to nonattainment or interfere with maintenance based on projections of air quality in the future year in which any emission reductions would be expected to go into effect. For the 1998 NO_X SIP Call, it used an analytic year of 2007, and for the 2005 CAIR, it used analytic years of 2009 and 2010 for ozone and $PM_{2.5}$, respectively. 63 FR 57450; 70 FR 25241. The D.C. Circuit affirmed the EPA's interpretation of ''will'' in CAIR, finding the EPA's consideration of future projected air quality (in addition to current measured data) to be a reasonable interpretation of an ambiguous term. *North Carolina,* 531 F.3d at 913–14. The EPA applied the same approach in finalizing CSAPR in 2011 and the CSAPR Update in 2016 by evaluating air quality in 2012 and 2017, respectively. 76 FR 48211; 81 FR 74537.

Consistent with this approach, a key decision that informs the application of the interstate transport framework is the selection of a future analytic year. Several court decisions guide the factors that the EPA considers in selecting an appropriate future analytic year for this action. First, in *North Carolina,* the D.C. Circuit held that the timeframe for implementation of emission reductions required by the good neighbor provision should be selected by considering the relevant attainment dates of downwind nonattainment areas affected by interstate transport of air pollution. 531 F.3d at 911–12. Moreover, the U.S. Supreme Court and the D.C. Circuit have both held that the EPA may not over-control upwind state emissions relative to the downwind air quality problems to which the upwind emissions contribute. Specifically, the

courts found that the agency may not require emission reductions (at steps 3 and 4 of the good neighbor framework) from a state that are greater than necessary to achieve attainment and maintenance of the NAAQS in all of the downwind areas to which that state is linked. *See EME Homer City,* 134 S. Ct. at 1600–01; *EME Homer City II,* 795 F.3d at 127. In particular, in *EME Homer City II,* the D.C. Circuit determined that the CSAPR phase 2 ozone-season NO_X budgets for ten states were invalid because the EPA's modeling showed that the downwind air quality problems to which these states were linked would be resolved by 2014, when the phase 2 budgets were scheduled to be implemented. 795 F.3d at 129–30.[59] These court decisions therefore support the agency's choice to use a future analytic year in order to help ensure that the EPA does not over- or under-control upwind state emissions at the time that controls will be implemented. Generally, NO_X emissions levels are expected to decline in the future through the combination of the implementation of existing local, state, and federal emission reduction programs (*e.g.,* fleet penetration of mobile source programs through fleet turnover) and changing market conditions for electricity generation technologies and fuels.[60] As a result of expected emission reductions and resulting lower ozone concentrations in the future, the agency is relatively more at risk of over-controlling emissions were it not to identify an appropriate future year in which controls could be feasibly implemented to further reduce emissions and ozone concentrations. Therefore, because further controls cannot be implemented feasibly for several years, as discussed further below, and emissions, upwind contributions, and downwind ozone concentrations will likely be lower at that later point in time due to continued phase-in of existing regulatory programs, changing market conditions, and fleet turnover, it is reasonable for the EPA to evaluate air quality (at steps 1 and 2 of the good neighbor framework) in a future analytic year. In other words, it is appropriate for the EPA's evaluation of air quality to focus on a future analytic year that is aligned with feasible timing for installation of controls in order to ensure that downwind air quality problems exist (at step 1) and that upwind states continue (at step 2) to be linked to downwind air quality problems at a time when any cost-effective emission reductions (identified at step 3) would be implemented (at step 4) and to ensure that such reductions do not over-control relative to the identified ozone problems. *Cf. EME Homer City,* 134 S. Ct. at 1600–01; *EME Homer City II,* 795 F.3d at 127.

Thus, in determining the appropriate future analytic year for purposes of assessing remaining interstate transport obligations for the 2008 ozone NAAQS, the EPA considered two primary factors: (1) The applicable attainment dates for this NAAQS; and (2) the timing to feasibly implement new NO_X control strategies. These factors are discussed in the following two sections. The EPA is finalizing its proposed determination that these factors collectively support the identification of 2023 as the future analytic year for evaluating whether further unfulfilled good neighbor obligations for the 2008 ozone NAAQS will remain after implementation of the CSAPR Update.

Comment: Several commenters challenge the EPA's interpretation of the term ''will'' in the good neighbor provision to permit the identification of downwind air quality problems based on evaluating air quality in a future year. The commenters contend that the EPA's interpretation is inconsistent with the Clean Air Act for various reasons.

One commenter contends that the word ''will'' merely reflects the temporal dimension of interstate transport of pollutants—*i.e.,* the fact that an upwind state ''will'' significantly contribute to nonattainment or interfere with maintenance as soon as its ozone pollutants are transported in significant amounts into a downwind area measuring nonattainment or struggling to maintain the NAAQS. The commenter concedes that the term ''will'' also contemplates impacts in relevant future compliance years but contends it is not limited to the distant future. The commenter asserts that section 110's prohibition against ''emitting'' pollutants that will significantly contribute to downwind nonattainment (or interfere with downwind maintenance) plainly indicates that the phrase ''will contribute'' must be read to include both current and future emissions, citing *North Carolina,* 531 F.3d at 914. The commenter contends that the EPA's interpretation of ''will'' to encompass future air quality, as affirmed by the D.C. Circuit in the CAIR litigation, was reasonable only in light of the agency's complementary consideration of present measured data. The commenter states that the EPA's proposed interpretation would grant the agency unfettered discretion, permitting it to find that ''will'' refers to any future time that the EPA selects, even one only in the distant future. The commenter contends that the interpretation of ''will'' to refer to a future year when ''any emission reductions would be expected to go into effect'' is circular, meaningless, and irrational where the EPA finds that no further emission reductions are required.

Another commenter states that Congress specified that implementation plans must prohibit ''any'' pollution from ''any'' source that will contribute significantly to nonattainment and interfere with maintenance, and this includes pollution that will contibute between now and 2023. The commenter states that the fact that other pollution emitted at some other time allegedly will not contribute significantly to nonattainment and interfere with maintenance does not excuse the EPA's failure to prohibit the pollution that will do so between now and 2023.

A further commenter contends that the use of the word ''emitting'' in section 110(a)(2)(D)(i) includes protection against current emissions from upwind sources that are significantly contributing to downwind areas' inability to attain a NAAQS. The commenter cites CAA section 126(b), which provides that a state ''may petition the Administrator for a finding that any major source or group of stationary sources *emits or would emit* any air pollutant in violation of the prohibition of'' section 110(a)(2)(D)(i) (emphasis added). The commenter states that this clause confirms that current air pollution transport cannot be ignored. Similarly, one commenter asserts that, when interpreting the term ''emit'' in other provisions of the Act, the D.C. Circuit has held that it refers to actual, present emissions, as opposed to mere potential or future emissions, citing *New York* v. *EPA,* 413 F.3d 3, 39–40 (D.C. cir. 2005).

Response: These commenters are incorrect, for five reasons.

First, the commenters misconstrue both the facts and the holding of the D.C. Circuit's decision in *North Carolina.* In that case, the court was reviewing a challenge to the EPA's approach to identifying downwind

[59] The Supreme Court also held that the agency may not over-control upwind state emissions such that the impact from an upwind state to all downwind air quality problems is below the contribution threshold applied at step 2 that ''linked'' the upwind state in the first place, *EME Homer City,* 134 S. Ct. at 1600–01, but CSAPR was not found in *EME Homer City II* to have violated the prohibition on this type of over-control.

[60] Annual Energy Outlook 2018. *Electricity Supply, Disposition, Prices, and Emissions.* Reference Case. Department of Energy, Energy Information Administration. Available at *https://www.eia.gov/outlooks/aeo/data/browser/#/?id=8-AEO2018&cases=ref2018&sourcekey=0.*

receptors in CAIR wherein the agency considered only those areas projected to be in nonattainment in a future year to be downwind receptors, but not areas projected to be in attainment that were currently measuring nonattainment. 531 F.3d at 913. The court explained that the EPA had consistently interpreted ''will'' in both the NO_X SIP Call and CAIR to ''indicate sources that presently *and* at some point in the future 'will' contribute to nonattainment,'' and noted that both rules relied on projections of nonattainment in the future year in which the rule would go into effect. *Id.* at 914. Thus, contrary to the commenters' assertions, the EPA did not identify downwind air quality problems in CAIR based on *either* a current measured violation *or* a projected violation of the NAAQS. Rather, in CAIR the EPA determined that a downwind air quality problem was required to be addressed under the good neighbor provision only if *both* the current measured data and the projected future data demonstrated there would be an air quality problem in a downwind area.

The court affirmed the EPA's interpretation, explaining that ''will'' ''can mean either certainty or indicate the future tense'' and held that it is reasonable for the EPA to give effect to both potential meanings of the word. *Id.* Thus, although the court acknowledged that the term ''will'' could refer to the certainty of an upwind state's impact on a downwind state (*i.e.,* based on current measured nonattainment), as one commenter contends it should, the court also clearly acknowledged the ambiguity of this term and indicated this was not the only reasonable interpretation. In light of this ambiguity, the D.C. Circuit affirmed that the EPA's approach, which gives effect to both meanings, is permissible under the Act. Here, as explained in more detail later in section III.C.3, the EPA is identifying downwind nonattainment receptors based on both current measured data and projected future air quality, just as the EPA did in the CSAPR Update, as well as CAIR and the NO_X SIP Call.[61]

Second, the EPA also does not agree that the term ''emitting'' precludes its interpretation of ''will'' in the good neighbor provision. The relevant clause of the CAA section 110(a)(2)(D)(i) requires state plans (or federal plans, where the agency is acting in the state's stead) to ''contain adequate provisions . . . *prohibiting* . . . any source or other type of emissions activity within the State *from emitting* any air pollution in amounts which will'' improperly impact downwind areas under the remaining terms of the provision (emphasis added). Thus, the term ''emitting'' should be read in concert with the prohibition required in this clause to refer to the limitation that should be imposed on sources otherwise found to be in violation of section 110(a)(2)(D)(i)(I); the term ''emitting'' in its statutory context does not clearly define the temporal requirements for determining whether such a violation exists in the first instance. Rather, the good neighbor provision indicates that sources should be ''prohibit[ed] . . . from emitting,'' which is a forward-looking phrase intended to address limitations on a source's future activity. The introduction of the phrase ''which will'' at the end of the clause further serves as a transition from the general obligation to impose a prohibition to the specific circumstances under which the prohibition will apply.

The commenter's reference to the court's interpretation of ''emit'' in *New York* is therefore an inapt citation for purposes of interpreting the good neighbor provision requirements. In that case, the court was evaluating whether the use of the term ''emit'' in certain nonattainment new source review provisions (a program imposing a permitting requirement on the construction of new major sources of air pollutants and major modifications of existing sources) was intended to refer to actual or allowable emissions when determining whether modifications to the source trigger a permitting requirement. 413 F.3d 3, 39–40 (D.C. Cir. 2005). The court noted that the statutory provisions governing new source review use different language to distinguish between actual emissions (''emit'' or ''emitted'') and potential emissions (''potential to emit'' or ''emission limitations''). *Id.* In the case of the good neighbor provision, the phrase ''prohibiting . . . sources . . . from emitting'' certain amounts of pollution is more consistent with the terminology used to indicate potential emissions, and therefore more reasonably refers to the emission limitation that would be imposed under the good neighbor provision *if* the requisite finding of significant contribution or interference with maintenance is made. Thus, the statute's use of the term ''emit'' does not clearly preclude the EPA's interpretation of ''will'' as permitting the analysis of downwind air quality in a future year to evaluate interstate transport. The new source review preconstruction permitting program expressly lays out the predicate trigger for the permitting requirement (and the D.C. Circuit in *New York* was considering whether EPA's interpretation and application of those statutory terms was permissible); the good neighbor provision does not expressly lay out the methodology (including the termporal frame of reference) for determining what constitutes a good neighbor violation (and the D.C. Circuit in *North Carolina* affirmed EPA's construction of the governing statutory provision).

Third, the commenters err in suggesting that the standard for granting a section 126(b) petition is incorporated into the good neighbor provision. While section 126(b) cross-references the prohibition in section 110(a)(2)(D)(i),[62] the cross-reference is unidirectional. There is no indication that Congress intended for the ''emits or would emits'' language from section 126(b) to be conversely incorporated into section 110, and section 110(a)(2)(D)(i) does not contain any reference to section 126(b). In any event, the commenters have not offered any explanation regarding how any relevant interpretation of section 126(b) should inform the EPA's interpretation of section 110 with respect to current emissions data or projections of future air quality.

Fourth, while the EPA agrees that the references to ''any'' in section 110(a)(2)(D)(i) means that any source of emissions of any air pollutant having the requisite impact may be subject to control under that provision, the commenter does not explain how this term imposes an obligation to select a specific analytic year when evaluating whether such emissions are improperly impacting downwind areas and therefore whether such control is necessary or authorized. Rather, as the commenters fail to acknowledge, the EPA is only authorized under the good neighbor provision to require the prohibition of such emissions in ''amounts which will'' improperly impact another state with respect to the NAAQS. The Supreme Court has held that this language means that any emission reductions imposed under the good neighbor provision be no greater than necessary to address downwind

[61] In compliance with a separate holding of the *North Carolina* decision, the EPA further evaluates receptors in areas currently attaining the standard based on projected future air quality in order to ensure that the ''interfere with maintenance'' clause of the good neighbor provision is given independent effect. *See* 531 F.3d at 910–11.

[62] The text of CAA section 126 as codified in the U.S. Code cross-references CAA section 110(a)(2)(D)(ii) instead of CAA section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross-reference is to CAA section 110(a)(2)(D)(i). *See Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1040–44 (D.C. Cir. 2001).

nonattainment and maintenance of the NAAQS, *i.e.,* that the EPA avoid unnecessary ''over-control'' of emissions from upwind states. *See EME Homer City,* 134 S. Ct. at 1608. In interpreting that decision, the D.C. Circuit declared EPA's emission reduction requirements for certain states to be invalid under the good neighbor provision where the EPA had information indicating that there will be no downwind air quality problems by the time the emission reductions would have been implemented. *See EME Homer City II,* 795 F.3d at 130. Thus, the EPA does not agree that information indicating a current violation necessarily obligates the EPA to impose additional emission reductions, especially if additional information indicates there will be no downwind air quality issues to address by the time such reductions could be in place. On the contrary, the D.C. Circuit has already spoken to both the temporal flexibilities and the temporal obligations imposed by the good neighbor provision. The court has both affirmed the EPA's interpretation of ''will'' as permitting consideration of projected future air quality and instructed the EPA to consider relevant downwind attainment dates in establishing future compliance timeframes. *North Carolina,* 531 F.3d at 910–11, 913. The EPA has reasonably aligned these two considerations to ensure that emission reductions required from ''any source'' within the anticipated compliance timeframes are in fact necessary to address downwind air quality problems at that time, in order to avoid potential over-control in contradiction of *EME Homer City.*

Fifth and finally, the EPA does not agree that its interpretation of ''will'' to permit consideration of projected future air quality grants the agency unfettered discretion to choose any future analytic year, however distant, to justify its conclusions. While the EPA does contend that the statute permits the consideration of air quality in a future year aligned with anticipated compliance, the EPA concedes that it must both comply with the holding in *North Carolina* to appropriately consider relevant downwind attainment dates and provide a reasonable, non-arbitrary justification for selecting an appropriate future analytic year. The EPA provides such an explanation for the selection of the 2023 analytic year in the following sections of this notice.

1. Attainment Dates for the 2008 Ozone NAAQS

As previously noted, in determining the appropriate future analytic year for purposes of assessing remaining interstate transport obligations for the 2008 ozone NAAQS, the EPA first considers the downwind attainment dates for the 2008 ozone NAAQS. Many areas currently have attainment dates of July 20, 2018 for areas classified as Moderate. However, as noted earlier, the 2017 ozone season was the last full season from which data could be used to determine attainment of the NAAQS by that date.[63] Given that the 2017 ozone season has now passed, it is not possible to achieve additional emission reductions by the Moderate area attainment date. It is therefore necessary to consider what subsequent attainment dates should inform the EPA's analysis. The next attainment dates for the 2008 ozone NAAQS will be July 20, 2021, for nonattainment areas classified as Serious, and July 20, 2027, for nonattainment areas classified as Severe.[64] Because the various attainment deadlines are in July, which is in the middle of the ozone monitoring season for all states, data from the calendar year prior to the attainment date—*e.g.,* data from 2020 for the 2021 attainment date and from 2026 for the 2027 attainment date—are the last data that can be used to demonstrate attainment with the NAAQS by the relevant attainment date. Therefore, the EPA considers the control strategies that could be implemented by 2020 and 2026 in assessing the 2021 and 2027 attainment dates in its subsequent analysis. The EPA has also considered that, in all cases, the statute provides that areas should attain as expeditiously as practicable. *See* CAA section 181(a)(1).

Comment: One commenter notes that all of the states burdened by the interstate pollution addressed by the proposed action are currently subject to attainment deadlines in 2015, 2016, or 2018, and it is likely that some states will be determined to have failed to attain and become subject to more stringent requirements and a new deadline of July 20, 2021. The commenter notes that no relevant states are subject to a deadline of 2027, nor will any be subject to a 2027 deadline in the future unless they fail yet again to attain by 2021. The commenter therefore contends that the EPA's decision to consider the 2027 attainment deadline is illegal, unexplained, and arbitrary.

Response: The EPA does not agree that it may not consider any later attainment dates simply because there are no states currently subject to that deadline. As the commenter concedes, there are also currently no areas in the east subject to the 2021 Serious area attainment date, yet the EPA nonetheless believes it is appropriate to consider both future attainment dates in selecting a future analytic year, especially in light of the limitations on additional control strategies available in the near term, as discussed in more detail later. Moreover, the EPA was required to select an analytic year before the Moderate area attainment date had passed in order to provide sufficient time to conduct air quality modeling before issuing a proposal for the state of Kentucky by the court-ordered deadline in June 2018. *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15-cv-04328 (N.D. Cal. May 23, 2017), ECF No. 73. Because the Kentucky action addressed the same problem of regional interstate ozone transport for the 2008 ozone NAAQS at issue in this action, it was necessary to complete the modeling in time for the EPA to issue a proposed action for Kentucky in advance of that deadline. At that time, as the commenter notes, all areas were subject to attainment dates in 2015, 2016, or 2018, and emission reductions intended to assist with attainment by those dates would need to be achieved by the prior year's ozone season. Since all of these dates were effectively in the past (including one date that fell less than two weeks after the date of the proposal of this action), the EPA reasonably looked forward to the next potential attainment dates for purposes of this analysis.

2. Feasibility of Control Strategies To Further Reduce Ozone Season NO_X Emissions

The EPA's analysis of the feasibility of NO_X control strategies reflects the time needed to plan for, install, test, and place into operation EGU and non-EGU NO_X reduction strategies regionally—*i.e.,* across multiple states. This regional analytic approach is consistent with the regional nature of interstate ozone pollution transport as described in section II.A. As proposed, the agency adopted this approach for this final action based on previous interstate ozone transport analyses showing that where eastern downwind ozone problems are identified, multiple upwind states typically are linked to

[63] As discussed in Section II.D, emission reductions that were feasible and cost-effective for the 2017 ozone season were the focus of the CSAPR Update.

[64] While there are no areas (outside of California) that are currently designated as Serious or Severe for the 2008 ozone NAAQS, the CAA requires that the EPA reclassify to Serious any Moderate nonattainment areas that fail to attain by their attainment date of July 20, 2018. *See* CAA section 181(b)(2), 42 U.S.C. 7511(b)(2). Similarly, if any area fails to attain by the Serious area attainment date, the CAA requires that the EPA reclassify the area to Severe.

these problems.[65] Specifically of relevance to this action, as discussed in section II.C, the EPA's prospective air quality assessment of CSAPR Update implementation found that 21 states each continued to contribute greater than or equal to one percent of the 2008 ozone NAAQS (*i.e.,* 0.75 ppb) to identified downwind nonattainment or maintenance receptors in multiple downwind states in 2017. Thus, to reasonably address any remaining ozone transport problems, the EPA must identify and apportion emission reduction responsibility across multiple upwind states. In other words, given the breadth of the ozone transport problem identified in the CSAPR Update and the breadth of the remaining CAA obligations (*i.e.,* for 20 states), it is reasonable for the EPA's analysis to be regional. Where such an analysis is needed for multiple states, the inquiry into the availability and feasibility of control options is considerably more time-consuming than it would be for a single facility or state or sector.

Further, the feasibility of new emissions controls should be considered with regard to multiple upwind source categories to ensure that the agency properly evaluates NO_X reduction potential and cost-effectiveness from all reasonable control measures. NO_X emissions come from multiple anthropogenic source categories, such as mobile sources, electric utilities, and stationary non-EGU sources (*e.g.,* resource extraction industries and industrial and commercial facilities). Among stationary sources, EGUs in the eastern U.S. have been the primary subject of regulation to address interstate ozone pollution transport and have made significant financial investments to achieve emission reductions. While the EPA continues to evaluate control feasibility for EGUs in its analysis, the EPA's recent analyses indicate that non-EGU source categories, which the EPA has not made subject to new regulations to address interstate ozone transport since the NO_X SIP Call, may also warrant further assessment of their potential to cost-effectively reduce NO_X relative to EGUs.[66] Accordingly, the EPA's assessment of control feasibility focuses on both EGU and non-EGU sources.

Although mobile source emissions also influence ozone formation, transport, and ambient concentrations, the EPA has historically addressed mobile source emissions through national rulemakings. As a result, mobile source emissions are already decreasing because of sector-specific standards related to fuels, vehicle fuel economy, pollution controls, and repair and replacement of the existing fleet. Programs such as the Tier 3 vehicle emissions standards are already being phased in between now and 2023. That rule was finalized in 2014 with a phase-in schedule of 2017–2025 reflecting fleet turnover. As discussed in more detail later, emission reductions from stationary sources could likely be implemented more quickly than would result from any attempt to effect additional reductions from mobile sources beyond those already being implemented. Thus, the EPA has focused its analysis of the feasibility of implementing additional emission controls on stationary sources.

a. EGUs

The EPA's analysis in the CSAPR Update is of particular relevance to the agency's assessment of feasible EGU NO_X mitigation strategies in this action because that rule evaluated and implemented all EGU strategies that were cost-effective and feasible to implement quickly. Accordingly, as explained in the proposal for this action, the EPA reasonably focused its current assessment of the feasibility of implementing further EGU NO_X mitigation strategies on control technologies that require more time to implement and that were thus not previously evaluated in the CSAPR Update with respect to the 2008 ozone NAAQS.

In establishing the CSAPR Update EGU ozone season NO_X emissions budgets, the agency quantified the emission reductions achievable from all NO_X control strategies that were feasible to implement in less than one year and cost-effective at a marginal cost of $1,400 per ton of NO_X removed.[67] These EGU NO_X control strategies were: Optimizing NO_X removal by existing, operational selective catalytic reduction (SCR) controls; turning on and optimizing existing, idled SCR controls; installing state-of-the-art NO_X combustion controls; and shifting generation to existing units with lower NO_X emissions rates within the same state. 81 FR 74541. The agency observes that the resulting CSAPR Update emissions budgets are being appropriately implemented under the CSAPR NO_X Ozone Season Group 2 allowance trading program. Data for the 2017 ozone season (the first CSAPR Update compliance period) indicate that power plant ozone season NO_X emissions across the 22 state CSAPR Update region fell by 77,512 tons (or 21%) from 2016 to 2017.[68] As a result, total 2017 ozone season NO_X emissions from covered EGUs across the 22 CSAPR Update states were approximately 294,394 tons,[69] well below the sum of states' 2017 emissions budgets established in the CSAPR Update of 316,464 tons.[70] Further, the EPA is not aware of any relevant, significant changes in the EGU fleet since promulgation of the CSAPR Update that would necessitate reevalution of the emission reduction potential from control strategies already implemented in the CSAPR Update. Accordingly, for the purposes of this final determination, the EPA considers optimizing NO_X removal by existing, operational SCR controls, turning on and optimizing of existing SCR controls, and the installation of combustion controls to be NO_X control strategies that have already been appropriately evaluated and implemented in the final CSAPR Update for purposes of addressing the good neighbor provision for the 2008 ozone NAAQS. The EPA does not believe it would be reasonable to base its selection of a future analytic year on the timeframe for implementation of control strategies that the EPA has already evaluated in the CSAPR Update and that are already being implemented appropriately, according to the best data available at this time (*i.e.,* recent ozone season NO_X emissions data with CSAPR Update implementation).

In the CSAPR Update, the EPA also evaluated one EGU NO_X control strategy that was considered feasible to implement within one year but was not cost-effective relative to other near-term control strategies at a marginal cost of $1,400 per ton of NO_X removed: Turning on existing idled selective non-catalytic reduction (SNCR) controls. In the CSAPR Update, the EPA identified

[65] 81 FR 74538.

[66] See Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final TSD from the CSAPR Update (U.S. EPA, August 2016) in the docket for this action.

[67] The CSAPR Update was signed on September 7, 2016, approximately 8 months before the beginning of the 2017 ozone season on May 1.

[68] *https://ampd.epa.gov/ampd/* (Data current as of October 26, 2018).

[69] *Id.*

[70] Preliminary data for the 2018 ozone season (the second CSAPR Update compliance period), which became available after the proposal for this action and after the close of the comment period, continue to indicate that CSAPR Update emissions budgets are being appropriately implemented under the trading program. Power plant ozone season NO_X emissions across the 22 state CSAPR Update region fell by 83,084 tons (or 22%) from 2016 to 2018. As a result, total 2018 ozone season NO_X emissions from covered EGUs across the 22 CSAPR Update states were approximately 288,825 tons, well below the sum of states' 2018 emissions budgets established in the CSAPR Update of 313,626 tons.

a marginal cost of $3,400 per ton as the level of uniform control stringency that represents turning on and fully operating idled SNCR controls.[71] However, the CSAPR Update finalized emissions budgets using $1,400 per ton control stringency, finding that this level of stringency represented the control level at which incremental EGU NO_X reductions and corresponding downwind ozone air quality improvements were maximized with respect to marginal cost in the context of the short-term control strategies being considered in that rulemaking. In finding that the $1,400 per ton control cost level was appropriate, the EPA determined that, based on the fleet characteristics of SNCR and their operation at the time of the CSAPR Update, the more stringent emissions budget level reflecting $3,400 per ton (representing turning on idled SNCR controls) yielded fewer additional emission reductions and fewer air quality improvements relative to the increase in control costs. In other words, based on the CSAPR Update analysis, establishing emissions budgets at $3,400 per ton, and therefore developing budgets based on operation of idled SNCR controls, was not determined to be cost-effective for addressing good neighbor provision obligations for the 2008 ozone NAAQS. 81 FR 74550. As explained in our proposed determination, the EPA continues to believe that the strategy of turning on and fully operating idled SNCR controls was appropriately evaluated in the CSAPR Update with respect to other short-term control strategies for addressing interstate ozone pollution transport for the 2008 ozone NAAQS. Further, the EPA is not aware of any significant changes in the fleet characteristics of existing SNCR and their operation since promulgation of the CSAPR Update and therefore does not find it necessary to reevaluate the cost-effectiveness of operating idled SNCR in the short term. Based on data available at this time, the EPA does not believe it would be reasonable to base its selection of a future analytic year on the timeframe for implementation of a control strategy that the EPA has already determined was not cost-effective relative to other short-term control strategies. Accordingly, in this final action the EPA is not further assessing this control strategy for purposes of identifying an appropriate future analytic year.

The remaining control strategy that the EPA evaluated in the CSAPR Update was the shifting of generation from EGUs with higher NO_X emissions rates to EGUs with lower NO_X emissions rates within the same state as a means of reducing emissions at costs commensurate with and in support of emission control technologies to reduce NO_X emissions. Shifting generation is a NO_X control strategy that occurs on a time- and cost-continuum, in contrast to the relatively discrete price-points and installation timeframes that can be identified for emission control technologies—*i.e.,* combustion and post-combustion controls. Therefore, in the CSAPR Update, the EPA identified the discrete cost thresholds used to evaluate upwind states' good neighbor obligations based on its evaluation of combustion and post-combustion control technologies, and secondarily examined the amount of generation shifting that would result at the same time and cost threshold associated with and in support of the particular control technology. Quantifying NO_X reductions from shifting generation anticipated at the same time and cost thresholds relative to the control technologies being considered (*e.g.,* restarting idled SCR controls) helped ensure that the emission reductions associated with the control strategies could be expected to occur in the CSAPR Update's market-based implementation system. In other words, had the agency excluded consideration of generation shifting in calculating emissions budgets in step 3 in the CSAPR Update, generation shifting would have nonetheless occurred as a compliance strategy in step 4. Although potential emission reductions resulting from generation shifting were factored into the final budgets, this compliance strategy did not drive the EPA's identification of the analytic year or cost thresholds analyzed in the CSAPR Update.

Consistent with our explanation at proposal, the EPA does not find it appropriate to solely evaluate the potential for generation shifting (*e.g.,* in isolation from viable combustion or post-combustion control assessments) for purposes of selecting a future analytic year. The EPA continues to believe that generation shifting is not particularly well suited to identifying discrete analytic inputs, given its ability to be phased in on a time- and cost-continuum. Further, given CSAPR Update implementation as well as current and projected natural gas prices that are low relative to historical levels, significant shifting from higher-emitting EGUs to lower-emitting EGUs (relative to historical generation levels) is already occurring and expected to continue to occur by 2023 due to market drivers.[72] Thus, there may only be a limited opportunity, if any, for the EGUs in CSAPR Update states to implement as an interstate transport control measure further emission reductions through generation shifting prior to 2023, beyond that which is already occurring and reasonably expected to occur as a result of other factors. Given EPA's historical consideration of this strategy as a secondary factor in quantifying emissions budgets, the EPA believes the most reasonable approach for selecting a future analytic year is to focus on the timeframe in which specific control strategies other than generation shifting can be implemented.[73]

For these reasons, for purposes of identifying an appropriate future analytic year, the EPA is focusing its assessment of EGUs in this action on control technologies that were deemed to be infeasible to install for the 2017 ozone season rather than reassessing controls previously analyzed for cost-effective emission reductions in the CSAPR Update. In establishing the CSAPR Update emissions budgets, the EPA identified but did not analyze the following two EGU NO_X control strategies in establishing emissions budgets because regional implementation by 2017 was not considered feasible: (1) Installing new SCR controls; and (2) installing new SNCR controls. The EPA observed that EGU SCR post-combustion controls can achieve up to 90 percent reduction in EGU NO_X emissions. The EPA also observed that SNCR controls can be effective at reducing NO_X emissions and can achieve up to a 25 percent emission reduction from EGUs (so long as sufficient reagent is employed). In 2017, SCR controls were in widespread use across the power sector in the east, whereas SNCR controls are considerably

[71] *See* EGU NO_X Mitigation Strategies Final Rule TSD (docket ID EPA–HQ–OAR–2015–0500–0554, available at *www.regulations.gov* and *https://www.epa.gov/sites/production/files/2017–05/documents/egu_nox_mitigation_strategies_final_rule_tsd.pdf*) (NO_X Mitigation Strategies TSD).

[72] See *Electric Monthly Power.* Department of Energy, Energy Information Administration. Table 1.1 Net Generation by Energy Sources. September 2018. Also See *Total Electricity Supply, Disposition, Prices, and Emissions,* Annual Energy Outlook. Department of Energy, Energy Information Administration.

[73] Because the EPA is not in this final action evaluating additional generation shifting possibilities, it does not at this time need to revisit the question whether it is within the EPA's authority or otherwise proper to consider generation shifting in implementing the good neighbor provision. The EPA is aware that this has been an issue of contention in the past, and stakeholders have raised serious concerns regarding this issue. *See, e.g.,* 81 FR at 74545 (responding to comments); CSAPR Update—Response to Comment, at 534–50 (EPA–HQ–OAR–2015–0500–0572) (summarizing and responding to comments).

less prevalent. In the 22-state CSAPR Update region, approximately 62 percent of coal-fired EGU capacity is equipped with SCR controls while 12 percent is equipped with SNCR controls.[74]

The EPA notes that differences between these control technologies exist with respect to the potential viability of achieving cost-effective, regional NO_X reductions from EGUs. As just described, SCR controls generally achieve greater EGU NO_X reduction efficiency (up to 90 percent) than SNCR controls (up to 25 percent). Resulting in part from this disparity in NO_X reduction efficiency, the EPA found new SCR controls to be more cost-effective at regionally removing NO_X when considering both control costs and the NO_X reduction potential in developing its cost-per-ton analysis for the CSAPR Update. Specifically, the EPA found that new SCR controls could generally reduce EGU emissions at a marginal cost of $5,000 per ton of NO_X removed whereas new SNCR controls could generally reduce EGU emissions at a higher cost of $6,400 per ton of NO_X removed.[75] In other words, the greater NO_X reduction efficiency for SCR controls translates into greater cost-effectiveness of NO_X removal relative to SNCR controls. Simply put, SCR can achieve significantly more regional NO_X reduction at a lower cost per ton than SNCR. The general NO_X mitigation and cost-effectiveness advantage of SCR is also consistent with observed installation patterns where SCR controls (62 percent of coal-fired capacity) are more prevalent across the CSAPR Update states relative to SNCR (12 percent of coal-fired capacity). Moreover, as discussed in response to a comment later in this section, installation of SNCR still takes significant time as compared to the 2008 ozone NAAQS attainment dates and SNCR installation at an individual source would likely make later installation of an SCR cost-prohibitive and therefore forgo the potential for greater emission reductions that could be achieved at that source from the latter technology in the future. Considering these factors, the EPA believes it is appropriate to give particular weight to the timeframe required for implementation of SCR across the region as compared to SNCR.

For SCR, the total time associated with project development is estimated to be up to 39 months for an individual power plant installing controls on more than one boiler.[76] However, more time is needed when considering installation timing for new SCR controls regionally, for CSAPR Update states. As described in the subsequent paragraphs, the EPA has determined that a minimum of 48 months (4 years) is a reasonable time period to allow to complete all necessary steps of SCR projects at EGUs on a regional scale. This timeframe would allow for regional implementation of these controls (*i.e.,* at multiple power plants with multiple boilers) considering the necessary stages of post-combustion control project planning, shepherding of labor and material supply, installation, coordination of outages, testing, and operation. SNCR installations, while generally having shorter project timeframes (*i.e.,* up to 16 months for an individual power plant installing controls on more than one boiler), share similar implementation steps with and also need to account for the same regional factors as SCR installations.[77] Therefore, the EPA finds that more than 16 months would be needed to complete all necessary steps of SNCR development at EGUs on a regional scale. Despite EPA's prioritization of SCR as compared to SNCR in identifying the timeframe for installing new controls, the EPA notes that installing these post-combustion controls (SCR or SNCR) involve very similar steps and many of the same considerations. The timing of their feasible regional development is therefore described together in the following paragraphs.

Installing new SCR or SNCR controls for EGUs generally involves the following steps: Conducting an engineering review of the facility to determine suitability and project scope; advertising and awarding a procurement contract; obtaining a construction permit; installing the control technology; testing the control technology; and obtaining or modifying an operating permit.[78] These timeframes are intended to accommodate a plant's need to conduct an engineering assessment of the possible NO_X mitigation technologies necessary to then develop and send a bid request to potential suppliers. Control specifications are variable based on individual plant configuration and operating details (*e.g.,* operating temperatures, location restrictions, and ash loads). Before making potential large capital investments, plants need to complete these careful reviews of their system to inform and develop the control design they request. They then need to solicit bids, review bid submissions, and award a procurement contract—all before construction can begin.

An appropriate regional control implementation timeframe should also accommodate the additional coordination of labor and material supply necessary for any regional NO_X mitigation efforts. For example, the total construction labor for a SCR system associated with a 500-megawatt (MW) EGU is in the range of 330,000 to 350,000 person-hours, with boilermakers accounting for approximately half of this time.[79] In a 2017 industry survey, one of the largest shortages of union craft workers was for boilermakers. This shortage of skilled boilermakers is expected to rise due to an anticipated nine percent increase in boilermaker labor demand growth by 2026, coupled with expected professional retirements and comparatively low numbers of apprentices joining the workforce.[80] The shortage of and demand for skilled labor, including other craft workers critical to pollution control installation, is pronounced in the manufacturing industry. The Association of Union Constructors conducted a survey of identified labor shortages and found that boilermakers were the second-most frequently reported skilled labor market with a labor shortage.[81] Moreover, recovery efforts from the natural disasters of recent hurricanes (*e.g.,*

[74] National Electric Energy Data System v6 (NEEDS). EPA (September 2018). Available at *https://www.epa.gov/airmarkets/national-electric-energy-data-system-needs-v6.*

[75] EGU NO_X Mitigation Strategies Final Rule TSD.

[76] Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies. EPA Final Report. Table 3–1. Available at *https://archive.epa.gov/clearskies/web/pdf/multi102902.pdf.*

[77] A month-by-month evaluation of SNCR installation is discussed in EPA's ''Engineering and Economic Factors Affecting the Installation of Control Technologies for Mulitpollutant Strategies'' at Exhibit A–6 and in EPA's NO_X Mitigation Strategies TSD. As noted at proposal, the analysis in this exhibit estimates the installation period from contract award as within a 10–13 month timeframe. The exhibit also indicates a 16-month timeframe from start to finish, inclusive of pre-contract award steps of the engineering assessment of technologies and bid request development. The timeframe cited for installation of SNCR at an individual source in this final action is consistent with this more complete timeframe estimated by the analysis in the exhibit.

[78] Final Report: Engineering and Economic Factors Affecting the Installation of Control Technologies for Multipollutant Strategies, EPA–600/R–02/073 (Oct. 2002), *available at https://nepis.epa.gov/Adobe/PDF/P1001G0O.pdf.*

[79] *Id.*

[80] Occupational Outlook Handbook. Bureau of Labor Statistics. Available at *https://www.bls.gov/ooh/construction-and-extraction/boilermakers.htm.*

[81] Union Craft Labor Supply Survey. The Association of Union Constructors. Exhibit 4–2 at page 29. Available at *https://www.tauc.org/files/2017_TAUC_UNION_CRAFT_LABOR_SUPPLY_REVISEDBC_FINAL.pdf.*

Harvey, Irma, Florence, and Michael) and wildfires in 2017 are expected to further tighten the labor supply market in manufacturing in the near term.[82] The EPA determined that these tight labor market conditions within the relevant manufacturing sectors, combined with regional NO_X mitigation initiatives, would likely lead to some sequencing and staging of labor pool usage in implementing control technologies, rather than simultaneous construction across all efforts. This sector-wide trend supports SCR and SNCR installation timeframes for a regional program that exceed the demonstrated single-facility installation timeframe.

In addition to labor supply, NO_X post-combustion control projects also require materials and equipment such as steel and cranes. Sheet metal workers, necessary for steel production, are reported as having a well-above-average supply-side shortage of labor.[83] This, coupled with growth in steel demand estimated at three percent in 2018 suggests that there may be a constricted supply of steel needed for installation of new post-combustion controls.[84] Similarly, cranes are critical for installation of SCRs, components of which must be lifted hundreds of feet in the air during construction. Cranes are also facing higher demand during this period of economic growth, with companies reporting a shortage in both equipment and available labor.[85] [86] The tightening markets in relevant skilled labor, materials, and equipment, combined with the large number of installations that could be required under a regional air pollution transport program, necessitates longer installation timetables relative to what has been historically demonstrated at the facility level.

Further, scheduled curtailment, or planned outage, for pollution control installation would be necessary to complete SCR or SNCR projects on a regional scale. Given that peak demand and rule compliance would both fall in the ozone season, sources would likely need to schedule installation projects for the ''shoulder'' seasons (*i.e.,* the spring and/or fall seasons), when electricity demand is lower than in the summer, reserves are higher, and ozone season compliance requirements are not in effect. If multiple units were under the same timeline to complete the retrofit projects as soon as feasible from an engineering perspective, this could lead to bottlenecks of scheduled outages as each unit attempts to start and finish its installation in roughly the same compressed time period. Thus, any compliance timeframe that would assume installation of new SCR or SNCR controls should be developed to reasonably encompass multiple shoulder seasons to accommodate scheduling of curtailment for control installation purposes and better accommodate the regional nature of the program.

Finally, the time lag observed between the planning phase and in-service date of SCR operations in certain cases also illustrates that site-specific conditions can lead to installation times of four years or longer—even for individual power plants. For instance, SCR projects for units at the Ottumwa power plant (Iowa), Columbia power plant (Wisconsin), and Oakley power plant (California) were all in the planning phase in 2014. By 2016, these projects were under construction with estimated in-service dates of 2018.[87] Similarly, individual SNCR projects can exceed their estimated 16-month construction timeframe. For example, the SNCR installation at the Jeffrey power plant (Kansas) was in the planning phase in 2013 but not in service until 2015.[88] Further, large-scale projects also illustrate that timelines can extend beyond the general estimate for a single power plant when the project is part of a larger, multifaceted air pollution reduction goal. For instance, the Big Bend power plant in Florida completed a multifaceted project that involved adding SCRs to all four units as well as converting furnaces, over-fire air changes, and making windbox modifications. A decade elapsed between the initial planning stages and completion.[89]

In summary, while facility-level SCR and SNCR projects can themselves take up to 39 and 16 months, respectively, a comprehensive and regional emission reduction effort requires more time to accommodate the labor, materials, and outage coordination for these two types of control strategies. Given the extra weight given to SCR controls due to their greater NO_X reduction efficiency and cost-effectiveness as well as the time to regionally develop and implement SCRs as a control strategy for CSAPR Update states, the EPA concludes that 48 months would be a reasonable and expeditious timeframe to coordinate the planning and completion of further regional NO_X mitigation efforts.

Comment: Several commenters contend that the EPA's assessment of emission reductions available from existing EGU NO_X controls in the CSAPR Update is insufficient. These comments suggested that additional reductions are available from existing SCR NO_X controls before 2023 because the EPA's use of a 0.10 lb/mmBtu emission rate in its calculation of emission budgets was not reflective of the total reduction potential from SCR optimization. The commenters provide analysis using the unit-level ozone-season emission rates between 2005–2016 and suggest that the EPA should have relied on each unit's best performing ozone-season emission rate from a given year in that period to determine the emission rate at which each unit's SCR is fully optimized. The commenters suggest that because the optimization of SCRs at a lower rate can be achieved prior to 2023, the EPA should examine air quality in an earlier analytic year.

Response: The EPA does not agree that it is necessary to consider any further emission reductions ostensibly available from the optimization of existing SCRs. As described in the following paragraphs, the agency's assessment of NO_X reduction potential from existing SCR controls used in establishing CSAPR Update emission budgets remains appropriate. Moreover, as discussed later in this notice, the best data available at this time—2017 EGU emission data reflecting CSAPR Update implementation—indicate that in general these controls are optimally operating to mitigate NO_X emissions across the CSAPR Update region. Thus, control optimization for existing SCRs has already been addressed in the CSAPR Update and emission reductions associated with the ''additional'' control technology proposed by commenters are being commensurately realized through implementation of the CSAPR Update's

[82] Skilled Wage Growth Less Robust, Worker Shortage Still an Issue. Industry Week. October 23, 2017. Available at *http://www.industryweek.com/talent/skilled-wage-growth-less-robust-worker-shortage-still-issue.*

[83] Union Craft Labor Supply Survey. The Association of Union Constructors. Exhibit 4–2 at page 29. Available at *https://www.tauc.org/files/2017_TAUC_UNION_CRAFT_LABOR_SUPPLY_REVISEDBC_FINAL.pdf.*

[84] Worldsteel Short Range Outlook. October 16, 2017. Available at *https://www.worldsteel.org/media-centre/press-releases/2017/worldsteel-Short-Range-Outlook-2017-2018.html.*

[85] *See, e.g.,* Seattle Has Most Cranes in the Country for 2nd Year in a Row—and Lead is Growing. Seattle Times. July 11, 2017. Available at *https://www.seattletimes.com/business/real-estate/seattle-has-most-cranes-in-the-country-for-2nd-year-in-a-row-and-lead-is-growing/.*

[86] See RLB Crane Index, January 2018 in the docket for this action.

[87] 2014 EIA Form 860. Schedule 6. Environmental Control Equipment.

[88] 2013 EIA Form 860, Schedule 6, Environmental Control Equipment.

[89] *Big Bend's Multi-Unit SCR Retrofit.* Power Magazine. March 1, 2010. Available at *http://www.powermag.com/big-bends-multi-unit-scr-retrofit/.*

allowance trading program. The EPA therefore does not agree that a control strategy that is already being appropriately implemented should guide its selection of a future analytic year.

In the CSAPR Update, the EPA determined that, based on an aggregation of unit-level emission rates, an average fleet-wide emission rate of 0.10 lb/mmBtu would represent the optimized operation of SCR controls that were not already being operated and optimized. 81 FR 74543. In concluding that this rate would be appropriate for calculating emission reduction potential from implementation of this control strategy, the EPA recognized that some units would have optimized rates above that level and some below that level. 81 FR 74543. The EPA explained that it used data from 2009 through 2015 and calculated an average NO_X ozone-season emission rate across the fleet of coal-fired EGUs with SCR for each of those years. It then selected the third-best (*i.e.,* third-lowest) yearly rate for each unit, noting that it did not find it prudent to use the first- and second-best yearly rate because the best-performing data from those years is likely to reflect the utilization of new SCR systems, all of whose components were new in that year (*e.g.,* new layers of catalyst), and may not be representative of an ongoing, achievable NO_X rate once one or more SCR components have begun to degrade with age. *Id.* The third-to-lowest year average was 0.10 lb/mmBtu. In the CSAPR Update, the EPA applied that fleet-wide average to units with SCR that were not already emitting at or below that NO_X emission rate. For units operating at or below that level in 2015 (the starting year from EPA's budget-setting methodology), the EPA continued to utilize that lower rate. The EPA in the CSAPR Update already addressed comments regarding the reasonableness of its approach to calculating an appropriate emission rate and did not, in this action, request additional comment on the EPA's determination finalized in the CSAPR Update that 0.10 lb/mmBtu was a reasonable rate to represent optimized SCR controls.[90] 81 FR 74544. The issue is also currently the subject of litigation before the D.C. Circuit in *Wisconsin* v. *EPA,* No. 16–1406. Accordingly, the EPA does not believe this issue is properly within the scope of this action.

The EPA continues to believe its approach in the CSAPR update was prudent and reasonable for purposes of calculating emission reductions achievable from the optimization of existing SCR controls and is not changing its approach in this action. While commenters suggest alternative emission rates would have been more appropriate, they have not demonstrated that the EPA's approach is unreasonable. In particular, the EPA does not agree with commenters that suggest that the EPA should have used a value derived by relying on a 2005–2016 baseline (as opposed to the 2009–2015 baseline years used by EPA) and selecting the single best year (*i.e.,* the lowest average ozone-season rate for SCR-controlled units in any given year) rather than the third-best year. The EPA continues to find, as it did in the CSAPR Update, that using a baseline starting in 2009 is more appropriate because that year coincided with the onset of annual operation for most SCR controls under the CAIR annual NO_X program. Prior to 2009, these controls operated seasonally, which allowed substantial time during the fall, winter, and spring for routine maintenance and repair of the SCR, as well as replacement of catalyst. This seasonal operation is not representative of current or reasonably anticipated future operation of these units that have been and continue to be subject to annual NO_X requirements, first under CAIR and now under CSAPR. Further, the agency notes that the power sector has undergone significant changes in recent years due to economic factors and technological advances (*e.g.,* natural gas production from horizontal fracking technology advancements). As a result, the agency believes that it is more appropriate to focus its analysis on relatively more recent years of data, rather than to include a significant number of years that preceded the set of current economic and technological conditions affecting and driving outcomes in the sector. In other words, the agency is more confident that recent data are an appropriate basis to reasonably project future economic and technological conditions with respect to operation of EGUs and their NO_X controls. The agency is not confident that older (*i.e.,* pre-2009 data) would be an appropriate basis to reasonably project future economic and technological conditions with respect to operation of EGUs and their NO_X controls. The EPA therefore believes its approach in the CSAPR Update was reasonable and preferable for the 2008 ozone NAAQS compliance assumptions, and retains that approach in this action.

The EPA also believes that its decision to rely on the third-best seasonal emission rate was more appropriate than the commenter's suggestion that the EPA select the emission rate from the best performing year. By selecting the third-best seasonal rate, the EPA avoided selecting times when SCR controls were newly constructed for most units or may have been recently refreshed/replaced with all-new catalyst. Complete catalyst change may have occurred at the onset of major NO_X reduction programs or at a time when the purpose of the catalyst use changed (such as simultaneously optimizing for mercury (Hg) removal under the Mercury and Air Toxic Standards (MATS) program). By selecting the third-best seasonal rate out of the 2009–2015 time period, the agency evaluated repeatable, low-NO_X control operation consistent with ongoing operation and maintenance of SCR controls.

Comment: A commenter asserts that the EPA should consider operation of existing SNCR controls for purposes of selecting a future analytic year, rather than considering cost-effectiveness to eliminate utilization of some potentially feasible controls. The commenter contends that the EPA's use of cost-effectiveness as a bright line for determining what measures are appropriate for fully meeting the good neighbor SIP obligations for upwind states is both erroneous and, as applied here, arbitrary and capricious. The commenter states that, even if the CSAPR Update could be read to conclude that operation of SNCR was not cost-effective at that time, this conclusion was limited to the purposes of the partial solution in that rule. The commenter claims that the CSAPR Update did not deem operation of SNCR to never be cost-effective, particularly in circumstances where the EPA has found no other less-expensive way to reduce emissions. The commenter concludes that, if EPA is using cost to eliminate potentially available solutions, it must reevaluate these costs, not merely rest on cost data from the CSAPR Update that are now several years old.

Response: The EPA does not agree that the timeframe for operating existing SNCR should influence its selection of a future analytic year. As discussed earlier, the EPA's assessment in the CSAPR Update indicated that the $3,400 per ton NO_X control stringency (representing turning on idled SNCR) was not cost-effective relative to other short-term control strategies considered in that rulemaking. This conclusion was based on the fact that EGUs with idled SNCR in the CSAPR Update analysis

[90] 83 FR 31937 (indicating that EPA is not reconsidering or reopening any analyses conducted or determinations made in the CSAPR Update).

were relatively few and relatively small, such that few NO_X reductions were incrementally achievable from operation of idled SNCR compared to other near-term control strategies available, while the difference in cost per ton compared to the other strategies was relatively large. Accordingly, the EPA found that the level of NO_X control stringency reflecting operation of idled SNCR did not maximize NO_X reduction potential and air quality improvement relative to cost. Although the commenters suggest that the EPA should reevaluate the cost-effectiveness of operating idled SNCR, the commenters have not provided any data to the agency that would indicate the agency's analysis would significantly change. Rather, the EPA's conclusion in the CSAPR Update is further supported by reported 2017 data which show that there were 55 coal units operating in the CSAPR Update region with SNCR installed with a weighted average ozone-season emission rate of 0.14 lb/mmBtu, indicating that existing SNCR-controlled units are already widely operating and would likely provide little opportunity for additional reductions.[91]

The EPA notes that the agency's analysis in the CSAPR Update was specific to the conditions evaluated therein. Thus, the EPA's conclusion that the feasibility of implementing SNCR should not inform the potential compliance timeframe and the identification of the future analytic year would not have precluded the EPA from considering whether the operation of SNCR would be cost-effective relative to the installation of the post-combustion controls discussed earlier in this section. Had the EPA, at step 1 of the four-step framework, identified continued downwind air quality problems in the future analytic year, the EPA could have considered at step 3 whether it would be cost-effective to require upwind states linked at step 2 to make emission reductions consistent with operation of existing SNCR relative to other longer-term control strategies like the implementation of new post-combustion controls. However, because EPA has already concluded that operation of existing SNCR is not cost-effective in the near term, the EPA does not agree that it would be reasonable for EPA to select an earlier analytic year that would only be consistent with the timeframe for implementing that particular compliance strategy.

Comment: Several commenters contend that the EPA's implementation of emission reductions via an allowance trading program is not sufficient to guarantee that existing SCRs will continue to run in the future (especially in light of low allowance prices). The commenters therefore contend that further reductions are available from existing EGU controls. The commenters suggest that EPA needs to ensure daily operation of SCR controls and that the seasonal nature of the trading program does not do so.

Response: The EPA begins by pointing out that the commenter appears to be attempting to reopen a determination made in the CSAPR Update regarding how best to implement the emission reductions required by that rule. The question of whether an allowance trading program is sufficient to ensure emission reductions, relative to other forms of emission limitations, was raised by commenters and addressed in the CSAPR Update.[92] The EPA did not, in this action, request additional comment on the appropriateness of an allowance trading program to ensure the CSAPR Update emission reductions would be achieved,[93] and it is therefore not re-opening the issue in this action. Moreover, even if this issue were within the scope of this action, the commenters have not explained how this concern should influence the EPA's selection of the future analytic year used in this action. Accordingly, the relative effectiveness of the CSAPR Update allowance trading program to ensure emission reductions commensurate with optimizing SCR, as compared to daily limits, is outside the scope of this action.

Nonetheless, the EPA notes that current data refute commenters' assertion that allowance trading has been insufficient to achieve the emission reductions associated with the operation and optimization of existing SCRs. The best currently available data indicate that sources in in CSAPR Update states are indeed operating SCRs in order to comply with the CSAPR Update allowance trading program. Data from 2017, the first year of ozone-season data that would be influenced by the CSAPR Update compliance requirements, are consistent with the EPA's assumption that the allowance trading program would incentivize SCR operation on a fleet-wide level. The average emission rate for the 83 SCR-controlled units in the CSAPR Update region that were not previously emitting with a NO_X rate at or below 0.10 lb/mmBtu in 2016 and are still operating in 2017 dropped by 45% from 0.22 lb/mmBtu to 0.12 lb/mmBtu between 2016 and 2017—the first ozone season of CSAPR Update implementation.[94] Not only is the program effective at encouraging these particular units to achieve a better performance rate, it also encourages the wider universe of SCR-controlled units to keep operating their controls. In 2017, 261 of 274 EGUs with SCR in the U.S. had ozone-season emission rates below 0.20 lb/mmBtu (194 of 202 in CSAPR Update states), indicating that they were likely operating their post-combustion controls throughout most of the ozone season. The 274 units were operating at an average emission rate of approximately 0.088 lb/mmBtu. Of the 13 units with 2017 emission rates above 0.20 lb/mmBtu, five are located in states outside of the CSAPR Update region, five have preliminary 2018 ozone season NO_X emission rates below 0.20 lb/mmBtu, and one has retired (Killen unit 2 in Ohio).[95] Consequently, the EPA finds that on average, SCR-controlled units appear to be operating their SCRs throughout the season, and that the petitioner's assertion regarding the likelihood of not operating controls is therefore not supported by the most recently available data. The EPA has not identified a basis for reevaluating emission reductions available from optimizing SCRs and it therefore does not believe it would be reasonable in light of this data to select an earlier analytic year on the basis of this control strategy.

Notwithstanding the EPA's finding that SCRs are currently operating consistent with optimizing NO_X reduction potential, the EPA notes that SCR operation is not the sole metric with which to gauge success of a cap-and-trade program. Rather, the success of the program is ultimately indicated

[91] Preliminary data for the 2018 ozone season, which became available after the proposal for this action and after the close of the comment period, continue to support this conclusion by showing that there were 48 coal units operating in the CSAPR Update region with SNCR installed with a weighted average ozone-season emission rate of 0.148 lb/mmBtu.

[92] CSAPR Update—Response to Comment (EPA–HQ–OAR–2015–0500–0572).

[93] 83 FR 31937 (indicating that EPA is not reconsidering or reopening any analyses conducted or determinations made in the CSAPR Update).

[94] Preliminary data for the 2018 ozone season, which became available after the proposal for this action and after the close of the comment period, continue to support this conclusion. The average emission rate for the 73 SCR-controlled units in the CSAPR Update region that were not previously emitting with a NO_X rate at or below 0.10 lb/mmBtu in 2016 and are still operating in 2018 dropped by 40% from 0.201 lb/mmBtu to 0.121 lb/mmBtu between 2016 and 2018—the second ozone season of CSAPR Update implementation. Additionally, preliminary 2018 data indicate that the 192 coal units operating in the CSAPR Update region with SCR installed had a weighted average ozone-season NO_X emission rate of 0.086 lb/mmBtu.

[95] *Source:* AMPD (*ampd.epa.gov*), EPA, 2018.

not by the employment of any particular control strategy, but rather by regionwide and state-level emission reductions. The CSAPR Update has contributed to a 21 percent reduction in regionwide NO_X emissions in its first year, below the cumulative level of the budgets, and all states operated well below their assurance levels.[96] If some SCRs are not performing at lower rates, but commensurate reductions are achieved elsewhere in the state, this demonstrates one of the benefits of a market-based trading program: It helps participants identify and make the least-cost reductions. The EPA does not agree that such a result, even accepting the commenter's analysis for the sake of argument, demonstrates that the allowance trading program is ineffective at achieving the intended emission reductions simply because the covered sources chose an alternative pathway to comply with the program's requirements.

The EPA has also not identified a need to supplement the allowance trading program established in the CSAPR Update with additional emission limits in order to promote the daily operation of controls. The EPA examined the hourly NO_X emissions data reported to the EPA and did not observe a significant number of instances of units selectively turning down or turning off their emission control equipment during hours with high generation. SCR-controlled units generally operated with lower emission rates during high generation hours, suggesting SCRs generally were in better operating condition—not worse condition, let alone idling—during those days/hours. In other words, the EPA compared NO_X rates for EGUs from hours with high energy demand, compared them with seasonal average NO_X rates, and found very little difference. Thus, the data do not support the notion that units are reducing SCR operation on high demand days and that consequently a narrower compliance timeframe is needed to incentivize them to run on a daily basis. An examination of average daily NO_X emission rates for SCR-controlled units in the CSAPR Update region shows that 2017 emission rates were significantly lower than 2016 and 2015. The seasonal decline in emission rate was also observed on a daily basis in the CSAPR Update region: Out of 153 days in the ozone season in 2017, all 153 days had lower average emissions rates among SCR-controlled sources than the same day in 2016.[97] Moreover, the auxiliary power used for control operation is small—typically less than one percent of the generation at the facility—and it is therefore unlikely that sources would cease operation of controls for such a limited energy savings. Instead, the data indicate that increases in total emissions on days with high generation are generally the result of additional units that do not normally operate coming online to satisfy increased energy demand and units that do regularly operate increasing hourly utilization, rather than reduced functioning of control equipment. Thus, the EPA does not agree that there are additional limitations that should be implemented to achieve emission reductions from the optimization of existing SCRs.

Comment: One commenter suggests that the EPA can achieve additional emission reductions in the short term by reducing budgets to account for the accumulation of banked allowances. The commenter contends that this would support higher allowance prices under the CSAPR NO_X Ozone Season Group 2 program, thereby incentivizing continued SCR operation and further cost-effective reductions in NO_X emissions.

Response: The EPA first notes that, to the extent the commenter is challenging the EPA's decision in the CSAPR Update permit the continued use of certain banked allowances, the agency already addressed comments regarding this issue in that rulemaking, 81 FR 74557, and did not, in this action, request additional comment on its determination with regard to this issue as finalized in the CSAPR Update.[98] The issue is also currently the subject of litigation before the D.C. Circuit in *Wisconsin* v. *EPA.* Accordingly, the EPA does not believe concerns regarding the bank of allowances that were carried over in the CSAPR Update are properly within the scope of this action. To the extent the commenter suggests that the EPA eliminate the current bank of allowances to achieve further NO_X emission reductions in the future, the EPA does not believe that the mere presence of a bank of allowances indicates that such additional emission reductions are actually achievable in practice. Current program design elements, specifically the assurance provisions, are already in place to incentivize the control operation referred to by the commenter and ensure emission reductions. Moreover, the most recently observed historical data suggest these controls are widely operating in the compliance period and that their operation is not undermined by the existence of the bank as suggested by the commenter.

First, the CSAPR Update includes assurance provisions that help ensure that EGUs in each covered state collectively limit their emissions. These provisions include an assurance level for each state that serves as a statewide emissions limit that cannot be exceeded without penalty. This assurance level is the sum of the state emission budget plus a variability limit equal to 21 percent of the state's ozone-season budget. This means that collective EGU emissions in each state cannot exceed 121 percent of the state budget level without incurring penalties. The assurance levels are designed to help ensure that emissions are reduced in each covered state of a region-wide trading program while acknowledging and accommodating the inherent variability in electricity generation and NO_X emissions due to year-to-year changes in power sector market conditions. These assurance levels help ensure that emission reductions, including those associated with the optimization of existing controls on which the CSAPR Update budgets were based, continue to be implemented. Therefore, even with fleet turnover and a growing allowance bank, EPA anticipates that the assurance limit will maintain downward pressure on state-level emissions.

Second, the commenter misconstrues the emissions impact of an allowance bank and does not provide further evidence that would be needed to show that real-world emission reductions are available. A bank of allowances, first and foremost, represents emission reductions and not an emissions liability. Specifically, an allowance bank represents allowable emissions that have not been emitted into the atmosphere, converted into ozone, or transported downwind to impact the ability of downwind areas to attain or maintain the NAAQS. The commenter essentially asserts that an allowance bank will necessarily undermine the operation of NO_X controls. However, as described previously, the best currently available data (*i.e.,* recent EGU emissions data with CSAPR Update implementation) indicate that existing controls are being operated consistent with optimizing for NO_X mitigation. As such, the agency finds that, at this time, the accumulation of the allowance bank primarily represents emission reductions, and is not creating the incentive for controls to be idled. Because the emission reductions sought

[96] *Source:* AMPD (*ampd.epa.gov*), EPA, 2018.

[97] *Source:* AMPD (*ampd.epa.gov*), EPA, 2018.

[98] 83 FR 31937 (indicating that EPA is not reconsidering or reopening any analyses conducted or determinations made in the CSAPR Update).

by the commenter (via operation of existing SCRs) are in fact already being implemented across the region, the EPA has no reason to believe that additional emission reductions could be achieved by either eliminating the banked allowances or adjusting the budgets in some manner commensurate with the current level of banked allowances. As such, the emission reduction potential asserted by commenters is hypothetical and the EPA has no reason to believe at this time that the adjustments to the bank would lead to significant real-world NO_X reductions.

Comment: The EPA received several comments on the proposed determination regarding its assessment of new EGU NO_X control strategies, suggesting that new NO_X emission mitigation technologies are available prior to 2023 and that the EPA's reliance on the feasibility of regional installation of SCRs for selection of a future analytic year is arbitrary and capricious. The commenter further questions the EPA's estimate for installation of SCRs and suggests they can be installed at a faster pace, noting that the EPA allowed for just 30 months under the initial CSAPR promulgated in 2011. They assert that the EPA has not adequately demonstrated that the market for labor and materials, while observed to be strained, is more strained than previous environments. The EPA notes that other commenters agreed with the EPA's timeline for implementation of new mitigation technologies and asserted that that it would be infeasible for EGUs to install new SCRs or SNCRs in less than four years. The commenters observe that in many cases it may take longer due to planning and the outage window required for implementation of such controls. They suggest that the EPA should consider a later analytic year because not doing so puts the EPA at risk of over-controlling as some plants that could not install controls by 2023 would install them at a later date when those reductions are no longer needed.

Response: For the reasons discussed earlier in this notice, the EPA believes that conducting a regional analysis ensures that the Agency can fully evaluate remaining obligations pursuant to the good neighbor provision with respect to the 2008 ozone NAAQS. As the EPA has routinely found throughout nearly 20 years of interstate transport rulemakings, the ozone transport problem is regional in nature, in that downwind states' problems attaining and maintaining the ozone NAAQS result from the contribution of pollution from multiple upwind states, with multiple upwind states routinely contributing to multiple downwind states' air quality problems in varying amounts. With respect to the 2008 ozone NAAQS, the EPA determined in the CSAPR Update rulemaking that, collectively, 22 upwind states contributed at or above the 1 percent threshold to downwind air quality problems at one or more of 19 different receptor locations in the eastern United States. Individual upwind states contributed to between 1 and 8 downwind nonattainment or maintenance receptors and, in a number of cases, upwind states also contained at least one receptor indicating a downwind air quality problem to which other states contributed. Given the multi-faceted nature of ozone transport, the Supreme Court has acknowledged that the EPA is faced with the burden to determine ''how to differentiate among otherwise like contributions of multiple upwind states.'' *EME Homer City,* 134 S. Ct. at 1607. As the Supreme Court acknowledged, the statute is silent as to which metric the EPA should use to decide the apportionment of the shared obligation to address a downwind air quality problem among multiple upwind states—what the Court referred to as the ''thorny causation problem.'' *Id.* at 1603–04.

Accordingly, because ozone air quality problems (and in particular interstate transport) are regional in nature, the EPA has developed—and the Supreme Court has endorsed—a regional approach for quantifying individual states' emission reduction obligation. In particular, the EPA has developed a two-pronged metric (constituting steps 2 and 3 of the four-step transport framework) to identify the amounts of an upwind state's emissions that ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the ozone NAAQS in a downwind state to which it is linked. The EPA identifies those emissions that *both:* (1) Contribute 1 percent or more of the NAAQS to an identified downwind air quality problem (*i.e.,* the identification of linkage at CSAPR framework step 2); *and* (2) can be eliminated through implementation of cost-effective control strategies, applied uniformly to all states linked to an air quality problem (*i.e.,* the quantification of emission reductions at CSAPR framework step 3). When evaluating at step 3 whether a control strategy is cost-effective for this purpose, the EPA considers the incremental cost per ton of emissions reduced, the magnitude of emissions that can be reduced using a particular control strategy, and the downwind air quality benefits of implementing such emission reductions. 81 FR at 74519. The Supreme Court found this approach, as applied in the original CSAPR rulemaking, to be ''an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address.'' *Id.* at 1607. The Court held that this approach is: ''[e]fficient because EPA can achieve the levels of attainment, *i.e.,* of emission reductions, the proportional approach [urged by respondants in *EME Homer City*] aims to achieve, but at a much lower overall cost. Equitable because, by imposing uniform cost thresholds on regulated States, EPA's rule subjects to stricter regulation those States that have done relatively less in the past to control their pollution. Upwind States that have not yet implemented pollution controls of the same stringency as their neighbors will be stopped from free riding on their neighbors' efforts to reduce pollution. They will have to bring down their emissions by installing devices of the kind in which neighboring States have already invested.'' *Id.*

Given the regional nature of the ozone pollution problem and the requirement that the EPA determine the remainder of its good neighbor FIP obligation with respect to the 2008 ozone NAAQS for 21 states in the CSAPR Update region, the EPA reasonably applied the regional framework endorsed by the Supreme Court as an ''efficient and equitable'' approach to resolving the remaining good neighbor obligations interstate transport problem. *Id.* at 1607. Accordingly, the EPA evaluated the contributions of all upwind states that are linked to a given downwind air quality problem, rather than quantifying the significant contributions of single states or sectors in a vacuum. Similarly, the EPA evaluated potential control strategies to address that contribution on a regional, rather than facility- or state-specific, basis. Such an approach also ensures that each state's contributions to downwind air quality problems are quantified relative to the contribution of the other contributing states.

The commenters are also incorrect to assert that the agency's conclusion that 48 months should be provided for the implementation of new SCR is in conflict with its position in the original CSAPR rulemaking. In the original CSAPR, the EPA established NO_X emission budgets in CSAPR based on a cost threshold of $500 per ton, which was not anticipated to drive any new SCR installation in either compliance phase. *See* Table VII.C.2–1, 76 FR 48279 and discussion at 76 FR 48302. As such,

this control strategy was not central to CSAPR Update implementation.

Notwithstanding that SCR post-combustion controls were omitted from the EPA's CSAPR emissions budgets at the time, to the extent labor and supply markets were a consideration for installation timing requirements for scrubbers in CSAPR in 2011, those variables have changed over the last seven years. For instance, the EPA noted a sharp drop in boilermaker person-hours worked between 2008 and 2010, suggesting that the market at that time had substantial underutilized capacity whereas today's industry surveys identify labor shortages.[99] The EPA also disagrees with the commenter's assertion that these observations regarding crane and steel markets are not reasonable and thus should not influence the EPA's analysis. While not the sole reason for the EPA's conclusion that a 48-month timeframe would be necessary for region-wide control installation, the EPA believes the market for labor and materials is a relevant weight-of-evidence consideration in light of reports from companies that supply the tower cranes that there is a shortage of both equipment and available labor. The crane index and quarterly construction costs reports are metrics regularly used to evaluate construction activity by construction consultants and provide a sense of equipment demand. Moreover, the commenter provides no evidence to refute the EPA's finding that these equipment markets are facing periods of higher demand.

Thus, while the EPA does not agree that it is reasonable to consider a timeframe longer than four years for the expeditious, region-wide implementation of SCR controls, neither does the EPA agree that it would be reasonable to assume any shorter timeframe under the circumstances.

Comment: Some commenters assert that the EPA could identify an earlier analytic year based on the installation of new SNCRs because the controls can be implemented more quickly than SCRs.

Response: As explained above, the EPA does not agree that that the regional installation of SNCRs should drive EPA's selection of an appropriate future analytic year, primarily because SCR controls are more effective at reducing NO_X emissions and because SCR controls are more regionally cost-effective at mitigating NO_X. Specifically, the EPA estimates the amount of reductions available by SCR installation at uncontrolled sources is nearly triple that available from SNCR installation.[100] This difference is significant because the agency is tasked with issuing FIPs that fully resolve good neighbor obligations and therefore the agency finds it reasonable to focus its analysis on the timeframe for installing controls that would be best suited to achieve that goal in terms of NO_X mitigation, downwind air quality improvement, and cost—*i.e.,* SCR controls. Further, as described in the subsequent paragraphs, the EPA finds that the regionally implementing NO_X reductions from SNCR would still take a significant amount of time and would significantly hamper the ability of these EGUs to obtain further emission reductions from installation of SCRs in the future.

First, the EPA noted above that the estimated timing to install SNCR for multiple boilers at one power plant is approximately 16 months—and can take even longer in practice. Accounting for the regional factors that must be considered (described previously), it would take more than 16 months for this control strategy to be regionally implemented. Starting with promulgation of this action in December of 2018, the agency believes it would take well into 2020 for these controls to be feasibly implemented, regionally. As a result, it is very unlikely that these controls could affect ozone season NO_X attainment demonstrations made in July 2021 for areas designated serious for the 2008 ozone NAAQS.

Finally, the agency notes the potential for inefficiency in effectively controlling NO_X emissions in the long term by prioritizing SNCR controls now to the detriment of future NO_X mitigation potential from SCR controls. Installing an SNCR at a unit in the near term and then upgrading or retrofitting the unit to an SCR a few years down the road would effectively increase the cost per ton of that eventual SCR installation as compared to installing the SCR in the first place. The main difference between the two systems is the temperature window at which the reaction takes place. With an SNCR, that window is 900–1050 degrees Celsius, whereas it drops to a range of 160 to 350 degrees Celsius for an SCR. These differentials in optimal temperatures influence the location and modifications necessary for each retrofit technology and therefore complicate any transition from SNCR to SCR. SNCR can be described as including a silo or tank (for reagent), a conveyance system for the reagent, and a properly placed injection lance in the furnace. In terms of volume occupied, over 90 percent of the system exists outside the flue gas path. The SCR system, on the other hand, requires a catalytic reactor and is placed downstream of the economizer. An SCR occupies a significant space as the catalytic reactor resides in a dedicated multi-story structure elevated above ground elevation. Over 90 percent of an SCR's volume exists within the flue and duct work.

The two systems are unique and distinct from one another in their approach to reducing NO_X and the equipment cannot be shared or dual-purposed due to the size differences, conversion rates, and reagent material flows based on the application (namely, the location within the flue gas stream). Consequently, almost none of the capital cost incurred for an SNCR system can be credited towards installation of an SCR system. This would result—in most cases—in a higher overall cost to get to the same level of emission reductions if a source first installed an SNCR and then upgraded to an SCR as opposed to the initial installation of an SCR. Such a retrofit would also likely increase the amount of work, and therefore time, to complete the SCR installation.

Thus, selecting an analytic year and imposing emission reductions focused on installation of SNCR alone at an earlier date (if this could even occur on an earlier timeframe regionwide) would potentially obviate a source's ability to cost-effectively install SCR, a more effective NO_X control, at a later date. The EPA's obligation in this action was to fully address states' good neighbor obligation for the 2008 ozone NAAQS. Therefore, it was reasonable for the EPA to select a future analytic year that would allow for advanced control installation which would deliver significant reductions, if they were determined to be necessary. Choosing an earlier analytic year based on the installation of a SNCR alone would potentially be counterproductive to EPA's objective to address states' full obligations and severely limit sources' ability to obtain more significant emission reductions from SCR in the future to address other control obligations.

b. Non-EGU Control Technologies

The EPA is also evaluating the feasibility of implementing NO_X control

[99] Labor Availability for the Installation of Air Pollution Control Systems at Coal-Fired Power Plants. Andover Technology Partners. October 18, 2011. Available at *http://www.andovertechnology.com/images/boilermaker%20labor%20availability%20final_jes_%2010%2018%202011.pdf.*

[100] Based on 2017 ozone-season NO_X data. Applying SCR reduction potential of 90 percent (up to a 0.07 lb/mmBtu floor) as opposed to 25 percent reduction for SNCR to 2017 emission levels for uncontrolled coal sources emitting at 0.15 lb/mmBtu or greater.

technologies for non-EGUs stationary sources as part of its identification of an appropriate future analytic year. While the EPA did not regulate non-EGUs in the CSAPR Update, the rule did evaluate the feasibility of NO_X controls on non-EGUs in the eastern United States to assess whether any such controls could be implemented in time for the 2017 ozone season. In the CSAPR Update, the EPA noted that there was greater uncertainty in the assessment of non-EGU point-source NO_X mitigation potential as compared to EGUs, and therefore explained that more time was required for states and the EPA to improve non-EGU point source data, including data on existing control efficiencies, additional applicable pollution control technologies, and installation times for those control technologies. 81 FR 74542. A significant factor influencing uncertainty was that the EPA lacked sufficient information on the capacity and experience of suppliers and major engineering firms' supply chains to determine if they would be able to install the pollution controls on non-EGU sources in time for the 2017 ozone season. Further, using the best information available to the EPA at that time, the EPA found that there were more non-EGU point sources than EGU sources and that these sources on average emit less NO_X than EGUs. The implication was that there were more individual sources that could be controlled, but relatively fewer emission reductions available from each source when compared to the number of EGUs and emission reductions available from EGUs. Considering these factors, the EPA found that it was substantially uncertain whether significant aggregate NO_X mitigation would be achievable from non-EGU point sources to address the 2008 ozone NAAQS by the 2017 ozone season. *Id.*

Although the EPA determined that there were limited achievable emission reductions available from non-EGUs by the 2017 ozone season, the EPA acknowledged that it may be appropriate to evaluate potential non-EGU emission reductions achievable on a timeframe after the 2017 ozone season to assess whether upwind states continued to have outstanding good neighbor obligations for the 2008 ozone NAAQS. 81 FR 74522. In particular, the EPA's preliminary assessment in the CSAPR Update indicated that there may be emission reductions achievable from non-EGUs at marginal costs lower than the costs of remaining NO_X control strategies available for EGUs. In evaluating potential non-EGU emission reductions in the CSAPR Update, the EPA included preliminary estimates of installation times for some non-EGU NO_X control technologies in a technical support document entitled Assessment of Non-EGU NO_X Emission Controls, Cost of Controls, and Time for Compliance Final Technical Support Document (henceforth, ''Final Non-EGU TSD''). These preliminary estimates were based on research from a variety of information sources, including:

- *Typical Installation Timelines for NO_X Emissions Control Technologies on Industrial Sources, Institute of Clean Air Companies,* December 2006 (all sources except cement kilns and reciprocating internal combustion engines (RICE));[101]
- *Cement Kilns Technical Support Document for the NO_X FIP*, U.S. EPA, January 2001;[102] and
- *Availability and Limitations of NO_X Emission Control Resources for Natural Gas-Fired Reciprocating Engine Prime Movers Used in the Interstate Natural Gas Transmission Industry,* Innovative Environmental Solutions Inc., July 2014—prepared for the Interstate Natural Gas Association of America (INGAA Foundation).[103]

In assessing an appropriate future analytic year for this action, the EPA has looked to the information compiled in the Final Non-EGU TSD for the CSAPR Update to evaluate what timeframe might be appropriate for installing sector- or region-wide controls on non-EGU sources.

Among the control technologies that were evaluated in the Final Non-EGU TSD, the EPA identified six categories of common control technologies available for different non-EGU emission source categories. Final Non-EGU TSD at 19. For four of the technology categories (SNCR, SCR, low-NO_X burners (LNB), and mid-kiln firing), the EPA preliminarily estimated that such controls for non-EGUs could be installed in approximately one year or less in some unit-specific cases. Installation time estimates presented in the Final Non-EGU TSD considered a timeline that begins with control technology bid evaluation (bids from vendors) and ends with the startup of the control technology. *See id.* at 20. For the other two technology categories (biosolid injection technology (BSI) and OXY-firing), as well as one emission source category (RICE), the EPA had no installation time estimates or uncertain installation time estimates. For example, the EPA found that the use of BSI is not widespread, and therefore the EPA does not have reliable information regarding the time required to install the technology on cement kilns. The installation timing for OXY-firing is similarly uncertain because the control technology is installed only at the time of a furnace rebuild, and such rebuilds occur at infrequent intervals of a decade or more. For those categories for which preliminary estimates were available, as noted in the Final Non-EGU TSD, the single-unit installation time estimates provided do not account for additional important considerations in assessing the full amount of time needed for installation of NO_X control measures at non-EGUs, including additional time likely necessary for permitting or installation of monitoring equipment. *See id.* at 19–21. These preliminary installation estimates also do not account for factors such as multi-boiler installations at a particular source and pre-vendor bid engineering studies.[104]

In particular, the preliminary estimates of installation times of approximately a year or less shown in the Final Non-EGU TSD are for installation at a single source and do not account for the time required for installing controls to achieve sector-wide compliance. Thus, the preliminary estimates do not consider time, labor, and materials needed for programmatic adoption of measures and time required for installing controls on multiple sources in a few to several non-EGU sectors across the region. When considering installation of control measures on sources regionally and across non-EGU sectors, the time for full sector-wide compliance is uncertain, but it is likely longer than the installation times shown for control measures for individual sources in the Final Non-EGU TSD. As discussed earlier with respect to EGUs, regional,

[101] Institute of Clean Air Companies. Typical Installation Timelines for NO_X Emissions Control Technologies on Industrial Sources, December 2006. Available at *https://c.ymcdn.com/sites/icac.site-ym.com/resource/resmgr/ICAC_NOx_Control_Installatio.pdf.*

[102] U.S. EPA. Cement Kilns Technical Support Document for the NO_X FIP. January 2001. Available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0094.*

[103] INGAA Foundation. Availability and Limitations of NO_X Emission Control Resources for Natural Gas-Fired Reciprocating Engine Prime Movers Used in the Interstate Natural Gas Transmission Industry, Innovative Environmental Solutions Inc., July 2014. Available at *http://www.ingaa.org/Foundation/Foundation-Reports/NOx.aspx.*

[104] In particular, this document presents different installation time estimates for SCRs for EGUs and non-EGUs. However, these installation times are not necessarily inconsistent, because the EGU time estimate of 39 months mentioned above is based on multi-boiler installation and factors in a pre-vendor bid engineering study consideration, whereas the non-EGU SCR installation time estimates are based on single-unit installation and do not factor in pre-vendor bid evaluation. Consideration of these additional factors might extend the time estimate for installation of SCRs for non-EGUs.

sector-wide compliance could be slowed down by limited vendor capacity, limited available skilled labor for manufacturers such as boilermakers (who produce steel fabrications, including those for pollution control equipment), availability of raw materials and equipment (*e.g.,* cranes) for control technology construction, and bottlenecks in delivery and installation of control technologies. Some of the difficulties with control technology installation as part of regional, sector-wide compliance at non-EGUs, such as availability of skilled labor and materials, could also have an impact on monitor installation at such sources. The EPA currently has insufficient information on vendor capacity and limited experience with suppliers of control technologies and major engineering firms, which results in additional uncertainty in the overall installation time estimates for non-EGU sectors.

The EPA notes that its analysis in the Final Non-EGU TSD focused on potential control technologies within the range of costs considered for EGUs in the final CSAPR Update, *i.e.,* those controls available at a marginal cost of $3,400 per ton (2011 dollars) of NO_X reduced or less. The EPA's analysis did not evaluate implementation timeframes or potential emission reductions available from controls at higher cost thresholds. *See* Final Non-EGU TSD at 18. This focus excluded some emission source groups with emission reduction potential at a marginal cost greater than $3,400 per ton, including: Industrial/commercial/institutional boilers using SCR and LNB; and catalytic cracking units, process heaters, and coke ovens using LNB and flue gas recirculation. However, while emission reduction potential from these source groups is uncertain, the timeframe for these control technologies would be subject to considerations and limitations similar to those discussed in the preceding paragraphs.

In summary, there is significant uncertainty regarding the implementation timeframes for various NO_X control technologies for non-EGUs. While the EPA has developed preliminary estimates for some potential control technologies, these estimates only account for the time between bid evaluation and startup but do not account for additional considerations such as pre-bid evaluation studies, permitting, and installation of monitoring equipment. Moreover, these preliminary estimates do not account for the impacts of sector- and region-wide compliance, which may be complex considering the diversity of non-EGU sources as well as the greater number and smaller size of the individual sources. The EPA did not receive any comments on its proposal that would contradict the importance of these considerations. Accordingly, in light of these considerations, the EPA believes that it is reasonable to assume for purposes of this action that an expeditious timeframe for installing sector- or region-wide controls on non-EGU sources may be four years or more.

Comment: One commenter suggests that the EPA's assessment of feasibility of control strategies for non-EGU sources rests on a need for further information gathering, when the agency has had ample time to do this work already, citing *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 644 (D.C. cir. 2016) (''The Agency was obligated to collect the data it needed, and Congress gave it the authority to do so.''). The commenter asserts that the EPA cited this same basis for deferring a full remedy in the CSAPR Update and that the EPA has been invoking an alleged need to gather more information on these sources for more than a decade, citing the original CSAPR rulemaking and CAIR. The commenter states that it is unlawful and arbitrary for the EPA to rely on a need for information that it has failed to collect or analyze despite its own longstanding recognition that the information is needed, citing *Sierra Club* v. *Johnson,* 444 F. Supp. 2d 46, 53 (D.D.C. 2006) (explaining that statutory deadlines in the Clean Air Act indicate that Congress intended agencies to prioritize timeliness over perfection).

Another commenter notes that the EPA indicated in separate litigation that it intended to take steps to improve its data on non-EGU controls by November 2017, citing Opposition and Cross-Motion for Summary Judgment, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. Dec. 15, 2016) ECF No. 63., but that it has never completed these steps. The commenter asserts that the determination is therefore based on speculation. The commenter continues that the EPA does not explain why the information that was previously found to be insufficient is now sufficient for purposes of this action, nor does the EPA explain why it still has not quantified or analyzed the potential for cost-effective emission reductions from non-EGU sources. Thus, the commenter asserts that the EPA ignores its own framework for determining the availability and cost-effectiveness of non-EGU controls. The commenter claims that this is a change in position from the CSAPR Update where the EPA stated that a final determination of whether the emission reductions from that rule would be sufficient to address the good neighbor obligation would depend upon an evaluation of non-EGU sources.

Response: The commenter is incorrect in asserting that the EPA's basis for its conclusion in this action regarding the implementation timeframe for control strategies for non-EGU sources rests on the assumption that more information gathering is necessary. While the EPA has discussed the uncertainties associated with determining appropriate implementation timeframes for a number of control measures and technologies that could be applied to a large number and variety of non-EGU sources, as discussed above the EPA has evaluated the information known to the agency regarding various control measures and technologies and the factors affecting the installation of various control technologies. Considering the information known to the agency, as outlined in the Final Non-EGU TSD, the EPA has reasonably concluded that expeditious implementation of additional controls for non-EGU sources may be four years or more. The commenter is thus incorrect to suggest that the EPA has further deferred its evaluation of non-EGU sources. This is the same information that the EPA relied upon to determine that significant and meaningful non-EGU emission reductions could not feasibly be implemented by the 2017 ozone season in the CSAPR Update. 81 FR 74542. The commenter has not provided information that would contradict the EPA's conclusion that it is appropriate to assume, based on the information known to the agency, that four years or more should be provided for the installation of controls for non-EGU sources.

This approach is not a change in policy. In the CSAPR Update, the EPA only stated that it could not conclude, at that time, whether additional reductions from NO_X sources (including non-EGUs) would be necessary to fully resolve these obligations. In the CSAPR Update, the EPA did indicate that it anticipated the need to evaluate non-EGUs to evaluate the full scope of upwind states' good neighbor obligations, and the agency has done so here in so far as evaluating control feasibility. Specifically, in selecting the appropriate future analytic year in which to evaluate air quality, contributions, and NO_X reduction potential, as necessary, the EPA considered the implementation timeframes for controls at EGUs as well as non-EGUs. As discussed in more detail later, the EPA's analysis showed

that there would be no remaining air quality problems in 2023 in the eastern U.S., and thus the EPA has concluded that no such additional reductions beyond those on-the-books or on-the-way controls are necessary, whether from non-EGUs or otherwise, to bring downwind areas into attainment and maintenance of the 2008 ozone NAAQS. Because the air quality modeling results for 2023 show that air quality problems in the eastern U.S. would be resolved by 2023, the EPA has not further evaluated the cost-effectiveness of the control options considered for the feasibility analysis. This approach is consistent with the EPA's four-step framework and does not rely on the relative cost-effectiveness of controls for non-EGU sources.

The commenter's reliance on *U.S. Sugar* and *Sierra Club* is therefore inapposite. In *U.S. Sugar,* the court was reviewing the EPA's decision not to regulate certain sources under a different provision of the CAA based on a lack of information. 830 F.3d at 642–43. The court, however, found that the agency's duty to regulate these sources was nondiscretionary and that the statute provided the agency with explicit authority to gather information from the affected sources for this purpose. *Id.* at 644. Here, the EPA is not deferring a nondiscretionary duty to issue a regulation addressing controls at non-EGU sources, but has evaluated the potential NO_X control measures and technologies at non-EGU sources using all information known to the agency, as described in the Final Non-EGU TSD, in order to inform its further analysis of upwind state obligations under the good neighbor provision. In *Sierra Club,* the court laid out the standard for determining the time needed to promulgate regulations under the CAA after the EPA fails to perform the mandatory duties within the statutorily prescribed timeframe. 444 F. Supp. 2d at 52. As the commenters note, the court stated, among other things, that courts will generally not provide additional time to promulgate a regulation ''simply to improve the quality or soundness of the regulations to be enacted.'' *Id.* at 53. However, the court in that case addressed a mandatory deadline set by the statute to promulgate a plan; it was not evaluating the EPA's interpretation of a statutory provision like the good neighbor provision that does not set an express deadline for implementation of emission reductions.

Notably, the court in *Sierra Club* did find that the statutory deadlines in the Clean Air Act indicate that Congress intended agencies to prioritize timeliness over perfection. 444 F. Supp. 2d at 53. Thus, to the extent another commenter chides the EPA for acting based on the information before the agency, even if it has not completed all steps to improve its data for non-EGU sources, the *Sierra Club* decision supports the agency's approach. Moreover, because the EPA did not need to evaluate either the cost-effectiveness or NO_X reduction potential of either EGU or non-EGU sources, the commenter's concern with whether the EPA has completed steps to improve its data on these issues is irrelevant. Nonetheless, the EPA notes that the particular efforts outlined in the court filing referred to by the commenter were taken in support of the EPA's request in a mandatory duty suit that the court permit the agency several years to develop a rulemaking to address the good neighbor obligations with respect to the 2008 ozone NAAQS for Kentucky and 20 other states. In that filing, the EPA outlined steps that the agency believed would be necessary to promulgate a rulemaking *if* the EPA's analysis demonstrated that additional emission reductions would be required from sources in upwind states, including what the EPA viewed as necessary analysis regarding non-EGU sources. The EPA acknowledged in that same declaration that one possible result of the EPA's analysis could be a determination that downwind air quality problems would be resolved, in which case a cost-effectiveness analysis would be unnecessary. *See* Opposition and Cross-Motion for Summary Judgment, Exhibit 1 (Decl. of Janet G. McCabe) para. 98, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328–JD (N.D. Cal. Dec. 15, 2016), ECF No. 63. As the EPA could not know the results of any future air quality modeling before it was performed, the EPA's proposed timeline assumed that such an analysis might be required. *Id.* para. 170. Ultimately, the court disagreed with the EPA's proposed timeline and provided only one year from its order—until June 30, 2018—for promulgation of a rulemaking addressing Kentucky's good neighbor obligation, which was insufficient time to complete all of the steps outlined in the EPA's declaration, thereby requiring the EPA to prioritize certain steps and eliminate others, including the additional efforts intended to improve data regarding the feasibility and cost-effectiveness of controls. Nonetheless, because the first step of the EPA's analysis demonstrated that there would be no remaining air quality problems in 2023 in the eastern U.S., it turned out to be unnecessary for the EPA to finalize the efforts to improve its data regarding the cost-effectiveness of controls before finalizing this action. Thus, the representations that the EPA made to the court regarding the steps necessary to take this action no longer apply under the present circumstances.

3. Focusing on 2023 for Analysis

As discussed in section III.B, the EPA weighed several factors to identify an appropriate future analytic year for evaluating interstate transport obligations for the 2008 ozone NAAQS. First, the EPA identified the relevant attainment dates to guide the EPA's consideration as 2021 and 2027, respectively the Serious and Severe area attainment dates for the 2008 ozone NAAQS.

Second, the EPA identified and analyzed the feasibility and timing needed for installing additional NO_X emissions controls. As discussed in section III.B.2, the EPA believes it is appropriate to assume that planning for, installing, and commencing operation of new controls, regionally, for EGUs and non-EGUs would take up to 48 months, and possibly more in some cases, following promulgation of a final rule requiring appropriate emission reductions. This period of time reflects, among other considerations, the time needed to regionally develop new post-combustion SCR projects—systems that continue to represent the engineering gold-standard in terms of reducing NO_X from the U.S. power sector.

To determine how this feasibility assessment should influence potential compliance timeframes, the EPA believes it is appropriate to consider the date of promulgation of the rule that would establish emission reduction requirements if necessary and thereby provide notice to potentially regulated entities that actions will be required for compliance. The EPA, therefore, considered the timeframe in which this rulemaking would be finalized. As discussed previously, the EPA is subject to several statutory and court-ordered deadlines to issue FIPs to address any outstanding requirements under the good neighbor provision for the 2008 ozone NAAQS for several states. The agency is issuing this final action in light of those obligations. This action will be signed no later than December 6, 2018, consistent with a court order to take action addressing the FIP obligation for five states.[105] Considering the EPA's conclusion that 48 months is a reasonable, and potentially expeditious,

[105] Order, *New York* v. *Pruitt,* No. 1:18–cv–00406–JGK (S.D.N.Y. June 12, 2018), ECF No. 34. The five states are Illinois, Michigan, Pennsylvania, Virginia, and West Virginia.

timeframe for implementation of substantial regional control strategies considered herein, emission reductions from these control strategies would not be feasible until the 2023 ozone season. In other words, 48 months from a final rule promulgated in December 2018 would be December 2022, after which the next ozone season begins in May 2023. Considering the time necessary to implement the controls calculated from a realistic timeframe in which EPA would expect to promulgate a final rule requiring such controls, the EPA believes that such reductions on a variety of sources across the region are unlikely to be feasibly implemented for a full ozone season until 2023.

Consistent with the court's holding in *North Carolina,* the agency considers this timing in light of upcoming attainment dates for the 2008 ozone NAAQS. While 2023 is later than the next attainment date for nonattainment areas classified as Serious (*i.e.,* July 20, 2021), for the reasons discussed above the EPA does not believe it is reasonable to expect that additional regional emissions control requirements could be developed and implemented by the Serious area attainment date. Rather, the most expeditious timeframe in which additional regional control strategies could be implemented at both EGUs and non-EGUs is 48 months after promulgation of a final rule requiring appropriate emission reductions. At the same time, the EPA does not believe that it should generally take longer than 2023 to install emissions controls on a regional basis, based on the analysis above. Therefore, there is no basis to postpone any potentially needed emission reductions to the next attainment date after 2023, which is for nonattainment areas classified as Severe (*i.e.,* July 20, 2027). Accordingly, the EPA believes implementation of additional emission reductions by 2023 is the earliest feasible timeframe that could be reasonably required of EGU and non-EGU sources that would be potentially subject to control requirements. Although this year does not precisely align with a particular attainment date, it reflects the year that is as expeditious as practicable for regionwide implementation, while also taking into account the relevant attainment dates.

Given the current stage of the 2008 ozone implementation cycle, the EPA's feasibility analysis set forth above, the relevant attainment dates, and the courts' holdings in *North Carolina* and *EME Homer City,* the EPA believes that 2023 is the most appropriate year for it to assess downwind air quality and to evaluate any remaining requirements under the good neighbor provision for the 2008 ozone NAAQS with regard to all states covered in this action.

Comment: Several commenters contend that the EPA's selection of a 2023 analytic year is inappropriate because it does not address downwind states' obligations to attain the 2008 Ozone NAAQS by the July 20, 2021 attainment date for nonattainment areas classified as Serious. The commenters generally cite *North Carolina* for the proposition that EPA must esatablish interstate transport compliance deadlines under the good neighbor provision that are identical to deadlines for downwind states to achieve attainment with the NAAQS. The commenters note that, in that decision, the D.C. Circuit rejected portions of CAIR on the grounds that it did not require upwind contributors to eliminate their significant contributions in time for downwind areas to meet their impending attainment deadlines. The commenters state that the attainment date for areas classified as Moderate nonattainment for the 2008 ozone NAAQS passed on July 20, 2018, and the next attainment dates for the 2008 ozone NAAQS will be Serious area attainment date. Because July 20, 2021 falls during the 2021 ozone season, the 2020 ozone season will be the last full ozone season from which data can be used to demonstrate attainment of the NAAQS by the July 2021 attainment date. The commenters contend that *North Carolina* compels the EPA to identify upwind reductions and implementation programs to achieve these reductions, to the extent possible, during or before the 2020 ozone season.

One commenter further notes that CAA sections 110(a)(2)(D) and 182 require the EPA to implement the good neighbor provision ''consistent with'' applicable attainment deadlines, and notes that the D.C. Circuit held in *North Carolina* that this requirement is unambiguous. The commenter states that the attainment deadlines in section 182 are fixed dates with which the EPA must comply, citing *Sierra Club* v. *Johnson,* 294 F.3d 155, 161 (D.C. cir. 2002) (''[Section] 181(a)(1)[ ] as written sets a deadline without an exception.''), and *Train* v. *Natural Resources Defense Council,* 421 U.S. 60, 64–65 (1975) (Congress ''required'' attainment of air quality standards ''within a specified period of time''). The commenter further states that the EPA is bound by the requirement to eliminate significant contributions ''as expeditiously as practicable'' but further notes that the use of the words ''but not later than'' the dates listed in section 182 established the attainment deadlines as an express limit on the EPA's discretion. The commenter therefore contends that the EPA's claim of authority to fully implement the good neighbor provision ''as expeditiously as practicable'' and later than the Serious attainment dates is an exercise in rewriting the statute.

Commenters also contend that the EPA's consideration of feasibility cannot justify delaying action or analysis until 2023. One commenter contends that the D.C. Circuit's decision in *North Carolina* rejected compliance deadlines in CAIR that were based on ''feasibility restraints such as the difficulty of securing project financing and the limited amount of specialized boilermaker labor to install controls'' but were not ''consistent with . . . compliance deadlines for downwind states.'' 531 F.3d at 911–12. The commenter asserts that the Clean Air Act's attainment deadlines ''leave[ ] no room for claims of technological or economic infeasibility,'' citing *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 258 (1976) (deadlines are ''intended to foreclose the claims of emission sources that it would be economically or technologically infeasible for them to achieve emission limitations sufficient to protect the public health within the specified time''); *id.* at 259 (Congress ''determined that existing sources of pollutants either should meet the standard of the law or be closed down'') (quoting S. Rep. No. 91–1196, pp. 2–3 (1970)).

Response: The EPA does not agree that either the text of the statute or the court's holding in *North Carolina* dictates that there can only be one appropriate future analytic year and that this year must be identical to an attainment deadline or forecloses consideration of the feasibility of implementing emission reductions in determining the appropriate future analytic year.

First, as to the statute, the good neighbor provision does not set forth any timeframe for the analysis of downwind air quality or the implementation of upwind emission reductions. On its face, the good neighbor provision is therefore ambiguous as to when the upwind emission reductions it calls for must be in place. The EPA acknowledges that the good neighbor provision does indicate that the prohibition of upwind state emissions must be ''consistent with the provisions of [title I],'' and that the D.C. Circuit held in its *North Carolina* decision that the other provisions with which the implementation of the good neighbor provision must be consistent include the attainment dates in part D of title I of the Act. However, the good neighbor

provision does not specify what it means to be ''consistent with'' the other provisions of the Act, and courts have routinely held that this phrase is ambiguous *See, e.g., EDF,* 82 F.3d at 457 (holding the requirement that implemention of transportation control measures be ''consistent with'' the applicable implementation plan under section 176 of the CAA is ''flexible statutory language'' which does not require ''exact correspondence . . . but only congruity or compatibility,'' thus requiring a court to defer to reasonable agency determinations); *Natural Resources Defense Council* v. *Daley,* 209 F.3d 747, 754 (D.C. cir. 2000) (finding that statute requiring fishing quotas be ''consistent with'' a fishery management plan was ambiguous); *NL Indus.* v. *Kaplan,* 792 F.2d 896, 898–99 (9th Cir. 1986) (statutory phrase ''consistent with the national contingency plan'' in 42 U.S.C. 9607(a)(2)(B) ''does not necessitate strict compliance with [national contingency plan's] provisions''). Moreover, while CAA section 181 identifies timeframes for attaining ozone standards in downwind states, it does not specify deadlines for good neighbor emission reductions.[106] Therefore, Congress has left a gap for EPA to fill. *See Chevron* v. *NRDC,* 467 U.S. 837, 843 (1984). In light of this ambiguity, the good neighbor provision cannot be read to require implementation of upwind emission reductions on a specific timeframe, and a compliance timeframe imposed pursuant to a good neighbor plan should be considered reasonable so long as the EPA has demonstrated that it is chosen in consideration of and is not inconsistent with downwind attainment dates and other relevant attainment planning requirements in title I.

Moreover, the statute does not impose inflexible deadlines for attainment. The general planning requirements that apply to nonattainment areas under subpart 1 of part D provide that the Administrator may extend the default five-year attainment date by up to 10 years ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.'' CAA section 172(a)(2)(A). In the case of the ozone NAAQS, this provision is overridden by the more specific attainment date provisions of subpart 2. The general timeframes provided for attainment in ozone nonattainment areas in the section 181(a)(1) table may be (and often are) modified pursuant to other provisions in section 182, considering factors such as measured ozone concentrations and the feasibility of implementing additional emission reductions. For example, the six-year timeframe for attainment of the 2008 ozone NAAQS in Moderate areas (the July 2018 attainment date) could be extended under certain circumstances to 2020, pursuant to section 181(a)(5). And pursuant to section 181(b)(2), when downwind areas are unable to implement sufficient reductions via feasible control technologies by one attainment date, those areas will be reclassified, or ''bumped up'' in classification, and given a new attainment date with additional time to attain. With ''bump-ups'' like this, the date for an area to attain the 2008 ozone NAAQS could be extended to 2021, 2027, and 2032, and each of these deadlines could be subject to further extensions of up to two years pursuant to section 181(a)(5). Part D further defines what control strategies states must implement by sources in nonattainment areas by each of the applicable attainment dates, incorporating considerations of technological feasibility at each stage. *See, e.g.,* CAA section 172(c)(1), (2) (requiring implementation of *reasonably available* control measures and *reasonable* further progress in designated nonattainment areas); section 182(b)(1)(A), (c)(2)(B) (setting explicit reasonable further progress targets for ozone precursors, and providing an exception when the SIP includes ''all measures that can *feasibly* be implemented in the area, in light of *technological achievability*'' (emphasis added)).

Thus, while the statute indicates that downwind areas should attain as expeditiously as practicable, but no later than the attainment dates specified in sections 172(a)(2) and 181(a)(1), implementation provisions for nonattainment planning lay out myriad exceptions to those deadlines, including for circumstances when attainment is simply infeasible. *See Whitman* v. *Am. Trucking Ass'ns, Inc.,* 531 U.S. 457, 493–94 (2001) (Breyer, J., concurring) (considerations of costs and technological feasibility may affect deadlines established for attainment by the EPA). Thus, the EPA's approach to evaluating upwind emission reductions based on technological feasibility is consistent with the requirements imposed on downwind nonattainment areas required to implement certain ''reasonable'' controls within the targeted timeframe. By contrast, the commenters' premise that all upwind emission reductions must occur before the earliest downwind attainment date, without regard to feasibility, is inconsistent with the framework of section part D as it applies to downwind states.

The ambiguity in the good neighbor provision regarding the relationship of upwind state emission reductions to attainment dates is further heightened with respect to downwind areas that the EPA anticipates are likely to be in attainment in a future year, some of which are already currently attaining the standard (or even designated attainment) [107] but which may have problems maintaining the standard in the future (*i.e.,* maintenance receptors). In the EPA's 2017 air quality modeling performed for the CSAPR Update, the EPA identified six nonattainment receptors and thirteen maintenance receptors. 81 FR 74533. The maintenance receptors were areas that the EPA expected were likely to be in attainment based either on the modeling projections or current monitored data, but which EPA expected may have problems maintaining attainment of the standard under certain circumstances. While many of the maintenance receptors are in areas currently designated nonattainment, the EPA's analysis suggests that these areas will be able to demonstrate (and in many cases have in fact demonstrated) [108] attainment of the NAAQS by the attainment date or otherwise receive a clean data determination that relieves the state of further planning obligations. While the good neighbor provision requires states to prohibit emissions that will ''interfere with maintenance'' of the NAAQS in these areas, there is no deadline for maintenance of the standard comparable to an attainment date for downwind areas that are in nonattainment of the standard. The commenters present no argument as to why upwind obligations for states linked to downwind maintenance areas

[106] It is worth noting that the statutory text of CAA section 181(a) does not itself establish the attainment dates for the 2008 ozone NAAQS. Rather, the EPA undertakes rulemakings to establish the appropriate deadlines after a new or revised ozone NAAQS is promulgated. *See, e.g.,* 2008 Ozone NAAQS SIP Requirements Rule, 80 FR 12264, 12268 (Mar. 6, 2015); 40 CFR 51.1103.

[107] For example, in the CSAPR Update, two maintenance receptors (in Allegan County, Michigan, and Jefferson County, Kentucky) were located in areas designated attainment for the 2008 ozone NAAQS. 40 CFR 81.318 (Kentucky), 81.323 (Michigan).

[108] *See, e.g.,* 80 FR 30941 (June 1, 2015) (determination of attainment of Baltimore, MD (Harford receptor)); 81 FR 26697 (May 4, 2016) (determination of attainment by the attainment date of Cincinnati-Hamilton OH–KY–IN (Hamilton receptor)); 82 FR 50814 (November 2, 2017) (determination of attainment by attainment date of Philadelphia PA–NJ–MD–DE (Philadelphia receptor)).

must be pegged to future analytic years identical to attainment dates which may not themselves be relevant to maintenance receptors.

The EPA further disagrees that the D.C. Circuit's *North Carolina* decision requires the EPA to only use the next relevant attainment date in selecting its future analytic year. The *North Carolina* decision faulted the EPA for not giving *any* consideration to upcoming attainment dates in downwind states when setting compliance deadlines for upwind emission reductions in CAIR: There, the EPA had evaluated *only* the feasibility of implementing upwind controls. 531 F.3d at 911–12. But the court did not hold that the CAA requires that compliance deadlines for good neighbor emission reductions be *identical* to *any* attainment date, let alone the next upcoming one. Nor did the court opine that the EPA would never be justified in setting compliance dates that fall after the next upcoming downwind attainment date (but, as with the future analytic year selected in this action, well before the next date after that one) or that are based, in part, on the feasibility of implementing upwind emission reductions. Indeed, in remanding the rule, the D.C. Circuit acknowledged that upwind compliance dates may, in some circumstances, come *after* attainment dates. *Id.* at 930 (where the attainment date relevant to the discussion was 2010, instructing EPA to ''decide what date, whether 2015 or earlier, is as expeditious as practicable for states to eliminate their significant contributions to downwind nonattainment''). Accordingly, the EPA's consideration of anticipated compliance timeframes for implementation of NO_X control strategies in selecting a future analytic year is not inconsistent with *North Carolina.*

The commenter's citations to *Sierra Club* and *Train* also do not contradict the EPA's interpretation. At issue in *Sierra Club* was whether the EPA could extend the deadline for attainment without reclassifying the area as a ''Severe'' nonattainment area and suspend other planning requirements based on the conclusion that continued nonattainment would be caused by emissions transported from other states. 294 F.3d at 159. Thus, although the court indicated that the attainment dates are ''without exception,'' it specifically stated that this was with respect to ''setbacks owing to ozone transport.'' *Id.* at 161. The court did not contradict the conclusion that states are only required to implement measures that are ''reasonably available'' in downwind areas, deferring to the EPA's interpretation of section 172(c) as not requiring measures that ''would not advance the attainment date, would cause substantial widespread and long-term adverse impacts, or would be economically or technologically infeasible.'' *Id.* at 162–63, quoting 66 FR 608. *Sierra Club* therefore *supports* EPA's position that it is appropriate to consider the feasibility of implementing control strategies when evaluating appropriate compliance timeframes under the good neighbor provision. And although the Supreme Court in *Train* stated that the Act requires states to attain the air quality standards ''within a specified period of time,'' the court pointed this out in a background discussion describing the evolution of the CAA from a prior period when the statute included no attainment dates. 421 U.S. at 65. Moreover, the decision was issued in 1975, before the 1990 amendments added the complicated set of provisions governing the timing concerns and control obligations imposed on states with ozone nonattainment areas. Thus, this decision cannot be relied upon to read out the flexibilities subsequently provided in the Act.[109] (And, of course, in any event it does not address requirements such as the good neighbor provision, which contains no express deadlines or other timeframes.)

CAA section 110(a)(2)(D)(i) (the good neighbor provision) and part D (governing nonattainment requirements), when read together, do not unambiguously require good neighbor emission reductions by a particular deadline. And in *North Carolina* the court simply found that EPA must make an effort to ''harmonize'' its upwind good neighbor reductions with downwind attainment dates. 531 F.3d at 911–12. The EPA has reasonably harmonized these provisions to require good neighbor emission reductions as expeditiously as practicable to benefit downwind areas, taking into account their attainment dates as well as how expeditiously upwind controls could feasibly be implemented. Thus, where the EPA was able to identify substantial upwind emission reductions available by the upcoming attainment date, as in the CSAPR Update, the EPA implemented those reductions. However, where additional controls could not be feasibly implemented by the next immediate attainment date, the EPA has instead reasonably determined it was appropriate to analyze air quality in the future year that represents the most expeditious timeframe for implementation of such controls after that date, but before the following attainment date. The EPA reasonably reads the good neighbor provision and the gaps left in the statutory scheme by Congress to allocate responsibility between the upwind and downwind states in a manner that aligns with the *overall structure* of CAA Title I. *See, e.g.,* 81 FR at 74515–16, 74535–36. Notably, the consequence of reading the statute as the commenters suggest would be profound: Emission reductions would be required even if such reductions could be achieved only by the use of manifestly infeasible upwind control measures, an obligation not imposed on downwind nonattainment areas due to the availability of extensions and reclassifications, described earlier, which provide more time for such areas to implement reductions to attain the relevant NAAQS. *Cf.* S. Rep. No. 95–127, at 42 (1977) (the good neighbor provision is intended to ''mak[e] a source *at least as* responsible for polluting another State as it would be for polluting its own State''—not more responsible) (emphasis added). Nothing in the CAA or judicial precedents requires this result.

Comment: One commenter suggests that EPA cannot rely on the need to avoid over-control to justify the choice of the 2023 analytic year. The commenter states that, in *EME Homer City,* the Supreme Court made clear that, while EPA should strive to avoid over-control, ''the Agency also has a statutory obligation to avoid 'under-control.''' 134 S. Ct. at 1609. The commenter suggests that, should over-control become an issue at some future time, such as in 2023, the EPA can address that issue when it arises.

Response: The EPA disagrees with the commenter's assertion that the EPA has inappropriately weighted concerns about over-control of upwind state emissions. The Supreme Court and the D.C. Circuit have both held that EPA may not require emission reductions that are greater than necessary to achieve attainment and maintenance of the NAAQS in downwind areas. *See EME Homer City,* 134 S. Ct. at 1608; *EME Homer City II,* 795 F.3d at 127. While the Supreme Court indicated that ''EPA must have leeway'' to balance the possibilities of under-control and over-control and that ''some amount of over-

[109] Commenters also cite *Union Electric* for the proposition that economic and technological feasibility may not be considered, but the Court was also reviewing an earlier version of the Clean Air Act that has since been amended to add the specific provisions for ozone nonattainment areas discussed in this section which allow for consideration of economic and technological feasibility. 427 U.S. at 249–50.

control . . . would not be surprising,'' the Court did not indicate that the EPA should ignore the risk of over-control. 134 S. Ct. at 1609. Rather, the Court held, ''If EPA requires an upwind State to reduce emissions by more than the amount necessary to achieve attainment in every downwind State to which it is linked, the Agency will have overstepped its authority, under the Good Neighbor Provision.'' *Id.* at 1608. On remand in *EME Homer City II,* the D.C. Circuit gave that holding further meaning when it determined that the CSAPR phase 2 ozone season NO_X budgets for 10 states were invalid because EPA's modeling showed that the downwind air quality problems to which these states were linked when EPA projected air quality to 2012 would be entirely resolved by 2014, when the phase 2 budgets were scheduled to be implemented. 795 F.3d at 129–30. Thus, the Court did not hold that over-control was a secondary consideration or an issue that could be deferred to some indefinite future course correction, but rather that it was a primary constraint on the EPA's authority.

Under the current circumstances, the EPA is determining that substantial additional emission reductions cannot be achieved until 2023 because the implementation of additional control strategies not already considered and implemented in the CSAPR Update would take at least four years to accomplish. Thus, in order to ensure that the emission reductions that might be achieved from the implementation of such controls would not be more than necessary to address downwind air quality problems, the EPA reasonably evaluated air quality in the future year when implementation of such controls could reasonably and feasibly be expected to occur. Had the EPA instead evaluated air quality in an earlier year (*e.g.,* the 2021 Serious area attainment date), even though emission reductions from these control strategies could not be implemented for several more years, the EPA could not have ensured that the emission reductions would still be necessary by the time of implementation. Here, where the EPA has information indicating that such emission reductions would likely *not* be necessary to address downwind air quality problems by the time they could feasibly and expeditiously be implemented, the D.C. Circuit's holding in *EME Homer City II* suggests that the EPA may not have the authority under the good neighbor provision to require such additional emission reductions. In any event, the court's holding suggests that it is prudent for the EPA to exercise its discretion taking into consideration, among other factors, the prohibition against over-control as one of multiple scientific, policy, and legal considerations informing the selection of a future analytic year for projection of air quality at step 1 of the four-step framework. Thus, it is reasonable for the EPA to harmonize this consideration with the EPA's reasonable anticipation of how long it would take to accomplish substantial additional emission reductions.

Comment: One commenter contends that *North Carolina* required that the EPA model nonattainment and maintenance in the earliest compliance year that would align with the next attainment deadline, which is effectively the 2020 ozone season for the July 2021 Moderate area attainment date. Under the four-step framework, the commenter asserts that the EPA must first identify whether any downwind receptors are expected to have problems attaining or maintaining the 2008 ozone NAAQS in 2020 and then identify the upwind states that are contributing to those downwind problems. The commenter then contends that EPA should evaluate whether those unlawful contributions could be reduced through compliance with state budgets established using the next most cost-effective NO_X control technology that EPA has not yet relied upon to establish a good neighbor provision rule, in this case, starting up and operating idled SNCR controls.

Another commenter states that the Ozone Transport Commission (OTC) has already conducted modeling for 2020, which shows that a number of receptor sites will exceed the 2008 ozone standard in 2020. In light of this modeling, the commenter asserts that it would be arbitrary for the EPA to dismiss the likelihood of continued attainment and maintenance difficulties through and in 2020 or to fail to conduct comprehensive modeling for the years before 2023.

Response: As discussed earlier, the EPA does not agree that it is obligated to review air quality only in a year associated with the next attainment date, particularly under the present circumstances where its analysis of potential control strategies shows that new control strategies cannot be feasibly implemented within that timeframe. Further, the EPA does not believe it would be reasonable to implement the next most costly control technology simply to achieve any amount of additional reductions in the near term. As discussed in section III.B.2 earlier, the EPA has already determined in the CSAPR Update that the operation of idled SNCR is not a cost-effective control strategy as compared to other available short term control strategies because the operation of such controls would result in small emission reductions and small downwind air quality improvements relative to the cost and relative to the much more significant emission reductions and ozone improvements the EPA determined were available from less-costly control strategies.[110] Thus, it is incorrect to refer to the operation of SNCR as the ''next most cost-effective'' control strategy because the EPA concluded the control strategy was simply *not* cost-effective relative to other near-term control strategies.

The EPA notes that it would have been difficult under the circumstances to conduct air quality modeling for *both* the 2020 attainment date suggested by the commenters *and* the 2023 compliance timeframe associated with the additional control strategies discussed earlier. Air quality modeling is a resource- and time-consuming process, as described in more detail in Section III.C and in the technical support documents in the record. Air quality modeling for a future year requires more than three months to develop detailed emission projection inventories for each emissions sector for the future year (with many of the inventories themselves derived from running other models) and to pre-process these emissions data for input to the air quality model. Once the inputs are prepared, a month or more is required to run the air quality model and post-process the outputs in order to produce results, followed by additional analysis to interpret the results. Producing contribution data, if necessary, also requires additional time to run a different, more complex modeling tool (*i.e.,* modeling with source apportionment) and to interpret the results. All told, preparing for, completing, and interpreting air quality modeling data for a future year generally takes on the order of 6 months. Thus, modeling more than one future year would have required significant additional time beyond that available to

[110] For instance, based on 2017 heat input, SNCR coal-fired operation reflected a small portion (8 percent) of the total coal-fired fleet operation. Not only is it a small inventory of units, but the additional reductions from these sources would be small as the SNCR fleet was already averaging a nationwide ozone-season emission rate of 0.16 lb/mmBtu and most SNCR-controlled units were emitting at levels consistent with control operation. Less than 1 percent of the 2017 coal-fleet heat input had a SNCR and was operating at emission rates (greater than 0.3 lb/mmBtu) that would suggest additional reductions would be available from better SNCR operation.

the agency in light of the court-ordered deadline to propose an action *fully* addressing the good neighbor obligation for the 2008 ozone NAAQS for several states by June 30, 2018, and to take final action by December 6, 2018.[111] In light of the resource and time constraints, the EPA determined that it was appropriate to select a single future analytic year that was most likely to permit the agency to fulfill its obligation to determine whether any good neighbor requirements remain unfulfilled for the 2008 ozone NAAQS. Accordingly, the EPA reasonably chose to only model air quality in 2023 in order to target the control strategies that were most likely to impact downwind air quality. *Cf. Sierra Club* v. *Johnson,* 444 F. Supp. 2d 46, 53 (D.D.C. 2006) (explaining that statutory deadlines in the Clean Air Act indicate that Congress intended agencies to prioritize timeliness over perfection).

If the EPA had analyzed air quality in 2020 instead of 2023, in order to strictly adhere to the attainment dates under the Act, as the commenters suggest, and identified downwind air quality problems in that year, the agency would not have been able to identify any cost-effective emission reductions that could be implemented in that year. As explained earlier, the EPA has already addressed control strategies that could be implemented in the short term and that were considered to be cost-effective. If the EPA issued a rule that focused instead only on the limited amount of emission reductions potentially achievable from additional control strategies feasible to implement by 2020—*i.e.,* from the optimization of SNCR—the EPA is not aware of any information that would change its analysis of the cost-effectiveness of those controls, and accordingly believes that those controls would be unlikely to be implemented. Under these circumstances, any downwind air quality problems projected in 2020 would remain.

The EPA believes that a more substantial amount of emission reductions is likely achievable from the implementation of new controls (SCR and SNCR) at EGUs or from the implementation of various control strategies at non-EGUs, but its analysis shows that such control strategies could not be feasibly implemented by the 2020 attainment date (or, indeed, for several years thereafter). Thus, if the EPA had relied on modeling for 2020 to identify downwind air quality issues, as the commenter urges, the EPA could not ensure that implementation of the emission reductions achievable with these control strategies several years later would be justified by continued downwind air quality problems (a concern justified by the results of the 2023 modeling cited in this action). NO_X emissions levels are expected to decline in the future through the combination of the implementation of existing local, state, and federal emission reduction programs and changing market conditions for generation technologies and fuels.[112] Therefore, were the EPA to evaluate downwind ozone concentrations and upwind state linkages in a future year that precedes the date when actual compliance is anticipated (*i.e.,* the timeframe within which additional control strategies can feasibly be implemented), the EPA could not ensure that the emission reductions will be ''necessary to achieve attainment'' in any downwind area by the time they were implemented. *EME Homer City,* 134 S. Ct. at 1608. While the Supreme Court indicated that the EPA was entitled to ''leeway,'' *id.* at 1609, the EPA does not believe it would have been consistent with the *EME Homer City* decisions to impose substantially *greater* emission reductions several years after the modeling year used to identify downwind air quality problems without ensuring that such reductions would be necessary by the time that they can reasonably be anticipated to be implemented, *i.e.,* without ensuring that they would not over-control relative to downwind air quality. Such an approach would only replicate the circumstances the D.C. Circuit found impermissible in CSAPR in *EME Homer City II.*

Thus, if the EPA were to rely on only air quality modeling for 2020, the EPA would be faced with a choice between the possibility of under-control if it promulgated a rule focusing only on the cost-effective emission reductions achievable by the 2020 ozone season, and the potential for a significant amount of over-control if it promulgated a rule requiring substantial emission reductions to be implemented several years after any downwind ozone problems projected in 2020. Given the limited availability of potential emission reductions by the 2020 attainment date, the EPA instead has reasonably chosen to model downwind air quality in a year associated with a compliance timeframe consistent with the NO_X control strategies anticipated to result in more meaningful improvements in downwind areas.

While the EPA is aware of the modeling conducted by the OTC for 2020, the EPA does not believe that this information demonstrates that the EPA's decision to model 2023 was unreasonable. As already noted, the EPA has already implemented all cost-effective control strategies that could be implemented in the near term under the CSAPR Update, and does not believe additional cost-effective control strategies can be implemented by the 2020 ozone season, even if the modeling did appropriately identify downwind air quality problems in that year. Moreover, despite asserting that the OTC used ''EPA-approved methods'' for the modeling, the commenter did not provide sufficient information regarding the inputs and methodology for the modeling such that the EPA could rely on the OTC modeling for purposes of this action. For the same reasons described more fully below in section III.C.4 with regard to the OTC's 2023 projections, the EPA also cannot conclude that the projections are reliable for all of the areas identified as having apparent projected air quality problems in 2020. Without reliable projected design values, the EPA cannot appropriately determine whether emission reductions implemented in that year (even assuming, contrary to EPA's conclusions in this action, that any additional control strategies that could be implemented in that year would be both feasible and cost-effective) would under- or over-control upwind state emissions.

It is worth noting that the EPA was not aware at the time that it selected the 2023 modeling year that the results would show no remaining air quality problems in the East. The EPA certainly anticipated that ozone concentrations would improve over time relative to the 2017 modeling conducted for the CSAPR Update. However, the EPA had previously conducted modeling for 2023, released in Janaury 2017 and discussed further in section III.C, that showed at least one potential maintenance receptor in Tarrant County, Texas. *See* Notice of Data

[111] Order, *New York* v. *Pruitt,* No. 1:18–cv–00406–JGK (S.D.N.Y. June 12, 2018), ECF No. 34 (setting deadline for EPA to address FIP obligation for Illinois, Michigan, Pennsylvania, Virginia, and West Virginia). The EPA's time to conduct the modeling was additionally constrained by the court-ordered deadline to take *final* action addressing the good neighbor obligation for Kentucky by June 30, 2018. *See* Order, *Sierra Club* v. *Pruitt,* No. 3:15–cv–04328 (N.D. Cal. May 23, 2017), ECF No. 73. Because the Kentucky action addressed the same problem of regional interstate ozone transport for the 2008 ozone NAAQS, it was necessary to complete the modeling in time for the EPA to issue a proposed action for Kentucky in advance of that deadline.

[112] Annual Energy Outlook 2018. *Electricity Supply, Disposition, Prices, and Emissions.* Reference Case. Department of Energy, Energy Information Administration.

Availability, 82 FR 1733, 1737.[113] The EPA accepted comments on this modeling and made adjustments to the emission inventories and other modeling inputs before running the model for 2023 again for purposes of this action after determining that 2023 would also be an appropriate year to evaluate for purposes of the remaining good neighbor obligations for the 2008 ozone NAAQS. It was only upon completing this additional modeling run that the EPA could conclude that, for the purposes of these good neighbor obligations, it projected no further air quality problems in 2023.

Comment: One commenter contends that the EPA's approach to determining that 2023 is the appropriate analytic year is a reversal of past agency interpretation regarding the four-step CSAPR framework. The commenter states that the CSAPR Update, though only a partial remedy under the good neighbor provision, acknowledged the 2018 attainment deadline for Moderate nonattainment areas. The commenter asserts that here, in contrast, the EPA has begun by assessing the feasibility of installing an arbitrarily narrow set of new controls without regard to the next attainment date. The commenter contends that this approach turns the CSAPR framework on its head, unreasonably changing agency interpretation without explanation and in violation of the Act.

The commenter notes that control feasibility has played a role in the past regional ozone rules, but contends that it cannot override the obligation to prohibit pollution that prevents attainment and maintenance of the standards, nor can it displace the attainment deadlines. The commenter further asserts that when the EPA has considered feasibility in analyzing ozone-related good neighbor obligations since the *North Carolina* decision, it has not done so in the context of selecting an analytic year, but in apportioning the necessary emission reductions. The commenter explains that, in the original CSAPR, feasibility of installing SO_2 controls did contribute to selecting two future analytic years, but contends that the rule linked both analytic years to attainment deadlines, including analysis of the next upcoming attainment year.

Response: In the CSAPR Update, the EPA focused its analysis on the upcoming attainment date and the limited control strategies that could be implemented within that timeframe with the explicit understanding that such a limited analysis was unlikely to provide a sufficient basis to determine that the good neighbor obligation was fully addressed for all states for the 2008 ozone NAAQS. Here, the EPA is obligated to conduct an analysis that fully addresses the good neighbor provision and thus has selected a future analytic year to coincide with the timeframe in which emission reductions most likely to address that obligation could be implemented, rather than selecting a year in which few emission reductions could be implemented. Selection of an analytic year associated with anticipated future compliance is entirely consistent with the EPA's four-step framework as applied in prior rulemakings. *See, e.g.,* NO_X SIP Call, 63 FR 57450 (using the anticipated 2007 compliance year for its analysis); CAIR, 70 FR 25241 (using the years 2009 and 2010, the anticipated compliance years for the ozone and $PM_{2.5}$ NAAQS, respectively); CSAPR, 76 FR 48211 (using the 2012 compliance year); CSAPR Update, 81 FR 74537 (using the 2017 compliance year).

The commenter is also incorrect to suggest that the EPA's approach is inconsistent with the original CSAPR rulemaking, which addressed good neighbor obligations for the 1997 ozone NAAQS. While it is true that the EPA considered attainment dates in its CSAPR analysis, the commenter fails to acknowledge that the EPA considered the entire suite of attainment dates for the relevant NAAQS, including the ''maximum'' future attainment dates that CSAPR's later compliance phase was intended to address. 76 FR 48277–78. Thus, in establishing two phases of compliance in 2012 and 2014, the EPA considered attainment dates for the ozone NAAQS between 2007 and 2024, and for the $PM_{2.5}$ NAAQS, the EPA considered attainment dates ranging from 2010 to 2019. *Id.* Moreover, as the commenter acknowledges, the EPA established two compliance phases in CSAPR based on the feasibility of implementing certain control strategies. *Id.* at 48278. In the earlier phase, the EPA anticipated that the covered EGUs would undertake more easily implemented control strategies that could be implemented in the short term, including optimization of existing controls, installation of relatively simple NO_X controls, and generation shifting, *see id.* at 48279, the same control strategies already considered and implemented for the 2008 ozone NAAQS in the CSAPR Update. The EPA determined that a later compliance phase was justified based on the need for more time to feasibly implement other controls strategies. *Id.* at 48278 (''Given the time needed to design and construct scrubbers at a large number of facilities, EPA believes the 2014 compliance date is as expeditious as practicable for the full quantity of SO_2 reductions necessary to fully address the significant contribution to nonattainment and interference with maintenance.''). The EPA's approach to the 2008 ozone NAAQS has been consistent with ths earlier approach, except that the EPA has evaluated these two categories of control strategies in two separate actions (*i.e.,* the CSAPR Update and this action) rather than in a single rulemaking specifically to ensure that the first phase of reductions could be implemented as soon as possible.

To the extent that the commenters suggest that the EPA chose an earlier analytic year in prior rulemakings, the EPA notes that it has not done so in all rulemakings. In the NO_X SIP Call, the EPA evaluated air quality in 2007, nine years after the rule was promulgated. 63 FR 57377 (October 27, 1998). In CAIR, which was promulgated in 2005, the EPA evaluated air quality in 2009 and 2010, for the ozone and $PM_{2.5}$ NAAQS, respectively. 70 FR 25241 (May 12, 2005). Thus, the EPA's approach in this action is not inconsistent with these prior actions. Although the EPA evaluated relatively more near-term air quality in CSAPR and CSAPR Update, the EPA expected that certain cost-effective control strategies could be implemented in the near term in those actions. Here, the EPA has already analyzed and implemented those cost-effective control strategies that could be implemented quickly to address the 2008 ozone NAAQS through the CSAPR Update. Accordingly, any further emission reductions that may be required to address the 2008 ozone NAAQS would necessarily be implemented through control strategies that cannot be implemented in the near term and require a longer period for implementation.

C. Air Quality Analysis

In this section, the agency describes the air quality modeling performed, consistent with step 1 of the framework described in section III.A, to identify locations where it expects nonattainment or maintenance problems with respect to the 2008 ozone NAAQS in the 2023 analytic year. This section includes information on the air quality modeling platform used in support of the final determination with a focus on the base year and future base case emission inventories. The June 2018 Air

[113] Although the modeling was conducted to evaluate air quality relative to the more stringent 2015 ozone NAAQS, the data show that the maximum design value for the Tarrant County, Texas monitor was also expected to exceed the 2008 ozone NAAQS.

Quality Modeling Technical Support Document (AQM TSD) in the docket for this action contains more detailed information on the air quality modeling for 2023 used to support the final determination.[114]

In addition to the proposal, 83 FR 31915 (July 10, 2018), the EPA provided an additional opportunity to comment on the air quality modeling platform and air quality modeling results that are used in this determination when it published a Notice of Data Availability (82 FR 1733) on January 6, 2017, which provided the preliminary modeling results for the 2023 analytic year. Specifically, in the NODA the EPA requested comment on the data and methodologies related to the 2011 and 2023 emission inventories and the air quality modeling to project 2023 ozone concentrations and ozone contributions. While the EPA issued this NODA to provide information to assist state interstate transport planning for the 2015 ozone NAAQS (which is set at 70 ppb), the modeling approaches and future year projection methods were also applicable to the 2008 ozone NAAQS (set at 75 ppb). In fact, commenters explicitly commented on these methods with respect to the 2008 ozone NAAQS. The EPA considered comments received on the NODA in the development of the air quality modeling analysis used for proposal. As discussed below and in the Response to Comments (RTC) in the docket for this action, we have considered additional comments on emission inventories and air quality modeling submitted in response to the proposal for this action for this final determination. However, the EPA did not find that any of these comments raised concerns with the modeling discussed at proposal such that additional air quality modeling was merited. Accordingly, the emission inventories and modeling discussed in the following sections is the same information discussed in the EPA's proposed action.

1. Overview of Air Quality Modeling Platform

The EPA performed nationwide photochemical modeling for 2023 to identify nonattainment and maintenance receptors relevant for the 2008 ozone NAAQS. For this action, the EPA performed air quality modeling for two emissions scenarios: (1) A 2011 base year; and (2) the 2023 analytic year (*i.e.,* a business-as-usual scenario in 2023: One without any additional interstate ozone transport requirements beyond those imposed by the CSAPR Update). The modeling results for 2023 presented here were originally released to the public with an accompanying memorandum on October 27, 2017.[115]

The 2011 base year has previously been used to support the CSAPR Update proposal and final rule. The EPA chose to continue using 2011 as the base year because when EPA's analyses commenced, 2011 was the most recent emissions modeling platform available that included future year projected inventories needed for transport analyses. Using 2011 as a base year also remains appropriate from the standpoint of good modeling practice. The meteorological conditions during the summer of 2011 were generally conducive for ozone formation across much of the U.S., particularly the eastern U.S. As described in the AQM TSD, the EPA's guidance for ozone attainment demonstration modeling, hereafter referred to as the modeling guidance, recommends modeling a time period with meteorology conducive to ozone formation for purposes of projecting future year design values.[116] The EPA therefore believes that meteorological conditions and emissions during the summer of 2011 provide an appropriate basis for projecting 2023 ozone concentrations.

For this rule, the EPA used the Comprehensive Air Quality Model with Extensions (CAMx) version 6.40 [117] to simulate pollutant concentrations for the 2011 base year and the 2023 future year scenarios. This version of CAMx was the most recent publicly available version of this model at the time that the EPA performed air quality modeling for this final rule. CAMx is a grid cell-based, multi-pollutant photochemical model that simulates the formation and fate of ozone and fine particles in the atmosphere. The CAMx model applications were performed for a modeling region (*i.e.,* modeling domain) that covers the contiguous 48 United States, the District of Columbia, and adjacent portions of Canada and Mexico using grid cells with a horizontal resolution of 12 km x 12 km. A map of the air quality modeling domain is provided in the AQM TSD.

The 2011-based air quality modeling platform includes 2011 base year emissions, 2023 future year projections of these emissions, and 2011 meteorology for air quality modeling with CAMx. In the remainder of this section, the EPA provides an overview of the 2011 and 2023 emission inventories and the methods for identifying nonattainment and maintenance receptors along with a list of the receptors in the U.S. that EPA projected would have nonattainment and maintenance air quality problems in 2023 (in the business-as-usual scenario).

To ensure the reliability of its modeling results, the EPA conducted an operational model performance evaluation of the 2011 modeling platform by comparing the 8-hour daily maximum ozone concentrations predicted during the May through September ozone season to the corresponding measured concentrations in 2011. This evaluation generally followed the approach described in the modeling guidance. Details of the model performance evaluation are described in the AQM TSD. The model performance results indicate that the 8-hour daily maximum ozone concentrations predicted by the 2011 CAMx modeling platform generally reflect the corresponding magnitude of observed 8-hour ozone concentrations on high ozone days in the 12-km U.S. modeling domain. These results provide confidence in the ability of the modeling platform to provide a reasonable projection of expected future year ozone concentrations and contributions.[118]

[114] And available online at *https://www.epa.gov/airmarkets/proposed-csapr-close-out.*

[115] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1–10, Supplemental Information on the Interstate Transport State Implementation Plan Submissions for the 2008 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I) (Oct. 27, 2017), *available at https://www.epa.gov/airmarkets/october-2017-memo-and-supplemental-information-interstate-transport-sips-2008-ozone-naaqs.*

[116] U.S. Environmental Protection Agency, 2014. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, Research Triangle Park, NC, *available at http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

[117] CAMx v6.40 was the most recent public release version of CAMx at the time the EPA updated its modeling in fall 2017. Comprehensive Air Quality Model with Extensions version 6.40 User's Guide. Ramboll Environ, December 2016, *available at http://www.camx.com/.*

[118] As recommended in the modeling guidance, the acceptability of model performance was judged by considering the 2011 CAMx performance results in light of the range of performance found in recent regional ozone model applications. These other modeling studies represent a wide range of modeling analyses that cover various models, model configurations, domains, years and/or episodes, and chemical mechanisms. Overall, the ozone model performance results for the 2011 CAMx simulations are within the range found in other recent peer-reviewed and regulatory applications. The model performance results, as described in the AQM TSD, demonstrate that the predictions from the 2011 modeling platform correspond to measured data in terms of the magnitude, temporal fluctuations, and spatial differences for 8-hour daily maximum ozone.

2. Emission Inventories

The EPA developed emission inventories for this rule, including emissions estimates for EGUs, non-EGU point sources, stationary nonpoint sources, onroad mobile sources, nonroad mobile sources, wildfires, prescribed fires, and biogenic emissions. The EPA's air quality modeling relies on this comprehensive set of emission inventories because emissions from multiple source categories are needed to model ambient air quality and to facilitate comparison of model outputs with ambient measurements.

To prepare the emission inventories for air quality modeling, the EPA processed the emission inventories using the Sparse Matrix Operator Kernel Emissions (SMOKE) Modeling System version 3.7 to produce the gridded, hourly, speciated, model-ready emissions for input to the CAMx air quality model. Additional information on the development of the emission inventories and on datasets used during the emissions modeling process for this final rule is provided in the October 2017 Technical Support Document ''Additional Updates to Emission Inventories for the Version 6.3, 2011 Emissions Modeling Platform for the Year 2023'' (Emissions Modeling TSD).[119]

As noted earlier, the emission inventories, methodologies, and data used for the air quality modeling discussed in this final rule are the same as the inventories discussed at proposal as no new modeling was performed following the proposal. The inventories incorporate comments received on the January 2017 NODA along with improved data and methods that became available after the NODA modeling was completed. The inventories are documented in the Emissions Modeling TSD. The January 2017 NODA itself was developed after taking into account the several iterations of comments on the data and methods used in the 2011 emissions modeling platform.[120]

As noted above, the EPA uses emissions data from the year 2011 in its base year air quality modeling. The 2011 NO_X and SO_2 EGU emissions are based primarily on reported data from continuous emissions monitoring systems (CEMS). Other EGU pollutants in the 2011 emission inventories are estimated using emissions factors and annual heat input data reported to the EPA. For EGUs without CEMS, the EPA used data submitted to the National Emissions Inventory (NEI) by the states. The 2011 inventories also include some updates to 2011 EGU stack parameters and emissions made in response to comments on the January 2017 NODA. For more information on the details of how the 2011 EGU emissions were developed and prepared for air quality modeling, see the Emissions Modeling TSD.

In developing the 2023 emission inventory, the EPA did not incorporate any new interstate transport emission reductions beyond the CSAPR Update, but the 2023 projected emission inventory does reflect expected changes in activity and emission reductions from on-the-books actions, including planned emission control installations and promulgated federal measures that affect anthropogenic emissions. The emission inventories for air quality modeling include some emissions categories that are held constant between the base and future years, such as biogenic emissions and emissions from agricultural, wild, and prescribed fires.[121] The emission inventories used for Canada were received from Environment and Climate Change Canada in April 2017 and were provided for the years 2013 and 2025. This was the first time that future year projected inventories for Canada were provided directly by Environment and Climate Change Canada and the new inventories are thought to be an improvement over inventories projected by EPA. The EPA used the Canadian emission inventories without adjusting the emissions to the represented year because the EPA lacks specific knowledge regarding Canadian emissions trends and because the interval of years (*i.e.,* 12) was the same as that used for the U.S. modeling which relied on a 2011 to 2023 interval. For Mexico, onroad mobile source inventory data were based on 2011 and 2023 runs of MOVES-Mexico. For area, nonroad, and point source emissions in Mexico, EPA used the Inventario Nacional de Emisiones de Mexico using 2018 and 2025 data projections to interpolate 2023 estimates.

As noted in the October memo, the EPA projected EGU emissions for the 2023 emission inventory based on an approach that combines the latest reported operational data with known and anticipated fleet and pollution controls changes. The EPA begins with the most recent reported ozone season data available at the time of the EPA's analysis—in this case, 2016 SO_2 and NO_X data from units reporting under the Acid Rain and CSAPR programs under 40 CFR part 75. The EPA then updated the 2016 reported emissions with unit-specific adjustments to account for upcoming announced retirements, post-combustion control retrofits, coal-to-gas conversions, combustion controls upgrades, new units, and on-the-books reductions such as CSAPR Update compliance, state rules, and Best Available Retrofit Technology (BART) requirements under the regional haze program of the CAA.[122] The EPA implemented reductions associated with the CSAPR Update in its emission projection, because the 2016 reported data did not reflect the implementation of this rule, by assuming each SCR-controlled unit in the CSAPR Update region not already emitting at or below 0.10 lb/mmBtu would do so beginning in 2017. For emissions from EGUs not reporting under 40 CFR part 75, the EPA largely relied on unadjusted 2011 NEI data for its 2023 assumptions.[123] We note that the EPA's approach to projecting 2023 EGU emissions is consistent with the approach the EPA used in the CSAPR Update to project the future EGU emissions baseline from which to estimate reduction potential. 81 FR 74543.[124] Additional details about the EPA's future year EGU emissions projections are provided in the Emissions Modeling TSD.

Non-EGU point source emissions in the 2011 inventory are generally based on the 2011 NEI version 2.[125] However,

[119] This TSD is also available in the docket for this final action and at *https://www.epa.gov/air-emissions-modeling/additional-updates-2011-and-2023-emissions-version-63-platform-technical.*

[120] The initial modeling platform based on the 2011 National Emissions Inventory (NEI) was first released for public comment in November 2013 through a NODA (78 FR 70935). In developing the CSAPR Update, the EPA subsequently updated the base year 2011 emission inventory as well as future year inventories for that rulemaking and took comment on those updates. Notice of Data Availability, 79 FR 2437 (January 2014); CSAPR Update proposal, 80 FR 46271 (August 2015); CSAPR Update final, 81 FR 74527 (September 2016). Technical support documents are available for each iteration of the inventories on EPA's emissions modeling website: *https://www.epa.gov/air-emissions-modeling/2011-version-6-air-emissions-modeling-platforms.*

[121] Biogenic emissions and emissions from wildfires and prescribed fires were held constant between 2011 and 2023 because: (1) These emissions are tied to 2011 meteorological conditions and (2) the focus of this action is on the contribution from anthropogenic emissions to projected ozone nonattainment and maintenance.

[122] The EPA uses the U.S. EIA Form 860 as a source for upcoming controls, retirements, and new units.

[123] Available at *https://www.epa.gov/air-emissions-modeling/2011-version-63-platform.*

[124] Also see the Ozone Transport Policy Analysis Final Rule Technical Support Document. EPA. August 2016. Available at *https://www.epa.gov/sites/production/files/2017-05/documents/ozone_transport_policy_analysis_final_rule_tsd.pdf.*

[125] For more information on the 2011 National Emissions Inventory version 2, see *https://www.epa.gov/air-emissions-inventories/2011-national-emissions-inventory-nei-technical-support-document.*

the NEI emission inventories must be processed into a format that is appropriate for the air quality model to use. Details on the development and processing of the emissions for 2011 are available in the Emissions Modeling TSD. The TSD also describes the EPA's methodology for developing the non-EGU emissions for the 2023 emission inventory. Projection factors and percent reductions used to estimate 2023 emissions in this final rule reflect comments received through the January 2017 NODA, along with emission reductions due to national and local rules, control programs, plant closures, consent decrees, and settlements. The Emissions Modeling TSD contains details on the factors used and on their respective impacts on the emission inventories.

As noted in the proposal, the EPA updated its methodology for estimating point and nonpoint 2023 emissions from the oil and gas sector after the release of the January 2017 NODA. The projection factors used in the updated 2023 oil and gas emission inventory incorporate state-level factors based on historical growth from 2011–2015 and region-specific factors that represent projected growth from 2015 to 2023. The 2011–2015 state-level factors were based on historical state oil and gas production data published by the U.S. Department of Energy's Energy Information Administration (EIA), while the 2015–2023 factors are based on projected oil and gas production in EIA's 2017 Annual Energy Outlook (AEO) Reference Case without the Clean Power Plan for the six EIA supply regions. The 2017 AEO was the latest available at the time the modeling was performed. Details on the revised methodology that the EPA used to project oil and gas emissions to 2023, as well as changes to the base year 2011 and future year 2023 emission inventories for other sectors, can be found in the Emissions Modeling TSD.

The EPA developed the onroad mobile source emissions for both the 2011 and 2023 inventories using the EPA's Motor Vehicle Emissions Simulator, version 2014a (MOVES2014a). The agency computed these emissions within SMOKE by multiplying the MOVES-based emissions factors with activity data appropriate to each inventory year. MOVES2014a reflects projected changes to fuel usage and onroad mobile control programs finalized as of March 2014, which include emission reductions expected to occur into the future. Therefore, for the 2011 inventory, those rules that were in effect in 2011 are reflected at a level that corresponds to the extent to which each rule had penetrated the fleet and fuel supply by that year, and similarly for the 2023 inventory. Local control programs such as the California Low Emission Vehicle (LEV) III program, also implemented in states other than California that have adopted California's program pursuant to CAA section 177, are included in the onroad mobile source emissions. Activity data for onroad mobile sources, such as the expected vehicle miles traveled in 2023, were projected for future year using trends identified in AEO 2016.

The commercial marine category 3 vessel (''C3 marine'') emissions in the 2011 emission inventory for this rule are equivalent to those in the 2011NEIv2 with the inclusion of updated emissions for California. These emissions reflect reductions associated with the Emissions Control Area proposal to the International Maritime Organization control strategy (EPA–420–F–10–041, August 2010); reductions of NO_X, VOC, and CO emissions for new C3 engines that went into effect in 2011; and fuel sulfur limits that went into effect as early as 2010. The cumulative impacts of these rules, which will achieve additional reductions through 2023, are incorporated in the 2023 projected emissions for C3 marine sources. For this modeling, the larger C3 marine sources are treated with plume rise, thereby putting the emissions into model layers higher than ground-level. This was done because the ships have stacks that release emissions higher than the 20-meter threshold for the ground-level layer in the air quality model. The height at which the emissions are inserted into the model impacts how the emissions are transported within the model. The emissions from the smaller category 1 (C1) and category 2 (C2) vessels are still released into the ground-level layer of the model.

To develop the nonroad mobile source emission inventories other than C3 marine for the modeling platform, the EPA used monthly, county, and process-level emissions output from the National Mobile Inventory Model (NMIM) (*http://www.epa.gov/otaq/nmim.htm*). The nonroad mobile emissions control programs include reductions in emissions from locomotives, diesel engines, and marine engines, along with standards for fuel sulfur content and evaporative emissions. A comprehensive list of control programs included for mobile sources is available in the Emissions Modeling TSD.

The emissions for stationary nonpoint sources in the 2011 emission inventory are generally derived from the 2011 NEI version 2. For more information on nonpoint source emissions in the 2011 emission inventory, see the Emissions Modeling TSD and the 2011NEIv2 TSD. 2023 emissions for stationary nonpoint sources were projected using a variety of factors, including AEO 2017 projections for 2023 and state projection factors using EIA data from 2011–2015. The 2023 emission inventory in the EPA's proposal and this final rule also incorporate information from states about projected control measures or changes in nonpoint source emissions provided in comments to the January 2017 NODA. These changes were limited and are discussed in the Emissions Modeling TSD.

Comment: While some commenters agreed with the reasonableness of the EPA's projections, others contend that the EPA's EGU emission projections are unreasonable for a variety of reasons. These commenters assert that actual 2023 emissions may be higher than modeled due to low CSAPR Update allowance prices or natural gas price uncertainty. They suggest that the 0.10 lb/mmBtu average used by EPA for SCR-controlled units covered by the CSAPR Update is not reasonable because some units may operate at higher levels in the future, and they also suggest that EPA should have incorporated impacts of the proposed repeal of the Clean Power Plan and the proposed Affordable Clean Energy (ACE) rule into its emissions projections.

Response: The EPA disagrees with the suggestion that its 2023 EGU emission projections and the underlying methodology to generate those projections are unreasonable. As with all projections, there is inherent uncertainty, but with respect to EGU NO_X emissions, the EPA's 2023 projections likely reflect a more conservative (*i.e.,* higher) NO_X emissions estimate than comparable alternative methods for projecting future EGU emissions. As explained above, the EPA's 2023 EGU emissions projections used reported 2016 data, adjusting that data based only on currently known changes in the power sector and a change in emission rate to reflect implementation of the CSAPR Update after 2017. As such, the EPA's approach does not account for changes that would be estimated to occur due to economic and other environmental policy factors. Trends in historic emissions data and emission projections using a variety of methods and models suggest that inclusion of these factors would likely further reduce future NO_X emission projections. To illustrate the potential for additional NO_X reductions when considering further factors, we note that

nationwide 2023 EGU NO_X emission projections using various modeling approaches estimate lower NO_X emission futures than the methodology EPA applied here. The EPA's EGU emissions projection methodology estimates that 2023 NO_X emissions will be 20% below 2016 levels whereas EIA estimates that 2023 NO_X emissions will be 21% to 32% below 2016 levels and EPA's Integrated Planning Model estimates that 2023 NO_X emissions will be 28% below 2016 levels.[126] [127]

The EPA neither intends nor expects to be able to predict future emissions from each of thousands of EGUs.[128] And it does not expect each of these SCR-controlled units to emit at the fleet-wide technology-specific average emission rate that it uses in its EGU emissions projections. Some of the units will over-perform and some of the units will under-perform in comparison to this average rate, but the average rate nevertheless reflects both a reasonable compliance pathway in response to the CSAPR Update and a reasonable fleet average for that compliance pathway. Predicting each unit's individual emission rate is an exercise in increased uncertainty, and the use of an average technology-specific fleet emission rate for each unit reduces that uncertainty. Moreover, in a trading program with state-specific caps, sources are permitted the flexibility to emit in a variety of ways provided the state and regional caps are met. The compliance success is not gauged on unit-level operation and emissions, but rather state and regional operation and emission levels. (The same holds true for gauging the reasonableness and accuracy of projections for such programs.) This compliance mechanism promotes more cost-effective attainment of the emissions and air quality goals. Therefore, it is plausible—and entirely consistent with EPA projections—that sources in each state would find an alternative compliance pathway that achieves commensurate emission reductions in equally relevant parts of the upwind airshed.

The EPA's EGU assumptions for 2023 reflected ozone-season emission levels that were approximately 10 percent lower than the CSAPR Update budgets. 2017 ozone-season data reflected emissions that were already 7 percent below the CSAPR Update budgets, reflecting a 21 percent drop from the prior year, a pace of reduction that would, if continued, put actual emissions well below 2023 assumptions. Preliminary 2018 data suggest continuing reductions, and indicate that the CSAPR Update region is already in 2018 emitting at or near the EPA-assumed 2023 emission level. In other words, the emission levels that commenters suggest are unreasonable for 2023 may well already have been achieved or nearly achieved in 2018—five years ahead of the analytic year. In order for emissions in 2023 to be at the levels commenters prefer that the EPA model (*e.g.,* only emission levels that can be ensured via enforceable limits), a decade-long decline in ozone-season emissions would have to not only cease but reverse. Moreover, this would have to occur during a time period where significantly more high-emitting coal generation capacity has announced plans to retire and significantly more zero- or lower-emitting generation capacity is expected to come online. In particular, since the EPA in 2017 made EGU projections for 2023 (in which the EPA only assumed retirements that had already been planned and announced at the time it made the projections), many additional high emitting coal units have announced their plans to retire by 2023. 5.9 gigawatts (GW) of coal capacity retirements were announced and planned for 2019–2022 based on the June 2017 EIA 860m Form, but that same form a year later (June 2018 EIA Form 860m) shows 10.2 GW of coal retirements for that same period, reflecting a near doubling of coal retirement announcements occurring over a one-year period. For instance, Conesville Units 4, 5, and 6 in Ohio have announced their retirement prior to 2023. The EPA in its 2017 projections had assumed these units would be operating and collectively emitting 1,502 tons of NO_X in the 2023 ozone season. These additional retirements announced subsequent to the EPA's analysis further bolster the conclusion that the EPA's emission estimates are conservative (*i.e.,* that they may overpredict 2023 emissions). The magnitude of coal retirements like this, announced after the EPA's analysis, but scheduled to occur prior to 2023, suggests the emissions trend will continue downward. Moreover, the commenters' assertion that an assumed increase would be a more reasonable projection is not supported by compelling analysis or economic modeling: It contradicts the recent historical data, the most recent announcements on retirements and newly built capacity, and the widely used power sector models' outlook for 2023. The EPA believes, supported by the most recent reported data, that its 2023 EGU projections are reasonable and conservative. To the extent that actual 2023 emissions may differ from these projections, they are more likely to be even lower than the assumptions used in the EPA's modeling.

The utility and the reasonableness of the EPA's EGU projections hinge on state-level and regional-level EGU emission projections, not projections for individual units or groups of units within a state. Nonetheless, the EPA notes that the assumed average emission rate for units with SCR optimization potential was quite consistent with the observed compliance measures. That is, the most recent historical data reported by unit operation, discussed in more detail in section III.B.2, bears out EPA assumptions in the CSAPR Update that these units would lower their emission rates in response to that rule, as they did in fact lower their emission rate 45 percent in the first year of the program.

The EPA also disagrees with the assertion that that low allowance prices necessarily mean that emissions will be higher than the EPA's EGU projections. In a scenario where all other elements of the power sector and allowance market are held constant, the commenters observation would likely be realized. However, it is the EPA's experience with trading programs that those other variables do not remain constant over time. In most cases, lower allowance prices reflect the market's expectation that future emissions will be lower than anticipated, rather than higher, as other market forces continue to drive down emissions, thus decreasing demand for allowances authorizing those emissions. The commenters' claim is therefore not consistent with observed historical emission patterns over successive years of an allowance trading program's implementation. For example, regional emissions under the Acid Rain Program and CSAPR have consistently been below the sum of emission budgets, despite relatively low allowance prices.[129] The commenters' claim is also not consistent with forward-looking emissions projections in power sector models. There are a variety of policy and market forces at work beyond CSAPR Update allowance prices that are

[126] EIA 2018 Annual Energy Outlook, Reference Case and High Oil and Gas Resource and Technology side case. Table 8 ''Electricity Supply, Disposition, Prices, and Emissions,'' available at *https://www.eia.gov/outlooks/aeo/.*

[127] IPM Version 6—Initial Run, available at *https://www.epa.gov/airmarkets/clean-air-markets-power-sector-modeling.*

[128] EPA–HQ–OAR–2018–0225–0042 at 98; EPA–HQ–OAR–2009–0491–4512 (RTC at 4).

[129] *See* 2016 Program Progress—Cross-State Air Pollution Rule and Acid Rain Program available at *https://www3.epa.gov/airmarkets/progress/reports/index.html.*

anticipated to continue to drive generation shifting from higher-emitting to lower-emitting sources. These include changes such as: Sustained, lower natural gas prices that make lower-emitting natural gas combined cycle units more economic to build and dispatch; state energy policy and technology advancements which have made renewable energy (*e.g.,* solar and wind) more competitive compared to higher-emitting fossil-fuel fired generation; and the aging of the coal fleet which is leading many companies to conclude that a significant number of higher-emitting plants are reaching the end of their useful economic life. The EPA's experience implementing prior allowance trading programs shows that emissions from covered sources generally trend downwards (regardless of allowance price) as time extends further from the initial compliance year. Both the Acid Rain Program and CSAPR SO_2 allowance banks grew in 2017 from their 2016 levels, indicating that sources are collectively adding to the bank by emitting below state budgets rather than drawing down the bank because of the availability of low-cost allowances. This supports the EPA's belief that the assumptions underlying its projection of 2023 ozone-season NO_X levels for EGUs are reasonable and appropriate.

To the extent that commenters assert that the EPA cannot in its projections perfectly predict future natural gas prices, the EPA agrees. Projections are inherently uncertain, and the EPA believes it has made reasonable and conservative estimates regarding the role of natural gas prices in generation shifting and lower future emission reductions. The EPA's EGU projection method for this action started with existing data and only assumed generation shifting in instances where retirements were scheduled to occur and newly built capacity was scheduled to come online. In other words, the generation shifting assumed for 2023 reflects concrete, planned actions. The agency's applied projection method would suggest that the EPA's 2023 projections are conservative and that more, not less, generation shifting is likely to occur as we remain in a low natural gas price environment that is complemented by debottlenecking of Marcellus region natural gas production through significant new pipeline and pipeline capacity expansion in the 2017–2023 timeframe.

With regard to comments stating that the EPA should factor the proposed ACE rule into its 2023 outlook, the EPA notes it has not done so as the ACE rule is not final. Moreover, it has not factored the Clean Power Plan into its projections given the stay of that rule issued by the Supreme Court. Both of these assumptions are reasonable and consistent with EPA analytic precedents and OMB Circular A–4 guidance (requiring that regulatory baselines should reflect the future effect of current government programs and policies).[130] [131]

Comment: For mobile source and non-EGU emissions, commenters suggest that emissions projections for these sectors could be unreliable due to the EPA's planned rulemaking actions including the proposed repeal of regulations with respect to so-called ''glider'' vehicles, engines, and kits, 82 FR 53442 (Nov. 16, 2017) (proposing to repeal the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2); the proposed Safer Affordable Fuel Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 FR 42986 (Aug. 24, 2018) (proposing to repeal the Corporate Average Fuel Economy (CAFE) standards); and the proposed withdrawal of Control Techniques Guidelines (CTG) for the Oil and Natural Gas Industry, 83 FR 10478 (Mar. 9, 2018).

Response: The EPA disagrees that its 2023 projections are unreliable because of potential changes to other regulations. The EPA first notes any potential regulatory changes to the ''glider'' regulations, the SAFE vehicle rules, and the oil and gas CTG have not been finalized. In general, the mobile source and non-EGU emission inventories do not reflect rulemakings finalized in calendar year 2016 or later, nor do they reflect any rules proposed but not yet finalized since 2016, as only finalized rules are reflected in modeling inventories. The EPA's normal practice is to only include changes in emissions from final regulatory actions in its modeling because, until such rules are finalized, any potential changes in NO_X or VOC emissions are speculative.

In addition, even if emissions were to change as a result of any such final rules, commenters have not indicated how and whether these additional emissions would affect downwind ozone concentrations. The model year 2017–2025 GHG regulations for cars and light trucks were projected to yield small but measurable criteria and toxic emission reductions from vehicles.[132] Because the vehicles affected by the 2017–2025 GHG standards would still need to meet applicable criteria pollutant emissions standards (*e.g.,* the Tier 3 emissions standards; 79 FR 23414), the regulatory impact analysis that accompanied the proposed revision to the GHG standards estimated a very limited impact on criteria and toxic pollutant emissions (increases in upstream emissions and decreases in tailpipe emissions). Moreover, the proposed SAFE Vehicles Rule specifically notes that none of the regulatory alternatives considered ''would noticeably impact net emissions of smog-forming or other 'criteria' or toxic air pollutants.'' 83 FR 42996. As to glider kits in particular, we note that the ''no action assurance'' provided by then-Administrator Pruitt via memorandum of July 6, 2018, was subsequently rescinded via a memorandum signed by Acting Administrator Wheeler on July 26, 2018, and that the EPA has not taken any further final action that would change any requirements for glider vehicles, glider engines, or glider kits.

Finally, with regard to the proposed withdrawal of the oil and gas CTG, we also note that impacts of the CTGs were not included in the modeled inventories, so their withdrawal would not change the results of the modeling.

3. Definition of Nonattainment and Maintenance Receptors

In this action, the EPA is continuing to apply the CSAPR Update approach to identifying nonattainment and maintenance receptors for the 2008 ozone NAAQS in the 2023 analytic year. The EPA here describes the analytical approach pursued in the CSAPR Update with regard to the good neighbor requirements for the 2008 ozone NAAQS. For consistency's sake, the analysis and discussion underlying and presented in this action adheres to that analytical approach.

To give independent effect to both the ''contribute significantly to nonattainment'' and the ''interfere with maintenance'' prongs of section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, consistent with the D.C. Circuit's opinion in *North Carolina,* 531

[130] Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program. EPA. Table ES–8. August 2018. Available at *https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.*

[131] Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission. Table ES–8. Available at *https://www.epa.gov/sites/production/files/2018-08/documents/utilities_ria_proposed_ace_2018-08.pdf.*

[132] *See* Table 4.3–19 in EPA Regulatory Impact Analysis for EPA's Final Rulemaking for 2017–2025 Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards (EPA–420–R–12–016, August 2012).

F.3d at 910–11, the EPA has separately identified downwind areas expected to be in nonattainment of the 2008 ozone NAAQS and downwind areas expected to have problems maintaining the 2008 ozone NAAQS.

Specifically, the EPA has identified as *nonattainment* receptors those monitors that *both* currently measure nonattainment based on measured 2014–2016 design values *and* that the EPA projects will be in nonattainment for the 2008 ozone NAAQS in 2023 (*i.e.,* are projected to have average design values that exceed the NAAQS).

The EPA has identified *maintenance* receptors as those receptors that would have difficulty maintaining the relevant NAAQS in a scenario that accounts for historical variability in air quality at that receptor. The variability in air quality was determined by evaluating the ''maximum'' future design value at each receptor based on a projection of the maximum measured design value over the relevant base-year period. The EPA defines the projected maximum future design value as a potential future air quality outcome consistent with the meteorology that yielded maximum measured concentrations in the ambient data set analyzed for that receptor. The EPA also recognizes that previously experienced meteorological conditions (*e.g.,* dominant wind direction, temperatures, air mass patterns) promoting ozone formation that led to maximum concentrations in the measured data may reoccur in the future. Therefore, the maximum design value gives a reasonable projection of future air quality at the receptor under a scenario in which such conditions do, in fact, reoccur. The projected maximum design value is used to identify downwind areas where emissions from upwind states could therefore interfere with the area's ability to maintain the NAAQS. The EPA therefore assessed the magnitude of the maximum projected design value for 2023 at each receptor in relation to the 2008 ozone NAAQS. Where that value exceeded the NAAQS, the EPA determined that receptor to be a ''maintenance'' receptor for purposes of defining interference with maintenance, consistent with the method used in CSAPR and upheld by the D.C. Circuit in *EME Homer City II.*[133] That is, monitoring sites with a maximum projected design value that exceeds the NAAQS in 2023 are considered to have a maintenance problem in 2023.

All nonattainment receptors also, by definition, meet EPA's criteria for identifying maintenance receptors—*i.e.,* in addition to currently measuring nonattainment and having projected average design values that exceed the NAAQS, the receptors also would have difficulty maintaining the NAAQS accounting for variability in air quality at the receptor. The EPA refers to maintenance receptors that are not also nonattainment receptors as ''maintenance-only'' receptors. *Maintenance-only* receptors therefore include those sites where the projected maximum design value exceeds the NAAQS, but the projected average design value is at or below the NAAQS. In addition, those sites that are currently measuring clean data (*i.e.,* are at or below the 2008 ozone NAAQS), but are projected to be in nonattainment based on the average design value (and that, by definition, are projected to have a maximum design value above the standard) are also identified as maintenance-only receptors. Unlike nonattainment receptors, the EPA did not disqualify potential maintenance receptors based on current clean monitored data in order to account for the possibility that certain areas would fail to maintain the NAAQS in the future, even though they may be currently attaining the NAAQS. *See North Carolina,* 531 F.3d at 910–11 (finding that failure to give independent significance to the maintenance prong ''provides no protection for downwind areas that, despite EPA's predictions, still find themselves struggling to meet NAAQS due to upwind interference'').

For further details regarding the EPA's identification of receptors in the CSAPR Update, see 81 FR 74526.

4. Air Quality Modeling To Identify Nonattainment and Maintenance Receptors

The following summarizes the procedures for projecting future-year 8-hour ozone average and maximum design values to 2023 to determine nonattainment and maintenance receptors. Consistent with the EPA's modeling guidance, the agency uses the air quality modeling results in a ''relative'' sense to project future concentrations. That is, the ratios of future year model predictions to base year model predictions, *i.e.,* the ''relative response factor'' or relative (percent) change in model predictions for each location, are used to adjust monitored ambient ozone design values to generate future year projected design values. The modeling guidance recommends using measured ozone concentrations for the 5-year period centered on the base year as the air quality data starting point for future year projections. This average design value is used to dampen the effects of inter-annual variability in meteorology on ozone concentrations and to provide a reasonable projection of future air quality at the receptor under ''average'' conditions. In addition, the EPA uses the projection of the maximum base period design value to provide a projection of future year air quality during meteorological conditions more favorable for ozone formation than on average. Because the base year for this analysis is 2011, the EPA is using the base period 2009–2013 ambient ozone design value data to project 2023 average and maximum design values in a manner consistent with the modeling guidance.

The approach for projecting future ozone design values involved the projection of an average of up to three design value periods, which include the years 2009–2013 (design values for 2009–2011, 2010–2012, and 2011–2013). The 2009–2011, 2010–2012, and 2011–2013 design values are accessible at *www.epa.gov/airtrends/values.html.* The average of the three design values creates a ''5-year weighted average'' value. The 5-year weighted average values were then projected to 2023. To project 8-hour ozone design values, the agency used the 2011 base year and 2023 future base-case model-predicted ozone concentrations to calculate relative response factors (RRFs) for the location of each monitoring site. The RRFs were then applied to actual monitored data, *i.e.,* the 2009–2013 average ozone design values (to generate the projected average design values) and the individual design values for 2009–2011, 2010–2012, and 2011–2013 (to generate potential maximum design values). Details of this approach are provided in the AQM TSD.

The EPA considers projected design values that are greater than or equal to 76.0 ppb to be violating the 2008 ozone NAAQS in 2023.[134] As noted previously, nonattainment receptors are those sites that both have projected average design values greater than the 2008 ozone NAAQS and are also

[133] *See* 795 F.3d at 136.

[134] From 40 CFR 50.15(b): ''The 8-hour primary and secondary ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to 0.075 ppm, as determined in accordance with appendix P to this part.'' The agency's use of 76.0 ppb (or 0.076 parts per million) to identify violations of the 2008 Ozone NAAQS in this action is consistent the 2008 ozone NAAQS regulation. From section 2.2 of appendix P to 40 CFR part 50: ''The computed 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations shall be reported to three decimal places (the digits to the right of the third decimal place are truncated, consistent with the data handling procedures for the reported data).''

violating the NAAQS based on the most recent measured air quality data. Therefore, as an additional step, for those sites that are projected to be violating the NAAQS based on the average design values in 2023, the EPA examined the most recent measured design value data to determine if the site was currently violating the NAAQS. For the proposal, the agency examined ambient data for the 2014–2016 period, which form the basis for the most recent available, certified measured design values at the time of proposal. Certified measured design value data for 2015–2017 are now available and have been included in the analysis of projected receptor. The 2015–2017 design values can be found in a spreadsheet file in the docket for this rule. Considering the 2015–2017 measured design values does not change the determination regarding nonattainment and maintenance receptors in 2023 for the 2008 NAAQS.

As discussed above, maintenance-only receptors include both: (1) Those sites with projected average and maximum design values above the NAAQS that are currently measuring clean data; and (2) those sites with projected average design values below the level of the NAAQS, but with projected maximum design values of 76.0 ppb or greater.

In projecting these future year design values, the EPA applied its own modeling guidance,[135] which recommends using model predictions from the ''3 x 3'' array of grid cells surrounding the location of the monitoring site to calculate the relative response factors and identify future areas of nonattainment. In addition, in light of comments on the January 2017 NODA and other analyses, the EPA also projected 2023 design values based on a modified version of this approach for those monitoring sites located in coastal areas. In brief, in the alternative approach, the EPA eliminated from the design value calculations those modeling data in grid cells not containing a monitoring site that are dominated by water (*i.e.,* more than 50 percent of the land use in the grid cell is water).[136] For each individual monitoring site, the EPA is providing the base period 2009–2013 average and maximum design values, 2023 projected average and maximum design values based on both the 3 x 3 approach and the alternative approach affecting coastal sites, and 2014–2016 measured design values.

Tables III.C–1 and III.C–2 contain the ambient 2009–2013 base period average and maximum 8-hour ozone design values, the 2023 projected baseline average and maximum design values, and the ambient 2014–2016 design values for the air quality monitors that were identified in the CSAPR Update as having remaining problems attaining or maintaining the 2008 ozone NAAQS in 2017, even with CSAPR Update implementation. The tables present the projected design values under both the 3x3 approach and the alternative approach. Table III.C–1 contains data for the monitors identified as remaining nonattainment receptors in 2017 in the CSAPR Update and Table III.C–2 contains data for the monitors identified as remaining maintenance-only receptors in 2017 in the CSAPR Update.[137] The design values for all monitoring sites in the contiguous U.S. are provided in the docket. According to the EPA's modeling, there are no remaining nonattainment or maintenance receptors in the eastern U.S. in 2023 regardless of which approach to projecting design values is used.

TABLE III.C–1—BASE PERIOD, CURRENT (2014–2016), AND 2023 PROJECTED DESIGN VALUES (ppb) FOR MONITORS IDENTIFIED AS REMAINING NONATTAINMENT RECEPTORS IN 2017 IN THE CSAPR UPDATE

Monitor ID	State	County	2009–2013 Avg	2009–2013 Max	2014–2016	2023en ''3x3'' Avg	2023en ''3x3'' Max	2023en ''No Water'' Avg	2023en ''No Water'' Max
090019003	Connecticut	Fairfield	83.7	87	85	72.7	75.6	73.0	75.9
090099002	Connecticut	New Haven	85.7	89	76	71.2	73.9	69.9	72.6
480391004	Texas	Brazoria	88.0	89	75	74.0	74.9	74.0	74.9
484392003	Texas	Tarrant	87.3	90	73	72.5	74.8	72.5	74.8
484393009	Texas	Tarrant	86.0	86	75	70.6	70.6	70.6	70.6
551170006	Wisconsin	Sheboygan	84.3	87	79	70.8	73.1	72.8	75.1

TABLE III.C–2—BASE PERIOD, CURRENT (2014–2016), AND 2023 PROJECTED DESIGN VALUES (ppb) FOR MONITORS IDENTIFIED AS REMAINING MAINTENANCE-ONLY RECEPTORS IN 2017 IN THE CSAPR UPDATE

Monitor ID	State	County	2009–2013 Avg	2009–2013 Max	2014–2016	2023en ''3x3'' Avg	2023en ''3x3'' Max	2023en ''No Water'' Avg	2023en ''No Water'' Max
090010017	Connecticut	Fairfield	80.3	83	80	69.8	72.1	68.9	71.2
090013007	Connecticut	Fairfield	84.3	89	81	71.2	75.2	71.0	75.0
240251001	Maryland	Harford	90.0	93	73	71.4	73.8	70.9	73.3
260050003	Michigan	Allegan	82.7	86	75	69.0	71.8	69.0	71.7
360850067	New York	Richmond	81.3	83	76	71.9	73.4	67.1	68.5
361030002	New York	Suffolk	83.3	85	72	72.5	74.0	74.0	75.5
481210034	Texas	Denton	84.3	87	80	69.7	72.0	69.7	72.0
482010024	Texas	Harris	80.3	83	79	70.4	72.8	70.4	72.8
482011034	Texas	Harris	81.0	82	73	70.8	71.6	70.8	71.6
482011039	Texas	Harris	82.0	84	67	71.8	73.6	71.8	73.5

[135] U.S. Environmental Protection Agency, 2014. Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze. *http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

[136] A model grid cell is identified as a ''water'' cell if more than 50 percent of the grid cell is water based on the 2006 National Land Cover Database. Grid cells that meet this criterion are treated as entirely over water in the Weather Research Forecast (WRF) modeling used to develop the 2011 meteorology for EPA's air quality modeling.

[137] The EPA recognizes that the modeling results indicate a substantial projected improvement in ozone air quality (compared to current measured ozone levels) at several locations, including three monitors in Connecticut located near the sea—*i.e.,* on the order of 10–12 ppb.

Comment: The EPA received several comments regarding its projection of 2023 ozone design values. The commenters suggest that certain monitoring sites in the New York City area will continue to have nonattainment and/or maintenance problems for the 2008 NAAQS in 2023, a claim which is contrary to the results of the EPA's modeling which shows that nonattainment and maintenance problems will be resolved in all areas outside of California by 2023. The assertion by the commenters is based on their examination of measured design values for 2017 and modeling-based projected design values for 2017 and 2023. First, some commenters compared the projected design values for 2017 based on modeling by the OTC using the Community Multi-scale Air Quality Model (CMAQ) to the 2017 design values projected by the EPA using the CAMx model. Those commenters point out that the 2017 CMAQ-based design values are higher than the EPA CAMx design values by up to 9.2 ppb at certain sites in the Northeast. Commenters also point to data showing that the greatest difference between the OTC CMAQ and EPA CAMx 2017 design values is at coastal monitoring sites, such as the Susan Wagner site in New York and the Westport site in Connecticut. Second, commenters compared the 2017 OTC CMAQ and EPA CAMx design values to the corresponding 2017 measured design values and contend that the CMAQ-based 2017 design values compare favorably to the measured data and that the CAMx-based design values under-predict the measured data. One commenter identified eight sites in Connecticut that are currently measuring nonattainment based on 2015–2017 design values which the EPA's CAMx modeling predicts will be in attainment in 2017. Third, commenters point to OTC CMAQ-based design values for 2023 which indicate that there will be two monitoring sites in Connecticut with design values that exceed the 2008 NAAQS in that year. Fourth, the commenters note that the design values based on OTC CAMx modeling for 2023 are comparable in magnitude to the corresponding 2023 design values based on EPA's 2023 CAMx modeling. Commenters use this information to contend that the CAMx model provides a forecast that is too optimistic and that the EPA should rely upon the higher projected design values for 2023 from the OTC CMAQ modeling.

Some of the commenters point out that the EPA's 2023 modeling projects a maximum design value of 75.9 ppb at Westport site and contend that, before the EPA can conclude that areas will attain by 2023 with only the narrowest of margins (*i.e.,* 0.1 ppb), the EPA must conduct its own analysis of the emission response differences between CMAQ and CAMx. Similarly, some commenters said that the EPA must address the demonstrated tendency of its methodology to under-predict real-world ozone levels in many downwind locations and that the EPA's modeling is not sufficiently conservative to give confidence that attainment is assured even as late as 2023.

Response: The EPA does not agree that the modeling provided by commenters should affect the EPA's reliance on its own 2023 modeling. First, the commenters focused on projected *average* design values and completely ignore the EPA's projected *maximum* design values when comparing modeled to measured design values for 2017.[138] The projected maximum design values are intended to represent future ozone concentrations when meteorological conditions are more conducive to ozone formation than on average. Analysis of meteorological conditions for the summers of 2015, 2016, and 2017 indicate that meteorology was more conducive than average for ozone formation during these summers in the Northeast.[139] Comparing both the 2017 modeled average design values and maximum projected design values from the EPA's modeling to the 2017 measured design values indicates that the projected maximum design values are, in most cases, closer in magnitude to the 2017 measured design values than the 2017 model-projected average design values, particularly for the Susan Wagner and Westport sites cited by commenters. Specifically, the 2017 measured design value and the EPA's modeled maximum design value at the Susan Wagner site are 76 ppb and 77.8 ppb, respectively. At the Westport site the 2017 measured design value and the EPA's modeled maximum design value are 83 ppb and 79.5 ppb, respectively. At the site in Philadelphia County, Pennsylvania the modeled 2017 maximum design value was 1.1 ppb lower than the corresponding measured value (78 ppb), and at the site in Harford County, Maryland, the modeled value was higher, not lower, than the measured 2017 design value (75 ppb). As part of our response to the commenters' concerns about the EPA's modeling we also compared the 2017 measured design values to the EPA's projected 2017 maximum design values for 81 sites in the Northeast that had both a 2009 to 2013 base period measured maximum design value exceeding the 2008 NAAQS and valid 2017 measured design values. As a result of this analysis we found that the 2017 projected maximum design values are only 0.5 ppb higher than the corresponding 2017 measured design values, on average across these 81 sites, and the median difference is −0.9 ppb. Thus, while the EPA recognizes that there are uncertainties in the modeling, the results for sites in the Northeast do not, on balance, show a notable bias in the EPA's design value projections. It is not unreasonable that there may be some differences in terms of over- and under-estimates between the modeling-based projections for a future year and the measured data in part because the meteorology of the future year cannot be known in advance. For instance, the degree of ozone conducive meteorology in a particular region can vary from year to year such that some years are more conducive then others. Since it is not possible to forecast meteorology for analytic years in the future, the EPA chose to model meteorological conditions from a historical time-period when meteorology was generally conducive for ozone formation, as recommended in the EPA's modeling guidance.

For 2023, the modeling results show that the EPA and OTC CAMx-based 2023 average design value projections are consistent on an individual site basis for all sites in the Northeast.[140] Both the EPA and OTC CAMx modeling indicate that there will be no sites with design values that exceed the 2008 NAAQS by 2023.

Moreover, the OTC CMAQ 2023 design values are, in fact, fairly consistent with both the OTC and EPA CAMx-based 2023 projections at nearly all sites. As an example, the average and median differences between the OTC CMAQ and EPA CAMx 2023 design values for sites in the Northeast are 0.15 ppb and 0.70 ppb, respectively. However, while the EPA and OTC CAMx modeling both indicate that all sites in the Northeast will be clean for the 2008 NAAQS by 2023, the OTC CMAQ modeling projects that two sites will have average design values above the 2008 NAAQS by 2023. The two sites projected to exceed the 2008 NAAQS in

[138] Note that the analysis of modeled ozone design values described in this response are based on the ''3x3'' method to be consistent with the modeling data submitted by the commenter.

[139] See the Appendix in to the Considerations for Identifying Maintenance Receptors Memo (signed on October 19, 2018).

[140] The OTC did not provide data on projected future year maximum design values based on their modeling.

2023 with OTC CMAQ modeling are the Westport and the Susan Wagner site. The CMAQ projected design values for these two sites are not only inconsistent with the CAMx modeling, but they are also inconsistent with the CMAQ modeling for other nearby sites in Connecticut, New York, and New Jersey. For example, based on the OTC CMAQ modeling, ozone at the Susan Wagner site is projected to decline by only 5 percent between 2011 and 2023, whereas at a site in nearby Bayonne, New Jersey, ozone is projected to decline by 13 percent over this same time period. Similarly, ozone at the Westport site is projected to decline by only 3 percent between 2011 and 2023 with CMAQ, but at other sites along the Connecticut coastline (*i.e.,* sites in Greenwich, Stratford, and Madison), ozone is projected to decline by 10 to 19 percent. In addition, the OTC CMAQ results for these two sites (*i.e.,* Westport and Susan Wagner) are inconsistent with ozone reductions predicted by CMAQ at other sites in the New York City area which range from 11 to 18 percent. In contrast, the EPA's 2023 modeling shows that ozone is projected to decline by 13 percent at the Westport site which is an amount far greater than the 3 percent predicted by OTC's CMAQ modeling. The EPA's predicted ozone reductions at Westport, however, are consistent with the predicted reductions at other coastal sites in Greenwich, Madison, and Stratford, all of which are in the range of 13 to 18 percent. Similarly, ozone at the Susan Wagner site is projected to decline by 12 percent between 2011 and 2023 based on the EPA's CAMx modeling which is consistent with the 15 percent reduction predicted at the nearby site in Bayonne, New Jersey. Thus, the change in ozone from 2011 to 2023 predicted by the EPA's CAMx modeling is much more spatially consistent within the New York City area than OTC's CMAQ modeling which predicts spatially anomalous results at two sites (*i.e.,* Westport and Susan Wagner).

While it is possible ozone levels in 2023 at the Westport and/or Susan Wagner sites may be higher than at other sites in the New York City area, the commenter fails to provide any explanation regarding the large difference in the CMAQ-based model response to emission reductions compared to the response at nearby sites and to other sites in the New York City area. Based on the complicated photochemistry in this area, it is possible that ozone monitoring sites closest to the large NO_X emissions in New York City may be less responsive to NO_X controls compared to sites further downwind. Due to non-linear chemistry, sites very close to the city may experience increases in ozone or less reduction than other nearby sites on some days in response to local emission reductions in NO_X. Thus, we might expect that monitoring sites in Connecticut that are closer to New York City would show less reduction in ozone than sites in Connecticut that are further downwind. However, as noted above, in the OTC CMAQ modeling, the closest downwind Connecticut site (Greenwich) has a 10-percent modeled ozone reduction, while the Westport site, which is slightly farther downwind, has only a 3-percent modeled ozone reduction. The commenter did not provide any information to explain why the OTC CMAQ modeling results for the Westport and Susan Wagner monitoring sites are dissimilar to other nearby sites or why the commenters believe that the OTC CMAQ modeling provides a more representative ozone projection for these two sites compared to the EPA and OTC CAMx-based modeling.

Information in the OTC air quality modeling technical support document (OTC TSD) provides some insight into why their CMAQ and CAMx modeling shows a dramatic difference in model response in New York City and coastal Connecticut.[141] First, the OTC's comparison of CMAQ and CAMx 2011 base year model predictions to the corresponding measured data indicate that the CAMx 2011 predictions have lower error and higher correlation with measured data (*i.e.,* better model performance) than the CMAQ 2011 predictions for the 8 monitoring sites in Connecticut and New York that are included in Table 6–6 of the OTC TSD. Second, examining the 2011 modeled data for the top-10 days used to calculate the site-specific RRF indicates that the CMAQ 2011 predictions are not representative of ozone concentrations at the location of high ozone coastal sites in New York City and coastal Connecticut for which data are provided in the OTC TSD. For example, Figures 6–81 through 6–90 in the OTC TSD provide time series plots of measured and CMAQ and CAMx-modeled ozone data for the days used to calculate the RRF at each of 5 monitoring sites in the Northeast (2 sites in coastal Connecticut, 2 sites in New York City, and 1 site in Maryland). These figures show several types of data including (1) the 2011 measured and corresponding model-predicted hourly ozone concentrations at the monitoring site and (2) the highest 2011 and 2017 modeled 8-hour daily maximum ozone concentrations in the 3 x 3 array of grid cells including and surrounding the monitoring site.[142] The latter set of data are used in the calculation of the RRF which, in turn, is used to project the future year design value at each site. It is expected that the highest modeled ozone values based on the 3 x 3 approach for calculating RRFs will be equal to or greater than the modeled value in the grid cell containing the monitor. However, as evident from the figures in the OTC TSD, the 2011 and 2017 ozone concentrations used for projecting design values based on OTC's CMAQ modeling overstate the modeled values at the coastal monitoring sites by a notably larger amount than the corresponding 2011 predictions from OTC's CAMx modeling. The clearest example of this is at the Queens College site in New York City where the CMAQ-based 2011 and 2017 data for the ten days used for the RRF calculation appear to be 50 to 60 ppb above the highest hourly measured concentrations at the location of the monitoring site. In contrast, the CAMx data used for the RRF calculation appear to be within 20 ppb of the highest hourly measured data on all ten days at this site. Overall, the OTC CAMx 2011 ozone concentrations used to calculate the RRF align closely with the model predictions and measured data at the monitoring sites for which data are provided in the OTC TSD. Thus, the CAMx-based projections are more likely to be representative than OTC's CMAQ modeling of the expected ozone response to emissions reductions at the location of the monitoring site.

Typically, the highest modeled concentrations near coastal monitoring sites are found in adjacent over-water grid cells. Ozone can be higher over water than over land because mixing of the air is more limited over water and titration (*i.e.,* removal) by chemical reaction of ozone with fresh NO emissions is less prevalent. Thus, it is possible that the apparent anomalous 2017 design values at the Westport and Susan Wagner sites derived from OTC's CMAQ modeling may be the result of using predicted ozone values in the RRF calculations that are not representative of concentrations at the monitoring site. This hypothesis is supported by the

[141] Ozone Transport Commission/Mid-Atlantic Northeastern Visibility Union 2011 Based Modeling Platform Support Document, October 18, 2018. This document can be found in the docket for this action.

[142] In Figures 6–81 through 6–90 of the OTC TSD the highest modeled ozone concentration in the 3 x 3 array of grid cells is referred to as the ''9-Grid 8HMX'' value.

OTC's own analysis in which the OTC applied an approach that limits the use of over-water ozone predictions in the calculation of projected design values (*i.e.,* Land Water Mask or LWMASK). When the OTC applied the LWMASK approach, the projected 2017 design values at the Westport and Susan Wagner sites were lowered significantly. Specifically, the 2017 OTC CMAQ design value at Westport drops from 83 ppb to 76 ppb and from 78 ppb to 72 ppb at Susan Wagner by limiting the amount of over water grid cells used in the projections. Thus, the concerns with the OTC's application of CMAQ for 2017, as described above, call into question the validity of their CMAQ modeling for other future years.

Regarding the comment that the EPA's modeling predicts attainment in 2017 at eight monitors in Connecticut that are currently measuring nonattainment, it is entirely reasonable to project that these sites will be in attainment by 2023 as a result of the roughly 19 percent reduction in aggregate ozone season NO_X emissions that is expected to occur between 2017 and 2023 for the states covered by the CSAPR Update. Despite large regional and local NO_X emission reductions, ozone has remained stubbornly high at sites in Connecticut. Larger ozone reductions are expected at these sites in the future as NO_X emissions continue to go down, and the local ozone chemistry becomes more responsive to NO_X reductions. That is, because of the high NO_X emissions in the New York City area and the non-linear chemistry associated with ozone formation, the benefits of NO_X emission reductions may not have been fully realized to date at downwind sites in Connecticut. More notable reductions in ozone at these sites are expected as NO_X emissions decline further, in response to existing control programs and other factors influencing emissions. Large, short-term reduction in ozone is not unprecedented at historically high-ozone sites in other parts of the Northeast Corridor. Specifically, the measured design values at the Edgewood monitoring site in Harford County, Maryland, which is downwind of the Baltimore/Washington, DC urban area, declined by nearly 20 percent between 2012 and 2014 and have been below the level of the 2008 NAAQS since 2014, as shown by the data in Table III.C–3, below. Thus, the EPA disagrees that the monitored and OTC CMAQ modeling data cited by the commenter indicate that the EPA modeling projections for 2023 are not reliable.

TABLE III.C–3—DESIGN VALUES (PPB) AT EDGEWOOD SITE IN HARFORD COUNTY, MD, 2007 THROUGH 2017

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Design Value	94	91	87	89	92	93	85	75	71	73	75

As the commenters have suggested, the EPA did perform an analysis comparing model response of ozone to emissions between CMAQ and CAMx and found that both models give very similar responses when both models are run with similar inputs (*e.g.,* emissions, meteorology, and boundary concentrations) and similar technical constructs (*e.g.,* vertical layer structure and vertical mixing method).[143] The results of that study are further supported by a more recent comparison by the EPA of projected CAMx and CMAQ ozone design values using the EPA's version 6.2 of the 2011 emissions platform [144] with 2025 as the future year.[145] [146] For the two sites in the New York City area that are the focus of the comments (*i.e.,* Westport and Susan Wagner), the EPA's analysis shows that both models predict a comparable reduction at each of these sites. Specifically, at the Westport site the 2009 to 2013 base period ozone design values were projected to decline by 9 percent with CMAQ and by 11 percent with CAMx. This difference in model response equates to only a 1.8 ppb difference in projected 2025 design values at this site, which is far less than the 9.2 ppb difference between CMAQ and CAMx seen in the OTC's analysis of 2023 modeling results. Similarly, at the Susan Wagner site the base period ozone design value was projected to decline by 11.2 percent with CMAQ and 11.7 percent with CAMx in EPA's modeling. The difference in model response at the Susan Wagner site equates to only a 0.4 ppb difference in the projected 2025 design, which is far less than the 5.8 ppb difference between CMAQ and CAMx in OTC's 2023 analysis.[147] Furthermore, a study sponsored by the Texas Commission on Environmental Quality also found that CAMx and CMAQ provide a comparable response to the same amount of NO_X and VOC emission reductions.[148] In summary, based on the EPA's analysis of its own data and the data available from commenters, we disagree with the commenter's contention that the EPA's CAMx-based modeling does not provide a credible projection of 2023 ozone design values.

5. Pollutant Transport From Upwind States

Although the EPA has conducted nationwide contribution modeling for 2023, the EPA does not believe this information is necessary for evaluating remaining good neighbor obligations for the 2008 ozone NAAQS because there are no ozone monitoring sites in the eastern U.S. that are expected to have problems attaining or maintaining the 2008 ozone NAAQS in 2023. Nonetheless, the results of the EPA's state-by-state ozone contribution modeling were released in a memorandum on March 27, 2018, and are also available in the docket for this action.[149] The EPA notes that, while the air quality modeling did identify potential remaining problem receptors in California in 2023, none of the EPA's prior analysis nor its current contribution modeling have linked any of the CSAPR Update states in the eastern U.S., whose good neighbor obligations for the 2008 ozone NAAQS

[143] Baker, K., S. Phillips, and B. Timin. ''Operational Evaluation and Model Response Comparison of CAMx and CMAQ for Ozone and $PM_{2.5}$'', 7th Annual Community Modeling & Analysis System Conference, October 2008.

[144] See the Technical Support Document (TSD): Preparation of Emissions Inventories for the Version 6.2, 2011 Emissions Modeling Platform, EPA, August 2015.

[145] A description of the CAMx modeling can be found in the Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, EPA–452/R–15–007, September 2015.

[146] A description of the EPA CMAQ modeling can be found in the docket.

[147] An Excel file containing the differences in projected design values between EPA's CMAQ and CAMx modeling for sates along the Northeast Corridor from Washington, DC to Connecticut can be found in the docket for this final action.

[148] Final Report: Three-Dimensional Performance Comparison of CAMx and CMAQ Using the 2013 DISCOVER–AQ Field Study Data Base. Prepared by Ramboll under contract to the Texas Commission on Environmental Quality, August 2015.

[149] Information on the Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I). EPA Memorandum to Regional Air Division Directors. March 27, 2018. Available at *https://www.epa.gov/sites/production/files/2018-03/documents/transport_memo_03_27_18_1.pdf.*

are the subject of this action, to any of those potential remaining problem receptors. Therefore, the EPA does not believe there is a need to further evaluate the contributions of the 20 CSAPR Update states to any downwind receptors identified in the EPA's 2017 modeling conducted for the CSAPR Update.

D. Final Determination

Consistent with the proposed action, the EPA has determined that, with CSAPR Update implementation, 20 eastern states' good neighbor obligations for the 2008 ozone NAAQS are fully addressed.[150] The states covered by this action are listed in table III.D–1. The EPA's determination is based on findings that: (1) 2023 is a reasonable future analytic year for evaluating ozone transport problems with respect to the 2008 ozone NAAQS; and (2) for the purposes of interstate ozone transport, air quality modeling projections for 2023 indicate that no further air quality problems will remain in the east in 2023.

As explained in more detail in section III.B, the EPA's selection of 2023 as a reasonable future analytic year is supported by an assessment of attainment dates for the 2008 ozone NAAQS and feasibility of implementing control strategies to reduce NO_X in CSAPR Update states. The EPA's NO_X control strategy feasibility assessment prioritizes NO_X control strategies in CSAPR Update states that would be additional to those strategies that were already quantified into CSAPR Update emissions budgets. The EPA finds: (1) That 2023 is an appropriate future analytic year, taking into consideration relevant attainment dates, because it is the first ozone season for which significant new controls to reduce NO_X could be feasibly installed across the CSAPR Update region and thus represents the timeframe that is as expeditious as practicable for upwind states to implement additional emission reductions.

Furthermore, as described in section III.C, the EPA finds: (2) That its analysis of ozone concentrations in step 1 for the 2023 analytic year indicates that there are no monitoring sites in the east that are projected to have nonattainment or maintenance problems with respect to the 2008 ozone NAAQS in 2023. Together, these two findings lead to EPA's final determination that—with CSAPR Update implementation—CSAPR Update states are not expected to significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states in 2023.

As a result of this final determination, the EPA finds that the promulgation of the CSAPR Update fully satisfies the requirements of the good neighbor provision for the 2008 ozone NAAQS for these states, and therefore also satisfies the agency's obligation pursuant to CAA section 110(c) for these states. Accordingly, the EPA has no remaining obligation to issue FIPs, nor are the states required to submit SIPs, that would further reduce transported ozone pollution beyond the existing CSAPR Update requirements with regard to the 2008 ozone NAAQS.

TABLE III.D–1—STATES COVERED BY THE FINAL DETERMINATION REGARDING GOOD NEIGHBOR OBLIGATIONS FOR THE 2008 OZONE NAAQS

State name
Alabama
Arkansas
Illinois
Indiana
Iowa
Kansas
Louisiana
Maryland
Michigan
Mississippi
Missouri
New Jersey
New York
Ohio
Oklahoma
Pennsylvania
Texas
Virginia
West Virginia
Wisconsin

Consistent with this final determination, this action also finalizes minor revisions to the existing state-specific sections of the CSAPR Update regulations for states other than Kentucky and Tennessee. The revisions will remove the current statements indicating that the CSAPR Update FIP for each such state only partially addresses the state's good neighbor obligation under CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. Because states can replace the CSAPR Update FIPs with SIPs, these revisions will also mean that a SIP that is approved through notice-and-comment rulemaking to fully replace the CSAPR Update FIP for one of these states would also fully address the state's good neighbor obligation for this NAAQS. In particular, the EPA finalizes findings that the agency's previous approvals of CSAPR Update SIPs for Alabama (82 FR 46674) and Indiana (signed November 27, 2018; publication in the **Federal Register** forthcoming)[151] fully satisfy those states' good neighbor obligations for the 2008 ozone NAAQS. Thus, Alabama and Indiana have no obligation to submit any additional SIP revisions addressing these good neighbor obligations.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

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

This action is not subject to Executive Order 13771 because this final rule is expected to result in no more than de minimis costs.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0667. The minor revisions to the FIP provisions finalized in this action have no impact on monitoring, recordkeeping, and reporting requirements for affected

[150] The EPA has also already separately finalized an approval of Kentucky's SIP submittal demonstrating that the CSAPR Update is a full remedy for Kentucky's good neighbor obligation for the 2008 ozone NAAQS. 83 FR 33730 (July 17, 2018).

[151] In this action, the EPA proposed to find that Alabama's previously approved CSAPR Update SIP would now fully satisfy its good neighbor obligation for the 2008 ozone NAAQS. Subsequent to the proposal, the EPA finalized its approval of Indiana's CSAPR Update SIP. As discussed earlier, the EPA found that Indiana's SIP approval only partially satisfied its good neighbor obligation for the 2008 ozone NAAQS for the same reasons that the EPA found that Alabama's SIP approval only partially satisfied that state's good neighbor obligation. Although the EPA did not propose in this action to find that Indiana's SIP would now fully satisfy its good neighbor obligation, the EPA did propose to find that the state's CSAPR Update FIP would fully satisfy its obligation. Because Indiana's approved SIP is commensurate with its prior CSAPR Update FIP such that Indiana is therefore now situated identically to Alabama, the EPA believes it is a logical outgrowth of the proposal to finalize a finding that Indiana's approved CSAPR Update SIP also now fully satisfies its good neighbor obligation for the 2008 ozone NAAQS.

EGUs in the CSAPR NO_X Ozone Season Group 2 Trading Program.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This action makes a minor modification to existing CSAPR Update FIPs and does not impose new requirements on any entity. The EPA has therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA consulted with tribal officials while developing the CSAPR Update. A summary of that consultation is provided in the preamble for the CSAPR Update, 81 FR 74584 (October 26, 2016). Additionally, the EPA provided an overview of its proposed determination during a National Tribal Air Association—EPA Air Policy Update meeting on Thursday July 26, 2018.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

Comment: One commenter contends that the EPA has inappropriately failed to identify and assess the health risks to children from its decision to authorize continued interstate ozone pollution that contributes to violations of the 2008 and 2015 ozone air quality standards in downwind states. The commenter states that the EPA has consistently recognized that children are disproportionately vulnerable to the environmental health risks of ozone and asserts that by authorizing continued pollution that will harm children, the EPA has failed to ensure that its policies, programs, activities, and standards address these risks. The commenter claims that this rule is subject to section 2–202 of the Executive Order, which provides that ''covered regulatory action'' means ''any substantive action in a rulemaking'' that is ''likely to result in a rule that may'' (1) ''adversely affect in a material way . . . the environment, public health or safety, or State, local, or tribal governments or communities'' and (2) ''concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.'' The commenter asserts that ozone pollution above the air quality standards the EPA has adopted indisputably is a health risk that disproportionately affects children.

Response: According to section 2–202, a rulemaking is a ''covered regulatory action'' and thus subject to the Executive Order if the action is economically significant under Executive Order 12866 *and* involves an environmental health risk or safety risk that the agency has reason to believe may disproportionately affect children. This rulemaking does not qualify under either criterion. First, although this action is considered a significant regulatory action under Executive Order 12866, the EPA has *not* determined that the rule is economically significant under that Order, and the commenter has not explained whether or why it should be considered economically significant. To the extent that the commenter cites the standard for economic significance wherein an action ''would adversely affect in a material way . . . the environment, public health or safety, or State, local, or tribal governments or communities,'' the commenter has not explained how this action, which concludes that air quality problems will be resolved and therefore does not either impose or repeal any regulatory requirements, would have an adverse effect.

Second, the health-based standard at issue in this action has already been set in a prior rulemaking to promulgate the 2008 ozone NAAQS, wherein the EPA did consider the effects of the standard under the Executive Order. 73 FR 16436, 16506–07. Therefore, this action does not concern an environmental health or safety risk because the EPA is simply evaluating how to implement an existing health standard. Moreover, under the good neighbor provision, the EPA's authority to prohibit emissions from sources in upwind states is constrained by the obligation to demonstrate that such reductions are necessary to address a downwind nonattainment or maintenance problem relative to a NAAQS. *See EME Homer City,* 134 S. Ct. at 1608. If the EPA's analysis determines that there are no such downwind air quality problems in the future, then the EPA cannot demonstrate that further emission reductions are necessary from an upwind state and the EPA lacks the authority to prohibit any further emissions. *See id.; EME Homer City II,* 795 F.3d at 130. Under such circumstances, there is no health or safety risk which may disproportionality affect children.

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

This action is not a ''significant energy action'' because it is not likely to

have a significant adverse effect on the supply, distribution, or use of energy. This action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary.

J. National Technology Transfer Advancement Act

This rulemaking does not involve technical standards.

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

Consistent with Executive Order 12898 and the EPA's environmental justice policies, the EPA considered effects on low-income populations, minority populations, and indigenous peoples while developing the CSAPR Update. The process and results of that consideration are described in the preamble for the CSAPR Update, 81 FR 74585 (October 26, 2016). Because this action simply updates the existing CSAPR Update FIPs to establish that no further federal regulatory requirements are necessary and does not establish a new environmental health or safety standard, the EPA believes that no further review of this action under Executive Order 12898 is necessary.

Comment: One commenter asserts that the EPA has failed either to identify or to address the disproportionately high and adverse impact on minority communities of continued interstate ozone pollution that contributes to violations of both the 2008 and 2015 health-based standards for ozone and harms human health, in violation of the Executive Order. The commenter notes that the EPA's modeling conducted for the CSAPR Update showed that interstate ozone pollution contributes significantly to downwind states' failure to attain and maintain the 2008 ozone standard and identified the downwind nonattainment and maintenance areas that receive this pollution. However, the commenter contends that the EPA conceded the CSAPR Update would achieve only very small reductions in the pollution and that the EPA expected air quality problems in downwind areas to persist. Data for the 2017 ozone season confirms the EPA's projection that these areas would continue to suffer poor air quality in violation of the 2008 standard. The commenter asserts that the agency's claim that all Eastern states will be in compliance with the 2008 ozone standard in 2023 does not negate the serious harms that will result from unhealthy ozone levels this year, next year, and in future years. The commenter states that the populations in downwind areas that continue to experience violations are disproportionately members of minority racial and ethnic groups, and that the EPA's decision will expose communities who live near polluting sources, who are also disproportionally members of racial and ethnic minorities, to continued high levels of pollution. The commenter further asserts that people most exposed to power plant pollution are the least likely to be able to afford the health care costs imposed by exposure to pollution and are otherwise socially disadvantaged.

The commenter concludes that the agency's attempt to justify its failure to identify and address disproportionately high and adverse impacts on minority populations is contrary to the Executive Order and arbitrary. The commenter explains that Executive Order 12898 applies to all ''effects of [EPA's] programs, policies, and activities,'' which includes effects of the EPA's administration of the Clean Air Act's good neighbor provision and the decision not to address ongoing air pollution that contributes to violations of health-based air quality standards. The commenter contends that there is no basis to conclude that the Executive Order creates any exception for EPA programs, policies, or activities that effectively authorize, rather than curtail pollution, concluding that decisions that result in greater pollution are most likely to have disproportionately high and adverse impacts on minority populations.

Response: The health-based standard at issue in this action was set in a prior rulemaking to promulgate the 2008 ozone NAAQS, wherein the EPA did consider the effects of ozone on different populations, including those identified by the commenter. 73 FR 16436, 16507. As discussed earlier, the EPA also considered these effects in promulgating the emission reduction obligations intended to address downwind nonattainment and maintenance concerns with respect to this standard in the CSAPR Update. However, under the good neighbor provision, the EPA's authority to prohibit emission reductions from sources in upwind states is constrained by the obligation to demonstrate that such reductions are necessary to address a downwind nonattainment or maintenance problem relative to a NAAQS. *See EME Homer City,* 134 S. Ct. at 1608. If the EPA's analysis demonstrates that there are no such downwind air quality problems in the future, then the EPA cannot demonstrate that further emission reductions are necessary from an upwind state and the EPA therefore lacks the authority to prohibit any further emissions. *See id.; EME Homer City II,* 795 F.3d at 130. Under such circumstances, further review under Executive Order 12898 is not warranted.

L. Congressional Review Act

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

M. Determinations Under CAA Section 307(b)(1) and (d)

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if: (i) the agency action consists of ''nationally applicable regulations promulgated, or final action taken, by the Administrator''; or (ii) such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA finds that this action is ''nationally applicable'' or, in the alternative, is based on a determination of ''nationwide scope and effect'' within the meaning of section 307(b)(1). This action addresses emissions impacts and sources located in 20 States, which are located in multiple EPA Regions and federal circuits. The final action is also based on a common core of factual findings and analyses concerning the transport of pollutants between the different states. Furthermore, the EPA intends this interpretation and approach to be consistently implemented nationwide with respect to section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

For these reasons, the Administrator determines that this final action is nationally applicable or, in the alternative, is based on a determination of nationwide scope and effect for purposes of section 307(b)(1). Thus, pursuant to section 307(b), any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

In addition, pursuant to sections 307(d)(1)(C) and 307(d)(1)(V) of the CAA, the Administrator has determined

that this action is subject to the provisions of section 307(d). CAA section 307(d)(1)(B) provides that section 307(d) applies to, among other things, ''the promulgation or revision of an implementation plan by the Administrator under CAA section 110(c).'' 42 U.S.C. 7407(d)(1)(B). Under section 307(d)(1)(V), the provisions of section 307(d) also apply to ''such other actions as the Administrator may determine.'' 42 U.S.C. 7407(d)(1)(V). The agency has complied with procedural requirements of CAA section 307(d) during the course of this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 6, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, part 52 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§§ 52.54, 52.184, 52.731, 52.789, 52.840, 52.882, 52.984, 52.1084, 52.1186, 52.1284, 52.1326, 52.1584, 52.1684, 52.1882, 52.1930, 52.2040, 52.2283, 52.2440, 52.2540, and 52.2587 [Amended]

■ 2. Part 52 is amended by removing the text '', provided that because the CSAPR FIP was promulgated as a partial rather than full remedy for an obligation of the State to address interstate air pollution, the SIP revision likewise will constitute a partial rather than full remedy for the State's obligation unless provided otherwise in the Administrator's approval of the SIP revision'' from the second sentence in each of the following paragraphs:

■ a. Section 52.54(b)(2);
■ b. Section 52.184(b);
■ c. Section 52.731(b)(2);
■ d. Section 52.789(b)(2);
■ e. Section 52.840(b)(2);
■ f. Section 52.882(b)(1);
■ g. Section 52.984(d)(2);
■ h. Section 52.1084(b)(2);
■ i. Section 52.1186(e)(2);
■ j. Section 52.1284(b);
■ k. Section 52.1326(b)(2);
■ l. Section 52.1584(e)(2);
■ m. Section 52.1684(b)(2);
■ n. Section 52.1882(b)(2);
■ o. Section 52.1930(b);
■ p. Section 52.2040(b)(2);
■ q. Section 52.2283(d)(2);
■ r. Section 52.2440(b)(2);
■ s. Section 52.2540(b)(2); and
■ t. Section 52.2587(e)(2).

[FR Doc. 2018–27160 Filed 12–20–18; 8:45 am]

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Part IV

National Credit Union Administration

12 CFR Chapter VII
Regulatory Reform Agenda; Proposed Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Chapter VII

Regulatory Reform Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of regulatory review.

SUMMARY: The NCUA has established a Regulatory Reform Task Force (Task Force) to oversee the implementation of the agency's regulatory reform agenda. This is consistent with the spirit of the president's regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chose to comply with its spirit and reviewed all of the NCUA's regulations to that end. The Task Force published and sought comment on its first report in August 2017. Having reviewed all of the comments received, the Task Force is publishing its second and final report.

DATES: December 21, 2018.

ADDRESSES: Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314 or telephone: (703) 548–2478.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

a. The NCUA's Regulatory Mission

The NCUA, as a prudential regulator, is charged with protecting the safety and soundness of the credit union system and, in turn, the National Credit Union Share Insurance Fund (NCUSIF) and the taxpayer through regulation and supervision. The NCUA's mission is to ''provide, through regulation and supervision, a safe and sound credit union system, which promotes confidence in the national system of cooperative credit.'' [1] Consistent with that mission, the NCUA has statutory responsibility for a wide variety of regulations that protect the credit union system, members, and the NCUSIF.

b. The Regulatory Reform Agenda

The president has established a regulatory reform agenda and issued multiple executive orders designed to alleviate unnecessary regulatory burdens. The NCUA is not subject to these executive orders but has nonetheless chosen to comply with them in spirit. Executive Order 13777, entitled ''Enforcing the Regulatory Reform Agenda,'' directs subject agencies to establish Regulatory Task Forces and to evaluate existing regulations to identify those that should be repealed, replaced, or modified. The Executive Order requires subject agencies to, at a minimum, attempt to identify regulations that:

1. Eliminate jobs, or inhibit job creation;
2. Are outdated, unnecessary, or ineffective;
3. Impose costs that exceed benefits;
4. Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
5. Are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
6. Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

c. This Document

The NCUA established a Regulatory Reform Task Force (Task Force) in March 2017 to oversee the implementation of the agency's regulatory reform agenda. This is consistent with the spirit of the president's regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the agency chose to comply with its spirit and reviewed all of the NCUA's regulations to that end. The Task Force undertook an exhaustive review of the NCUA's regulations and issued its first draft report to Chairman McWatters in May 2017 and submitted it without change to the NCUA Board in June 2017. The first report outlined the Task Force's proposed review and reporting procedures and made numerous recommendations for the amendment or repeal of regulatory requirements that the Task Force believed to be outdated, ineffective, or excessively burdensome. On August 22, 2017 the NCUA published the substance of the Task Force's first report in the **Federal Register** and sought public comment.[2]

This document contains the Task Force's second and final report. As described more fully below, this report contains both general recommendations for the NCUA's regulatory reform agenda moving forward and a refined blueprint of the timeline for recommended regulatory changes. The NCUA began implementing Tier 1 of the regulatory reform agenda in May 2017. The agency aims to have commenced action on all Tier 1 recommendations by May 2019. The agency plans to initiate the implementation of Tier 2 and Tier 3 recommendations in May or June 2019 and 2020, respectively.

II. The Second Report

a. General Recommendations

i. Report Structure

The structure of this report closely tracks the structure of the first report. The Task Force has retained the effort/impact prioritization matrix used in the first report [3] and has tried to structure the notice as similarly as possible. Along with a consolidated refined blueprint of the timeline for future regulatory actions, this report includes a detailed refined blueprint that provides the first report's recommendations, a general summary of comments received on the recommendations, and this report's recommendations. The Task Force does not intend to respond to the specific substance of commenters' recommendations in this report. Instead, this report is largely focused on setting the procedures governing the regulatory reform agenda as it moves forward and providing the refined timeline for completing the Task Force's recommendations. Commenters' substantive recommendations, while considered in the development of this report and its refined timeline, will be most helpful in shaping recommended actions as they are more fully developed. Commenter recommendations related to completed actions have been reviewed by the Task Force and will be considered in future rulemakings unless otherwise indicated.

The NCUA will also separately publish a consolidated version of this report on the NCUA website. The

[1] *https://www.ncua.gov/About/Pages/Mission-and-Vision.aspx.*

[2] 82 FR 39702 (Aug. 22, 2017).

[3] *Id.* at 39704.

consolidated report will provide the Task Force's recommendations from the first report, the Task Force's updated recommendations, and the updated prioritizations.

ii. Measuring Future Progress

As contemplated by both Executive Order 13777 and the first report, the Task Force recommends that the NCUA measure the agency's progress as it advances through the regulatory reform agenda. To best do this, the Task Force recommends that the NCUA publish on its website the outline of this report's refined blueprint, subject to needed future modifications, to be updated every six months to monitor progress. This outline should document whether the agency has published any documents related to the individual recommendations and whether any changes to the recommendation or refined blueprint timeline have been made.

iii. The NCUA's Annual Regulatory Review

In the first report, the Task Force recommended suspending the NCUA Office of General Counsel's annual regulatory review until 2020. Approximately five commenters supported the temporary suspension. Several commenters opposed the suspension, noting that changes will likely occur between now and 2020, including to the NCUA Board composition. One of these commenters felt that the NCUA should maintain a formal mechanism for stakeholder insight into the effect of existing regulations on a contemporary basis and asked that the review be reinstated in January 2019 as Tier 1 is completed.

Based on commenter feedback, the Task Force has amended its recommendation. The Task Force recommends that the annual regulatory review resume in January 2019, via a notice published on the NCUA's website. The 2019 regulatory review will cover parts 700–710 of the NCUA's regulations. The Task Force believes the annual regulatory review plays an important role in giving stakeholders a continuing means of providing feedback as changes are made and take effect.

b. The Consolidated Refined Blueprint

REPORT 1 AND REPORT 2 PRIORITIZATION COMPARISON

Regulation	Report 2 priority	Report 1 priority	Justification for change
	Report 2 Tier 1		
1. Corporate Credit Unions	Completed	Tier 1	N/A.
2. Emergency Mergers	Completed	Tier 1	N/A.
3. Securitization	Completed	Tier 1	N/A.
4. Supervisory Review Committee	Completed	Tier 1	N/A.
5. Appeals	Completed	Tier 1	N/A.
6. Equity Distribution	Completed	Tier 1	N/A.
7. Capital Planning and Stress Testing	Completed	Tier 1	N/A.
8. Advertising	Completed	Tier 1	N/A.
9. Field of Membership	Completed	Tier 1	N/A.
10. Risk-Based Capital Delay and Risk-Based Capital Substantive	Completed	Tier 1 Tier 2	The risk-based capital rule finalized in October 2018 addressed both the delay and substantive recommendations made in the first report.
11. FCU Bylaws	Proposed	Tier 1	N/A.
12. Payday Alternative Loans	Proposed	Not in Report	The Task Force believes the proposed change will provide additional regulatory relief.
13. Loans to Members: a. Loan Maturity Limits, b. Single borrower and Group of Associated Borrowers Limit.	Proposed	Tier 1	N/A.
14. Appraisals	Proposed	Tier 1	N/A.
15. Fidelity Bonds	Proposed	Tier 1	N/A.
16. Supervisory Committee Audits and Verification (Engagement Letter, Target Date of Delivery).	Tier 1	Tier 1	N/A.
17. Supervisory Committee Audits and Verification (Audit per Supervisory Committee Guide).	Tier 1	Tier 1	N/A.
18. Subordinated Debt (formerly Alternative Capital).	Tier 1	Tier 2	Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1.
19. Designation of Low Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions.	Tier 1	Tier 2	Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1.
20. Borrowed Funds from Natural Persons	Tier 1	Tier 2	Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1.
21. Payment on Shares by Public Units and Nonmembers.	Tier 1	Tier 2	Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 2 to Tier 1.
22. Compensation in Connection with Loans	Tier 1	Tier 1	N/A.

REPORT 1 AND REPORT 2 PRIORITIZATION COMPARISON—Continued

Regulation	Report 2 priority	Report 1 priority	Justification for change
23. CUSOs	Tier 1	Tier 3	The Task Force believes that this recommendation is appropriately placed in Tier 1. The change should be low effort and high impact.
24. Loan Interest Rate, Temporary Rate	Tier 1	Tier 3	The loan interest rate is a priority for the Board, the agency, and commenters.
Report 2 Tier 2			
1. Investment and Deposit Activities	Tier 2 (First Item)	Tier 2	Upon further consideration and in response to stakeholder feedback the Task Force has decided to move this item to the top of Tier 2.
2. Loan Participations	Tier 2	Tier 2	N/A.
3. Purchase, Sale, and Pledge of Eligible Obligations.	Tier 2	Tier 2	N/A.
4. Purchase of Assets and Assumption of Liabilities.	Tier 2	Tier 2	N/A.
5. Third-Party Due Diligence Requirements and	Tier 2	Tier 3	These recommendations were combined and put into Tier 2.
Third-Party Servicing of Indirect Vehicle Loans.	Tier 2	Tier 1	
6. Payout priorities in Involuntary Liquidation	Tier 2	Tier 3	This recommendation will help protect the NCUSIF and higher prioritization is appropriate.
Report 2 Tier 3			
1. Preemption of State Laws (Loans to Members and Lines of Credit to Members).	Tier 3	Tier 3	N/A.
2. Treasury Tax and Loan Depositaries and Financial Agents of the Government.	Tier 3	Tier 3	N/A.
3. Leasing	Tier 3	Tier 3	N/A.
4. Central Liquidity Facility	Tier 3	Tier 3	N/A.
5. Maximum Borrowing Authority	Tier 3	Tier 3	N/A.
6. Special Reserve for Nonconforming Investments.	Tier 3	Tier 3	N/A.
7. Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance.	Tier 3	Tier 3	N/A.
8. Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines.	Tier 3	Tier 3	N/A.

c. The Detailed Refined Blueprint and Summary of Comments

As discussed, this report contains both a refined blueprint for the timeline for implementing the Task Force's recommendations and a summary of the comments the NCUA received on the first report. The NCUA received nearly 50 comments on the first report. Commenters overwhelmingly supported the NCUA's regulatory reform agenda. It should be noted that comment tallies are only reflective of the number of commenters who directly addressed a specific recommendation or issue. Many commenters expressed general support for the first report or for wide-ranging review of a number of regulations.

The NCUA has completed ten of the first report's initial regulatory relief recommendations:

1. Corporate Credit Unions;
2. Emergency Mergers;
3. Securitization;
4. Supervisory Review Committee;
5. Appeals Procedures;
6. The Equity Distribution;
7. Capital Planning and Stress Testing;
8. Accuracy of Advertising and Notice of Insured Status;
9. Field of Membership; and
10. Risk-Based Capital.

Additionally, the NCUA has issued proposed rules or commenced action for five other recommendations:

1. Bylaws;
2. Loan Maturities;
3. The Single Borrower or Group of Associated Borrower Limit;
4. Appraisals;
5. Fidelity Bonds.

Nearly all commenters explicitly commended the NCUA's efforts to identify outdated, ineffective, or excessively burdensome requirements and ease regulatory burden while modernizing the NCUA's regulations.

i. Tier 1 (First 24 Months)

1. Completed Actions

1. Part 704—Corporate Credit Unions

Addresses: Corporate Credit Unions.
Sections: 704.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: Low.
Report 1: Amend capital standards for corporate credit unions to include expanding what constitutes Tier 1 Capital. For mergers, permit Tier 1 Capital to include generally accepted accounting principles (GAAP) equity acquired. Also, establish a retained earnings requirement of 2.50%, which, when achieved, will allow for all perpetual contributed capital to be included in Tier 1 Capital. The current rule for perpetual contributed capital would remain in effect until the retained earnings requirement is met.

Comments: The NCUA issued this final rule in November 2017. However,

a number of commenters either addressed the rulemaking or provided other substantive comments on part 704. Several commenters that submitted their comments prior to the November final rule's publication explicitly asked the NCUA to finalize the proposed rule. One of these commenters stated that the proposal provides corporate credit unions with greater flexibility in the calculation and treatment of capital and promotes increased certainty and stability in the credit union system. Several commenters agreed that expressly including merger-acquired GAAP equity as retained earnings would clarify that capital is available to cover losses, resulting in greater accounting transparency and reduced ambiguity. These commenters also supported counting perpetual contributed capital as Tier 1 Capital, especially given the confusion for credit union auditors evaluating potential perpetual contributed capital impairment. The commenters argued that the limitation of perpetual contributed capital for regulatory capital purposes undermines the full value of perpetual contributed capital to absorb losses during an economic event.

Approximately 15 commenters asked the NCUA to review part 704 in its entirety to explore modernization opportunities for the benefit of corporate credit unions and natural person members. The commenters argued that this would provide more relief by decreasing regulatory burden, increasing operational efficiency, and improving member services. One of these commenters stated that the NCUA revised part 704 as a result of the financial crisis and consequently the corporate system has significantly contracted and consolidated. Another commenter argued for more regulatory relief and refinement of the rules governing corporate credit unions, and recommended that the NCUA: (1) Form a task force with state regulators to review future adjustments to the corporate credit union rules; (2) reintroduce meaningful dual chartering by eliminating unnecessary preemption of state rules, particularly with respect to corporate credit union governance; and (3) enhance the joint supervision of corporates and their risk to natural person credit unions by formalizing increased information sharing between the NCUA and the state regulators supervising the corporate credit unions' natural person credit union members.

As discussed below, commenters also recommended a number of more specific substantive changes to part 704.

One commenter noted that, relative to credit risk management, the NCUA limits investments in any single obligor to the greater of 25% of total capital or $5 million. Section 704.6(c)(2) provides several exceptions to the single-obligor limit, including an exception for credit card master trust asset-backed securities that allows for a higher limit of 50% of total capital in any single obligor. The commenter stated that other asset-backed securities utilize the master trust structures such as vehicle, equipment, and student loan master trusts. The commenter opined that, like credit card master trusts, these other master trusts offer larger asset pools and greater borrower and geographic diversity. The commenter further noted that many offer structural features that enhance the safety of the investments. The commenter asked that, given the described advantages of master trust asset-backed securities, the NCUA consider including these additional master trust asset-backed securities in the exception allowing for investments up to 50% of capital.

One commenter asked the NCUA to examine the concept of Weighted Average Life (WAL) as a tool for risk mitigation of government-issued or guaranteed securities. The commenter noted that, per the current rule, a corporate credit union must manage its financial assets to maintain a WAL of 2 years or less to be measured at month-end in the base case, and 2.25 years or less to be measured at month-end in a 50% prepayment speed slowdown scenario. The commenter observed that under § 704.8(h) U.S. Government-issued or guaranteed securities are allowed a modest one-half WAL treatment. The commenter stated that government-guaranteed securities exhibit no credit risk, are highly liquid in the marketplace, serve as a buffer in economic stress scenarios, and are valuable collateral for liquidity in the capital markets and at the Federal Reserve Bank. The commenter argued that the one-half WAL treatment is not enough of a benefit or incentive for buying these securities. The commenter stated that they were not recommending that the NCUA Board revise the WAL measurement for credit-related securities, § 704.8(f) and (g), but did recommend the factor in § 704.8(h) be changed to make the WAL of government-issued and government-backed securities equal to a cash equivalent. The commenter asserted it is technically incorrect to assign WAL limits on government-guaranteed instruments.

One commenter noted that § 704.8 limits the WAL of corporate credit unions' financial assets and asserted that the NCUA's WAL thresholds for corporates were intentionally designed to limit a corporate's services to natural person credit unions to short-term liquidity lending and payments system services. The commenter recalled that the NCUA noted at the time that the WAL provision was essential in the absence of cash-flow mismatch test requirements. The commenter said that neither natural person credit unions nor other financial institutions have explicit limitations on the WAL of the asset side of their balance sheets.[4] The commenter conceded that, as the corporate system restructured in the aftermath of the corporate crisis, such regulatory shaping of the marketplace, and restrictions on corporate credit union growth and operations, were arguably necessary to contain risk. However, the commenter also argued that these same limitations restrict corporate credit union service to natural person credit unions, which in turn may be hindering the ability of some natural person credit unions to remain competitive in the marketplace. In addition to the WAL restrictions, the commenter noted that corporate credit unions are also limited to 180 days maturity on secured borrowings. The commenter contended that, taken together, the WAL and secured borrowing provisions limit corporates' ability to provide term lending and other liquidity management services to natural person credit unions. The commenter further observed that natural person credit unions have limited choices to find those essential services elsewhere, noting that the Federal Reserve discount window is generally a lender of last resort, and credit union membership in the Federal Home Loan Bank (FHLB) system may be more limited than commonly understood. The commenter concluded that, while the commenter and state regulators remain keenly aware of the severity of the corporate crisis and understand the importance of the lessons learned, the future of the corporate system cannot be solely controlled by a crisis mindset. The commenter also suggested the formation of a joint working group to help identify the proper regulatory balance.

Another commenter argued that a corporate credit union that has been granted Part 1 expanded authority should have more flexibility in the WAL requirement than base or base plus corporate credit unions. The commenter argued that since a Part 1 corporate has

[4] The commenter stated that ''[n]atural person credit union WAL of assets is factored into Prompt Corrective Action (PCA) net worth calculations, but are not limited by the PCA. See 12 CFR 702.105–107.''

a stronger developed infrastructure and higher capital requirements, such as a minimum leverage ratio of 6%, permission to increase the WAL in the base case and stressed scenario should be allowed. The commenter recommended the calculation be tiered to reflect a correlation to the required higher leverage ratios. The commenter said that, for example, a Part 1 corporate with: a 6% leverage ratio should be permitted to have a 2.5 year WAL in the base and 2.75 year WAL in the 50% slower prepayment scenario; a 7% leverage ratio should be permitted to have a 3.5 year WAL in the base and 4.0 year WAL in the 50% slower prepayment scenario; and an 8% leverage ratio should be permitted to have a 4.5 year WAL in the base and 5.0 year WAL in the 50% slower prepayment scenario. The commenter noted that Part 1 corporates are required to have more developed risk mitigation tools as part of their infrastructure in addition to stronger capital ratios. The commenter felt higher capital ratios are a good assessment of the safety and soundness of any financial institution and should correlate with the amount of risk a corporate should take. The commenter concluded that the additional regulatory flexibility within the WAL calculation is commensurate with the additional required capital and stronger infrastructure.

One commenter, a Part 1 corporate credit union, said that they would welcome the opportunity to expand their investment authority related to credit risk to correlate with the stronger capital position. The commenter would like to be able to buy investment grade subordinated secured asset-backed securities and would like parity with investment grade unsecured corporate debt, which is currently permitted under Part 1. The commenter argued parity would allow Part 1 corporates an investment opportunity that has the same credit rating and the same credit risk regardless of subordination. The commenter suggested subordinated investments within the secured asset-backed sector should be limited to only those sectors that are highly mature, such as credit cards, auto loans and FFELP-backed student loans. The commenter also asserted that a lower credit rating investment in these sectors is arguably less risky than the highest rating investment in a less mature, esoteric sector that does not have a proven track record through a business cycle.

The same commenter observed that part 704 has different definitions for credit risk for Part 1 versus base plus authorities. Specifically, the commenter noted that under Part 1 a purchase must be of ''investment grade'' whereas for base plus a purchase must only have a ''minimal amount of credit risk.'' The commenter pointed out that a distinction has been made for credit risk as it applies to Part 1 versus base plus, but the standard for investment action plans remains the same for both expanded authorities. The commenter stated that investment action plans are defined as required when the investment presents more than a minimal amount of credit risk. The commenter suggested this infers that an investment purchased under Part 1 as ''investment grade'' would be considered subject to an investment action plan immediately after purchase. The commenter did not believe this was the NCUA's intent and asked that this be clarified to remove any ambiguity.

Another commenter suggested that there should be a way for a corporate credit union to make a minimal investment in a company without the company being classified a corporate credit union service organization (CUSO). The commenter stated that many companies shun corporate credit union investment dollars due to the regulatory constraints of becoming a corporate CUSO, having to primarily serve credit unions and to follow the various regulatory restrictions of part 704. The commenter said that without the opportunity to invest in companies, a corporate credit union cannot direct or participate in the direction of new products or services. The commenter argued that the intent of an investment in such a company is not measured by a return as it is with traditional investments (securities) but instead is an opportunity to help bring new technologies, products, and services to credit union members.

One commenter requested that the NCUA make a technical correction. The commenter noted that changes to the member business lending rule caused references in § 704.7(e)(3) to § 723.1(b) and former § 723.16 to no longer be valid, leaving the rules for a loan to a member that is not a credit union or a corporate CUSO unclear.

Report 2: The NCUA issued a final rule related to the first report's recommendations in November 2017.[5] Part 704 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

2. Appendix B to Part 701—Chartering and Field of Membership Manual

Addresses: Emergency Mergers.

Sections: Appendix 1 to Appendix B to Part 701.

Category: Improve.

Degree of Effort: Moderate.

Degree of Impact: Moderate.[6]

Report 1: Revise the definition of the term ''in danger of insolvency'' for emergency merger purposes to provide a standard that better protects the NCUSIF. First, for two of the three current net worth-based categories, extend the time period in which a credit union's net worth is projected to either render it insolvent or drop below two percent from 24 to 30 months and from 12 to 18 months, respectively. Additionally, add a fourth category to the three existing net worth-based categories of the definition, to include credit unions that have been granted or received assistance under section 208 of the Federal Credit Union Act (FCU Act) within the last 15 months.

Comments: Approximately ten commenters offered support for the recommendations. Several commenters indicated the recommendation would make it easier for emergency mergers to occur and further protect the NCUSIF. One commenter said the recommended changes would allow the NCUA to better identify credit unions in danger of insolvency and give acquiring credit unions more time to step in and resolve troubled credit unions. Several commenters noted that, while they supported the increased flexibility, they objected to any regulatory regime that would result in rigid guidelines forcing credit union mergers. The commenters asked the NCUA to avoid any inflexible, one-size-fits-all rubric to resolve financially challenged institutions. One commenter felt the 208 assistance program had a poor track record in preventing credit union insolvency and urged the NCUA to explore ways to either improve the program's success rate or to seek more effective remedies to help struggling credit unions.

Report 2: The NCUA issued a final rule related to the first report's recommendations in December 2017.[7] No further action is being considered by the NCUA Board at this time. Part 701 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

3. Securitization

Addresses: Securitization.

Sections: 721.

Category: Expand Authority.

Degree of Effort: High.

Degree of Impact: Low.

[5] 82 FR 55497 (Nov. 22, 2017).

[6] Includes potential efficiencies and/or cost savings for NCUA.

[7] 82 FR 60283 (Dec. 20, 2017).

Report 1: Issue a legal opinion letter authorizing federal credit unions (FCUs) to issue and sell securities under their incidental powers authority. Also, finalize the safe harbor rule proposed in 2014 regarding the treatment by the NCUA Board, as liquidating agent or conservator of a federally insured credit union (FICU), of financial assets transferred by the credit union in connection with a securitization or a participation.

Comments: Approximately ten commenters offered general support for the recommendations. One commenter asked the NCUA to issue guidance to permit CUSOs to serve as aggregators of the mortgages underlying the securities. The commenter specifically reiterated the following points that it raised in a previously submitted letter: ''(1) Expand the eligibility of loans beyond those originated by the securitizing credit union, in particular, by permitting the use of purchased loans needed to complete a pool as well as allowing the aggregation of loans by CUSOs; (2) provide flexibility in the levels of residual and retained interests in securitized assets that a credit union may hold; (3) authorize credit unions to have special purpose vehicles with the authority to enter into derivative transactions; and (4) provide additional clarifications on the types of securitization transactions in which credit unions may engage.''

Several commenters requested new guidance as soon as possible. Another commenter urged the NCUA to work with the industry to develop guidance on an accelerated timeline. The commenter reasoned that building an effective securitization program takes time and investment in people and systems; thus, it is vital to have a clear understanding of any limitations on the type of activities a credit union can undertake. As part of this guidance, the commenter also suggested the NCUA set guidelines to allow well qualified credit unions, or their CUSOs, to serve as loan aggregators. The commenter felt that loan aggregation is a natural and necessary role within the financial services industry that should be extended to credit unions. Another commenter asked to work with the NCUA to develop the guidance through a working or advisory group established to allow credit unions and securitization experts to help identify key issues and concerns.

Report 2: The NCUA implemented the first report's recommendations through its June 2017 safe harbor final rule,[8] and its June 21, 2017 legal opinion letter regarding the authority to issue and sell securities.[9] Additionally, the Office of Examination and Insurance is currently developing guidance on asset securitization for credit unions. The NCUA is also evaluating whether any additional regulation, guidance, or supervision will be necessary.

4. Supervisory Review Committee

Addresses: Supervisory Review Committee.
Sections: 746, Subpart A.
Category: Improve.
Degree of Effort: High.
Degree of Impact: Low.
Report 1: Expand and formalize procedures by which FICUs may secure review of material supervisory determinations by the NCUA's Supervisory Review Committee (SRC). Broaden the jurisdiction of the SRC to more closely conform to the practices of the other federal financial institution regulatory agencies. Expand the pool of agency personnel who will serve on the SRC and implement an optional, intermediate level of review by the Director of the NCUA's Office of Examination and Insurance before a matter is considered by the SRC.

Comments: Approximately five commenters offered specific support for the recommendations. One commenter commended the SRC reforms and the NCUA's commitment to consider including appeals information in the agency's Annual Report. Another commenter supported the final rule, but still desired additional improvements that were not finalized, such as consistent review panels and review of CAMEL 1 and 2 component scores. Several other commenters expressed appreciation for the NCUA's willingness to provide several opportunities for review of material supervisory determinations from a program office. These commenters welcomed the additions of the intermediate SRC and the opportunity for oral argument before the NCUA Board directly. However, these commenters did contend that, given the nature of the regulator/regulated relationship, an independent review option should also be available. Further, the commenters felt the rule should allow for a request for oral hearing up until the final disposition, reasoning that as a credit union works through a complaint it may determine an oral hearing is appropriate and it should be able to request one up until an appeal decision is made.

Report 2: The NCUA issued a final rule related to the first report's recommendations in October 2017.[10] No further action is being considered by the NCUA Board at this time. Part 746 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

5. Appeals

Addresses: Appeals.
Sections: 746, Subpart B.
Category: Improve.
Degree of Effort: High.
Degree of Impact: Low.
Report 1: Consolidate procedures currently imbedded in various substantive regulations by which parties affected by an adverse determination at the regional or program office level may appeal that determination to the NCUA Board. Exclude formal enforcement actions and certain other subject areas. Establish uniform procedural guidelines to govern appeals and provide an avenue by which appellants may request the opportunity to appear in person before the NCUA Board. Matters that are excluded from the proposed new rule either require a formal hearing on the record in accordance with the Administrative Procedure Act (*e.g.,* formal enforcement actions and certain creditor claims in liquidation) or are already governed by separate, discrete procedures (*e.g.,* enforcement measures under prompt corrective action or material supervisory determinations reviewable by the SRC). Appeals of matters that are delegated by rule to an officer or position below the NCUA Board for final, binding agency action are also excluded.

Comments: Approximately ten commenters offered general support for the recommendations. One of these commenters commended the reforms and the NCUA's commitment to considering the inclusion of appeals information in the agency's Annual Report. Another commenter strongly supported the consolidation and improvement of procedures regarding appeals of adverse determinations. The NCUA does not have direct supervisory authority over CUSOs; however, one commenter said that the NCUA's exercise of *de facto* supervision over CUSOs means CUSOs should also have the ability to appeal adverse determinations made by NCUA examiners through the CUSO review process.

A handful of the supportive commenters noted that they appreciate the improved process, but felt the agency should provide a mechanism for

[8] 82 FR 29699 (June 30, 2017).

[9] Asset Securitization Authority, NCUA OGC Op. Ltr. 17–0670 (June 21, 2017), *available at https://www.ncua.gov/regulation-supervision/Pages/rules/legal-opinions/2017/asset-securitization-authority.pdf.*

[10] 82 FR 50270 (Oct. 30, 2017).

collection of exam feedback on the performance of individual examiners. These commenters argued that independent, ongoing, and confidential surveys should be processed and compiled by an external third party, free from public repercussion. The commenters felt that such a process would be advantageous for the NCUA by demonstrating education, training, and consistency metrics, as well as assisting in the merit pay process. The commenters said that most industries have successfully implemented client satisfaction methodologies to support data-driven decision making. Finally, one commenter supported this measure, but asked for reconsideration of additional changes, including expedited appeals when time is of the essence.

Report 2: The NCUA issued a final rule related to the first report's recommendations in October 2017.[11] No further action is being considered by the NCUA Board at this time. Part 746 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

6. Part 741—Requirements for Insurance

Addresses: National Credit Union Share Insurance Fund Equity Distributions.

Sections: 741.4; 741.13.

Category: Improve.

Degree of Effort: Low.

Degree of Impact: High.

Report 1: Revise this section of the regulation to preclude a credit union that has already converted to another form of insurance from receiving a subsequently declared NCUSIF dividend. Currently, if a credit union terminates insurance before a premium is declared it does not pay, but if it terminates insurance before a dividend is declared but within the same calendar year it receives the dividend. This is unfair to credit unions that remain insured.

Comments: A handful of commenters specifically supported the recommendation. Two of these commenters expected the same principles to be applied to 2018 Temporary Corporate Credit Union Stabilization Fund rebates. A third commenter strongly supported the recommendation, noting that the bright line proposed seems fairer to FICUs than the practice in existence at the time of the comment. The commenter emphasized that it is inherently inequitable to let credit unions terminate insurance coverage mid-year, and thereby avoid the risks of a premium assessment or capitalization deposit increase for the remaining months of that year, and still reward them with equity distributions at year-end. That practice, the commenter argued, disadvantages FICUs that remain insured throughout the calendar year and bear the risks others may avoid. The commenter also felt that FICUs considering terminating federal share insurance coverage should factor the risk of missing out on a year-end equity distribution into their decision.

Conversely, a handful of commenters opposed the recommendation. One commenter asked the NCUA to apportion any potential distributions based on the total amount of assessments paid by the FICU and suggested a FICU's proportionate share of a future equity distribution be determined by measuring the average of its four quarter-end insured share balances reported during the year applicable to the distribution. Several of the commenters reiterated concerns they had previously raised during the equity distribution method comment period. One of these commenters strongly urged the NCUA to forego any efforts related to this provision. The commenter felt that it is unclear how this provision would impact future equity distributions as they relate to the Corporate Resolution Program. The commenter noted that, at the time of the comment, if a FICU terminates federal share insurance coverage during the calendar year the credit union is entitled to receive an equity distribution, which is based on the insured shares as of the last day of the most recently ended reporting period and then reduced by the number of months remaining in the calendar year. The commenter applauded the simple and fair logic of that approach. Finally, another commenter reiterated objections to changes to § 741.4 that would deprive a credit union of a pro rata NCUSIF dividend share for a year in which that credit union was NCUSIF insured for at least part of the year.

Separately, several commenters argued that the NCUSIF's normal operating level can and should return to its historical 1.30% over the next several years. The commenters felt that, as the regulatory reform agenda moves forward in eliminating duplicative and outdated compliance burdens, continued stability will further ameliorate additional concerns regarding the NCUSIF's normal operating level. Another commenter expressed continued concern over the 1.39% normal operating level, arguing the increase is significant deviation from the NCUA's proven, successful policy. The commenter urged the NCUA to re-evaluate the normal operating level and to set it at 1.34% for a temporary period, followed by a return to the traditional 1.30% level. The commenter said that this historical policy dictated that the NCUSIF's equity ratio would be countercyclical, rising in good times so that premiums would not be necessary at the troughs of a recession.

Report 2: The NCUA issued a final rule related to the first report's recommendations in February 2018.[12] Under the final rule, a financial institution must file at least one quarterly Call Report within the current calendar year to be eligible to receive an NCUSIF equity distribution. This requirement applies to all potential beneficiaries of an NCUSIF equity distribution including FICUs that terminate federal share insurance coverage through conversion, merger, or liquidation. No further action is being considered by the NCUA Board at this time. Part 741 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

7. Part 702—Capital Adequacy

Addresses: Capital Planning and Stress Testing.

Sections: 702.501–702.506.

Category: Expand Relief.

Degree of Effort: Moderate.

Degree of Impact: Moderate.[13]

Report 1: Explore raising the threshold for required stress testing to an amount greater than $10 billion, and assigning responsibility for conducting stress testing to the credit unions.

Comments: Several commenters offered general support for the recommendations. Commenters' substantive recommendations focused on narrowing the rule's applicability. Several commenters suggested raising the threshold to a significantly higher value, reasoning that since most credit unions are well under the $10 billion threshold currently, but have room to grow, a higher threshold would better reflect macroeconomic realities than an inflexible dollar amount. These commenters also argued that large credit unions are best equipped to internally self-conduct these exercises, with reports to examiners, given that, unlike the banking agencies, NCUA staff are not consistently involved in large institution contingency exercises. One commenter asked the NCUA to consider Congressional efforts to raise the bank stress testing threshold to $250 billion. Several other commenters argued that,

[11] 82 FR 50288 (Oct. 30, 2017).

[12] 83 FR 7954 (Feb. 23, 2018).

[13] Includes potential efficiencies and/or cost savings for NCUA.

given research indicating that the asset size of an institution is insufficient to determine riskiness, the proposal should be expanded to provide relief for more credit unions.[14] One commenter argued that stress testing has become overly burdensome and has added unnecessary cost to the NCUA and affected credit unions, particularly considering the overall financial strength of the credit unions impacted by the rule.

Report 2: On April 25, 2018, the NCUA issued a final rule [15] amending its stress testing regulations, which, among other things, raised the threshold for required stress testing to a minimum of $15 billion, and assigned responsibility for conducting stress testing to covered credit unions. No further action is being considered by the NCUA Board at this time. Part 702 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

8. Part 740—Accuracy of Advertising and Notice of Insured Status

Addresses: Accuracy of Advertising and Notice of Insured Status.
Sections: 740.
Category: Expand Relief.
Degree of Effort: Moderate.
Degree of Impact: High.

Report 1: Revise certain provisions of the NCUA's advertising rule to provide regulatory relief to FICUs. The current draft NPRM proposes to allow FICUs to use a fourth version of the official advertising statement, ''Insured by NCUA.'' The draft also expands a current exemption from the advertising statement requirement regarding radio and television advertisements and eliminates the requirement to include the official advertising statement on statements of condition required to be published by law. Finally, it requests comment about whether the regulation should be modified to accommodate advertising via new types of social media, mobile banking, text messaging and other digital communication platforms, including Twitter and Instagram. Changes made based on this final request would need to be part of a separate rulemaking.

Comments: Approximately ten commenters generally supported the recommendations and an increased parity with banks. Approximately five commenters specifically supported expanding the radio/television exemption to 30 seconds. Several commenters supported eliminating the requirement for the advertising statement on statements of conditions. Approximately five commenters specifically supported updates to the rule to accommodate social media and urged that any new or modified rules should ensure credit unions retain maximum flexibility and the ability to take advantage of new technologies. Several commenters specifically supported the fourth version of the advertising statement.

One commenter asked the NCUA to take steps to emphasize that part 740 preempts state advertising restrictions for FCUs and federally insured, state-chartered credit unions (FISCUs). The commenter said that, for example, at a minimum, any modifications to these rules should retain the first sentence of part 740: ''[T]his part applies to all federally insured credit unions.'' The commenter further added that additional revisions to bolster the preemptive force of part 740 could provide additional clarity for both FCUs and FISCUs and ensure that all credit unions operate under fair and consistent advertising rules.

One commenter suggested that the final rule should be much more expansive. Several commenters emphasized that this rule is a priority to them. One of these commenters asked the NCUA to make the fourth advertising statement and the 30 second exemption effective immediately following the proposed rule's comment closing date.

One commenter found the changes unneeded, reasoning that saving a few characters on social media is a non-issue and not worthy of Tier 1 status, especially since Twitter doubled its character limits.

Report 2: The NCUA issued a final rule related to the first report's recommendations in April 2018.[16] No further action is being considered by the NCUA Board at this time. Part 740 is scheduled to be reviewed again as part of the Office of General Counsel's 2020 annual regulatory review.

9. Appendix B to Part 701—Chartering and Field of Membership Manual

Addresses: Field of Membership.
Sections: Appendix B to Part 701.
Category: Expand Authority.
Degree of Effort: Moderate.
Degree of Impact: Moderate.

Report 1: Revise the chartering and field of membership rules to give applicants for community-charter approval, expansion or conversion the option, in lieu of a presumptive community, to submit a narrative to establish common interests or interaction among residents of the area it proposes to serve, thus qualifying the area as a well-defined local community. Add public hearings for determining well-defined local communities with populations over 2.5 million. Remove the population limit on a community consisting of a statistical area or a portion thereof. Finally, when such an area is subdivided into metropolitan divisions, permit a credit union to designate a portion of the area as its community without regard to division boundaries.

Comments: Approximately ten commenters offered general support for the proposal. Several commenters opposed the public hearing requirement for determining well-defined local communities with populations over 2.5 million. One of these commenters felt that while such hearings may be warranted in the case of a narrative application, the requirement seemed capricious in the case of a well-defined presumptive community application based on a Combined Statistical Area or Metropolitan Statistical Area. Another of these commenters felt this is a technical legal issue for which public input is neither necessary nor appropriate. A handful of commenters supported removing the population limit on a community consisting of a statistical area or a portion thereof. One of these commenters said that the NCUA should approve field of membership requests based on the FCU's demonstrated ability to serve members within a community, regardless of population, rather than on an arbitrary cap. At least one commenter supported allowing designation of a portion of a statistical area as a community without regard to metropolitan division boundaries. Another commenter asked the NCUA to consider additional improvements, including: Deadlines for FOM amendment requests, increased transparency in the decision making process, and streamlined charter conversions and notification requirements.

Report 2: The NCUA issued a final rule related to the first report's recommendations in June 2018.[17] Specifically, the final rule allows the option for an applicant to submit a narrative to establish the existence of a well-defined local community instead of limiting the applicant to a presumptive statistical community. Also, the NCUA Board will hold a public hearing for narrative applications where the

[14] The commenters cited recent proposals by federal banking regulators and the Office of Financial Research's report, ''Size Alone is not Sufficient to Identify Systemically Important Banks,'' to support their position.

[15] 83 FR 17901 (Apr. 25, 2018).

[16] 83 FR 17910 (Apr. 25, 2018).

[17] 83 FR 30289 (June 28, 2018).

proposed community exceeds a population of 2.5 million people. Further, for communities that are subdivided into metropolitan divisions, the NCUA Board will permit an applicant to designate a portion of the area as its community without regard to division boundaries. The NCUA Board expressly declined to increase the population limit for presumptive statistical communities. The final rule became effective September 1, 2018.[18] Part 701 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

10. Part 702—Capital Adequacy

Addresses: Risk-Based Capital.
Sections: 702.
Category: Improve.
Degree of Effort: Low.
Degree of Impact: High.[19]

Report 1 (Delay): Consider extending the January 1, 2019, implementation date to avoid needing to develop call report and system changes while this rule is under review. This will also allow time for the agency to more closely coincide changes with the implementation of the new current expected credit loss (CECL) accounting standard and consider any changes in risk-based capital standards for community banks currently being considered by the federal banking agencies.[20] Considerations include changing the definition of complex to narrow the applicability of the rule, allowing for credit unions with high net worth ratios to be exempt, and simplifying the overall risk category and weighting scheme.

Report 1 (Substantive): Considerations include changing the definition of complex to narrow the applicability of the rule, allowing for credit unions with high net worth ratios to be exempt, and simplifying the overall risk category and weighting scheme. These amendments need to be coordinated with any amendments to supplemental and secondary capital, which need to be coordinated with any amendments to the borrowing rule.

Comments: Approximately 15 commenters offered comments supporting delay of the RBC rule. Several commenters specifically supported delaying implementation of the rule so that the NCUA can revisit the need for it as adopted.

Approximately five commenters cited the concurrent timeline for implementation of the new CECL standard as a factor necessitating delay. One of these commenters reasoned that aligning these dates would provide additional time for capital planning and, to the degree deemed appropriate, potential alignment with community bank capital standards. The commenter felt such a delay would be high impact and low effort and consistent with Executive Order 13777's spirit. Another commenter asked that the NCUA provide to credit unions any economic analysis it has conducted on the impact of the CECL standard, which the commenter believed will likely compound compliance issues for RBC covered credit unions when it takes effect.

Approximately ten commenters cited system integration and call report update issues as factors necessitating delay. Several of these commenters said that compliance requirements have not been adequately noticed to provide system integration updates. Another commenter emphasized that without delay credit unions will be challenged to make required call report and system changes as the rule remains under review. One commenter stated that internal adjustments and implementation of new call report instructions take considerable resources with each change. The commenter felt that delaying the effective date and preventing a series of smaller and possibly conflicting changes that need to be readjusted over the next year will save credit unions time and resources. Several commenters said that delay and further study should be one of the agency's highest priorities. The commenters reasoned that, given the January 2019 effective date, credit unions must begin planning for and altering operations as early as the second quarter of 2018 and strongly urged the NCUA to announce a delay as soon as possible. The commenters stressed that the longer the NCUA waits to delay the rule, the higher the likelihood that credit union operations will be affected. Another commenter said that delay is necessary to give credit unions more time to review the rule and to give the NCUA more time to develop the necessary call report changes. The commenter suggested the call report should be modernized to reduce reporting burdens and give regulators better tools for on-site exams and off-site monitoring.

Approximately ten commenters asked the NCUA to narrowly tailor and simplify the rule. Approximately five commenters specifically asked the NCUA to narrow the complex credit union definition. Approximately five commenters specifically supported reducing the applicability of RBC and risk-weights to all smaller credit unions. Another commenter asked that, if the rule is retained, the NCUA further consider the rule's scope and a complex credit union definition that is not so dependent on asset size. One commenter asked the NCUA to raise the threshold to at least $500 million. The commenter reasoned that the RBC requirements are supposed to give larger institutions greater flexibility while appropriately addressing system risk posed by larger institutions, goals the commenter does not believe a $100 million threshold satisfies.

Approximately five commenters suggested the NCUA simplify the overall risk category and weighting scheme. Another commenter asked the NCUA to revisit the rule in light of the other federal banking agencies' current review of simplified capital standards for community banks.

Approximately five commenters asked the NCUA to exempt credit unions with high net worth ratios. One of these commenters asked the NCUA to study further whether RBC requirements should be applied to natural person credit unions and whether credit unions with high net worth ratios should be exempt from the RBC requirements. Another of these commenters suggested that the NCUA could implement an ''off-ramp'' from RBC requirements for well-capitalized credit unions similar to the CHOICE Act provision.[21] Approximately five commenters stressed that RBC requirements should be narrowly tailored to capture only the appropriate risk profiles intended. The commenters said that credit unions are unique and vary in terms of asset class, lending activities, and membership fields and cautioned against a one-size-fits-all approach or methodology that would subject credit unions to undue regulatory burden that fails to appropriately address their activities.

Approximately five commenters, in addressing the RBC recommendations, said that supplemental capital should be permitted to count towards credit unions' RBC requirements, to the extent they must be met. One of these commenters asked that, if the NCUA's 2015 RBC final rule is revised or retained instead of repealed, alternative

[18] The NCUA has appealed the U.S. District Court for the District of Columbia's ruling on the October 2016 field of membership rule.

[19] Includes potential efficiencies and/or cost savings for NCUA.

[20] CECL (current expected credit loss) is a new accounting standard adopted by the Financial Accounting Standards Board (FASB) affecting how credit unions account for losses and related reserves for financial instruments. The FASB effective date of CECL applicable to credit unions is 2021.

[21] Financial CHOICE Act of 2017, H.R. 10, 115th Cong. (2017).

capital authority be provided to help covered credit unions meet the new RBC requirements. Another commenter stated that, regardless of any RBC delay, the alternative capital rulemaking should proceed now under Tier 1. The commenter said that the rulemaking is especially necessary because credit unions will need time to plan for and adopt new alternative capital options so they can manage their balance sheets prior to any RBC effective date.

Several commenters asked the NCUA to adjust its RBC standards to accommodate the credit union model as opposed to the banking model, which the standards are based on. One of these commenters suggested that the NCUA should review European standards which take into account the cooperative model. The commenter suggested that, if the NCUA lacks the authority to make these changes, it should request such authority from Congress.

One commenter provided a substantial comment arguing that the NCUA should incorporate the findings and actions of other federal banking agencies. The commenter cited a previous letter sent to the NCUA noting that the federal banking agencies issued a joint proposal to reduce regulatory burden by simplifying capital rules. The commenter said that the banking agencies proposed, in part, to simplify the threshold deduction for mortgage servicing assets (MSAs). The commenter stated that this would include raising the limit for MSAs from 10% of common equity tier I capital to 25%, where any MSAs that exceed that limit would be deducted from regulatory capital. The commenter felt that, while the federal banking agencies' proposal would maintain MSA risk weight at 250%, this move clearly demonstrates the commitment to reduce regulatory capital burdens. The commenter said that the NCUA could take comparable measures to ease capital requirements, such as a reduced risk-weighting for MSAs and CUSOs, as well as the disparate weighting of mortgages based on concentration.

Another commenter asked the NCUA to discard the 2015 RBC final rule and return to the previous one because the prior form of RBC is consistent with prompt corrective action (PCA) requirements under the FCU Act. The commenter also noted, however, that bank regulators are increasingly wary of RBC and some economists doubt its usefulness. The commenter cited a 2013 Mercatus Center study that the commenter said concluded that RBC is not an effective predictor of bank performance. The commenter also asked the NCUA to reconsider whether a higher RBC requirement for well-capitalized credit unions, compared to the one for adequately-capitalized credit unions, is justified given the language of the FCU Act under PCA, which the commenter believed conclusively precludes this result.

At least ten commenters specifically suggested that substantive amendments to RBC are a priority. One commenter stated that Tier 2 prioritization for substantive changes was acceptable, provided the NCUA delay RBC's implementation by at least 24-months. Another commenter recommended that the NCUA classify the Task Force recommendations as Tier 1 and accelerate the process to provide meaningful regulatory relief as soon as possible. Several commenters said that reconsideration of many aspects of the RBC rule should be a top priority.

Report 2: After careful consideration and review, the NCUA issued a final rule related to the first report's recommendations in October 2018.[22] The final rule delayed the effective date of the RBC rule until January 1, 2020, and amended the definition of ''complex'' credit union for risk-based capital purposes, resulting in an increase in the asset threshold from $100 million to $500 million. Part 702 is scheduled to be reviewed again as part of the Office of General Counsel's 2019 annual regulatory review.

2. Proposed Actions

11. Appendix A to Part 701—Federal Credit Union Bylaws

Addresses: FCU Bylaws.
Sections: Appendix A to Part 701.
Category: Improve.
Degree of Effort: High.
Degree of Impact: High.
Report 1: Recommend using an advance notice of proposed rulemaking (ANPR) and forming a working group to update the FCU bylaws. The FCU bylaws have not been significantly updated in nearly a decade and need to be modernized; the modernization is likely to be complex enough to require a working group approach.

Comments: Approximately five commenters offered general support for the recommendation. Several other commenters stated that bylaws should be optional, with credit unions permitted to use their own bylaws. Those commenters cautioned that the NCUA should not impose new and additional regulatory compliance or reporting burdens. One supportive commenter noted its previous calls for the NCUA to issue a proposed rulemaking or ANPR to implement the 2014 FCU Bylaws working group's recommendations, including amending the required number of members needed on matters relating to special meetings and board nominations. Another commenter felt that NCUA's prior approval of all bylaw changes is unnecessary when an after the fact notice to the region should suffice, particularly for changes already approved for other credit unions. The commenter also believed that sanctions for failure to comply with bylaws are overly harsh and unnecessary for most credit unions. One commenter specifically argued that Articles III and IV on member meetings and elections are overly prescriptive and need to be revisited with an eye toward facilitating governance procedures.

Report 2: The NCUA issued a bylaws ANPR in March 2018 [23] and a proposed rule with a request for comment in October 2018.[24]

12. § 701.21—Loans to members and lines of credit to members

Addresses: Payday Alternative Loans (PALs).
Sections: 701.21(c)(7).
Category: Improve.
Degree of Effort: High.
Degree of Impact: High.
Report 1: Not Available.
Comments: Not Available.
Report 2: In June 2018 the NCUA proposed amendments to the NCUA's general lending rule to provide FCUs with an additional option to offer PALs.[25] This proposal would not replace the current PALs rule (PALs I). Rather, it would be an alternative option, with different terms and conditions, for FCUs to offer PALs to their members. Specifically, this proposal (PALs II) would differ from PALs I by modifying the minimum and maximum amount of the loans, modifying the number of loans a member can receive in a rolling six-month period, eliminating the minimum membership requirement, and increasing the maximum maturity for these loans. The proposal would incorporate all other requirements of PALs I into PALs II. The NCUA also solicited advanced comment on the possibility of creating a third PALs loan program (PALs III), which could include different fee structures, loan features, maturities, and loan amounts. The comment period for this proposal closed on August 3, 2018. The Task Force recommends that the NCUA evaluate

[22] 83 FR 55467 (Nov. 6, 2018).

[23] 83 FR 12283 (Mar. 21, 2018).

[24] 83 FR 56640 (Nov. 13, 2018).

[25] 83 FR 25583 (June 4, 2018).

the comments received and explore the development of a PALS II final rule and potentially a PALS III proposal.

13. § 701.21—Loans to members and lines of credit to members

Addresses: Loan maturity limits for FCUs.

Sections: 701.21(c)(4)(e), (f), & (g).

Category: Clarify.

Degree of Effort: Moderate.

Degree of Impact: High.

Report 1: Combine all the maturity limitations into one section. Current maturity limits are confusing because they are not all co-located. Also, incorporate the legal opinion with respect to modifications to make it clear a lending action (like a troubled debt restructuring) that does not meet the GAAP standard for a ''new loan'' is not subject to the maturity limits. In addition, consider providing longer maturity limits for 1- to 4-family real estate loans and other loans (such as home improvement and mobile home loans) permitted by 12 U.S.C. 1757(5)(A)(i) and (ii) and removing the ''case-by-case'' exception the NCUA Board can provide.

Comments: Approximately ten commenters offered general support for the recommendations. Approximately ten commenters supported co-locating the maturity limits. These commenters stated that having limits spread across the regulations is confusing and inefficient and felt that having all of the limits in one section will improve compliance. Several commenters specifically supported incorporating the legal opinion. These commenters felt this would provide clarity and consistency across the examination regions and help compliance. Approximately five commenters specifically supported longer maturity limits for 1- to 4- family real estate loans and other similar housing loans and elimination of the case-by-case exception. These commenters argued that longer maturity limits would allow credit unions to more effectively compete in the real estate lending market. One of these commenters felt that removing the case-by-case requirements is consistent with the NCUA's decision to give credit unions greater flexibility in making loans, provided such loans are consistent with prudent safety and soundness standards. Several other commenters specifically suggested amendments to the FCU Act's loan maturity provisions, including changes to designate 1- to 4- non-owner occupied loans as real estate loans rather than member business loans (MBLs).

Report 2: The NCUA issued a proposed rule with a request for comment in August 2018 addressing the first report's recommendations.[26]

Addresses: Single borrower and group of associated borrowers limit.

Sections: 701.21(c)(5); 701.22(a) & (b)(5); 723.2 & 723.4(c).

Category: Clarify.

Degree of Effort: Low.

Degree of Impact: High.

Report 1: Combine single borrower (and group of associated borrowers) limits into one provision. Currently these limits are interspersed in the general loan, loan participation and member business lending regulations. It would provide clarity and consistency to incorporate all references in one location.

Comments: Approximately ten commenters agreed with the recommendation and offered general support. Two of these commenters stated that the recommendation will provide consistency for compliance purposes. One commenter supported the recommendation, but also asked for additional guidance and/or clarification as to the application of associated borrower in the commercial lending context. One commenter suggested moving this recommendation to Tier 3 so that resources can be used on more substantive relief.

Report 2: The NCUA Board requested further comment on the single borrower and group of associated borrower limits in the August 2018 proposal addressing loan maturities.[27]

14. Part 722—Appraisals

Addresses: Appraisals.

Sections: 722.

Category: Expand Relief.

Degree of Effort: Moderate.

Degree of Impact: High.

Report 1: The NCUA should further explore issuing a rule to raise appraisal thresholds separately from the interagency process. In response to comments received through the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process, the NCUA joined with the other banking agencies to establish an interagency task force to consider whether changes in the appraisal threshold are warranted. The task force is now drafting a proposed rule to relieve certain appraisal burdens. In particular, the proposal would increase the appraisal threshold from $250,000 to $400,000 for ''commercial real estate loans'' where repayment is dependent primarily on the sale of real estate or rental income derived from the real estate. In contrast to the other agencies' appraisal regulations, the NCUA's appraisal regulation does not currently distinguish, with respect to the appraisal threshold requirement, between different types of real estate secured loans. Under 12 CFR part 722, the dollar threshold for any real estate secured loan is $250,000; loans above that amount must be supported by an appraisal performed by a state certified appraiser. The banking agencies' current appraisal regulations have the same $250,000 threshold as the NCUA's regulation for most real estate related loans, but also recognize a separate appraisal threshold of $1 million for certain real estate related business loans that are not dependent on the sale of, or rental income derived from, real estate as the primary source of income (hereinafter, qualifying business loans). If the NCUA joins the task force in issuing this joint proposed rule defining and raising the threshold for ''commercial real estate loans,'' the agency will likely also need to address the appraisal threshold for ''qualifying business loans'' in a subsequent rulemaking. Recommend that, instead of joining the joint proposed rule, the NCUA further explore issuing a rule to raise both thresholds separately from the interagency process.

Comments: Approximately ten commenters specifically stated that they supported raising the commercial real estate threshold to $400,000. One commenter strongly opposed raising the commercial real estate threshold. The commenter argued that the federal banking agencies' proposal exemplified regulatory arbitrage, and contradicts regulators' concerns regarding the commercial real estate market and the quality of evaluations. The commenter felt that regulators should be calling for heightened due diligence by institutions, particularly for credit unions and small community/regional banks, which the commenter suggested are less likely to have robust collateral risk management policies, practices, and procedures. The commenter asserted that bank failures overwhelmingly occur amongst smaller institutions and are in large part due to poor commercial lending decisions. The commenter also cited a recent survey that purportedly indicated an overwhelming majority of those closest to this issue believe that the thresholds should remain at $250,000. The commenter said that, while they appreciate lender concerns about appraiser availability in some rural areas, a national policy should not be tailored around isolated conditions.

[26] 83 FR 39622 (Aug. 10, 2018).

[27] *Id.*

The commenter stated that any one real estate market may experience rapid growth, but that growth may increase the importance of appraisals, as real estate is prone to market fluctuations. The commenter further emphasized that during the EGRPRA process many bank representatives' appraisal concerns related to residential not commercial topics. To that point, the commenter noted that the number of commercial real estate appraisers has remained relatively steady in recent years as commercial lending activity has seen slight increases. The commenter concluded by saying that if the agencies proceed with the proposal the qualifications requirements for those completing evaluations should be raised or elevated to offset the safety and soundness risks caused by the increase in the threshold level.

Approximately ten commenters specifically supported raising the threshold level for certain qualifying business loans (QBLs) to $1 million like it is for banks. One of these commenters provided a lengthy historical discussion on the NCUA's appraisal waiver provision, § 722.3(a)(9), and compared it to the FDIC's exemption for QBLs. The commenter analogized the need to remove the clunky waiver process to the NCUA's recent removal of the MBL waiver. One commenter opposed raising the QBL threshold. The commenter was pleased the EGRPRA review did not recommend an increase in the QBL threshold. The commenter said that this is consistent with statements made by banking sector representatives, who expressed little to no concern about the current threshold during several outreach meetings. The commenter also noted that many of the loans that would be impacted by a proposed increase in the owner-occupied threshold level are guaranteed by the Small Business Administration (SBA) and that currently the SBA requires an appraisal for all loans above $250,000.

Approximately ten commenters offered support for the NCUA to act separately from the interagency appraisals working group. The commenters expressed that raising the appraisal thresholds outside of the current interagency process makes sense as credit unions and the NCUA's regulations differ from banks and the other agencies' regulations. The commenters said that the changes should maximize relief, be consistent with credit union practice, and quickly provide parity with the requirements applicable to banks on appraisals.

Conversely, one commenter said that absent more information, the NCUA's withdrawal from the interagency rulemaking was concerning. The commenter noted that state and federal regulators have recognized that current appraisal requirements are in some cases overly burdensome without producing a measurable offsetting supervisory benefit. The commenter also observed that critique of the appraisal requirements was a prominent theme in response to the EGRPRA process. The commenter stated two primary concerns with the NCUA's withdrawal. First, the commenter said that the purpose of the Federal Financial Institutions Examination Council (FFIEC) is to coordinate consistent standards and that having divergent supervisory standards can cause complications when banks and credit unions interact in the marketplace. The commenter stated that the existing appraisal standard discrepancies have caused complication with loan participations, confused consumer/member borrowers, and confused loan officers. Second, the commenter was also concerned that when the NCUA has broken with its federal banking agency peers in the past it has been to impose unnecessarily higher standards on credit unions.

Approximately three commenters stated the appraisals reforms should be made a priority. One of these commenters said that it was important to their state's credit unions. Another of these commenters stressed that this should be proposed as soon as feasible to afford credit unions the same regulatory flexibility that other depository institutions now have. A different commenter stated that the inconsistency of the appraisal requirements for business loans made by credit unions compared to banks is a top issue for credit unions.

One commenter stated that the current thresholds limit the ability of credit unions to use more advantageous rules on appraisals from the secondary market. The commenter noted that Fannie Mae provides appraisal waivers for some home purchase loans when there is a 20% down payment and a prior appraisal was obtained under its Collateral Underwriter program. The commenter said that Freddie Mac has a similar approach. The commenter stated that certain new mortgage refinancing, such as when the borrower has at least 20% equity in the home and is not receiving cash as part of the transaction, generally no longer requires appraisals in the secondary market. The commenter urged the NCUA Board to consider these developments as it reviews the NCUA's appraisal requirements.

Finally, one commenter encouraged dialogue with state regulators as changes are considered.

Report 2: The NCUA issued a proposed rule with a request for comment in September 2018 addressing the first report's recommendations.[28] The agency issued this proposal separately from the other banking agencies. The proposal would increase the threshold below which appraisals would not be required for non-residential real estate transactions from $250,000 to $1,000,000. For non-residential real estate transactions that would be exempted from the appraisal requirement as a result of the revised threshold, federally insured credit unions would still be required to obtain a written estimate of market value of the real estate collateral that is consistent with safe and sound lending practices. Additionally, the proposal would restructure § 722.3 of the NCUA's appraisal regulation to clarify its requirements for the reader. Finally, the proposal would, consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act,[29] exempt from the NCUA's appraisal regulation certain federally related transactions involving real estate where the property is located in a rural area, valued below $400,000, and no state certified or licensed appraiser is available.

15. Part 713—Fidelity Bond and Insurance Coverage

Addresses: Fidelity Bond and Insurance Coverage.
Sections: 713.
Category: Improve.
Degree of Effort: High.
Degree of Impact: High.[30]
Report 1: Explore ways to implement the requirements of the FCU Act in the least costly way possible. While requiring fidelity coverage is statutorily mandated by the FCU Act, the NCUA's objective should be to allow a credit union to make a business decision based on their own product and service needs. This will effectively reduce the NCUA's involvement in a credit union's operational decisions while remaining consistent with the FCU Act. This should be done separately from the Regulatory Reform Task Force process.
Comments: Approximately five commenters agreed that credit unions should be able to make business decisions on required fidelity bond and insurance coverage. One commenter

[28] 83 FR 49857 (Oct. 3, 2018).

[29] Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law 115–174, 132 Stat. 1296 (2018).

[30] Includes potential efficiencies and/or cost savings for NCUA.

suggested a working group that includes credit unions and insurers to update the rules to provide flexibility to make business decisions about bond coverage, particularly regarding the scope of coverage and deductibles. The commenter also felt that an ANPR would be useful to identify the range of issues before an actual proposal is developed. One commenter suggested that the NCUA move this to Tier 2 and focus on more pressing relief given the NCUA's recent legal opinion relative to this topic.[31]

Report 2: The NCUA issued a proposed rule with a request for comment in November 2018 addressing the first report's recommendations.[32] The NCUA also issued a legal opinion addressing the permissibility of certain joint coverage provisions in fidelity bonds in September 2017.[33]

3. Future Actions

16. Part 715—Supervisory Committee Audits and Verification

Addresses: Engagement letter, target date of delivery.
Sections: 715.9(c)(6).
Category: Remove.
Degree of Effort: Low.
Degree of Impact: High.
Report 1: Revise this section of the regulation to remove the specific ''120 days from the date of calendar or fiscal year-end under audit (period covered)'' reference from this section. Recommend the target date of the engagement letter be presented so the ''credit union can meet the annual audit requirement.'' This allows credit unions to negotiate the target date of delivery with the person or firm they contract with, but also ensures they meet the audit requirement per the FCU Act. This would also alleviate the need for a waiver.
Comments: Approximately five commenters offered general support for the recommendation. One commenter said that relief in this area is not a high priority and suggested a Tier 3 prioritization.
Report 2: The Task Force recommends adopting the first report's recommendation and prioritization. A proposed rule addressing this recommendation will likely be issued during the first quarter of 2019.

17. Part 715—Supervisory Committee Audits and Verification

Addresses: Audit per Supervisory Committee Guide.
Sections: 715.7(c).
Category: Clarify.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: Revise this provision to remove the reference to the NCUA's Supervisory Committee Audit Guide. In its place, include minimum standards a supervisory committee audit would be required to meet if the committee does not obtain a CPA opinion audit.
Comments: Two commenters offered general support for the recommendations. Three commenters suggested that if the NCUA pursues this change, it should not impose additional compliance burdens and instead only simplify, clarify, and streamline the ''minimum standards'' required for supervisory committee audits. Another commenter argued that more substantial changes are needed. The commenter stated that while the NCUA applies some of part 715 to FISCUs by reference in §§ 741.6 and 741.202, it is unclear which provisions of part 715 apply to FISCUs. The commenter asked the NCUA to clarify which requirements apply to FISCUs by fully incorporating the audit requirements applicable to FISCUs in part 741. The commenter also recommended that the NCUA separate the FCU Supervisory Committees' rules from FISCUs' audit requirements since not all FISCUs use supervisory committees in their governance structures or for audits. One commenter asked that this recommendation be moved to Tier 3 because relief in this area is not a high priority.
Report 2: The Task Force recommends adopting the first report's recommendation and prioritization. A proposed rule addressing this recommendation will likely be issued during the first quarter of 2019.

18. Subordinated Debt (Formerly Alternative Capital)

Addresses: Subordinated Debt.
Sections: 702 generally.
Category: Expand Authority.
Degree of Effort: High.
Degree of Impact: Low.
Report 1: As a follow up to the ANPR issued in January 2017, the NCUA Board should consider whether to propose a rule on alternative forms of capital FICUs could use in meeting capital standards. First, the NCUA Board should decide whether to make changes to the secondary capital regulation for low-income designated credit unions. Second, the NCUA Board should decide whether or not to authorize credit unions to issue supplemental capital instruments that would only count towards the risk-based net worth requirement.
Comments: Approximately fifteen commenters offered general support for the recommendation. Several commenters suggested that the NCUA has the statutory authority to include alternative capital to satisfy the risk-based net worth requirement, and should do so. These commenters felt that an initial volume limit of 25% of retained earnings or 2% of total assets, whichever is greater, would be appropriate. Several other commenters said that alternative capital is necessary considering the RBC requirements. Another commenter argued that, in addition to allowing credit unions to use supplemental capital for RBC requirements, the NCUA should allow supplemental capital to be counted towards the current PCA capital requirements. The commenter said that the ability to raise supplemental capital provides the credit union industry and the NCUSIF additional layers of protection against unexpected losses.

Approximately three of these commenters specifically said that they support efforts to explore additional sources of capital for purposes of net worth requirement calculations. These commenters felt supplemental capital should be permitted to count toward the risk-based net worth requirements. Several of these commenters suggested a supervisory approach that sets forth base requirements for issuance of capital instruments without specifying precisely how such broadly-defined instruments would comply. The commenters stated that the focus instead should be on the approval process, similar to the Food and Drug Administration's drug monograph approval procedures.

Another of these commenters urged the NCUA to promulgate a rule that incorporates the following principles: (1) Preserve the not-for-profit, mutual member-owned and cooperative structure of credit unions and ensure that ownership interest remains with the members; (2) ensure that the capital structure of credit unions is not fundamentally changed; (3) provide a degree of permanence such that the sudden outflow of capital will not occur; (4) allow for a feasible means to augment supplemental capital; and (5) provide a solution with market viability.

Several commenters stated that secondary capital and supplemental capital should be consolidated. One commenter felt that for supplemental capital to be effective it should: Transfer risk outside of the credit union system; be scalable and appropriate to the size and complexity of the credit union; and provide sufficient parity with the banks so as not to negatively impact investor

[31] OGC Op. Ltr. 17–0959 (Sept. 26, 2017).
[32] 83 FR 59318 (Nov. 23, 2018).
[33] OGC Op. Ltr. 17–0959 (Sept. 26, 2017).

interest in credit union supplemental capital instruments. One commenter suggested that the NCUA create a pilot program for alternative capital, similar to the derivatives rule. The commenter believed that by piloting supplemental capital with a select group of well-capitalized, well-managed credit unions, the NCUA could efficiently monitor the program's effectiveness and glean best practices that could benefit the entire industry.

At least eight commenters emphasized that this issue should be made a Tier 1 priority. One of these commenters argued that two years is too long to wait to be able to participate in capital markets. The commenter emphasized that credit unions are required to maintain the same capital ratios, sustain the same reserves, and pay for deposit insurance the same as any bank. Several commenters asked the NCUA to reaffirm its commitment to implement the rule prior to the 2019 RBC effective date. Several commenters expressed concern that the report is ambiguous as to whether the agency remains committed to a robust alternative capital rulemaking, which they deem contrary to previous statements from the NCUA linking alternative capital rulemaking to RBC. The commenters argued that substantial work and deliberation has already been done and to abdicate the progress made would squander one of the more significant, and long sought, regulatory relief opportunities before the NCUA.

More specifically, one commenter took issue with the report stating that the ''Board *should* decide whether or not to authorize credit unions to issue supplemental capital instruments that would only count towards the risk-based net worth requirement.'' The commenter said that the NCUA Board's public statements seem to show this affirmative decision has already been made and mentioned that substantial work has already been done to develop the rule. The commenter cited the RBC comment process, the 2017 alternative capital ANPR, and the 2007 working group white paper as evidence of the work already done. The commenter asked the NCUA Board to move forward now to capitalize on this momentum. The commenter also emphasized that the NCUA, the NCUA Board, and the Chairman have consistently stated the intent to implement the supplemental capital rule prior to the RBC requirements' effective date and took issue with the report providing ''no compelling justification to reverse course.'' The commenter argued that abandonment of this initiative is inconsistent with the regulatory reform agenda's goals and while the report's effort/impact matrix makes sense generally, it falls short given the NCUA Board's consistent statements. The commenter further pointed to statements by the Chairman that suggest the rule would afford credit unions heightened opportunity to extend job-creating small business loans that strengthen the economic viability of Main Street. Additionally, the commenter reiterated that RBC requirements may impose significant regulatory burden if not accompanied by access to some form of supplemental capital. The commenter concluded that a well-designed supplemental capital rule would serve as a tool to help credit unions meet the new RBC requirements and would ensure that the RBC rules are comparable to other bank regulatory agencies as required by 12 U.S.C. 1790d(b)(1)(A).

Another commenter was perplexed by alternative capital's Tier 2 placement, especially since the NCUA has prioritized other PCA/net worth requirement related provisions in Tier 1. For example, the commenter argued that alternative capital's Tier 2 placement would make it unavailable for use in meeting risk-based net worth requirements until after the RBC rule's effective date. The commenter also took issue with the fact that the first report is ''ambiguous'' as to whether the agency remains committed to a robust alternative capital rulemaking. The commenter felt this contrary to repeated statements from the NCUA unequivocally linking an alternative capital rulemaking to RBC. The commenter said that alternative capital is an essential tool for both low-income designated credit unions and non-low-income designated complex credit unions to meet net worth thresholds. The commenter also cited an FAQ on the NCUA's website stating that the NCUA Board plans to move forward with a rule to allow supplemental capital to be counted in the RBC numerator before the rule's effective date.[34] The commenter lamented that substantial work and deliberation has already been done, including, but not limited to: A 2007 whitepaper concluding supplemental capital was a worthwhile policy goal; solicitation of input on supplemental capital during the RBC comment process; a 2016 NCUA Board briefing on issues related to supplemental capital; a 2017 ANPR with over 100 supportive comments; and legislation introduced in Congress to provide alternative capital authority for all credit unions without regard to RBC standards. The commenter acknowledged that alternative capital is complex, but emphasized that state regulators, the NCUA, and many in the credit union system have been studying this issue and developing regulatory frameworks for well over a decade. The commenter asked the NCUA to commence rulemaking to enhance low-income designated credit union secondary capital rules and to establish supplemental capital for RBC.

One commenter strongly disagreed that an alternative capital overhaul would have a low impact and instead felt alternative capital authority would have a substantial impact. The commenter argued that capital modernization is needed as credit unions face both external challenges such as economic cycles, social media and Bank Transfer Day, with no growth opportunities beyond retained earnings. The commenter said that the need for increased earnings through managed risk is stronger than ever and a critical component of capital modernization. The commenter stated that credit unions are seeking the ability to increase loan portfolios and other growth opportunities within the not-for-profit cooperative structure. The commenter believed authority to issue and accept alternative capital is vital to safe-guarding the future of the credit union system and argued that unforeseen circumstances could strain a credit union's capital position to a point where the ability to quickly raise supplemental capital would be a valuable option. The commenter felt that increasing retained earnings, often the only current option, may not be sufficient in a severely stressed situation. The commenter suggested that alternative capital would also provide an additional source of protection for the NCUSIF.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force moved this recommendation from Tier 2 to Tier 1. Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1. All other aspects of this recommendation remain unchanged.

[34] Frequently Asked Questions about NCUA's Risk-Based Capital Final Rule October 2015 (stating ''Q10. Will credit unions be authorized to raise supplemental capital for purposes of risk-based net worth? Yes. The NCUA Board plans in a separate proposed rule to address comments supporting additional forms of supplemental capital. As the risk-based capital final rule does not take effect until January 1, 2019, there is ample time for the NCUA Board to finalize a new rule to allow supplemental capital to be counted in the risk-based capital numerator before the effective date.''), *available at https://www.ncua.gov/Legal/Documents/RBC/RBC-Final-Rule-FAQs.pdf.*

19. § 701.34—Designation of Low Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions

Addresses: Designation of low income status; Acceptance of secondary capital accounts by low-income designated credit unions.

Sections: 701.34.

Category: Improve.

Degree of Effort: High.

Degree of Impact: Low.

Report 1: See the January 2017 ANPR on alternative capital for the broad range of changes that need to be made to this regulation to relocate capital treatment to part 702 and address securities law issues, issuance and redemption standards, etc.

Comments: In response to this recommendation, six commenters were supportive of alternative capital generally. One commenter said that more credit unions are looking to take advantage of the economic opportunities of secondary capital. The commenter stated that although it is a comparatively small field now, amendments could offer a new avenue for low-income designated credit unions that are hesitant due to regulatory barriers to find new sources of capital and help to provide services for chronically underserviced communities. The commenter felt that improving regulatory clarity and reducing the burden of the approval process could benefit low-income designated credit unions and the communities they serve.

Another commenter argued that secondary capital accounts should be controlled by state law for FISCUs, including those seeking a low-income designation by their state regulatory agency. The commenter believed that the limits §§ 701.32 and 701.34 place on FISCUs pursuant to § 741.204 are unnecessarily preemptive and unduly burdensome. The commenter felt that while secondary capital accounts do not count toward regulatory capital requirements for non-low-income designated credit unions, the ability to offer the accounts is not inherently unsafe and unsound, and therefore should be subject to state law.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force moved this recommendation from Tier 2 to Tier 1. Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1. All other aspects of this recommendation remain unchanged.

20. § 701.38—Borrowed Funds From Natural Persons

Addresses: Borrowed funds from natural persons.

Sections: 701.38.

Category: Clarify/Expand.

Degree of Effort: High.

Degree of Impact: Moderate.

Report 1: Recommend revising this section of the regulation to comprehensively address the borrowing authority for FCUs. See the January 2017 ANPR on alternative capital for a discussion on this subject. Also, see recommended changes to part 702. A comprehensive borrowing rule could provide clarity and certainty needed to support supplemental capital.

Comments: Several commenters said that a comprehensive borrowing rule could provide clarity to support supplemental capital concerns, but cautioned against imposing additional regulatory burdens. These commenters stated that any rule should retain flexibility for credit unions to structure the offering in a cost-effective manner, regardless of the nature of the capital instrument, be it equity or subordinated debt. One commenter suggested the NCUA implement a pilot program similar to the derivatives rule. The commenter felt that a pilot program would yield best practices that could benefit the entire industry. The commenter recognized that statutory amendments may be necessary to provide meaningful alternative capital options for all credit unions, but suggested that a revised regulatory capital framework would still offer increased flexibility to credit unions that must meet the NCUA's risk-based net worth requirement. One commenter asked for a Tier 1 prioritization.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 2 to Tier 1. Subordinated debt (formerly alternative capital) is a priority for the Chairman, the agency, and commenters. As such, all recommendations associated with subordinated debt were moved to Tier 1. All other aspects of this recommendation remain unchanged.

21. § 701.32—Payment on Shares by Public Units and Nonmembers

Addresses: Payment on shares by public units and nonmembers.

Sections: 701.32.

Category: Expand.

Degree of Effort: Low.

Degree of Impact: Moderate.

Report 1: Raise the nonmember deposit limit from 20% to 50%. As the functional equivalent of borrowing, this will parallel the ability of credit unions to borrow from any source up to 50% of paid-in and unimpaired capital and surplus per § 1757(9) of the FCU Act. A credit union is required to be low-income designated to accept nonmember deposits, limiting the institutions that can engage in this activity.

Comments: Approximately five commenters offered general support for the recommendation. Several commenters noted that they support the development and preservation of community development credit unions and the use of the NCUA's statutory authority to support and encourage their growth. These commenters felt that raising the nonmember deposit limit to 50% would be a positive step. One commenter believed that raising the limit would allow credit unions to establish deeper relationships with political subdivisions and other public units, such as cities and counties. Another commenter noted that concerns regarding the limit have caused many to shy away from or unnecessarily limit a strategic source of liquidity. The commenter stated that, as is the case for loan participations, the use of the national wholesale market on both the liability side of the balance sheet as well as the asset side allows credit unions to manage certain risks with greater precision and provides for the ability to take advantage of liquidity sources that may allow for expansion of services while competing on a level playing field. One commenter stated that these types of transactions are functional equivalents to borrowings and should be subject to the same limits. Another commenter asked that the NCUA provide an exemption to any state regulatory authority that seeks to set a higher limit. Finally, several commenters asked for a Tier 1 prioritization.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 2 to Tier 1. All other aspects of this recommendation remain unchanged.

22. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Compensation in connection with loans.

Sections: 701.21(c)(8).

Category: Clarify.

Degree of Effort: Low.

Degree of Impact: Moderate/High.

Report 1: Modify to provide flexibility with respect to senior executive compensation plans that incorporate lending as part of a broad and balanced

set of organizational goals and performance measures.

Comments: Approximately ten commenters offered general support for the recommendation. One commenter supported allowing the flexibility to structure senior executive compensation plans to incorporate lending incentives. The commenter felt that such plans will help credit unions compete more effectively for talent and align organizational goals more closely with individual incentives. Another commenter supported the recommendation, but encouraged the NCUA to add stipulations that would require loan delinquencies to be given consideration so that the quality of the loans is measured. Several commenters argued that *de minimis* thresholds should apply in any assessment of compensation, either discretionary or compulsory.

Multiple commenters asked the NCUA to clarify how the agency interprets ''overall financial performance'' in § 701.21(c)(8)(iii). One of these commenters stated that, despite the rule's allowance for covered employees to receive compensation based on the credit union's ''overall financial performance,'' credit unions and examiners sometimes disagree regarding compensation programs that appear to meet this requirement. Another commenter stated that two provisions in particular create confusion and unduly limit well managed credit unions' ability to provide incentives for good performance: (1) Section 701.21(c)(8)(iii)(B) permits bonuses and compensation to an employee but it must be based on the ''overall financial performance'' of the credit union, rather than being tied to the performance of their department or individual function; and (2) Section 701.21(c)(8)(iii)(C), under which a bonus or incentive may be provided to an employee in connection with lending performance, but the employee cannot be a senior management official. According to the commenter, the 1995 final rule's preamble states that the rule allows FCUs to pay: ''(1) to any employee, including a senior management employee, an incentive or bonus based on the overall financial performance of the credit union.'' The commenter argued that, while the regulatory text does not specifically include the ''including senior management'' language in subsection (iii)(b), the preambles of the proposal and final rules make clear the intention to include senior management in the exception. According to the commenter, the 1995 final rule did not articulate any specific concerns to warrant the exclusion of senior management from the overall financial performance exception.

One commenter did not support the incentive compensation proposal.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

23. Part 712—Credit Union Service Organizations (CUSOs)

Addresses: Credit Union Service Organizations (CUSOs).

Sections: 712.

Category: Remove & Expand.

Degree of Effort: Low.

Degree of Impact: High.

Report 1: Recommend examining the CUSO regulation and evaluating the permissible activities in light of the FCU Act permitting CUSOs ''whose business relates to the daily operations of the credit unions they serve'' [35] or that are ''providing services which are associated with the routine operations of credit unions.'' [36]

Comments: A handful of commenters offered very general support for increasing and enhancing CUSO permissible activities. Several commenters that supported expanding CUSO permissible activities argued that, for many credit unions, the use of CUSOs will be essential as the need to seek operational efficiencies intensifies and credit unions face increasing competitive pressure from a variety of depository and non-depository financial service providers, such as fintechs. The commenters indicated that CUSOs provide a means for credit unions to address challenges related to changing consumer expectations and the need for technologies to better serve credit union members. Another commenter suggested that the NCUA abandon the preapproved list of CUSO activities and permit credit unions to invest in or loan to CUSOs offering products and services generally incidental to credit union business.

One commenter asked the NCUA to allow limited FCU investment in a FISCU CUSO even if that FISCU CUSO engages in activities not permissible for an FCU. The commenter argued that *de minimis* exposure should not rise to the level of being considered circumvention of FCU permissible activity provisions and suggested that this change would expand the opportunities for system collaboration and innovation.

Approximately five commenters asked that the NCUA expand and clarify CUSOs' loan origination powers. Commenters suggested that the NCUA expand permissible activities in § 712.5 to include ''loan origination of all types of loans that may be provided by a credit union.'' The commenters noted that with this addition the specific origination authority for business loans, consumer mortgage loans, student loans, and credit card loans could be deleted. Several of these commenters also suggested the NCUA make it clear that CUSOs are able to make, purchase, or sell any types of loans that credit unions can make on their own. Several commenters wrote extensively on this issue.

One of these commenters believed that CUSOs can play a pivotal role as credit unions turn increasingly to collaborative solutions in lending to reduce costs and compete with non-credit union loan aggregators. The commenter said that if CUSOs cannot be loan aggregators, credit unions will be at the mercy of non-credit union loan aggregators who are not willing to deal with the membership requirements. The commenter noted that credit unions are currently excluded from participation in the loan aggregation networks that more consumers are turning to for loans, especially for auto loans. The commenter argued that the fact that some types of loans are permitted to be originated by CUSOs and some are not seems based on historical happenstance rather than any sound policy. The commenter, along with several other commenters, stated that § 712.5 is a categorical list of pre-approved activities a CUSO may provide and not meant to be an exclusive laundry list of activities. However, the ''categories'' of loan origination services CUSOs are permitted to provide are not categories of services by themselves and create confusion in the industry. To demonstrate this, the commenter noted that ''business loan origination'' has meant for years that CUSOs can originate and hold ''business loans'' and asked if this precludes a CUSO from originating ''commercial loans.'' Similarly, the commenter asked if ''consumer mortgage loan origination'' precludes the origination of home equity loans or lines of credit. The commenter emphasized that selective lending power can be awkward and confusing.

The commenter suggested the time is appropriate to expand CUSO lending powers. The commenter argued that CUSOs should have the power to ''originate and hold all types of loans credit unions can make.'' The commenter believed that this change would create an unambiguous, rational, and highly defensible lending services definition for CUSO powers and would correct a policy that the commenter felt

[35] 12 U.S.C. 1757(5)(D).

[36] 12 U.S.C. 1757(7)(I).

authorizes certain lending powers for CUSOs and excludes others without a rational basis. More specifically, the commenter suggested that the NCUA amend § 712.5 by deleting references to the origination of business loans, consumer mortgage loans, student loans and credit card loans (§ 712.5(c), (d), (n), and (s)) and adding the power to ''originate and hold loans, including the authority to buy and sell participation interests in such loans'' as a new § 712.5(c).

A handful of commenters emphasized that the ability for CUSOs to package and sell loans to investment buyers is critical to credit unions moving forward, particularly if Fannie Mae and Freddie Mac are eliminated or their presence in the marketplace is reduced. The commenters felt that to continue cost effectively providing home loans that put the borrowers first, credit unions need to participate in the securitization market. The commenters stressed that secured loan investment packages require scale in order to make them affordable and attractive in the marketplace and noted that, except for a limited few, credit unions do not have sufficient loan volume to create single issuer loan packages. The commenters encouraged the NCUA to explore the ability of multiple credit unions to combine to sell their loans in multi-issuer packages with cross-indemnifications. The commenters concluded that enabling this cooperative activity would be a significant contributor to future financial health and stability for the industry.

Approximately five commenters provided comments addressing CUSO examinations. Several of these commenters provided general statements that CUSOs should not be subject to full examinations. Several other commenters asked the NCUA to revise the current approach to safety and soundness supervision of credit union CUSO investments and suggested it is best performed through the credit union supervisory framework, not the direct supervision of CUSOs themselves. The Task Force notes that the NCUA does not directly regulate or supervise CUSOs, but instead supervises credit unions' CUSO investments through the credit union supervisory framework.

Several commenters asked the NCUA to stop exercising *de facto* exam powers over CUSOs. The commenters described these exams as compelling CUSOs to report directly to the NCUA and comply with NCUA directives through the credit union owners and felt this was an exercise of power without specific congressional authority. The commenters asked the NCUA to revise the regulations in a manner that leaves no doubt that the agency is acting both within its authority and consistently with the need for safety and soundness supervision of credit union CUSO investments. The commenters also suggested that the NCUA use this regulatory review process to continue to compile necessary data on the investment of credit unions in CUSOs through the registry, but discontinue conducting *de facto* examinations in the form of CUSO reviews.

One commenter said that if the NCUA elects to continue to exercise *de facto* supervision over CUSOs, the agency should formally advise the Bureau of Consumer Financial Protection (BCFP) of that fact. The commenter noted that the BCFP administers the Secure and Fair Enforcement for Mortgage Licensing Act and the licensing and registration of mortgage loan originators (MLOs). The commenter said that prior to the passage of the most recent CUSO regulation, the NCUA advised the BCFP that it did not have the power to regulate CUSOs. The commenter said that this resulted in MLOs in the CUSOs providing mortgage lending services having to be licensed and not registered. The commenter explained that in multi-state situations, this means that MLOs and the CUSOs may have to be licensed in many states and incur greatly increased expenses and regulatory burden. The commenter requested the NCUA's assistance, should it continue to conduct *de facto* CUSO examinations in the form of CUSO reviews, in informing the BCFP that the NCUA exercises sufficient supervision over CUSOs to justify that CUSOs be exempt from the licensing requirements and the MLOs in CUSOs qualify for registration.

Several commenters said that they believe the percentage credit unions can invest in CUSOs should be increased. The Task Force notes that the FCU Act limits FCU CUSO investments to the 1% of paid-in and unimpaired capital and surplus currently permitted by § 712.2(a) of the NCUA's regulations.[37]

Another commenter noted that they support review of the CUSO regulation and said that they felt the January 2016 changes were punitive and excessive in light of the relatively low risk CUSOs pose to the system and went beyond the NCUA's authority. The commenter believed that the current rule burdens CUSO operations and limits credit unions' abilities to use CUSOs to maximize their services. The commenter said that, for example, the rule established elaborate reporting of CUSO activities to the NCUA and includes a list of high risk CUSO activities such as payroll processing that subject CUSOs to additional requirements. The commenter asked the NCUA to reconsider these requirements. The commenter also asked the NCUA to reconsider the need for the ''costly CUSO Registry.'' Additionally, the commenter said that they did not support the NCUA's past efforts to obtain statutory authority over CUSOs and other third-party service providers. The commenter stated that they appreciate that the current NCUA Board is not pressing Congress for such authority. The commenter felt that such authority would be an unnecessary expansion of the agency, would result in higher costs to credit unions, and would divert the agency from its primary mission of supervising and regulating credit unions.

One commenter asked the NCUA to reorganize the CUSO rules to co-locate FISCU applicable provisions or move the FISCU applicable provisions to part 741 to eliminate confusion as to which provisions apply to FISCUs.

One commenter suggested that there should be a way for a corporate credit union to make a minimal investment in a company without treating it as a corporate CUSO. The commenter stated that many companies shun corporate credit union investment dollars due to the regulatory constraints of becoming a corporate CUSO, having to primarily serve credit unions and to follow the various regulatory restrictions of part 704. The commenter said that without the opportunity to invest in companies, a corporate credit union cannot direct or participate in the direction of new products or services. The commenter argued that the intent of an investment in such a company is not measured by a return as it is with traditional investments (securities) but instead is an opportunity to help bring new technologies, products, and services to credit union members.

Finally, a commenter, noting their strong belief in the economies of scale and other advantages that CUSOs confer to credit unions, asked the NCUA to increase the prioritization of CUSO reform. The commenter recommended that the NCUA Board publish an ANPR in 2018 that solicits ideas and other feedback.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 3 to Tier 1. After reviewing the degree of effort and the potential impact, the Task Force believes that this recommendation is

[37] 12 U.S.C. 1757(7)(I).

more appropriately placed in Tier 1. The change should be low effort and high impact. The NCUA plans to issue a 2019 proposed rule on allowing CUSOs to originate any loan that a credit union may provide.

24. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Loan interest rate, temporary rate.
Sections: 701.21(c)(7)(ii).
Category: Expand/Clarify.
Degree of Effort: Moderate.
Degree of Impact: Low.[38]
Report 1: Research the possibility of using a variable rate instead of a fixed, temporary rate. Also, remove the specific means for notifying credit unions to preserve future flexibility in sending notices in the most efficient and suitable manner available.

Comments: Several commenters offered general support for the recommendations. A handful of commenters urged the NCUA to further explore options, including eliminating the maximum interest rate. Approximately five commenters noted that the loan interest rate ceiling has stayed at 18% since 1987 and felt it makes sense to study whether future rate changes should be tied to a domestic index. One of these commenters felt such a change would give much-needed elasticity to a rate cap that hasn't changed since 1987 despite dramatic economic swings. Another commenter felt that a variable rate could result in more certainty for FCUs regarding future loan rate ceilings and would facilitate credit union lending and overall planning.

One commenter suggested amending the ceiling to a 15% spread over prime, and articulated a belief that this action would help credit unions reduce interest rate risk. The commenter said that the NCUA has urged credit unions to be vigilant in identifying and managing interest rate risk and felt this action would go a long way towards helping credit unions reduce risk. The commenter believed that adjusting the interest rate cap so it floats with the level of prime would provide regulatory relief to the entire industry because it would benefit any credit union that makes variable rate loans to its members. The commenter said that, absent this relief, credit unions will either absorb margin compression, which places more capital at risk, or scale back lending to certain segments of the population. The commenter felt that this relief would enable credit unions to remain competitive, serve a broader spectrum of their members, and better manage risk and capital. The commenter concluded that this would provide relief for credit unions and reduce risk to the NCUSIF because the industry would be better positioned to absorb rising interest rates.

Several commenters said that removal of a specific means for notifications is appropriate given the pace of development in modern communication technology. The commenters believed that, to that end, the NCUA should take steps to ensure the application of this principle to all aspects of credit unions' communications, including advocating that credit unions have the flexibility to contact their members via modern communications.

Several commenters asked the NCUA to move the recommendation to Tier 1. One of the commenters urged the NCUA to make this its top priority given rising rates and the expectation the Federal Reserve Board will continue to raise rates in 2018.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 3 to Tier 1. In addition to being a priority for commenters, the loan interest rate is a priority for the Board. As such, the NCUA plans to issue a 2019 ANPR to solicit further input.

4. Other Commenter Suggestions for Tier 1

One commenter asked the NCUA to eliminate the readily marketable collateral standard in the new MBL rule. The commenter said that readily marketable collateral is a legal term of art that has not previously been imposed on credit unions. The commenter stated that, in determining whether to classify collateral as ''readily marketable,'' the Office of the Comptroller of the Currency has focused on an instrument's fungibility, trading ease, the ability to obtain reliable price quotations on a daily basis, and trading of the instruments through a regulated market. The commenter noted that, unlike banks, which the commenter said can easily obtain and utilize such collateral, credit unions typically do not often deal with collateral that satisfies the above criteria. The commenter said that this has resulted in some credit unions being unable to engage in MBLs that they were previously authorized to engage in, notwithstanding the fact that one of the primary purposes of the NCUA's MBL reforms was to give credit unions greater flexibility to make MBLs provided doing so was consistent with a credit union's risk profile and expertise. The commenter concluded that the NCUA should exercise its regulatory power to remove the readily marketable collateral standard and instead mandate that a credit union only be allowed to make such loans based on sound and prudent underwriting standards backed by adequate collateral. The commenter suggested a Tier 1 prioritization for this recommendation.

Several commenters asked for changes related to the restoration of accrual status on member business loan workouts. The commenters recommended clarifying appendix B to part 741, the interpretive ruling and policy statement on loan workouts, non-accrual policy, and regulatory reporting of troubled debt restructured loans. More specifically, the commenters recommended the NCUA align its policy pursuant to restoration to accrual status on member business loan workouts with those of other federal bank regulators. The commenters said that the NCUA's rules require a repayment period of six consecutive payments while banking agencies require only six consecutive months. The commenter stated that the NCUA's more restrictive term creates difficulties with credits with annual payments. The commenters said that under the NCUA's structure a credit could be in non-accrual status for six years despite strong performance in the case of an annual credit. The commenters asked the NCUA to reconsider whether the more stringent repayment requirement for credit union commercial accrual status remains necessary. One of these commenters noted that semi-annual or annual payment schedules are commonly found in agricultural purpose MBLs. The commenters suggested a Tier 1 prioritization for this recommendation.

ii. Tier 2 (Year 3)

1. Part 703—Investment and Deposit Activities

Addresses: Investment and Deposit Activities.
Sections: 703.
Category: Improve & Expand.
Degree of Effort: High.
Degree of Impact: High.
Report 1: Revise the regulation to remove unnecessary restrictions on investment authorities not required by the FCU Act, and provide a principles-based approach focused on governance for investing activity. Also, remove the pre-approval requirement for derivatives authority and substitute with a notice requirement (coheres this to part 741 for FISCUs as well). See the appendix for details on modifying this regulation.

Investments Comments: Approximately ten commenters offered

[38] Includes potential efficiencies and/or cost savings for NCUA.

explicit support for the expansion of investment authority, removal of unnecessary restrictions not required by the FCU Act, and a principles-based approach. Several of these commenters said that these changes would allow credit unions to reduce risk and perform better. Several more of these commenters said that in order to be competitive in today's financial services marketplace credit unions should be permitted to invest in a broad range of investment alternatives, subject to the decision-making control of their member directors. These commenters said that amending this section could give credit unions access to professionally-managed, separate-account investments with greater transparency than is afforded via permitted mutual funds. Several other commenters argued that if the FCU Act allows a type of investment, a credit union should be able to consider its purchase based on its balance sheet needs, risk appetite, and safety and soundness position. One commenter suggested that any approved rule changes should be accompanied by similar guidance and training for examiners to help ensure principles-based changes are permitted.

One commenter stated that a principles-based approach may enhance permissible investment options available to credit unions to fund executive and employee benefit programs that help retain and attract quality employees. Another commenter argued that a more principles-based approach will allow credit unions to tailor their investment activities to their individual portfolio needs. The commenter also concluded that allowing further authority will strengthen the board and senior management's ability to consider the best options based on individual circumstances.

Several commenters stated that they support the removal of the prescriptive due diligence requirements applicable toward investment advisors and broker-dealers, given the nature of those business models, and instead requiring credit unions to perform due diligence.

One commenter encouraged the creation of a working group that includes credit union officials and investment advisors. The commenter also suggested the development of an ANPR to provide a foundation for a comprehensive update of part 703. The commenter further recommended that the NCUA consider investment authority for community banks as it reviews new flexibility for credit unions.

Approximately five commenters asked the NCUA to permit credit unions to purchase mortgage servicing rights. Approximately five commenters asked the NCUA to allow credit unions to invest in municipal bonds without limitation. One of these commenters said that the blanket limitations on municipal security exposure only hamper credit unions that are able to appropriately measure, understand, and deal with the risks specific to these investments, which the commenter stated are quite common in other financial institutions. The commenter argued that the ability to take some credit risk in the investment portfolio allows credit unions to maintain needed earnings while reducing other portfolio risks, such as interest rate risk. The commenter stated that some credit unions have suffered material losses and/or lost revenue due to this unnecessary limit. The commenter also said that the limit does not factor risk considerations for general obligation versus revenue securities as is considered in the FCU Act (revenue issues having a limit versus general obligations having none), nor does it consider the effect of other credit enhancement factors, such as sinking fund provisions. One commenter prioritized and strongly supported removing limits on zero-coupon investments. The commenter felt that change would provide credit unions with added flexibility to manage their investment portfolios as they seek to offset risk. Another commenter objected to requiring a minimum of investment grade for all investments and argued it would increase regulatory burden.

One commenter asked the NCUA to expand investment authority to include other asset classes important for risk diversification and portfolio performance. The commenter asked the NCUA to explore authorizing the purchasing of: Investment-grade corporate debt; auto and other consumer debt asset-backed securities; and mortgage servicing rights assets. The commenter argued that for a credit union with sufficient resources, knowledge, systems, and procedures to handle the risks, there is no reason why investing in investment-grade corporate debt and asset-backed securities products should be prohibited. The commenter felt that authorization would promote the overall efficiency of credit union industry investment holdings since these asset classes are important for risk diversification and portfolio performance. The commenter argued that empirical data shows that a reasonable allocation to these assets classes provides diversification benefits such that the return series is less risky, not more risky. The commenter did advise that they are not aware of the legal landscape and the effort authorization would require. The commenter also said that credit unions are already in the mortgage servicing business and many are already large holders of these assets. The commenter noted, however, that many credit unions also may desire to shed the asset, possibly because of concerns over the asset's risk profile or the economic barriers to building an efficient servicing operation. The commenter concluded that allowing for transacting could promote the greater efficiency of the overall system.

Several commenters asked that at least some of the part 703 changes be moved to Tier 1. One of these commenters specifically asked that the recommendations in Subpart A numbers 1, 5, 7, 9, and 16 be moved to Tier 1.

Derivatives Comments: Approximately five commenters explicitly supported removal of the preapproval requirements for derivatives and replacement with a notification requirement. One commenter opposed removal of the pre-approval requirement and replacement with a notice requirement. The commenter felt that at this point it is important for the NCUA to ensure that a credit union is sophisticated enough to purchase derivatives.

One of the supportive commenters commended efforts to widen the rule's applicability and said that the replacement of the application process with a notification requirement and the removal of the volume-based limits are a step forward in promoting a more efficient interest rate risk management process. Several of the supportive commenters also supported the removal of limits on permissible off-balance sheet hedging instruments and expanding eligible collateral to include agency debt. These commenters felt that these changes would allow more credit unions to effectively manage interest rate risk, subject to appropriate supervisory intervention. Another commenter suggested that the authorization of two instruments, Eurodollar futures and interest rate swap futures, would improve hedging efficiency and effectiveness.

One commenter noted that the NCUA has not reviewed the derivatives rule since it was issued in 2014 and asked that review of the rule be made a priority. The commenter said that the combination of the suspended annual regulatory review and the Tier 2 classification defers consideration until

2020 at the earliest. The commenter argued that this designation ''creates a serious inconsistency or otherwise interferes with regulatory reform initiatives and policies,'' which is one of the criteria of Executive Order 13777. Further, the commenter disagreed that the effort associated with revising this rule is high. The commenter reasoned that the derivatives volume limits appear in a narrow section of part 703 and the invention of these artificial limits created more work than removing them would. The commenter did not understand why, given the Task Force acknowledged that the impact of revising this rule would be high, it is not a Tier 1 proposal—high impact and low effort. The commenter concluded by urging the NCUA to at least fix the weighted average remaining maturity notional (WARMN) limit immediately if the agency delays review of the entire rule.

Several commenters asked the NCUA to immediately eliminate the volume-based limits. One of these commenters argued that the derivatives volume limits, particularly the WARMN, have no parallel in the regulatory practice of any other FFIEC regulator, nor any state regulatory body of which the commenter is aware. The commenter also said that, similarly, the fair value limit threshold of negative 25% of regulatory net worth is arbitrary and is not evidence that a credit union has failed to hedge its assets properly. The commenter said that failure to manage interest rate risk, created by serving members' needs through long-term real estate lending, is the greatest mid- to long- term financial threat facing credit unions, and therefore, the NCUSIF. The commenter felt that credit unions and the NCUSIF have been fortunate to have gone through a sustained period of low interest rates, but luck is not a risk-mitigation strategy. The commenter cited the following to evidence that the need for hedging is significant: 49% of credit union loans are real estate loans, a portfolio that continues to grow at 10% per year; only 15% of credit union mortgage loans are adjustable rate loans; and 33% of credit union assets are long-term, whereas only 4% of credit union deposits are longer than three years. The commenter felt that part 703 already provides the governance and approval framework required to ensure that credit unions do not use derivatives for speculative purposes or in ways that inadvertently create harm to their net worth. The commenter argued that the derivatives volume limits do not reduce risk and said that, to the contrary, they limit the capacity of credit unions to adequately hedge the interest rate risk inherent in their business practice, thereby creating risk to the credit unions and the NCUSIF.

The commenter continued by arguing that tying notional value limits to a small multiple of net worth, as opposed to the amount of long-term assets the FCU holds, fails to match permissible risk mitigation to the risk created by holding those long-term assets. The commenter said that if an FCU has 10% net worth and mixes its swaps between 5 and 10 years to cover the longer-end of its fixed-rate loan portfolio, a 100% WARMN means the FCU cannot have notional swaps of more than 13.33% of assets. The commenter concluded that such a limit is sufficient if the FCU has long-term assets limited to 25–30% of its assets, but it is probably insufficient if an FCU has more long-term assets. As an example, the commenter said that a credit union with 60% of its assets in mortgage loans should be permitted to hedge at least 50% of this amount with long-term swaps, or roughly 25% of assets (or 250% of net worth). The commenter said that if instead the credit union can only hedge 13.33% of assets, as short-term rates rise sooner than assets mature, the credit union's net worth can quickly dissipate, given the fact that a large share of the long-term assets are largely un-hedged. The commenter said that, put more simply, the current WARMN limit means that a credit union with 10% net worth can only hedge 10% of its balance sheet with 10 year pay-fixed interest rate swaps. The commenter argued that this is simply insufficient for the large percentage of credit unions engaged in mortgage lending. The commenter believed that the current WARMN limit dramatically increases interest rate risk for the credit union system overall. The commenter finished by stating that the industry cannot wait two to three more years with nothing more than a hope that unhedged interest rates will remain stable and low.

Two commenters provided detailed comments advocating that the NCUA allow credit unions to invest in mutual funds that have access to the same interest rate risk mitigating derivatives as credit unions.

One of these commenters suggested that mutual funds could be effective in mitigating interest rate risk by engaging in limited derivative activities. The commenter noted that § 703.100(b)(2) of the NCUA's regulations specifically excludes mutual funds that contain derivatives from being a permissible FCU investment. The commenter felt that mutual fund managers with a high level of derivatives expertise and a well-developed derivatives program infrastructure could help mitigate the portion of interest rate risk attributable to credit unions' indirect investments. The commenter stated that mutual funds marketed to credit unions and restricted to FCU permissible investments should be expected to encounter risks similar to those faced by FCUs themselves. The commenter said that those risks, including interest rate risk, are passed on to shareholder credit unions if left unmitigated by the portfolios. The commenter recommended that the NCUA clarify that mutual funds have access to the same interest rate risk mitigating derivatives as credit unions themselves. The commenter believed that this broad, comprehensive view of interest rate risk mitigation would ultimately reduce risk to the NCUSIF. The commenter suggested that the NCUA explicitly state that, in addition to investing in all other FCU-permissible investments, mutual funds that possess an NCUA-approved level of financial sophistication, risk management, and operational capabilities (and market to credit union investors) may invest in permitted derivatives to mitigate the inherent risks of those other FCU-permissible investments. The commenter felt this change could be implemented with a low degree of effort given the regulatory and compliance infrastructure a mutual fund registered under the Investment Company Act of 1940 already has in place, but could have a significant impact given the limited number of credit unions that have been granted derivative authority to date.

The other commenter asked the NCUA to allow credit unions to invest in mutual funds offered by Management Investment Companies (MICs). The commenter said that the MIC would be the entity receiving NCUA derivatives authority as opposed to numerous individual credit unions. The commenter suggested that the NCUA could modify regulations to incorporate requirements for individual credit union investors utilizing any MIC issued funds with derivative authorities (policies, procedures, etc.). According to the commenter, the MIC would be registered under the Investment Company Act of 1940 and the Securities Act of 1933. From this perspective, the commenter said that the MIC would fall under the SEC's regulatory scope. The commenter noted that the existing regulatory framework of the mutual fund industry includes considerable oversight at the time of registration, as well as frequent ongoing reporting requirements. The commenter said that,

as they understand it, this reporting includes an annual prospectus, annual and semi-annual reports and other requirements related to various changes which occur during the interim. The commenter concluded that with this approach a credit union could invest in mutual funds that obtained derivatives authority from the NCUA. The commenter said that the intention would not be to create a fund invested entirely in derivatives, but to allow approved MICs the ability to utilize derivative tools to manage the interest rate risk within the fund. The commenter suggested that, as opposed to credit unions investing in individual securities with embedded interest rate, a credit union could utilize a fund as an alternative investment tool. The commenter noted that investing in such a fund would not grant any additional derivative authority to a credit union. The commenter concluded that this solution could: Increase the number of credit unions that could afford to participate and receive the benefits of derivative tools; allow access for credit unions with assets less than $250 million; reduce the cost of participating in the program; utilize the expertise of regulated third parties; provide less of a resource drain on NCUA staff; and retain for the NCUA the direct ability to set and monitor requirements of third-party vendors. The commenter felt that this could be an important risk management tool.

Addresses: Put option purchases in managing increased interest rate risk for real estate loans produced for sale on the secondary market.

Sections: 701.21(i).

Category: Clarify.

Degree of Effort: Low.

Degree of Impact: High.

Report 1: Recommend moving § 701.21(i) to part 703 Subpart B—Derivatives Authority to have all options/derivatives authority in one section.

Comments: Two commenters offered general support for the recommendation, noting that they support all conforming clarifications to ensure that regulations are clear, consistent, and where appropriate bundled in relevant and rational sections. One commenter opposed this recommendation and the recommendation to rename 703 Subpart B ''Derivatives and Hedging Authority.'' The commenter felt that the changes add complexity, which is contrary to the intent of the regulatory reform agenda. One commenter asked that it be deprioritized since it is a procedural change that the commenter does not believe will afford significant relief.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation to the top of Tier 2 and the NCUA plans to take action related to this recommendation in 2019. The Task Force has also merged into the investments recommendation the separate recommendation to move § 701.21(i) to part 703 Subpart B—Derivatives Authority so that all options/derivatives authority in one section. The Task Force also emphasizes that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking in this area. All other aspects of these recommendations remain unchanged.

2. § 701.22—Loan Participations

Addresses: The limit on the aggregate amount of loan participations that may be purchased from any one originating lender not to exceed the greater of $5 million or 100% of the FICU's net worth (unless waived).

Sections: 701.22(b)(5)(ii); 701.22(c).

Category: Remove.

Degree of Effort: Low.

Degree of Impact: High.

Report 1: Remove the prescriptive limit on the aggregate amount of loan participations that may be purchased from one originating lender. Replace with a requirement that the credit union establish a limit in their policy, and tie into proposed new universal standards for third-party due diligence with heightened standards if it exceeds 100% of net worth. Eliminates the need for the waiver provision in § 701.22(c).

Comments: Approximately 15 commenters offered support for eliminating the prescriptive limit on the aggregate amount of loan participations that may be purchased from any one originating lender and allowing credit unions to establish limits within a board approved policy. One commenter asked the NCUA to provide coordinated training and guidance for examiners if the recommendation is adopted to avoid an exam defaulting to the previous prescriptive standard.

Another commenter stated that they felt this proposal was well-reasoned. The commenter said that the credit risk associated with an individual loan and the concentration risk from a high aggregate single borrower exposure are more significant risks to the NCUSIF than those associated with overexposure to a properly vetted originating lender. The commenter felt that the current limitation has the adverse and unintended effect of forcing credit unions to pursue loans from new, unfamiliar, and in some cases less qualified and experienced originators simply to avoid an arbitrary cap. The commenter believed that such pursuits result in an inefficient use of internal resources to conduct proper and ongoing originator due diligence, which if not done properly will result in additional risk within a credit union's portfolio. The commenter concluded that allowing each credit union to establish its own sensible policy limit on the aggregate amount of loan participations purchased from a single originating lender will bring needed flexibility and encourage credit unions to customize their participation loan programs to their own size, needs, and appetite for risk.

Another commenter observed that under the MBL rule the NCUA treats certain purchased loan participations as MBLs, including for risk weighting under the RBC rule. The commenter said that if the participation involves a loan to a member of the purchasing credit union, even though the loan was originated by the selling credit union, the interest in the participation must be counted as an MBL by the purchasing credit union. The commenter felt that this treatment is not justified and encouraged the NCUA to reconsider it as it reviews this regulation. The commenter said that, in light of the provisions that apply to loan participations under the MBL rule, the loan participations rule could benefit from the approach proposed for eligible obligations (strip away requirements not required by the FCU Act and consolidate provisions in one place in the regulations).

One commenter noted that the conflict of interest provisions regarding the use of third parties to review a loan participation could be clearer as to when the third party can actually acquire an interest in the loan participation.

Several commenters asked that this be made a priority and moved to Tier 1. One commenter argued that the recommendations require relatively low effort, involve removing prescriptive limits or otherwise streamlining requirements, and would help credit unions manage their balance sheets more effectively. The commenter reasoned that removing unnecessary prescriptive limits and elements that are contrary to modern holistic balance sheet funds management theory would provide some credit unions risk management options that may be too late in three years when the market environment may have changed further.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization, with an understanding that the FCU Act

prevents the NCUA from offering all of the relief credit unions are seeking.

3. § 701.23—Purchase, Sale, and Pledge of Eligible Obligations

Addresses: Purchase, sale, and pledge of eligible obligations.
Sections: 701.23.
Category: Clarify & Expand.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: Simplify and combine all the authority to purchase loans and other assets into one section, and provide full authority consistent with the FCU Act. Eligible obligations of the credit union's members should have no limit. Remove CAMEL rating and other limitations not required by the FCU Act.[39]

Comments: Approximately ten commenters offered general support for the recommendations. Several commenters said that the removal of supervisory ratings and limitations beyond the statutory scope will aid credit unions in their member service business by reducing regulatory burden. The commenters felt that providing credit unions with the unlimited ability to purchase, sell, and pledge eligible member obligations is in the spirit of the credit union business model. One commenter opined that current limits to purchasing eligible obligations may only exacerbate the challenges facing credit unions that are struggling for earnings and/or risk diversification and take away much needed opportunities that could otherwise be part of a strategic aspect to cure concerns. The commenter said that waivers take time and rely on examiners recognizing the strategic importance/appropriateness of the request.

One commenter stated that the NCUA has the authority to allow credit unions to purchase whole loans from non-credit unions and argued that credit unions ought to have broad authority to purchase loans from other originators, particularly other federally insured depositories. The commenter argued that purchasing loans from other financial institutions can be a risk-appropriate, well-priced alternative to purchasing low-yielding, over-priced securities.

Another commenter said that, although the recommendation lacks detail, they would support a revised rule that allows for any credit union to purchase an eligible obligation that has been originated by a FICU, regardless of whether it is an obligation of its members. The commenter believed such a rule would not bring new risk into the system, yet would provide purchasing and selling FICUs with more market options, which ultimately would lower the cost for consumers.

Finally, one commenter asked the NCUA to clean up the language in § 701.23, which it believes to be the single most confusing regulation governing FCU powers.

Several commenters also asked that the recommendations be moved to Tier 1. One commenter contended that since the regulation was part of the Office of General Counsel's 2015 regulatory review revisions should be considered in 2018. Another commenter argued that the recommendations require relatively low effort, involve removing prescriptive limits or otherwise streamlining requirements, and would help credit unions manage their balance sheets more effectively. The commenter reasoned that removing unnecessary prescriptive limits and elements that are contrary to modern holistic balance sheet funds management theory would provide some credit unions risk management options that may be too late in three years when the market environment may have changed further.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

4. § 741.8—Purchase of Assets and Assumption of Liabilities

Addresses: Purchase of assets and assumption of liabilities.
Sections: 741.8.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: Moderate.
Report 1: Review this regulation to determine if NCUA approval is really needed in purchasing loans and assuming liabilities from market participants other than FICUs. Credit unions already have relatively broad authority to make loans, buy investments and other assets, and enter into transactions that create liabilities. Requiring NCUA approval in all cases (including transactions not material to the acquirer) is an inordinate burden for the institution and the NCUA.

Comments: Approximately ten commenters offered general support for the recommendation and felt prior approval an unnecessary burden. Several commenters agreed that requiring agency approval in every case might be an inordinate burden, especially since credit unions already have broad authority to make loans, buy investments and other assets, and enter into transactions that create liabilities. Several commenters said that credit unions should retain the broad flexibility and authority to lend, purchase, and sell assets and liabilities, not subject to NCUA approval in all cases. These commenters welcomed review to determine whether NCUA approvals are necessary in deals between credit unions and other non-FICU market participants.

One commenter argued that preapproval should not be required for a FISCU purchase of liabilities from a non-FICU. The commenter believed that the NCUA's approval for such transactions has never materially contributed to the transaction's safety and soundness and argued that there is no indication that a non-FICU, regulated by a state regulator, is less safe than an FCU. Another commenter argued that nothing in Title II of the FCU Act gives the NCUA the authority to proscribe the loan purchase powers of a FISCU. The commenter asked the NCUA to eliminate the loan seller restrictions governing FISCUs in § 741.8. Finally, several commenters asked that this recommendation be moved to Tier 1.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization, with an understanding that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking.

5. § TBD—Third-Party Due Diligence Requirements

Addresses: Third-party due diligence requirements.
Sections: TBD.
Category: Simplify & Improve.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: Add a comprehensive third-party due diligence regulation and remove and/or relocate such provisions from other regulations.

Comments: A handful of commenters supported increased clarity and simplification, but cautioned that no new or additional regulatory burdens should be imposed. One of these commenters was concerned that ''comprehensive'' implies additional regulations. This commenter said that vendor due diligence is a priority for credit unions as more services become more complex requiring the use of specialized vendors. However, the commenter felt that the current regulations achieve the NCUA's desired goal of a safe and sound credit union system. One commenter agreed with a review of what they believed to be considerable and burdensome due diligence requirements. This commenter generally agreed with consolidating due diligence requirements in one rule, but did not think the agency should regulate how credit unions meet their due

[39] See 12 U.S.C. 1757(7)(E), 1757(13), and 1757(14).

diligence obligations. The commenter said that any revised due diligence rule should not be overly prescriptive, but should focus on allowing credit unions to determine how best to vet third parties.

Several other commenters felt the recommendation did not provide sufficient information to comment. One of these commenters said that they would oppose any recommendation that would increase NCUA authority over third-party vendors. The commenter believed that would significantly increase credit unions' costs. Another of these commenters stated that they have a robust due diligence program and do not support additional regulatory burden aimed at reinventing the third-party services landscape. The commenter argued that such action would run contrary to Executive Order 13777.

Addresses: Third-party servicing of indirect vehicle loans.
Sections: 701.21(h).
Category: Remove.
Degree of Effort: Low.
Degree of Impact: Moderate.
Report 1: Revise this section to eliminate the portfolio limits and related waiver provision. A single, comprehensive third-party due diligence regulation would address the minimum expectations for credit unions using any servicers.
Comments: Approximately ten commenters offered general support for the recommendations. One of these commenters specifically noted that the recommendations will assist compliance. Several commenters offered support, but were concerned that a ''comprehensive'' regulation would lead to overly burdensome requirements. One of these commenters asked the NCUA to focus on clarifying and condensing existing third-party due diligence requirements. Another of these commenters expressed their desire that the NCUA ensure that credit unions maintain control over the direction of their institution and are not intimidated by examiners who may micromanage credit union contracts.

One commenter supported the Tier 1 prioritization. Another commenter asked that once the comprehensive guidance related to third-party management is developed all references to third-party due diligence be consolidated into a single provision requiring credit unions establish policies for managing third-party relationships.

Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has combined these recommendations in Tier 2 to avoid bifurcating rulemakings addressing third-party management.

6. Part 709—Involuntary Liquidation of Federal Credit Unions and Adjudication of Creditor Claims Involving Federally Insured Credit Unions in Liquidation

Addresses: Payout priorities in involuntary liquidation.
Sections: 709.5.
Category: Clarify.
Degree of Effort: Low.
Degree of Impact: Low.[40]
Report 1: Revise the payout priorities to make unsecured creditors *pari passu* with the NCUSIF. Currently, unsecured creditors are senior to the NCUSIF.
Comments: A handful of commenters generally supported the recommendation. Several of these commenters felt that the recommendation would help the larger credit union industry. One commenter noted that while the recommendation lacked detail, they support it because it could further protect the NCUSIF.
Report 2: Upon further consideration and in response to stakeholder feedback the Task Force has moved this recommendation from Tier 3 to Tier 2. The Task Force believes this recommendation will help to protect the NCUSIF and higher prioritization is appropriate.

iii. Tier 3 (Year 4+)

1. § 701.21—Loans to Members and Lines of Credit to Members

Addresses: Preemption of state laws.
Sections: 701.21(b).
Category: Simplify & Improve.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: Enhance federal preemption where possible and appropriate. FCUs that are multi-state lenders still are subject to a variety of state laws that create overlap and additional regulatory burden. Enhancing preemption where possible and appropriate may help reduce overlap and burden.
Comments: Approximately ten commenters offered general support for the recommendations. One of these commenters asked the NCUA to clarify the scope of preemption as it applies to FISCUs, not just FCUs. Approximately five of the commenters emphasized the potential beneficial impact on credit unions in multi-state situations. These commenters emphasized that multi-state lenders face regulatory overlap and additional burden. They felt that providing greater clarity on where federal law applies through regulation would provide regulatory relief. One commenter said that any opportunity to ensure and clarify for credit unions the supremacy of federal lending laws is welcome and long overdue. Another commenter said that determining whether a state law is preempted is difficult and they would appreciate any additional or explicit guidance. One commenter emphasized that preemption to facilitate operations can help reduce compliance burdens and produce cost savings. The commenter noted that it supported the NCUA's view of its preemption authority and encouraged the agency to consider preemption broadly while being mindful of consumer and state authority concerns.

Several commenters felt that preemption should be made a priority. These commenters recommended elevating the recommendation to either Tier 1 or Tier 2. A few commenters did caution the NCUA to make sure that federal preemption of applicable state laws and regulations is narrowly tailored so as not to undermine a state supervisory structure. The commenters said that since many credit unions opt for state charters based on their members' business needs, any federal legal preemption should not unduly burden the compliance obligations of credit unions who have not sought the degree of federal oversight imposed.
Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

2. § 701.37—Treasury Tax and Loan Depositaries and Financial Agents of the Government

Addresses: Treasury tax and loan depositaries and financial agents of the Government.
Sections: 701.37.
Category: Remove/Improve.
Degree of Effort: Moderate.
Degree of Impact: Low.
Report 1: Determine if this regulation remains relevant and necessary.
Comments: Several commenters thought this regulation irrelevant, unnecessary, and no longer applicable.
Report 2: The Task Force recommends eliminating this regulation.

3. Part 714—Leasing

Addresses: Leasing.
Sections: 714.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: Undetermined.
Report 1: Review this regulation to identify if any changes or improvements are needed.
Comments: Approximately five commenters encouraged relief to provide flexibility and inspire more leasing. One of these commenters noted

[40] Includes potential efficiencies and/or cost savings for the NCUA.

that the leasing rule was adopted in 2000 and, while there may not be the need for numerous changes, it is appropriate that the NCUA review the rule, which the commenter believed to be overly detailed and oriented toward micromanagement. The commenter stated that, for example, the rule controls the amount of the estimated residual value a credit union may rely upon to satisfy the full payout lease requirement, which is 25% of the original cost of the leased property unless the amount above that is guaranteed. The commenter felt this kind of detail about the mechanics of a leasing program would be more appropriately determined by the credit union.

Several commenters said that credit unions should have the flexibility to run their business as best suits their members' needs. These commenters argued that the leasing regulations should be reduced to allow more credit unions, other than the largest, to engage in this activity if it is appropriate to their business needs. The commenters felt that credit unions are uniquely positioned to provide creative, tailored lease terms that give members greater flexibility in personal leases.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

4. Part 725—National Credit Union Administration Central Liquidity Facility (CLF)

Addresses: National Credit Union Administration Central Liquidity Facility (CLF).

Sections: 725.

Category: Clarify.

Degree of Effort: Moderate.

Degree of Impact: Moderate.

Report 1: Update this regulation to streamline, facilitate the use of correspondents, and reduce minimum collateral requirements for certain loans/collateral.

Comments: Approximately five commenters provided comments offering support and substantive recommendations. Several commenters stated that they support updates that reduce minimum collateral requirements as well as facilitate the use of correspondents. As detailed more fully below, one commenter provided a number of substantive recommendations.

The commenter said that for the past several years, the corporate credit union community has worked closely with the CLF in order to provide operational efficiency with advances, repayments, and collateral management through a correspondent agreement with each corporate credit union. As such, the commenter asked that the NCUA amend § 725.2 to include a definition of a correspondent. The commenter also asked the NCUA to modify § 725.19 to reflect a market-based approach to collateral values. The commenter noted that current CLF collateral requirements call for a blanket net book value equal to at least 110% of advances and for certain types of collateral, *i.e.* marketable securities, CLF collateral values compare unfavorably to the Federal Reserve Board discount window and the Federal Home Loan Banks. Additionally, the commenter requested that the NCUA eliminate various references to dates in part 725 that are outdated.

The commenter also suggested the NCUA consider amending § 725.4(a)(2), which requires an agent member to purchase capital stock for all of its member natural person credit unions, in conjunction with a change to § 304(b)(2) of the FCU Act,[41] to allow the purchase of capital stock on behalf of a select group of member credit unions. The commenter noted that as corporate credit unions recapitalized their balance sheets following the crisis, the purchase of CLF capital stock for all member credit unions was thought to be prohibitively expensive by the corporate community. The commenter believed that the suggested changes would enable more natural person credit unions to access liquidity from the CLF during periods of tight liquidity.

The commenter also thought that corporate credit unions should have the ability to borrow directly from the CLF for liquidity purposes, and requested that the NCUA consider modifications to part 725 in conjunction with efforts to modernize the FCU Act in order to allow CLF advances directly to corporate credit unions. The commenter noted that during the financial crisis the CLF instituted several programs, including the Credit Union System Investment Program, which provided access to liquidity for select corporate credit unions. The commenter said that these programs required an advance from the CLF to a natural person credit union, following which the natural person credit union invested proceeds of the advance in a note issued by the corporate credit union and guaranteed by the NCUSIF pursuant to the Temporary Corporate Credit Union Liquidity Guarantee Program. The commenter argued that, while these transactions facilitated liquidity to corporate credit unions, the transactions were complex and costly.

The commenter also noted that they object to § 306(a)(1) of the FCU Act,[42] which reads in part ''the Board shall not approve an application for credit the intent of which is to expand credit union portfolios.'' The commenter argued that all advances expand a credit union's portfolio and the determination of whether or not an advance serves a liquidity purpose should be left up to the CLF.

A separate commenter asked the NCUA to review the authority for the CLF as well as its role and function. The commenter opined that the CLF was designed to be an important and useful facility that provides access to liquidity for those credit unions that could demonstrate the need and repay their borrowings. The commenter also stated that the CLF provides credit unions with a reliable resource for contingency funding needs. The commenter said that despite the CLF's past role, it currently has only 269 regular members and has no loans. The commenter believed that the CLF can be a useful facility that credit unions may utilize for liquidity when interest rates begin to rise again and asked the NCUA to work with Congress to restructure the CLF, ease requirements for credit unions to be members, and extend the range of borrowing opportunities.

One commenter specifically supported the Tier 3 categorization. Another commenter, citing the CLF's role during the financial crisis, felt part 725 warrants a higher priority.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization, with an understanding that the FCU Act prevents the NCUA from offering all of the relief credit unions are seeking.

5. Part 741—Requirements for Insurance

Addresses: Maximum borrowing authority.

Sections: 741.2.

Category: Remove.

Degree of Effort: Low.

Degree of Impact: Low.

Report 1: Remove the 50% borrowing limit for FISCUs and the related waiver provision. State law should govern in this area.

Comments: Approximately five commenters offered general support for the recommendation. One commenter specifically supported the Tier 3 categorization.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

[41] 12 U.S.C. 1795c(b)(2).

[42] *Id.* § 1795e(a)(1).

6. Part 741—Requirements for Insurance

Addresses: Special reserve for nonconforming investments.
Sections: 741.3(a)(2).
Category: Remove.
Degree of Effort: Low.
Degree of Impact: Technical Amendment.
Report 1: Remove as no longer necessary and not consistent with GAAP.[43]
Comments: Several commenters agreed with the recommendation. One commenter stated that a low prioritization is appropriate.
Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

7. Part 748—Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance

Addresses: Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts, and Bank Secrecy Act Compliance.
Sections: 748.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: Review this regulation to identify if any changes or improvements are needed. Recommend using an ANPR and forming a working group due to the complexity.
Comments: Approximately 15 commenters asked the NCUA to reform the Bank Secrecy Act (BSA) regulations and suggested the NCUA work with the Department of the Treasury and other regulators to support meaningful changes to minimize the costs and problems encountered in meeting BSA and anti-money laundering (AML) requirements. Several other commenters emphasized that BSA and AML compliance remain substantial issues and urged the NCUA to minimize compliance burdens. Another commenter noted that BSA compliance is a huge burden in paying for systems, training, and personnel. Several commenters also asked the NCUA to work with the Treasury and the Financial Crimes Enforcement Network (FinCEN) to eliminate burden from duplication in BSA requirements.

Approximately five commenters asked that the threshold for Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) be raised to a minimum of $20,000 to provide relief, ensure that only effective useful data is transmitted, and allow field examiners to provide consistent guidance during exams. Commenters noted that the current threshold has remained unchanged since 1972 and that the threshold would be over if $50,000 if adjusted for inflation. Several commenters requested that the SAR and CTR forms be combined into one form submission.

Another commenter asked that the NCUA promote better communication over mandatory reporting. The commenter stated that credit unions often file defensive SARs, which are of little use to law enforcement, to avoid compliance failures. The commenter believed reforms to promote open communication between law enforcement and credit unions would allow the system to function like Congress intended. The commenter also argued that enforcement of FinCEN regulations by the NCUA, without direct law enforcement feedback, is cumbersome and should be changed.

Another commenter suggested significantly curtailing customer due diligence requirements and eliminating redundant SARs filings for corporate credit unions. One commenter suggested that FinCEN and federal law enforcement should consider awarding a percentage, such as 10%, of fines or awards to credit unions in civil and criminal actions when those institutions' filings were instrumental in a case. The commenter believed that incentivizing better filings would result in better quality SARs, greater compliance, and the alleviation of some of the high costs of BSA compliance.

One commenter asked the NCUA to relax its requirement for monthly reporting of SAR activity to the board. The commenter stated that there is no statutory requirement that mandates monthly reporting and asked the NCUA to allow credit unions to report SAR filings promptly to the board, with promptly defined as the next regularly scheduled board meeting or at least quarterly.

Approximately five commenters offered support for a working group. Another commenter specifically supported the use of an ANPR. Several commenters said the NCUA should persuade FinCEN, other financial regulators, and Congress to reform some of the BSA inefficiencies.

Approximately 15 commenters asked that part 748 be made a priority. One commenter noted their appreciation for the NCUA's effort to reform BSA compliance procedures, but articulated a belief that substantive changes must originate from FinCEN and Congress. Another commenter asked the NCUA to explain all exam policies and priorities, particularly new ones, and provide the information in one ''examination issues'' location on the agency's website and in agency documents, such as letters to credit unions and examiners' guides.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization. Further, the Task Force emphasizes that the NCUA has limited authority in this area. Many of the changes requested by commenters fall outside of the NCUA's purview. The Task Force does note that the NCUA continues to participate in interagency work in this area.

8. Part 749—Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines

Addresses: Records Preservation Program and Appendices—Record Retention Guidelines; Catastrophic Act Preparedness Guidelines.
Sections: 749.
Category: Improve.
Degree of Effort: Moderate.
Degree of Impact: High.
Report 1: Review this regulation to identify if any changes or improvements are needed. Recommend using an ANPR and forming a working group due to the complexity.
Comments: Approximately 15 commenters stated that the record retention guidelines are unclear and conflicting. One of these commenters noted that, while the rule states that any records not explicitly mentioned as vital records do not need to be maintained permanently and can be destroyed periodically as determined by the credit union, other parts of the NCUA's regulations have record retention requirements. The commenter included two examples. First, under part 749 certain supervisory committee documents are not vital records and are subject to periodic destruction; yet under part 715 certain supervisory committee documents must be retained until the completion of the next verification process. Second, merger documents are not explicitly listed as permanent records in part 749; however, the NCUA's Credit Union Merger Procedures and Merger Forms Manual states that the continuing credit union must maintain all documents and records related to a merger. Another commenter agreed with the review and noted that some retention requirements lack a termination date. Several commenters asked the NCUA to update part 749 to reflect and adapt to technology record maintenance changes.

Approximately 15 commenters asked that changes to this regulation be made

[43] There are 11 FISCUs from 8 different states that report a total of $4.4 million in this account on the Call Report as of December 31, 2016.

a priority. Conversely, one commenter felt the changes would have negligible benefit and agreed with the Tier 3 prioritization. Several commenters asked the NCUA to develop a working group. One commenter specifically supported using an ANPR to frame the numerous issues.

Report 2: The Task Force recommends adopting the first report's recommendation and prioritization.

iv. Other Comments

1. Timeline

Several commenters asked that the four year timeline be accelerated. One commenter agreed with reassessing the timelines based on credit union feedback. Another commenter asked the NCUA to consider the implementation timelines for these changes, noting that credit unions and the NCUA will require substantial transition time to conform to new or changed regulations. The commenter asked that examiner training be emphasized to avoid implementation inconsistencies.

2. Prioritizations Generally

One commenter asked the Task Force to use a taxonomic system with Tier 1, Class A regulations receiving highest priority, followed by Tier 1, Class B regulations, and so forth.

3. Other

Other suggestions included: Co-locating all rules applicable to FISCUs; amendments to the definition of loan-to-value in part 723; formation of a Credit Union Advisory Council; flood insurance amendments; suggestions for how to better comply with Executive Orders 13771 and 13777; investment in fintech companies; clarity and parity for financing of pre-sold construction homes; changes to the PALs program; and more.

d. Appendix to Section III—Part 703 Recommendations Details

INVESTMENTS—PART 703 SUBPART A

Item	Change	Rationale
1	**Investment Policies § 703.3**	
	Fine tune section to focus on investment activities and not on balance sheet activities. *E.g.,* remove (c) and (d), IRR and liquidity, since those items should be addressed in the IRR and liquidity policies.	Reduces burden on credit unions by not requiring IRR and liquidity policies in the investment policy. Also should help credit unions focus on balance sheet risk.
2	**Discretionary Control Over Investments and Investment Advisor § 703.5(b)(1)(ii), § 703.5(b)(2)—(Net worth limit)**	
	Remove 100 percent of net worth limit for delegated discretionary control. Would need to add language to ensure credit unions have provided investment advisors with investment guidelines that contain: Duration/average life targets, permissible investments, and investment limits.	This would allow credit unions to have professionally managed, separate-account, investments without imposing a limit. There are no limits on mutual funds where the credit union has less control of what the manager invests in. Separate-account delegated discretionary programs have considerably more transparency than mutual funds.
3	**Discretionary Control Over Investments and Investment Advisor § 703.5(b)(3)—(Due diligence)**	
	Remove prescriptive due diligence requirements and simply state the credit union must perform due diligence on the investment advisor.	This section is too prescriptive for a credit union to perform due diligence. It also does not focus on the investment advisor's ability to manage investments for the credit union.
4	**Credit Analysis § 703.6—(Due diligence)**	
	Modify exception to credit analysis requirements to only securities guaranteed by the entities listed in the section.	This will make it clear that NCUA requires credit analysis for investments not guaranteed, but issued by, agencies. Currently the rule would not require a credit analysis for a Fannie Mae loss sharing bond or an unguaranteed subordinate tranche of a Freddie Mac multi-family mortgage security.
5	**Credit Analysis § 703.6—(Maximum credit risk)**	
	Require a minimum of investment grade for all investments	Sets a minimum expectation of credit worthiness for all investments purchased under the part 703 investment authority.
6	**Credit Analysis § 703.6—(Credit union process and people)**	
	A credit union, or its investment advisor, must have sufficient resources, knowledge, systems, and procedures to handle the risks and risk management (*e.g.,* IRR modeling) of the investments it purchases.	This establishes the basic standard for a credit union to purchase an investment. This will allow for a loosening of part 703 since NCUA has established standards to purchase investments that may have been prohibited or restricted in the past.
7	**Broker-Dealers—§ 703.8(b)—(Due diligence)**	
	Remove prescriptive due diligence requirements and simply state the credit union must perform due diligence on the broker-dealer.	This section is too prescriptive for a broker-dealer that doesn't provide advice. May want to specify standards for broker-dealers that provide advice to credit unions.
8	**Monitoring Non-Security Investments § 703.10—(Reporting requirements)**	
	Remove this section	Unduly prescriptive.

INVESTMENTS—PART 703 SUBPART A—Continued

Item	Change	Rationale
9	**Valuing Securities § 703.11(a) & (d)—(Due diligence)**	
	Combine sections and remove the reference to two price quotations. The requirement should be that the credit union use market inputs to determine if the purchase is at a reasonable market price.	Currently too prescriptive. A principled approach conforms more to market convention.
10	**Valuing Securities § 703.11(c)—(Due diligence)**	
	Remove this section	Unnecessary. This should be dictated by GAAP.
11	**Monitoring Securities § 703.12(a)—(Reporting requirements)**	
	Move to and combine with § 703.11	Streamlines part 703.
12	**Monitoring Securities § 703.12(b), (c) and (d)—(Reporting requirements)**	
	Remove these sections and 703.12(a) will be combined with part 703.11.	Unduly prescriptive.
13	**Permissible Investment Activities and Permissible Investments § 703.13 and § 703.14**	
	Merge these sections and add language from the FCU Act for permissible investments.	Streamlines rule and provides full investment authority allowed under the Act.
14	**Permissible Investment Activities § 703.13(d)—(Borrowing repurchase transactions)**	
	Allow mismatch permissible in § 703.20 as the ''base'' permissible activity.	A 30 day mismatch is low risk.
15	**Permissible Investments § 703.14(a)—(Permissible indices for variable rate investments)**	
	Expand permissible indices for credit unions that have sufficient resources, knowledge, systems, and procedures to handle the risks of the investment. Ability to model the investment for IRR should be required.	This could provide credit unions with investments that they could benefit from and not pose a risk to the NCUSIF.
16	**Permissible Investments § 703.14(e)—(Muni bond limits)**	
	Remove limitations on municipal exposure	This limit is unnecessary. Credit unions should determine limits.
17	**Permissible Investments § 703.14(h)—(Mortgage note repurchase transactions)**	
	Limits will be reviewed to determine if they are appropriate	Limits may need to be increased or eliminated.
18	**Permissible Investments § 703.14(i)—(Zero coupon investment restrictions)**	
	Remove limits on zero-coupon investments	Interest rate and liquidity risk should be managed from a balance sheet standpoint. This appears to try to manage it from an individual security standpoint. This limit is unnecessary.
19	**Permissible Investments § 703.14(j)(3)—(Commercial mortgage related securities)**	
	Remove this section	Not realistic in the current market place. Furthermore, having a large number of loans was actually a negative in many CMRS deals prior to 2007. Less attention was paid to the smaller loans that were poorly underwritten versus the larger loans in the deal.
20	**Prohibited Investment Activities § 703.15—(Short Sales)**	
	Review regulatory history on the prohibition of short sales	Restriction may be reconsidered.
21	**Prohibited Investments § 703.16(a)—(Mortgage servicing rights)**	
	Determine if mortgage servicing rights (MSRs) are permissible for credit unions to purchase per the FCU Act. If so, there should be consideration given to permit the purchase of MSRs.	Buying MSRs from other credit unions may offer efficiencies in the credit union system.
22	**Prohibited Investments § 703.16(b)—(Exchangeable, IO and PO MBS)**	

INVESTMENTS—PART 703 SUBPART A—Continued

Item	Change	Rationale
	Remove this section	A credit union should be able to purchase interest-only and principal-only investments if it has sufficient resources, knowledge, systems, and procedures to handle the risks and risk management (*e.g.,* IRR modeling) of the investments it purchases.
23	**Grandfathered Investments § 703.18**	
	Remove sections that will no longer apply based on other changes in the rule.	Some parts of the section may not apply due to other changes in the rule.
24	**Investment Pilot Program § 703.19**	
	Remove this section	Pilot programs will no longer be needed with the proposed changes.
25	**Request for Additional Authority § 703.20**	
	Remove this section	Will no longer be needed with the removal or alignment of the restrictions in other sections.

DERIVATIVES—PART 703 SUBPART B AND RELATED ITEMS

Item	Change	Rationale
1	**''Move'' Put-option purchases in managing increased interest rate risk for real estate loans produced for sale on the secondary market, in 701.21(i) to 703.102(a)**	
	Move the product to the Subpart B permissible derivative products	This would consolidate into one place all permissible derivative activities.
2	**''Move'' European financial options contract in 703.14(g) to 703.102(a)**	
	Move the product to the Subpart B permissible derivative products	This would consolidate into one place all permissible derivative activities.
3	**''Rename'' 703 Subpart B from ''Derivatives Authority'' to ''Derivatives and Hedging Authority''**	
	Name change	Would widen the rule to address off balance sheet hedging instruments that are permissible.
4	**''Move and Modify'' Derivatives section in 703.14(k) to 703 Subpart B**	
	With the move, remove 703.14(k)(1), move 703.14(k)(2) to 703.100 and move 703.14(k)(3) to 703.102.	Would provide more clarity on hedging activities for TBA, Dollar Rolls, etc.
5	**''Modify'' Derivatives Application process to ''Notification''**	
	Remove the FCU application requirements and replace with a ''Notification''. This would require changes to § 703.108, § 703.109, § 703.110, § 703.111, § 703.112.	The ''Notification'' requirements would include providing NCUA with at least 60 day notice before initially engaging in a Derivative transaction.
6	**''Remove'' Derivatives Regulatory Limits**	
	Remove the volume limits on derivatives activity. This would require changes to § 703.103, § 703.105, Appendix A.	Will be better supported as part of supervision guidance and possible use as scoping metrics.
7	**''Expand'' Eligible Collateral for Margining**	
	Expand the eligible collateral in 703.104(a)(2)(iii) to include Agency Debt (Ginnie Mae Securities).	This is an acceptable practice and should have been in the Final Rule.
8	**''Modify'' Eligibility (only part)**	
	Remove or change 703.108(b) to require notice but not pre-approval, and re-evaluate the CAMEL and asset size eligibility criteria.	Allows for more credit unions to use derivatives to manage interest rate risk subject to supervisory intervention if they are not equipped to manage it properly.
9	**''Modify'' Notification requirement for FISCUs**	
	Change 741.219(b)	Make consistent with FCU notification requirements.

DERIVATIVES—PART 703 SUBPART B AND RELATED ITEMS—Continued

Item	Change	Rationale
10	**"Remove" Pilot Program Participants**	
	Change 703.113	Not relevant anymore.

By the National Credit Union Administration Board on December 13, 2018.

Gerard Poliquin,

Secretary of the Board.

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Part V

Department of the Treasury

Internal Revenue Service

26 CFR Part 1
Base Erosion and Anti-Abuse Tax; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

REG–104259–18]

RIN 1545–BO56

Base Erosion and Anti-Abuse Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance regarding the tax on base erosion payments of taxpayers with substantial gross receipts and reporting requirements thereunder. The proposed regulations would affect corporations with substantial gross receipts that make payments to foreign related parties. The proposed regulations under section 6038A would affect any reporting corporations within the meaning of section 6038A or 6038C.

DATES: Written or electronic comments and requests for a public hearing must be received by February 19, 2019.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–104259–18), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–104259–18), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–104259–18).

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.59A–1 through 1.59A–10 of the proposed regulations, Sheila Ramaswamy or Karen Walny at (202) 317–6938; concerning the services cost method exception, L. Ulysses Chatman at (202) 317–6939; concerning §§ 1.383–1, 1.1502–2, 1.1502–4, 1.1502–43, 1.1502–47, 1.1502–59A, 1.1502–100, and 1.6655–5 of the proposed regulations, Julie Wang at (202) 317–6975 or John P. Stemwedel at (202) 317–5024; concerning §§ 1.6038A–1, 1.6038A–2, and 1.6038A–4 of the proposed regulations, Brad McCormack or Anand Desai at (202) 317–6939; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 59A, 383, 1502, 6038A, 6038C, and 6655 of the Internal Revenue Code (the ''Code''). The Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the ''Act''), which was enacted on December 22, 2017, added section 59A to the Code. Section 59A imposes on each applicable taxpayer a tax equal to the base erosion minimum tax amount for the taxable year (the ''base erosion and anti-abuse tax'' or ''BEAT'').

The Act also added reporting obligations regarding this tax for 25-percent foreign-owned corporations subject to section 6038A and foreign corporations subject to section 6038C and addressed other issues for which information reporting under those sections is important to tax administration.

Explanation of Provisions

I. Overview

These proposed regulations provide guidance under section 59A regarding the determination of the tax on base erosion payments for certain taxpayers with substantial gross receipts. In general, the proposed regulations provide rules for determining whether a taxpayer is an applicable taxpayer on which the BEAT may be imposed and rules for computing the taxpayer's BEAT liability.

Part II of this Explanation of Provisions section describes the rules in proposed § 1.59A–2 for determining whether a taxpayer is an applicable taxpayer on which the BEAT may be imposed. Part III of this Explanation of Provisions section describes the rules in proposed § 1.59A–3(b) for determining the amount of base erosion payments. Part IV of this Explanation of Provisions section describes the rules in proposed § 1.59A–3(c) for determining base erosion tax benefits arising from base erosion payments. Part V of this Explanation of Provisions section describes the rules in proposed § 1.59A–4 for determining the amount of modified taxable income, which is computed in part by reference to a taxpayer's base erosion tax benefits and base erosion percentage of any net operating loss deduction. Part VI of this Explanation of Provisions section describes the rules in proposed § 1.59A–5 for computing the base erosion minimum tax amount, which is computed by reference to modified taxable income. Part VII of this Explanation of Provisions section describes general rules in proposed § 1.59A–7 for applying the proposed regulations to partnerships. Part VIII of this Explanation of Provisions section describes certain rules in the proposed regulations that are specific to banks and registered securities dealers. Part IX of this Explanation of Provisions section describes certain rules in the proposed regulations that are specific to insurance companies. Part X of this Explanation of Provisions section describes the anti-abuse rules in proposed § 1.59A–9.

Parts XI–XIII of this Explanation of Provisions section address rules in proposed § 1.1502–59A regarding the general application of the BEAT to consolidated groups. Part XIV of this Explanation of Provisions section addresses proposed amendments to § 1.383–1 to address limitations on a loss corporation's items under section 382 and 383 in the context of the BEAT. Part XV of this Explanation of Provisions section describes reporting and record keeping requirements.

II. Applicable Taxpayer

The BEAT applies only to a taxpayer that is an applicable taxpayer. Proposed § 1.59A–2 provides rules for determining if a taxpayer is an applicable taxpayer.

Generally, an applicable taxpayer is a corporation (other than (1) a regulated investment company (''RIC''), (2) a real estate investment trust (''REIT''), or (3) an S corporation) that satisfies the gross receipts test and the base erosion percentage test. Section 59A and the proposed regulations provide that the taxpayer and certain other corporations that are related to the taxpayer are treated as one person for purposes of determining whether a taxpayer satisfies these tests.

Part II.A of this Explanation of Provisions section describes the proposed rules for determining the aggregate group for applying the gross receipts test and the base erosion percentage test. Part II.B of this Explanation of Provisions section describes the proposed rules for applying the gross receipts test. Part II.C of this Explanation of Provisions section describes the proposed rules for applying the base erosion percentage test. Part II.D of this Explanation of Provisions section describes the proposed rules for applying these tests on an aggregate group basis when members of the aggregate group have different taxable years. Part II.E of this Explanation of Provisions section describes proposed rules for computing the base erosion percentage for a taxpayer with deductions taken into account under a mark-to-market method of accounting.

A. Determining the Aggregate Group for Purposes of Applying the Gross Receipts Test and the Base Erosion Percentage Test

Section 59A(e)(3) aggregates corporations (''aggregate group'') on the basis of persons treated as a single employer under section 52(a), which treats members of the ''same controlled group of corporations'' (as defined in section 1563(a) with certain modifications) as one person. Although a section 1563(a) controlled group can include both foreign and domestic corporations, the proposed regulations treat foreign corporations as outside of the controlled group for purposes of applying the aggregation rules, except to the extent that the foreign corporation has effectively connected income. This limitation on the extent to which foreign corporations are included in the aggregate group ensures that payments made by a domestic corporation, or a foreign corporation with respect to its effectively connected income, to a foreign related corporation are not inappropriately excluded from the base erosion percentage test. Accordingly, the proposed regulations provide that a taxpayer must apply the gross receipts test and the base erosion percentage test using the aggregate group consisting of members of the same controlled group of corporations for purposes of section 52(a) that are (i) domestic corporations and (ii) foreign corporations, but only with regard to gross receipts taken into account in determining income which is effectively connected with the conduct of a trade or business in the United States and subject to tax under section 882(a). The proposed regulations limit the aggregate group to corporations that benefit from deductions, and accordingly may have base erosion tax benefits, while excluding foreign corporations that are not subject to U.S. income tax (except on a gross basis under section 881, with respect to income that is not effectively connected with a trade or business in the United States) and do not benefit from deductions. In the case of a foreign corporation that determines its net taxable income under an applicable income tax treaty of the United States, the foreign corporation is a member of the aggregate group with regard to gross receipts taken into account in determining its net taxable income.

The proposed regulations generally provide that payments between members of the aggregate group are not included in the gross receipts of the aggregate group, consistent with the single entity concept in section 59A(e)(3). Similarly, the proposed regulations generally provide that payments between members of the aggregate group are also not taken into account for purposes of the numerator or the denominator in the base erosion percentage calculation.

Payments between the aggregate group and any foreign corporation that is not within the aggregate group with respect to the payment are taken into account in applying both the gross receipts test and the base erosion percentage test. However, because a foreign corporation is considered within the aggregate group to the extent it is subject to net income tax in the United States, payments to a foreign corporation from within the aggregate group that are subject to net income tax in the United States are eliminated and not taken into account in applying the gross receipts test and the base erosion percentage test. Thus, it may be the case that a payment by a domestic corporation to a foreign corporation is not taken into account in determining applicable taxpayer status because the payee is subject to net income tax in the United States on that payment, while another payment by the same domestic corporation to the same foreign corporation is taken into account in determining applicable taxpayer status because the payee is not subject to net income tax in the United States on that payment. The Treasury Department and the IRS welcome comments on the proposed regulations addressing the aggregate group for purposes of the gross receipts test and the base erosion percentage test.

B. Gross Receipts Test

A taxpayer satisfies the gross receipts test if the taxpayer, or the aggregate group of which the taxpayer is a member, has $500 million or more of average annual gross receipts during the three prior taxable years. In the case of a foreign corporation, the gross receipts test only takes into account gross receipts that are taken into account in determining income that is subject to net income tax as income effectively connected with the conduct of a trade or business within the United States, or taken into account in determining net taxable income under an applicable U.S. income tax treaty.

In the case of an aggregate group, the proposed regulations measure gross receipts of a taxpayer by reference to the taxpayer's aggregate group determined as of the end of the taxpayer's taxable year for which BEAT liability is being computed, and takes into account gross receipts of those aggregate group members during the three-year period preceding that taxable year.

The proposed regulations further clarify how a taxpayer computes gross receipts, including providing rules for corporations that have been in existence for fewer than three years or have short years. These proposed rules are generally consistent with rules set forth in section 448(c). See section 59A(e)(2)(B) (providing that rules similar to the rules of section 448(c)(3)(B) through (D) apply in determining gross receipts for purposes of section 59A). The proposed regulations also clarify how gross receipts are determined if members of the aggregate group have different taxable years, as discussed in Part II.D of this Explanation of Provisions section.

In addition, the proposed regulations clarify how gross receipts are determined for corporations subject to tax under subchapter L (including a foreign corporation subject to tax under section 842(a)).

If a member of an aggregate group owns an interest in a partnership, the proposed regulations provide that the group includes its share of the gross receipts of the partnership in its gross receipts computation. The aggregate group's share of the gross receipts of the partnership is proportionate to its distributive share of items of gross income from the partnership. See Part VII of this Explanation of Provisions section for a more detailed description of the application of section 59A to partnerships.

C. Base Erosion Percentage Test

The base erosion percentage test is satisfied with respect to a taxpayer if the taxpayer (or if the taxpayer is a member of an aggregate group, the aggregate group of which the taxpayer is a member) has a base erosion percentage of three percent or more. Generally, a lower threshold of two percent applies if the taxpayer, or a member of the taxpayer's aggregate group, is a member of an affiliated group (as defined in section 1504(a)(1)) that includes a domestic bank or registered securities dealer. The proposed regulations provide that the lower two percent threshold does not apply, however, in the case of an aggregate group or consolidated group that has de minimis bank or registered securities dealer activities. See Part VIII of this Explanation of Provisions section for a more detailed description of these rules.

The proposed regulations provide that the base erosion percentage for a taxable year is computed by dividing (1) the aggregate amount of base erosion tax benefits (the ''numerator'') by (2) the sum of the aggregate amount of

deductions plus certain other base erosion tax benefits (the ''denominator''). As described in Part II.A of this Explanation of Provisions section, in the case of a taxpayer that is a member of an aggregate group, the base erosion percentage is measured by reference to the deductions or certain reductions in gross income of the taxpayer and members of the taxpayer's aggregate group as of the end of the taxpayer's taxable year. Base erosion tax benefits are generally the deductions or reductions in gross income that result from base erosion payments. Part III of this Explanation of Provisions section describes the proposed rules for determining the amount of base erosion payments, and Part IV of this Explanation of Provisions section describes the proposed rules for determining the base erosion payments that give rise to base erosion tax benefits.

The numerator of the base erosion percentage excludes deductions for (i) amounts paid or accrued to foreign related parties for services qualifying for the exception in proposed § 1.59A–3(b)(3)(i) (the ''services cost method (''SCM'') exception''), (ii) payments covered by the qualified derivatives payments (''QDP'') exception in proposed § 1.59A–3(b)(3)(ii), and (iii) amounts excluded pursuant to the total loss-absorbing capacity (''TLAC'') exception in proposed § 1.59A–3(b)(3)(v). See Parts III.B.1, III.B.2, and III.B.5 of this Explanation of Provisions section, for discussions of the SCM exception, QDP exception, and TLAC exception, respectively. Generally, these deductions are also excluded from the denominator of the base erosion percentage.

An applicable taxpayer may make a payment to a foreign related party that is not a member of the aggregate group, if, for example, the recipient of the payment is a 25-percent owner as described in proposed § 1.59A–1(b)(17) who does not own more than 50 percent of the applicable taxpayer, and that payment may qualify for the ECI exception described in proposed § 1.59A–3(b)(3)(iii). If so, and if that payment also qualifies for either the SCM exception described in proposed § 1.59A–3(b)(3)(i), the QDP exception described in proposed § 1.59A–3(b)(3)(ii), or the TLAC exception described in proposed § 1.59A–3(b)(3)(v), the payment will be included in the denominator for purposes of the base erosion percentage. For example, if an applicable taxpayer makes a deductible payment to a foreign related person who is a 25-percent owner and that payment is both a QDP and subject to federal income taxation as income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States under an applicable provision of the Internal Revenue Code or regulations, that deductible payment is included in the denominator of the base erosion percentage. However, if the applicable taxpayer makes a deductible payment to a foreign related person and that payment is a QDP, but not otherwise subject to federal income taxation, that deductible payment is excluded from the denominator of the base erosion percentage.

The proposed regulations also exclude any section 988 losses from the numerator and the denominator in determining the base erosion percentage. See Part III.B.4 of this Explanation of Provisions section, describing the exception for section 988 losses from the definition of base erosion payments.

The numerator of the base erosion percentage only takes into account base erosion tax benefits, which generally are base erosion payments for which a deduction is allowed under the Code for a taxable year. See Part IV of this Explanation of Provisions section. Similarly, the proposed regulations ensure that the denominator of the base erosion percentage only takes into account deductions allowed under the Code by providing that the denominator of the base erosion percentage does not include deductions that are not allowed in determining taxable income for the taxable year.

Finally, because a deduction allowed under section 965(c) to a United States shareholder of a deferred foreign income corporation is not one of the categories of deductions specifically excluded from the denominator under section 59A(c)(4)(B), that deduction is included in the denominator.

In general, as discussed in more detail in Part IV.A of this Explanation of Provisions section, if tax is imposed by section 871 or 881 and that tax has been deducted and withheld under section 1441 or 1442 on a base erosion payment, the base erosion payment is not treated as a base erosion tax benefit for purposes of calculating a taxpayer's modified taxable income. If an income tax treaty reduces the amount of withholding imposed on the base erosion payment, the base erosion payment is treated as a base erosion tax benefit to the extent of the reduction in withholding under rules similar to those in section 163(j)(5)(B) as in effect before the Act.

The proposed regulations apply the same rule concerning withholding taxes for purposes of the base erosion percentage computation. Accordingly, a base erosion tax benefit is not included in the numerator when the payment was subject to tax under section 871 or 881 and that tax has been deducted and withheld under section 1441 or 1442. In addition, the proposed regulations provide that for any base erosion payment subject to a reduced rate of withholding tax under an income tax treaty, the associated amount of base erosion tax benefits eliminated from the numerator of the base erosion percentage calculation is determined using rules similar to those in section 163(j)(5)(B) as in effect before the Act.

The base erosion percentage also takes into account the two categories of base erosion tax benefits that result from reductions in gross income rather than deductions allowed under the Code (that is, (1) certain premium or other consideration paid to a foreign related party for reinsurance, and (2) amounts paid or accrued by the taxpayer to certain surrogate foreign corporations that result in a reduction in gross receipts to the taxpayer). Section 59A(c)(4)(A)(ii)(II) provides that those base erosion tax benefits that result from reductions in gross income are included in the both the numerator and the denominator in the same amount. Other payments that reduce gross income but that are not base erosion payments are not included in the denominator of the base erosion percentage.

D. Taxpayers in an Aggregate Group with Different Taxable Years

Section 59A determines the status of a corporation as an applicable taxpayer on the basis of the aggregate group rules by taking into account the gross receipts and base erosion payments of each member of the aggregate group. However, each member must compute the aggregate group amount of gross receipts and base erosion payments based on its own taxable year and based on those corporations that are members of the aggregate group at the end of such taxable year. Therefore, members with different taxable years may have different base erosion percentages.

However, each corporation that is an applicable taxpayer computes its modified taxable income and base erosion minimum tax amount on a separate taxpayer basis. In the case of a group of affiliated corporations filing a consolidated tax return, the consolidated group is treated as a single taxpayer for purposes of section 59A, and its modified taxable income and base erosion minimum tax amount are determined on a consolidated group basis.

The proposed regulations provide rules for determining whether the gross receipts test and base erosion percentage test are satisfied with respect to a specific taxpayer when other members of its aggregate group have different taxable years. See proposed § 1.59A–2(e)(3)(vii). In general, the proposed regulations provide that each taxpayer determines its gross receipts and base erosion percentage by reference to its own taxable year, taking into account the results of other members of its aggregate group during that taxable year. In other words, for purposes of determining the gross receipts, base erosion tax benefits, and deductions of the aggregate group, the taxpayer must include those amounts that occur during the course of the taxpayer's own taxable year, not another member of the aggregate group's taxable year, if different. The proposed regulations adopt this approach to provide certainty for taxpayers and avoid the complexity of a rule that identifies a single taxable year for an aggregate group for purposes of section 59A that may differ from a particular member of the aggregate group's taxable year. As a result of this rule, two related taxpayers with different taxable years will compute their applicable gross receipts and base erosion percentage by reference to different periods, even though in each case the calculations are done on an aggregate group basis that takes into account other members of the controlled group. Taxpayers may use a reasonable method to determine the gross receipts and base erosion percentage information for the time period of the member of the aggregate group with a different taxable year. For an illustration of this rule, see proposed § 1.59A–2(f)(2) (*Example 2*).

The proposed regulations also provide that when determining the base erosion percentage for a taxpayer that is a member of an aggregate group with other members that have a different taxable year, the effective date in section 14401(e) of the Act, as it applies to the taxpayer making the return, controls whether that taxpayer takes into account transactions of other members of its aggregate group. (Section 14401(e) of the Act provides that section 59A applies only to base erosion payments paid or accrued in taxable years beginning after December 31, 2017.)

Thus, if one corporation (US1) that has a calendar year is a member of an aggregate group with another corporation (US2) that has a taxable year ending November 30, when US1 computes its base erosion percentage for its calendar year ending December 31, 2018, the base erosion payments made by US2 during the period from January 1, 2018, through December 31, 2018, are taken into account with respect to US1 for its computations even though US2's base erosion payments in its taxable year ending November 30, 2018, are not base erosion payments with respect to US2 because of section 14401(e) of the Act. Correspondingly, US2's taxable year beginning December 1, 2017, and ending November 30, 2018, is not subject to section 59A because US2's base erosion payments occur in a year beginning before January 1, 2018, and base erosion payments made by US1 during the period from December 1, 2017 through November 30, 2018, do not change that result. For a general discussion of the Act's effective date for section 59A, see Part III.C of this Explanation of Provisions section.

E. Mark-to-Market Deductions

As discussed in Part II.C of this Explanation of Provisions section, the taxpayer (or in the case of a taxpayer that is a member of an aggregate group, the aggregate group) must determine the amount of base erosion tax benefits in the numerator and the total amount of certain deductions, including base erosion tax benefits, in the denominator to determine the base erosion percentage for the year. The proposed regulations provide rules for determining the amount of base erosion tax benefits in the case of transactions that are marked to market. These proposed rules also apply for determining the total amount of the deductions that are included in the denominator of the base erosion percentage computation.

Specifically, to ensure that only a single deduction is claimed with respect to each transaction, the proposed regulations combine all income, deduction, gain, or loss on each transaction for the year to determine the amount of the deduction that is used for purposes of the base erosion percentage test. This rule does not modify the net amount allowed as a deduction pursuant to the Code and regulations. This rule is intended to prevent distortions in deductions from being included in the denominator of the base erosion percentage, including as a result of the use of an accounting method that values a position more frequently than annually.

III. Base Erosion Payments

The proposed regulations define a base erosion payment as a payment or accrual by the taxpayer to a foreign related party (as defined in § 1.59A–1(b)(12)) that is described in one of four categories: (1) A payment with respect to which a deduction is allowable; (2) a payment made in connection with the acquisition of depreciable or amortizable property; (3) premiums or other consideration paid or accrued for reinsurance that is taken into account under section 803(a)(1)(B) or 832(b)(4)(A); or (4) a payment resulting in a reduction of the gross receipts of the taxpayer that is with respect to certain surrogate foreign corporations or related foreign persons.

A payment or accrual that is not within one of the categories may be a base erosion payment described in one of the other categories. For example, a deductible payment related to reinsurance that does not meet the requirements for the third category of base erosion payments may still be a base erosion payment under the first category because the payment is deductible. Nonetheless, to the extent all or a portion of a payment or accrual is described in more than one of these categories, the amount is only taken into account once as a base erosion payment.

Except as otherwise provided in the proposed regulations, the determination of whether a payment or accrual by the taxpayer to a foreign related party is described in one of these four categories is made under general U.S. federal income tax law. For example, the proposed regulations do not explicitly address whether a royalty payment is classified as deductible under section 162 or as a cost includible in inventory under sections 471 and 263A resulting in a reduction in gross income under section 61.

In general, the treatment of a payment as deductible, or as other than deductible, such as an amount that reduces gross income or is excluded from gross income because it is beneficially owned by another person, generally will have federal income tax consequences that will affect the application of section 59A and will also have consequences for other provisions of the Code. In light of existing tax law dealing with identifying who is the beneficial owner of income, who owns an asset, and the related tax consequences (including under principal-agent principles, reimbursement doctrine, case law conduit principles, assignment of income or other principles of generally applicable tax law), the proposed regulations do not establish any specific rules for purposes of section 59A for determining whether a payment is treated as a deductible payment or, when viewed as part of a series of transactions, should be characterized in a different manner.

Part III.A of this Explanation of Provisions section discusses the

operating rules for certain specific types of base erosion payments and Part III.B of this Explanation of Provisions section describes certain exceptions to the definition of base erosion payments.

A. Certain Specific Types of Base Erosion Payments

This Part III.A of this Explanation of Provisions describes proposed operating rules for determining whether there is a payment or accrual that can give rise to a base erosion payment. This part also discusses proposed rules coordinating the definition of base erosion payment with rules that allocate deductions for purposes of determining a foreign corporation's effectively connected income.

1. Payments or Accruals That Consist of Non-Cash Consideration

The proposed regulations clarify that a payment or accrual by a taxpayer to a foreign related party may be a base erosion payment regardless of whether the payment is in cash or in any form of non-cash consideration. See proposed § 1.59A–3(b)(2)(i). There may be situations where a taxpayer incurs a non-cash payment or accrual to a foreign related party in a transaction that meets one of the definitions of a base erosion payment, and that transaction may also qualify under certain nonrecognition provisions of the Code. Examples of these transactions include a domestic corporation's acquisition of depreciable assets from a foreign related party in an exchange described in section 351, a liquidation described in section 332, and a reorganization described in section 368.

The proposed regulations do not include any specific exceptions for these types of transactions even though (a) the transferor of the assets acquired by the domestic corporation may not recognize gain or loss, (b) the acquiring domestic corporation may take a carryover basis in the depreciable or amortizable assets, and (c) the importation of depreciable or amortizable assets into the United States in these transactions may increase the regular income tax base as compared to the non-importation of those assets. The Treasury Department and the IRS have determined that neither the nonrecognition of gain or loss to the transferor nor the absence of a step-up in basis to the transferee establishes a basis to create a separate exclusion from the definition of a base erosion payment. The statutory definition of this type of base erosion payment that results from the acquisition of depreciable or amortizable assets in exchange for a payment or accrual to a foreign related party is based on the amount of imported basis in the asset. That amount of basis is imported regardless of whether the transaction is a recognition transaction or a transaction subject to rules in subchapter C or elsewhere in the Code.

In contrast, for transactions in which a taxpayer that owns stock in a foreign related party receives depreciable property from the foreign related party as an in-kind distribution subject to section 301, there is no base erosion payment because there is no consideration provided by the taxpayer to the foreign related party in exchange for the property. Thus, there is no payment or accrual.

In addition, because section 59A(d)(1) defines the first category of base erosion payment as ''any amount paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer and with respect to which a deduction is allowable under this chapter,'' a base erosion payment also includes a payment to a foreign related party resulting in a recognized loss; for example, a loss recognized on the transfer of property to a foreign related party. The Treasury Department and the IRS welcome comments about the treatment of payments or accruals that consist of non-cash consideration. See Part III.B.4 of this Explanation of Provisions section for a specific exception from the base erosion payment definition for exchange loss from a section 988 transaction.

2. Interest Expense Allocable to a Foreign Corporation's Effectively Connected Income

Section 59A applies to foreign corporations that have income that is subject to net income taxation as effectively connected with the conduct of a trade or business in the United States, taking into account any applicable income tax treaty of the United States. These proposed regulations generally provide that a foreign corporation that has interest expense allocable under section 882(c) to income that is effectively connected with the conduct of a trade or business within the United States will have a base erosion payment to the extent the interest expense results from a payment or accrual to a foreign related party. The amount of interest that will be treated as a base erosion payment depends on the method used under § 1.882–5.

If a foreign corporation uses the method described in § 1.882–5(b) through (d), interest on direct allocations and on U.S.-booked liabilities that is paid or accrued to a foreign related party will be a base erosion payment. If U.S.-booked liabilities exceed U.S.-connected liabilities, a foreign corporation computing its interest expense under this method must apply the scaling ratio to all of its interest expense on a pro-rata basis to determine the amount that is a base erosion payment. Interest on excess U.S.-connected liabilities also may be a base erosion payment if the foreign corporation has liabilities with a foreign related party.

If a foreign corporation determines its interest expense under the separate currency pools method described in § 1.882–5(e), the amount of interest expense that is a base erosion payment is equal to the sum of (1) the interest expense on direct allocations paid or accrued to a foreign related party and (2) the interest expense in each currency pool multiplied by the ratio of average foreign related party liabilities over average total liabilities for that pool. The base erosion payment exceptions discussed in Part III.B of this Explanation of Provisions section may apply and may lower the amount of interest expense that is a base erosion payment.

The Treasury Department and the IRS recognize that § 1.882–5 provides certain simplifying elections for determining the interest deduction of a foreign corporation. In particular, § 1.882–5(c) generally provides that the amount of U.S.-connected liabilities equals the total value of U.S. assets multiplied by the taxpayer's worldwide leverage ratio. However, § 1.882–5(c)(4) allows a taxpayer to elect to use a fixed ratio instead of its actual worldwide leverage ratio. Similarly, § 1.882–5(d)(5)(ii)(A) provides a general rule that the deduction for interest on excess U.S.-connected liabilities is determined by reference to the average rate of interest on U.S.-dollar liabilities that are not U.S.-booked liabilities. However, § 1.882–5(d)(5)(ii)(B) allows certain taxpayers to elect to determine the deduction by reference to the 30-day London Interbank Offering Rate. The Treasury Department and the IRS request comments about similar simplifying elections for determining the portion of U.S.-connected liabilities that are paid to a foreign related party.

3. Other Deductions Allowed With Respect to Effectively Connected Income

Like excess interest expense, the proposed regulations provide that the amount of a foreign corporation's other deductions properly allocated and apportioned to effectively connected gross income under § 1.882–4 are base erosion payments to the extent that

those deductions are paid or accrued to a foreign related party. Section 1.882–4(a)(1) generally provides that a foreign corporation engaged in a trade or business within the United States is allowed the deductions which are properly allocated and apportioned to the foreign corporation's gross income which is effectively connected its conduct of a trade or business within the United States. The proposed regulations follow the approach under § 1.882–4. Accordingly, the regulations identify base erosion payments by tracing each item of deduction, and determining whether the deduction arises from a payment to a foreign related party.

If a foreign corporation engaged in a trade or business within the United States acquires property of a character subject to the allowance for depreciation (or amortization in lieu of depreciation) from a foreign related party, the amount paid or accrued by the taxpayer to the foreign related party is a base erosion payment to the extent the property is used, or held for use, in the conduct of a trade or business within the United States.

4. Income Tax Treaties

Certain U.S. income tax treaties provide alternative approaches for the allocation or attribution of business profits of an enterprise of one contracting state to its permanent establishment in the other contracting state on the basis of assets used, risks assumed, and functions performed by the permanent establishment. The use of a treaty-based expense allocation or attribution method does not, in and of itself, create legal obligations between the U.S. permanent establishment and the rest of the enterprise. These proposed regulations recognize that as a result of a treaty-based expense allocation or attribution method, amounts equivalent to deductible payments may be allowed in computing the business profits of an enterprise with respect to transactions between the permanent establishment and the home office or other branches of the foreign corporation (''internal dealings''). The deductions from internal dealings would not be allowed under the Code and regulations, which generally allow deductions only for allocable and apportioned costs incurred by the enterprise as a whole. The proposed regulations require that these deductions from internal dealings allowed in computing the business profits of the permanent establishment be treated in a manner consistent with their treatment under the treaty-based position and be included as base erosion payments.

The proposed regulations include rules to recognize the distinction between the allocations of expenses that are addressed in Parts III.A.2 and 3 of this Explanation of Provisions section, and internal dealings. In the first instance, the allocation and apportionment of expenses of the enterprise to the branch or permanent establishment is not itself a base erosion payment because the allocation represents a division of the expenses of the enterprise, rather than a payment between the branch or permanent establishment and the rest of the enterprise. In the second instance, internal dealings are not mere divisions of enterprise expenses, but rather are priced on the basis of assets used, risks assumed, and functions performed by the permanent establishment in a manner consistent with the arm's length principle. The approach in the proposed regulations creates parity between deductions for actual regarded payments between two separate corporations (which are subject to section 482), and internal dealings (which are generally priced in a manner consistent with the applicable treaty and, if applicable, the OECD Transfer Pricing Guidelines). The rules in the proposed regulations applicable to foreign corporations using this approach apply only to deductions attributable to internal dealings, and not to payments to entities outside of the enterprise, which are subject to the general base erosion payment rules as provided in proposed § 1.59A–3(b)(4)(v)(A).

5. Certain Payments to Domestic Passthrough Entities With Foreign Owners or to Another Aggregate Group Member

The proposed regulations also provide rules for certain payments to a domestic trust, REIT or RIC, and for certain payments to a related domestic corporation that is not part of a consolidated group. Proposed § 1.59A–3(b)(2)(v) provides a rule that applies when a domestic trust, REIT or RIC receives a payment that otherwise would be a base erosion payment. Proposed § 1.59A–3(b)(2)(vi) applies when a taxpayer transfers certain property to a member of an aggregate group that includes the taxpayer, to ensure that any deduction for depreciation (or amortization in lieu of deprecation) by the transferee taxpayer remains a base erosion tax benefit to the same extent as the amount that would have been a base erosion tax benefit in the hands of the transferor.

B. Exceptions From the Base Erosion Payment Definition

1. Exception for Certain Amounts With Respect to Services

The SCM exception described in section 59A(d)(5) provides that section 59A(d)(1) (which sets forth the general definition of a base erosion payment) does not apply to any amount paid or accrued by a taxpayer for services if (A) the services are eligible for the services cost method under section 482 (determined without regard to the requirement that the services not contribute significantly to fundamental risks of business success or failure) and (B) the amount constitutes the total services cost with no markup component. The Treasury Department and the IRS interpret ''services cost method'' to refer to the services cost method described in § 1.482–9(b), interpret the requirement regarding ''fundamental risks of business success or failure'' to refer to the test in § 1.482–9(b)(5) commonly called the business judgment rule, and interpret ''total services cost'' to refer to the definition of ''total services costs'' in § 1.482–9(j).

Section 59A(d)(5) is ambiguous as to whether the SCM exception applies when an amount paid or accrued for services exceeds the total services cost, but the payment otherwise meets the other requirements for the SCM exception set forth in section 59A(d)(5). Under one interpretation of section 59A(d)(5), the SCM exception does not apply to any portion of a payment that includes any mark-up component. Under another interpretation of section 59A(d)(5), the SCM exception is available if there is a markup, but only to the extent of the total services costs. Under the former interpretation, any amount of markup would disqualify a payment, in some cases resulting in dramatically different tax effects based on a small difference in charged costs. In addition, if any markup were required, for example because of a foreign tax law or non-tax reason, a payment would not qualify for the SCM exception. Under the latter approach, the services cost would continue to qualify for the SCM exception provided the other requirements of the SCM exception are met. The latter approach to the SCM exception is more expansive because it does not limit qualification to payments made exactly at cost.

The proposed regulations provide that the SCM exception is available if there is a markup (and if other requirements are satisfied), but that the portion of any payment that exceeds the total cost of services is not eligible for the SCM exception and is a base erosion

payment. The Treasury Department and the IRS have determined that this interpretation is more consistent with the text of section 59A(d)(5). Rather than require an all-or-nothing approach to service payments, section 59A(d)(5) provides an exception for ''any amount'' that meets the specified test. This language suggests that a service payment may be disaggregated into its component amounts, just as the general definition of base erosion payment applies to the deductible amount of a foreign related party payment even if the entire payment is not deductible. See section 59A(d)(1). The most logical interpretation is that a payment for a service that satisfies subparagraph (A) is excepted up to the qualifying amount under subparagraph (B), but amounts that do not qualify (*i.e.,* the markup component) are not excepted. This interpretation is reinforced by the fact that section 59A(d)(5)(A) makes the SCM exception available to taxpayers that cannot apply the services cost method described in § 1.482–9(b) (which permits pricing a services transaction at cost for section 482 purposes) because the taxpayer cannot satisfy the business judgment rule in § 1.482–9(b)(5). Because a taxpayer in that situation cannot ordinarily charge cost, without a mark-up, for transfer pricing purposes, failing to adopt this approach would render the parenthetical reference in section 59A(d)(5)(A) a nullity. The interpretation the proposed regulations adopt gives effect to the reference to the business judgment rule in section 59A(d)(5). The Treasury Department and the IRS welcome comments on whether the regulations should instead adopt the interpretation of section 59A(d)(5) whereby the SCM exception is unavailable to a payment that includes any mark-up component.

To be eligible for the SCM exception, the proposed regulations require that all of the requirements of § 1.482–9(b) must be satisfied, except as modified by the proposed regulations. Therefore, a taxpayer's determination that a service qualifies for the SCM exception is subject to review under the requirements of § 1.482–9(b)(3) and (b)(4), and its determination of the amount of total services cost and allocation and apportionment of costs to a particular service is subject to review under the rules of § 1.482–9(j) and § 1.482–9(k), respectively.

Although the proposed regulations do not require a taxpayer to maintain separate accounts to bifurcate the cost and markup components of its services charges to qualify for the SCM exception, the proposed regulations do require that taxpayers maintain books and records adequate to permit verification of, among other things, the amount paid for services, the total services cost incurred by the renderer, and the allocation and apportionment of costs to services in accordance with § 1.482–9(k). Because payments for certain services that are not eligible for the SCM due to the business judgment rule or for which taxpayers select another transfer pricing method may still be eligible for the SCM exception to the extent of total services cost, the record-keeping requirements in the proposed regulations differ from the requirements in § 1.482–9(b)(6). See § 1.59A–3(b)(3)(i)(B)(*2*). Unlike § 1.482–9(b)(6), the proposed regulations do not require that taxpayers ''include a statement evidencing [their] intention to apply the services cost method to evaluate the arm's length charge for such services,'' but the proposed regulations do require that taxpayers include a calculation of the amount of profit mark-up (if any) paid for the services. For purposes of qualifying for the SCM exception under section 59A(d)(5), taxpayers are required to comply with the books and records requirements under these proposed regulations but not § 1.482–9(b)(6).

The proposed regulations also clarify that the parenthetical reference in section 59A(d)(5) to the business judgment rule prerequisite for applicability of the services cost method—''(determined without regard to the requirement that the services not contribute significantly to fundamental risks of business success or failure)''—disregards the entire requirement set forth in § 1.482–9(b)(5) solely for purposes of section 59A(d)(5).

2. Qualified Derivative Payments

Section 59A(h) provides that a qualified derivative payment (QDP) is not a base erosion payment. Proposed § 1.59A–6 defines a QDP as any payment made by a taxpayer to a foreign related party pursuant to a derivative for which the taxpayer recognizes gain or loss on the derivative on a mark-to-market basis (treats the derivative as sold on the last business day of the taxable year), the gain or loss is ordinary, and any gain, loss, income or deduction on a payment made pursuant to the derivative is also treated as ordinary.

The QDP exception applies only if the taxpayer satisfies reporting requirements in proposed § 1.6038A–2(b)(7)(ix). If a taxpayer satisfies the reporting requirements for some QDPs, but not all, then only the payments for which the taxpayer fails to satisfy the reporting requirements will be ineligible for the QDP exception. Section 1.6038A–2(b)(7)(ix) will first apply to taxable years beginning after final regulations are published, which provides taxpayers additional time to meet those reporting requirements. The proposed regulations provide that before final regulations are published, taxpayers satisfy the reporting requirements for QDPs by reporting the aggregate amount of QDPs for the taxable year on Form 8991, *Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts.*

Section 59A(h)(3) provides two exceptions to the QDP exception. Specifically, the QDP exception does not apply (1) to a payment that would be treated as a base erosion payment if it were not made pursuant to a derivative or (2) with respect to a contract that has derivative and nonderivative components, to a payment that is properly allocable to the nonderivative component. The proposed regulations do not specifically address or modify these statutory provisions. For the avoidance of doubt, the Treasury Department and the IRS observe that these rules in section 59A(h)(3) are self-executing; thus, taxpayers must apply these two rules to determine whether any of their payments pursuant to derivatives fail to qualify for the QDP exception. The Treasury Department and the IRS request comments on whether regulations should further clarify the statutory provisions in section 59A(h)(3).

Proposed § 1.59A–6(d) defines a derivative as any contract, the value of which, or any payment with respect to which, is determined by reference to any stock, evidence of indebtedness, actively traded commodity, currency, or any rate, price, amount, index, formula or algorithm. However, direct ownership of any of these items is not ownership of a derivative. The proposed regulations clarify that for purposes of section 59A(h)(4), a derivative does not include an insurance contract, a securities lending transaction, a sale-repurchase transaction, or any substantially similar transaction.

For federal tax purposes, a sale-repurchase transaction satisfying certain conditions is treated as a secured loan. Sections 59A(h)(3) and 59A(h)(4) explicitly exclude from qualified derivatives payment status any payment that would be treated as a base erosion payment if it were not made pursuant to a derivative, such as a payment of interest on a debt instrument. Accordingly, for purposes of section 59A(h), the proposed regulations

provide that sale-repurchase transactions are not treated as derivatives. Because sale-repurchase transactions and securities lending transactions are economically similar to each other, the Treasury Department and the IRS have determined that these transactions should be treated similarly for purposes of section 59A(h)(4), and therefore payments on those transactions are not treated as QDPs. The Treasury Department and the IRS request comments on whether securities lending transactions and sale-repurchase transactions have been properly excluded from the definition of a derivative, including whether certain transactions lack a significant financing component such that those transactions should be treated as derivatives for purposes of section 59A(h). The Treasury Department and the IRS also request comments regarding whether any additional transactions or financial instruments should be explicitly excluded from the definition of a derivative.

3. Exception to Base Erosion Payment Status for Payments the Recipient of Which is Subject to U.S. Tax

In general, for a payment or accrual to be treated as a base erosion payment, the recipient must be a foreign person (within the meaning of section 6038A(c)(3)) that is a related party with respect to the taxpayer, and a deduction must be allowable with respect to the payment or accrual. See section 59A(f). Section 6038A(c)(3) defines ''foreign person'' as any person that is not a United States person within the meaning of section 7701(a)(30), but for this purpose the term ''United States person'' does not include any individual who is a citizen of any U.S. territory (but not otherwise a citizen of the United States) and who is not a resident of the United States. See proposed § 1.59A–1(b)(10). The Treasury Department and the IRS have determined that it is appropriate in defining a base erosion payment to consider the U.S. tax treatment of the foreign recipient. In particular, the Treasury Department and the IRS have determined that a payment to a foreign person should not be taxed as a base erosion payment to the extent that payments to the foreign related party are effectively connected income. Those amounts are subject to tax under sections 871(b) and 882(a) on a net basis in substantially the same manner as amounts paid to a United States citizen or resident or a domestic corporation. Accordingly, the proposed regulations include an exception from the definition of base erosion payment for amounts that are subject to tax as income effectively connected with the conduct of a U.S. trade or business. In the case of a foreign recipient that determines its net taxable income under an applicable income tax treaty, the exception from the definition of base erosion payment applies to payments taken into account in determining net taxable income under the treaty.

4. Exchange Loss From a Section 988 Transaction

Proposed § 1.59A–3(b)(3)(iv) provides that exchange losses from section 988 transactions described in § 1.988–1(a)(1) are not base erosion payments. The Treasury Department and the IRS have determined that these losses do not present the same base erosion concerns as other types of losses that arise in connection with payments to a foreign related party. Accordingly, under these proposed regulations, section 988 losses are excluded from the numerator.

The proposed regulations also provide that section 988 losses are excluded from the denominator of the base erosion percentage. Specifically, proposed § 1.59A–2(e)(3)(ii)(D) provides that an exchange loss from a section 988 transaction (including with respect to persons other than foreign related parties) is not included in the denominator when calculating the base erosion percentage. Exchange gain from a section 988 transaction, however, is included as a gross receipt for purposes of the gross receipts test under proposed § 1.59A–2(d).

The Treasury Department and the IRS request comments on the treatment of section 988 losses in the context of section 59A, including whether the rule relating to section 988 losses in the denominator of the base erosion percentage calculation should be limited to transactions with a foreign related party.

5. Exception for Interest on Certain Instruments Issued by Globally Systemically Important Banking Organizations

The Federal Reserve requires that certain global systemically important banking organizations (GSIBs) issue TLAC securities as part of a global framework for bank capital that has sought to minimize the risk of insolvency. In particular, the Board of Governors of the Federal Reserve (the Board) has issued regulations that prescribe the amount and form of external TLAC securities that domestic GSIBs must issue and internal TLAC securities that certain foreign GSIBs must issue. In the case of internal TLAC securities, the Board regulations require the domestic intermediate holding company of a foreign GSIB to issue a specified minimum amount of TLAC to its foreign parent. Section 59A(i) provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of section 59A, including regulations addressing specifically enumerated situations. The Treasury Department and the IRS have determined that because of the special status of TLAC as part of a global system to address bank solvency and the precise limits that Board regulations place on the terms of TLAC securities and structure of intragroup TLAC funding, it is necessary and appropriate to include an exception to base erosion payment status for interest paid or accrued on TLAC securities required by the Federal Reserve.

Specifically, the proposed regulations include a TLAC exception that applies only to the extent of the amount of TLAC securities required by the Federal Reserve under subpart P of 12 CFR part 252. As a result, the exception is scaled back if the adjusted issue price of the average amount of TLAC securities issued and outstanding exceeds the average amount of TLAC long-term debt required by the Federal Reserve for the taxable year. The TLAC exception applies only to securities required by the Federal Reserve, and as a result generally does not apply to securities issued by a foreign corporation engaged in a U.S. trade or business because the applicable Federal Reserve requirement applies only to domestic institutions. However, the Treasury Department and the IRS acknowledge that foreign regulators may impose similar requirements on the financial institutions they regulate. The Treasury Department and the IRS request comments regarding a similar exception for foreign corporations that are required by law to issue a similar type of loss-absorbing instrument, including the appropriate scope of an exception that would provide parity between the treatment of domestic corporations and foreign corporations engaged in a U.S. trade or business.

C. Base Erosion Payments Occurring Before the Effective Date and Pre-2018 Disallowed Business Interest

Section 14401(e) of the Act provides that section 59A applies only to base erosion payments paid or accrued in taxable years beginning after December 31, 2017. The statutory definition of a base erosion tax benefit is based upon the definition of a base erosion payment. Accordingly, the proposed

regulations confirm the exclusion of a deduction described in section 59A(c)(2)(A)(i) (deduction allowed under Chapter 1 for the taxable year with respect to any base erosion payment) or section 59A(c)(2)(A)(ii) (deduction allowed under Chapter 1 for the taxable year for depreciation or amortization with respect to any property acquired with such payment) that is allowed in a taxable year beginning after December 31, 2017, if it relates to a base erosion payment that occurred in a taxable year beginning before January 1, 2018.

For example, if in 2015, a calendar year taxpayer makes a payment or accrual to a foreign related party to acquire depreciable property, the 2015 payment is excluded from the definition of a base erosion payment because of section 14401(e) of the Act. As a result, the taxpayer's depreciation deduction allowed in 2018 with respect to this property is not a base erosion tax benefit.

Similarly, if in 2016, a taxpayer with a calendar year had paid or accrued interest on an obligation to a foreign related party, but the interest was not deductible in 2016 due to the application of section 267(a), the 2016 accrual of the interest amount is excluded from the definition of a base erosion payment because of section 14401(e) of the Act. As a result, if the interest amount becomes deductible in 2018, the taxpayer's deduction allowed in 2018 with respect to this item is not a base erosion tax benefit.

In the case of business interest expense that is not allowed as a deduction under section 163(j)(1), the proposed regulations provide a rule that clarifies that the effective date rules apply in a similar manner as with other base erosion payments that initially arose before the effective date in section 14401(e) of the Act. Section 163(j), as modified by the Act, provides that the deduction for business interest expense is limited to the sum of business interest income, 30 percent of adjusted taxable income (''ATI''), and the amount of any floor plan financing interest. Section 163(j)(2) further provides that any disallowed business interest is carried forward to the succeeding year, and that the carryforward amount is treated as ''paid or accrued'' in the succeeding taxable year.

In Notice 2018–28, 2018–16 I.R.B. 492, Section 3, the Treasury Department and the IRS stated that business interest carried forward from a taxable year beginning before January 1, 2018, will be treated in the same manner as interest paid or accrued in a taxable year beginning after December 31, 2017, for purposes of section 59A. Under this approach, business interest expense that was initially paid or accrued in a taxable year beginning before January 1, 2018, could nonetheless be a base erosion payment in a taxable year beginning after December 31, 2017, because section 163(j)(2) deems a recurring ''payment or accrual'' for such item in each carryforward year. Comments requested that the Treasury Department and the IRS reconsider the position taken in Notice 2018–28, on the basis that the determination of whether a payment is a base erosion payment should be made as of the date of the actual payment of interest rather than the date that a deduction is allowed under section 163(j).

The Treasury Department and the IRS agree and have determined that the approach described in Notice 2018–28 is not consistent with the general effective date provision in Section 14401(e) of the Act because the language in section 163(j)(2) deeming a recurring ''payment or accrual'' is primarily to implement the carryforward mechanism in section 163(j), rather than to treat interest that is carried forward to a subsequent taxable year as paid or accrued for all tax purposes in that subsequent taxable year. Accordingly, the proposed regulations do not follow the approach described in Notice 2018–28. Instead, the proposed regulations provide that any disallowed disqualified interest under section 163(j) that resulted from a payment or accrual to a foreign related party and that is carried forward from a taxable year beginning before January 1, 2018, is not a base erosion payment. The proposed regulations also clarify that any disallowed business interest carryforward under section 163(j) that resulted from a payment or accrual to a foreign related party is treated as a base erosion payment in the year that the interest was paid or accrued even though the interest may be deemed to be paid or accrued again in the year in which it is actually deducted. The rule in the proposed regulations generally is consistent with excluding interest paid or accrued before January 1, 2018 (generally under financing arranged prior to the Act) from treatment as a base erosion payment. The Treasury Department and the IRS welcome comments with respect to the treatment of disallowed disqualified interest under section 163(j) from a taxable year beginning before January 1, 2018. See Part IV.B of this Explanation of Provisions section for proposed rules determining the amount of business interest expense for which a deduction is allowed when section 163(j) applies to limit interest deductions.

IV. Base Erosion Tax Benefits

The amount of base erosion tax benefits is an input in (i) the computation of the base erosion percentage test (discussed in Part II.C of this Explanation of Provisions section) and (ii) the determination of modified taxable income (discussed in Part V of this Explanation of Provisions section). Generally, a base erosion tax benefit is the amount of any deduction relating to a base erosion payment that is allowed under the Code for the taxable year. Base erosion tax benefits are defined in proposed § 1.59A–3(c).

A. Withholding Tax on Payments

As discussed in Part II.C of this Explanation of Provisions section, if tax is imposed by section 871 or 881 and the tax is deducted and withheld under section 1441 or 1442 without reduction by an applicable income tax treaty on a base erosion payment, the base erosion payment is treated as having a base erosion tax benefit of zero for purposes of calculating a taxpayer's modified taxable income. If an income tax treaty reduces the amount of withholding imposed on the base erosion payment, the base erosion payment is treated as a base erosion tax benefit to the extent of the reduction in withholding under rules similar to those in section 163(j)(5)(B) as in effect before the Act.

B. Rules for Classifying Interest for Which a Deduction Is Allowed When Section 163(j) Limits Deductions

Section 59A(c)(3) provides a stacking rule in cases in which section 163(j) applies to a taxpayer, under which the reduction in the amount of deductible interest is treated as allocable first to interest paid or accrued to persons who are not related parties with respect to the taxpayer and then to related parties. The statute does not provide a rule for determining which portion of the interest treated as paid to related parties (and thus potentially treated as a base erosion payment) is treated as paid to a foreign related person as opposed to a domestic related person. Proposed § 1.59A–3(c)(4) provides rules coordinating section 163(j) with the determination of the amount of base erosion tax benefits. This rule provides, consistent with section 59A(c)(3), that where section 163(j) applies to limit the amount of a taxpayer's business interest expense that is deductible in the taxable year, a taxpayer is required to treat all disallowed business interest first as interest paid or accrued to persons who are not related parties, and then as

interest paid or accrued to related parties for purposes of section 59A. More specifically, the proposed regulations provide that when a corporation has business interest expense paid or accrued to both unrelated parties and related parties, the amount of allowed business interest expense is treated first as the business interest expense paid to related parties, proportionately between foreign and domestic related parties, and then as business interest expense paid to unrelated parties. Conversely, the amount of a disallowed business interest expense carryforward is treated first as business interest expense paid to unrelated parties, and then as business interest expense paid to related parties, proportionately between foreign and domestic related party business interest expense.

Because section 163(j) and the proposed regulations thereunder provide an ordering rule that allocates business interest expense deductions first to business interest expense incurred in the current year and then to business interest expense carryforwards from prior years (starting with the earliest year) in order to separately track the attributes on a year-by-year layered approach for subchapter C purposes, these proposed regulations follow that convention. Accordingly, the proposed regulations also follow a year-by-year convention in the allocation of business interest expense and carryovers among the related and unrelated party classifications. See also the discussion of singular tax attributes in Part V.A of this Explanation of Provisions section. The proposed regulations adopt a similar approach for business interest expense and excess business interest of a partnership that is allocated to a corporate partner by separately tracking and ordering items allocated from a partnership.

V. Modified Taxable Income

For any taxable year, section 59A imposes a tax on each applicable taxpayer equal to the base erosion minimum tax amount for that year. Section 59A(b)(1) provides that the base erosion minimum tax amount is determined based on an applicable taxpayer's modified taxable income for the taxable year. Part V.A of this Explanation of Provisions section discusses how an applicable taxpayer computes its modified taxable income. Part V.B of this Explanation of Provisions section describes how modified taxable income is calculated if an applicable taxpayer has an overall taxable loss for a taxable year. Finally, Part V.C of this Explanation of Provisions section describes the base erosion percentage that is used when the base erosion percentage of a net operating loss deduction (''NOL deduction'') is added back to taxable income for purposes of the modified taxable income calculation.

A. Method of Computation

Section 59A(c)(1) provides that the term modified taxable income means the taxable income of the taxpayer computed under Chapter 1 for the taxable year, determined without regard to base erosion tax benefits and the base erosion percentage of any NOL deduction under section 172 for the taxable year. The proposed regulations clarify that the computation of modified taxable income and the computation of the base erosion minimum tax amount (which is discussed in Part VI of this Explanation of Provisions section) are made on a taxpayer-by-taxpayer basis. That is, under the proposed regulations, the aggregate group concept is used solely for determining whether a taxpayer is an applicable taxpayer and the base erosion percentage of any NOL deduction. This approach is consistent with section 59A(a)'s imposition of a tax equal to the base erosion minimum tax amount, which is in addition to the regular tax liability of a taxpayer.

The proposed regulations also provide that the computation of modified taxable income is done on an add-back basis. The computation starts with taxable income (or taxable loss) of the taxpayer as computed for regular tax purposes, and adds to that amount (a) the gross amount of base erosion tax benefits for the taxable year and (b) the base erosion percentage of any NOL deduction under section 172 for the taxable year.

The proposed regulations do not provide for the recomputation of income under an approach similar to the alternative minimum tax, which the Act repealed for corporations. See section 12001(a) of the Act. Under a recomputation approach, attributes that are limited based on taxable income would be subject to different annual limitations, and those attributes would have to be re-computed for purposes of section 59A. Applying this approach in a manner that reflects the results of the BEAT-basis recomputation to subsequent years would lead to parallel attributes that are maintained separately in a manner similar to the pre-Act corporate alternative minimum tax. For example, the amount of the net operating loss used to reduce modified taxable income would differ from the amount used in computing regular tax liability, and the carryforward of unused net operating loss that is used to compute regular tax liability would not reflect the net operating loss amount used to reduce modified taxable income (absent a separate BEAT-basis carryover). The annual limitation under section 163(j)(1), which generally limits a corporation's annual deduction for business interest expense, would present similar issues under a recomputation approach. Consequently, the add-back approach also provides simplification relative to the recomputation approach because the add-back approach eliminates the need to engage in the more complex tracking of separate attributes on a BEAT basis in a manner similar to the repealed corporate AMT. The Treasury Department and the IRS welcome comments on the add-back approach provided in the proposed regulations, and the practical effects of an alternative recomputation-based approach.

B. Conventions for Computing Modified Taxable Income—Current Year Losses and Excess Net Operating Loss Carryovers

If a taxpayer has an excess of deductions allowed by Chapter 1 over gross income, computed without regard to the NOL deduction, the taxpayer has negative taxable income for the taxable year. Generally, the proposed regulations provide that a negative amount is the starting point for computing modified taxable income when there is no NOL deduction from net operating loss carryovers and carrybacks.

The proposed regulations further provide a rule applicable to situations in which there is a NOL deduction from a net operating loss carryover or carryback to the taxable year and that NOL deduction exceeds the amount of positive taxable income before that deduction (because, for example, the loss arose in a year beginning before January 1, 2018). The proposed regulations provide that the excess amount of NOL deduction does not reduce taxable income below zero for determining the starting point for computing modified taxable income. The Treasury Department and the IRS have determined that this rule is necessary because section 172(a) could be read to provide that, for example, if a taxpayer has a net operating loss of $100x that arose in a taxable year beginning before January 1, 2018, that is carried forward, and in a subsequent year the taxpayer has taxable income of $5x before taking into account the $100x net operating loss carryover deduction, the taxpayer may nonetheless have a $100x NOL deduction in that year or a

$95x taxable loss (even though $95x of the net operating loss would remain as a carryforward to future years, as well). Because the proposed regulations recognize the notion of a taxable loss when deductions other than the NOL deduction exceed gross income (as discussed earlier in this Part V), this rule clarifies that the taxpayer's starting point for computing modified taxable income in this situation is zero, rather than negative $95x.

The proposed regulations further clarify that the NOL deduction taken into account for purposes of adding the base erosion percentage of the NOL deduction to taxable income under section 59A(c)(1)(B) is determined in the same manner. Accordingly, in the example above, the base erosion percentage of the NOL deduction added to taxable income is computed based on the $5x NOL deduction that reduces regular taxable income to zero, rather than the entire $100x of net operating loss carryforward, $95x of which is not absorbed in the current taxable year.

Finally, the proposed regulations provide that an applicable taxpayer's taxable income is determined according to section 63(a) without regard to the rule in section 860E(a)(1). That rule generally provides that a holder of a residual interest in a real estate mortgage investment conduit (''REMIC'') may not have taxable income less than its excess inclusion amount. As a result of section 860E(a)(1), a holder of a REMIC residual interest may have taxable income for purposes of computing its regular tax liability even though it has a current year loss. The proposed regulations provide that the limitation in section 860E(a)(1) is disregarded for purposes of calculating modified taxable income under section 59A. The rule described in this paragraph is relevant, for example, in situations when the taxpayer would have negative taxable income attributable to a current year loss, as described in this Part V.B, or no taxable income as a result of a net operating loss. Because section 860E(a)(1) ensures that the excess inclusion is subject to tax under section 11, the Treasury Department and the IRS have determined that it is not appropriate to apply the rule in section 860E(a)(1) for the purpose of calculating modified taxable income under section 59A.

C. Conventions for Computing Modified Taxable Income—Determining the Base Erosion Percentage of NOL Deductions

Section 59A(c)(1)(B) provides that modified taxable income includes the base erosion percentage of any NOL deduction allowed under section 172 for the taxable year. In this context, the relevant base erosion percentage could be either the base erosion percentage in the year that the net operating loss arose, or alternatively, the base erosion percentage in the year in which the taxpayer takes the NOL deduction. Proposed § 1.59A–4(b)(2)(ii) applies the base erosion percentage of the year in which the loss arose, or vintage year, because the base erosion percentage of the vintage year reflects the portion of base eroding payments that are reflected in the net operating loss carryover. In addition, because the vintage-year base erosion percentage is a fixed percentage, taxpayers will have greater certainty as to the amount of the future add-back to modified taxable income (as compared to using the utilization-year base erosion percentage).

Based on this approach, the proposed regulations also provide that in the case of net operating losses that arose in taxable years beginning before January 1, 2018, and that are deducted as carryovers in taxable years beginning after December 31, 2017, the base erosion percentage is zero because section 59A applies only to base erosion payments that are paid or accrued in taxable years beginning after December 31, 2017. See section 14401(e) of the Act. As a result, there is no add-back to modified taxable income for the use of those net operating loss carryovers. The Treasury Department and the IRS welcome comments on the vintage-year approach as well as the alternative utilization-year approach.

The proposed regulations also clarify that in computing the add-back for NOL deductions for purposes of the modified taxable income calculation, the relevant base erosion percentage is the base erosion percentage for the aggregate group that is used to determine whether the taxpayer is an applicable taxpayer, rather than a separate computation of base erosion percentage computed solely by reference to the single taxpayer.

VI. Base Erosion Minimum Tax Amount

An applicable taxpayer computes its base erosion minimum tax amount (''BEMTA'') for the taxable year to determine its liability under section 59A(a). Proposed § 1.59A–5 describes the calculation of the BEMTA. Generally, the taxpayer's BEMTA equals the excess of (1) the applicable tax rate for the taxable year (''BEAT rate'') multiplied by the taxpayer's modified taxable income for the taxable year over (2) the taxpayer's adjusted regular tax liability for that year. See Part VIII of this Explanation of Provisions section for a discussion of the higher BEAT rate for certain banks and registered securities dealers.

In determining the taxpayer's adjusted regular tax liability for the taxable year, credits (including the foreign tax credit) are generally subtracted from the regular tax liability amount. To prevent an inappropriate understatement of a taxpayer's adjusted regular tax liability, the proposed regulations provide that credits for overpayment of taxes and for taxes withheld at source are not subtracted from the taxpayer's regular tax liability because these credits relate to federal income tax paid for the current or previous year.

For taxable years beginning before January 1, 2026, under section 59A(b)(1)(B), the credits allowed against regular tax liability (which reduce the amount of regular tax liability for purposes of calculating BEMTA) are not reduced by the research credit determined under section 41(a) or by a portion of applicable section 38 credits. For taxable years beginning after December 31, 2025, this special treatment of the research credit and applicable section 38 credits no longer applies. As a result, an applicable taxpayer may have a greater BEMTA than would be the case in taxable years beginning before January 1, 2026. In general, foreign tax credits are taken into account in computing a taxpayer's regular tax liability before other credits. See section 26(a). As a result, a taxpayer with foreign tax credits that reduce its regular tax liability to, or close to, zero may not use its section 41(a) credits or its applicable section 38 credits in computing its regular tax liability. In these situations, those credits will not be taken into account in computing the taxpayer's BEMTA even in a pre-2026 year. Instead, those credits will reduce (or, put differently, will prevent an increase in) the BEMTA in the year when those credits are used for regular tax purposes (provided that the taxable year begins before January 1, 2026).

VII. Application of Section 59A to Partnerships

A partnership is not an ''applicable taxpayer'' as defined in Section 59A; only corporations can be applicable taxpayers. In general, however, a partnership also is not subject to the income tax imposed by Chapter 1 of Subtitle A of the Code. Instead, partners are liable for income tax only in their separate capacities. Each taxpayer that is a partner in a partnership takes into account separately the partner's distributive share of the partner's income or loss in determining its taxable income. Accordingly, an item of income is subject to federal income

taxation based on the status of the partners, and not the partnership as an entity. Similarly, a partnership does not itself benefit from a deduction. Instead, the tax benefit from a deduction is taken by the taxpayer that is allocated the deduction under section 704. Section 702(b) provides that the character of any item be taken into account as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership. Section 702(b) acknowledges that differences in partner tax characteristics (for example, whether the partner is a corporation or an individual, or domestic or foreign) may result in differences in the tax consequences of items the partnership allocates to its partners.

The proposed regulations generally apply an aggregate approach in conjunction with the gross receipts test for evaluating whether a corporation is an applicable taxpayer and in addressing the treatment of payments made by a partnership or received by a partnership for purposes of section 59A. The proposed regulations generally provide that partnerships are treated as an aggregate of the partners in determining whether payments to or payments from a partnership are base erosion payments consistent with the approach described in subchapter K as well as the authority provided in section 59A(i)(1) to prescribe such regulations that are necessary or appropriate to carry out the provisions of section 59A, including through the use of intermediaries or by characterizing payments otherwise subject to section 59A as payments not subject to 59A. Thus, when determining whether a corporate partner that is an applicable taxpayer has made a base erosion payment, amounts paid or accrued by a partnership are treated as paid by each partner to the extent an item of expense is allocated to the partner under section 704. Similarly, any amounts received by or accrued to a partnership are treated as received by each partner to the extent the item of income or gain is allocated to each partner under section 704. The rules and exceptions for base erosion payments and base erosion tax benefits then apply accordingly on an aggregate basis.

The Treasury Department and the IRS have determined that a rule that applies the aggregate principle consistently is necessary to align the treatment of economically similar transactions. The proposed rule prevents an applicable taxpayer from (a) paying a domestic partnership that is owned by foreign related parties, rather than paying those foreign partners directly, to circumvent the BEAT and (b) causing a partnership in which an applicable taxpayer is a partner to make a payment to a foreign related party, rather than paying that foreign related party directly. The rule applies consistently when a payment is to a foreign partnership that is owned, for example, by domestic corporations. This rule also addresses situations in which a partnership with an applicable taxpayer partner makes a payment to a foreign related party. Partners with certain small ownership interests are excluded from this aggregate approach for purposes of determining base erosion tax benefits from the partnership. This small ownership interests exclusion generally applies to partnership interests that represent less than ten percent of the capital and profits of the partnership and less than ten percent of each item of income, gain, loss, deduction, and credit; and that have a fair market value of less than $25 million. See proposed § 1.59A–7(b)(4). The Treasury Department and the IRS determined that a threshold of ten percent appropriately balanced the administrative burdens of determining whether deductions allocated to a partner with a small ownership interest in a partnership are base erosion payments with the Treasury Department and IRS's interest in maintaining a consistent aggregate approach to partnerships in applying to the BEAT. In determining the appropriate threshold for a small ownership interest, the Treasury Department and the IRS considered the treatment of small ownership interests in partnerships in analogous situations in other Treasury regulations. The Treasury Department and the IRS welcome comments on the aggregate approach to partnerships as well as the exception for small ownership interests, including the specific thresholds for the exception.

The proposed regulations do not provide for special treatment of base erosion tax benefits attributable to a partnership or to partnership nonrecognition transactions. Instead, the aggregate principle generally applies to these situations. For example, if a partnership acquires property from a foreign related party of a taxpayer that is a partner in the partnership, deductions for depreciation of the property allocated to the taxpayer generally are base erosion tax benefits. Similarly, if a foreign related party and a taxpayer form a partnership, and the foreign related party contributes depreciable property, deductions for depreciation of the property generally are base erosion tax benefits, in part, because the partnership is treated as acquiring the property in exchange for an interest in the partnership under section 721. This approach is consistent with the approach taken with respect to subchapter C transactions, as described in Part III.A.1 of this Explanation of Provisions section.

The proposed regulations provide that with respect to any person that owns an interest in a partnership, the related party determination under section 59A(g) applies at the partner level.

VIII. Rules Relating to Banks and Dealers for Purposes of Computing the Base Erosion Percentage and Determining the BEAT Rate for Computing BEMTA

Section 59A modifies two general rules in the case of certain banks or registered securities dealers. First, section 59A(e)(1)(C) lowers the base erosion percentage threshold for certain banks and registered securities dealers from three percent or more to two percent or more. See Part II.C of this Explanation of Provisions section for additional discussion of this rule. Second, section 59A(b)(3) provides that the BEAT rate is one percentage point higher for those banks or registered securities dealers.

The proposed regulations do not modify the statutory definition of the term ''bank'' for these purposes from its reference to section 581, which defines a bank by reference to a bank or trust company incorporated and doing business under the laws of United States (including laws related to the District of Columbia) or of any state. Thus, a foreign corporation licensed to conduct a banking business in the United States and subject to taxation with respect to income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States is not included in this definition.

The proposed regulations clarify that the term ''registered securities dealer'' is limited to a dealer as defined in section 3(a)(5) of the Securities Exchange Act of 1934 that is registered, or required to be registered, under section 15 of the Securities Exchange Act of 1934.

The proposed regulations also confirm that the operative rules that lower the base erosion percentage threshold and that increase the BEAT rate apply only to a taxpayer that is a member of an affiliated group as defined in section 1504(a)(1), and thus do not apply, for example, if the taxpayer is not affiliated with another includible corporation (within the meaning of section 1504(b)(1)), or if the taxpayer is not itself an includible corporation (for

example, a foreign corporation that is an applicable taxpayer).

For purposes of applying the lower base erosion percentage threshold to banks and registered securities dealers, the proposed regulations clarify that because the base erosion percentage is determined on an aggregate group basis, the lower threshold applies if any member of the aggregate group is a member of an affiliated group that includes a bank or registered securities dealer. The proposed regulations provide a limited exception for members of an affiliated group that includes a bank or registered securities dealer where the bank or registered securities dealer activities are de minimis. This de minimis rule provides that a consolidated group, or a member of the aggregate group of which the taxpayer is a member, is not subject to the lower base erosion percentage threshold if its gross receipts attributable to the bank or the registered securities dealer are less than two percent of the aggregate group's total gross revenue. This de minimis rule uses the same threshold measurement for exclusion from the special rule for banks and registered securities dealers (two percent) that is used as the base erosion percentage threshold for banks or registered securities dealers to determine whether such taxpayers are applicable taxpayers that are subject to the BEAT, with the latter test functioning in a manner similar to a de minimis threshold for the application of the BEAT. See Part II.C of this Explanation of Provisions section. The Treasury Department and the IRS welcome comments on the scope of the de minimis rule for banks and registered securities dealers. See also Part III.B.5 of this Explanation of Provisions section for a discussion of an exception to base erosion payment status for interest on TLAC securities.

IX. Rules Relating to Insurance Companies

The definition of a base erosion payment in section 59A(d) includes any premiums or other consideration paid or accrued by a taxpayer to a foreign related party for any reinsurance payments taken into account under section 803(a)(1)(B) or 832(b)(4)(A). Generally, section 803(a)(1) defines gross income for a life insurance company to include the gross amount of premiums and other consideration on insurance and annuity contracts less return premiums and premiums and other consideration arising out of indemnity reinsurance. For an insurance company other than a life insurance company, under section 832(b), gross income generally includes underwriting income, which is comprised of premiums earned during the taxable year less losses incurred and expenses incurred. Section 832(b)(4)(A) provides that the amount of premiums earned on insurance contracts is the amount of gross premiums written on insurance contracts during the taxable year less return premiums and premiums paid for reinsurance.

The Treasury Department and the IRS are aware that certain reinsurance agreements provide that amounts paid to and from a reinsurer are settled on a net basis or netted under the terms of the agreement. The Treasury Department and the IRS are also aware that other commercial agreements with reciprocal payments may be settled on a net basis or netted under the terms of those agreements. The proposed regulations do not provide a rule permitting netting in any of these circumstances because the BEAT statutory framework is based on including the gross amount of deductible and certain other payments (base erosion payments) in the BEAT's expanded modified taxable income base without regard to reciprocal obligations or payments that are taken into account in the regular income tax base, but not the BEAT's modified taxable income base. Generally, the amounts of income and deduction are determined on a gross basis under the Code; however, as discussed in Part III of this Explanation of Provisions section, if there are situations where an application of otherwise generally applicable tax law would provide that a deduction is computed on a net basis (because an item received reduces the item of deduction rather than increasing gross income), the proposed regulations do not change that result. The Treasury Department and the IRS request comments addressing whether a distinction should be made between reinsurance contracts entered into by an applicable taxpayer and a foreign related party that provide for settlement of amounts owed on a net basis and other commercial contracts entered into by an applicable taxpayer and a foreign related party that provide for netting of items payable by one party against items payable by the other party in determining that net amount to be paid between the parties.

The proposed regulations also do not provide any specific rules for payments by a domestic reinsurance company to a foreign related insurance company. In the case of a domestic reinsurance company, claims payments for losses incurred and other payments are deductible and are thus potentially within the scope of section 59A(d)(1). See sections 803(c) and 832(c). In the case of an insurance company other than a life insurance company (non-life insurance company) that reinsures foreign risk, certain of these payments may also be treated as reductions in gross income under section 832(b)(3), which are not deductions and also not the type of reductions in gross income described in sections 59A(d)(3). The Treasury Department and the IRS request comments on the appropriate treatment of these items under subchapter L. The Treasury Department and the IRS also recognize that to the extent that the items are not treated as deductions for non-life insurance companies this may lead to asymmetric treatment for life insurance companies that reinsure foreign risk because part I of subchapter L (the rules for life insurance companies) refers to these costs only as deductions (that is, does not also refer to the costs as reductions in gross income in a manner similar to section 832(b)(3)). The Treasury Department and the IRS request comments on whether the regulations should provide that a life insurance company that reinsures foreign risk is treated in the same manner as a non-life insurance company that reinsures foreign risk.

The proposed regulations do not address a foreign insurance company that has in effect an election to be treated as a domestic corporation for purposes of the Code. Amounts paid or accrued to such a company are not base erosion payments because the corporation is treated as a domestic corporation for purposes of the Code.

X. Anti-Abuse and Recharacterization Rules

Proposed § 1.59A–9(b) provides that certain transactions that have a principal purpose of avoiding section 59A will be disregarded or deemed to result in a base erosion payment. This proposed anti-abuse rule addresses the following types of transactions: (a) Transactions involving intermediaries acting as a conduit to avoid a base erosion payment; (b) transactions entered into to increase the deductions taken into account in the denominator of the base erosion percentage; and (c) transactions among related parties entered into to avoid the application of rules applicable to banks and registered securities dealers (for example, causing a bank or registered securities dealer to disaffiliate from an affiliated group so as to avoid the requirement that it be a member of such a group).

XI. Consolidated Groups as Taxpayers

Affiliated groups of domestic corporations that elect to file a consolidated income tax return generally compute their income tax liability on a ''single-entity'' basis. Because the regular tax liability is computed on a single entity basis, the additional tax imposed by section 59A must also be imposed on the same basis (because it is an addition to that regular tax liability). Accordingly, the proposed regulations provide that for affiliated corporations electing to file a consolidated income tax return, the tax under section 59A is determined at the consolidated group level, rather than determined separately for each member of the group. The BEAT is an addition to the regular corporate income tax under section 11, and the regular corporate income tax is applied to a consolidated group on a consolidated basis. Further, application of the BEAT on a group level eliminates the differences in the aggregate amount of taxation to a consolidated group that would otherwise occur, based on the location of deductions, including, for example, the location of related party interest payments within the group. Accordingly, the BEAT is also applied on a consolidated basis. This single taxpayer treatment for members of a consolidated group applies separately from the aggregate group concept in proposed § 1.59A–2(c), which also treats all members of the aggregate group as a single entity, but in that case, only for purposes of applying the gross receipts test and base erosion percentage test for determining whether a particular taxpayer is an applicable taxpayer. See generally, Part II of this Explanation of Provisions section.

To properly reflect the taxable income of the group, consolidated return regulations generally determine the tax treatment of items resulting from intercompany transactions (as defined in § 1.1502–13(b)(1)(i)) by treating members of the consolidated group as divisions of a single corporation (single entity treatment). In general, the existence of an intercompany transaction should not change the consolidated taxable income or consolidated tax liability of a consolidated group. Consistent with single entity treatment, items from intercompany transactions are not taken into account for purposes of making the computations under section 59A. For example, any increase in depreciation deductions resulting from intercompany sales of property are disregarded for purposes of determining the taxpayer's base erosion percentage. Similarly, interest payments on intercompany obligations (as defined in § 1.1502–13(g)(2)(ii)) are not taken into account in making the computations under section 59A.

XII. Coordinating Consolidated Group Rules for Sections 59A(c)(3) and 163(j)

Section 59A(c)(3) and proposed § 1.59A–3(c)(4) coordinate the application of section 163(j) with the determination of the amount of base erosion tax benefits when a taxpayer has business interest expense paid to both unrelated parties and related parties. Those rules provide that, where section 163(j) applies to limit the amount of a taxpayer's business interest that is deductible in a taxable year, the taxpayer is required to treat all disallowed business interest as allocable first to interest paid or accrued to persons who are not related parties, and then to related parties. See Part IV.B of this Explanation of Provisions section.

Proposed § 1.1502–59A provides rules regarding application of section 59A(c)(3) to consolidated groups. These rules are required for the allocation of the BEMTA among members of the group under section 1552. In addition, apportionment of the domestic related party status and foreign related party status (defined later in this Part XII) of section 163(j) carryforwards among members of the group is necessary when a member deconsolidates from the group.

The proposed regulations implement the classification approach of proposed § 1.59A–3(c)(4) on a consolidated basis (the ''classification rule''), to identify which interest deductions are allocable to domestic related party payments, foreign related party payments, and unrelated party payments. Slightly different rules apply to the deduction of current year business interest expense than to the deduction of section 163(j) carryforwards. A consolidated group applies these rules to the amount of business interest expense (either from current year business interest expense or from carryforward amounts) that is actually deducted pursuant to section 163(j) and proposed §§ 1.163(j)-4(d) and 1.163(j)-5(b)(3). If the group deducts business interest expense paid or accrued in different taxable years (for example, both current year business interest expense and section 163(j) carryforwards), the classification rule applies separately to business interest expense incurred in each taxable year. For purposes of the proposed regulations, a member's current year business interest expense is the member's business interest expense that would be deductible in the current taxable year without regard to section 163(j) and that is not a disallowed business interest expense carryforward from a prior taxable year.

The classification rule applies on a single-entity basis to deductions of current year business interest expense. The consolidated group classifies its aggregate business interest deduction from current year business interest expense based on the aggregate current year business interest expense of all types (related or unrelated) paid by members of the group to nonmembers. Business interest deductions are treated as from payments or accruals to related parties first, and then from payments or accruals to unrelated parties. If there are payments to both foreign related parties and domestic related parties, the deductions are classified as to the related parties on a pro-rata basis.

Recognizing the flexibility of related-party financing, these proposed regulations provide that, if the group has aggregate business interest deductions classified as payments or accruals to a domestic related party (domestic related party status) or foreign related party (foreign related party status), the status of such payments or accruals is spread among members of the group (the allocation rule). Specifically, the domestic related party status and foreign related party status of the deduction is allocated among members of the group in proportion to the amount of each member's deduction of its current year business interest expense. Similarly, if any part of a section 163(j) carryforward is from a payment or accrual to a domestic related party or a foreign related party, the related party status of the section 163(j) carryforwards for the year will be allocated among members of the group. The allocation is in proportion to the relative amount of each member's section 163(j) carryforward from that year. Members' additional section 163(j) carryforward amounts are treated as payments or accruals to unrelated parties. The allocation rule applies separately to each carryforward year.

With regard to the deduction of any member's section 163(j) carryforward, the classification rule applies on an entity-by-entity basis. As discussed, before a member's section 163(j) carryforward moves forward into subsequent years, it is allocated a domestic related party status, foreign related party status, or unrelated party status. This allocation ensures that business interest deductions drawn from any carryforward originating in the same consolidated return year bear the same ratio of domestic related, foreign related, and unrelated statuses. When a

member deducts any portion of its section 163(j) carryforward, the member applies section 59A(c)(3) and proposed § 1.59A–3(c)(4) to determine the status of the deducted carryforward, based on the status previously allocated to the member's section 163(j) carryforward for the relevant tax year. The tax liability imposed under section 59A on the consolidated group is allocated among the members of the consolidated group pursuant to the consolidated group's tax allocation method, taking into account these allocations. See section 1552.

If a member that is allocated a foreign related party status or domestic related party status to its section 163(j) carryforward deconsolidates from the group, the departing member's carryforward retains the allocated status. The departing member (and not the original consolidated group) takes into account the status of that carryforward for purposes of computing the BEAT in future years.

XIII. Consolidated Tax Liability

In § 1.1502–2, a reference is added to the base erosion anti-abuse tax as a tax included in the computation of consolidated tax liability. Additionally, the proposed regulations make the following changes: (1) Remove paragraph (j) of this regulation section because section 1333, relating to war loss recoveries, was repealed by section 1901(a)(145)(A) of the Tax Reform Act of 1976, Public Law 94–455, (2) remove paragraph (h) of this regulation section because section 1201, relating to the alternative tax for corporations, was repealed by section 13001(b)(2)(A) of the Act, and (3) update the cross reference to life insurance taxable income to section 801, following the revision of subchapter L of chapter 1 of the code in section 211 of the Deficit Reduction Act of 1984, Public Law 98–369.

In addition, the proposed regulations also make nonsubstantive changes to reorganize the structure of current § 1.1502–2. Specifically, the proposed regulations reorganize the current § 1.1502–2 to properly designate the unnumbered paragraphs. The proposed regulations also update other regulation sections that reference § 1.1502–2.

Finally, the proposed regulations correct an error in § 1.6655–5(e) *Example 10.* The proposed regulations replace the reference to ''§ 1.1502–2(h)'' with a reference to ''1.1502–1(h)'' because the context of *Example 10* demonstrates that the intended reference was to the definition of a consolidated group.

XIV. Sections 382 and 383

Section 1.383–1 provides that only otherwise currently allowable pre-change losses and pre-change credits will result in the absorption of the section 382 limitation and the section 383 credit limitation. The limitations under sections 382 and 383 are applied after the application of all other limitations contained in subtitle A of the Code. If the pre-change losses or pre-change credits cannot be deducted or otherwise used, they are carried forward to the next taxable year. The BEAT is not a modification to the normal computation of income tax under Subtitle A of the Code but an addition to that income tax. Therefore, these proposed regulations clarify that additions to tax under section 59A do not affect whether a loss, deduction, or credit is absorbed under section 382 or section 383.

XV. Reporting and Recordkeeping Requirements Pursuant to Section 6038A

Section 6038A imposes reporting and recordkeeping requirements on domestic corporations that are 25-percent foreign-owned. Section 6038C imposes the same reporting and recordkeeping requirements on certain foreign corporations engaged in a U.S. trade or business. These corporations are collectively known as ''reporting corporations.''

Reporting corporations are required to file an annual return on Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code),* with respect to each related party with which the reporting corporation has had any ''reportable transactions.'' See § 1.6038A–2. Reporting corporations are also subject to specific requirements under sections 6038A and 6038C to maintain and make available the permanent books of account or records as required by section 6001 that are sufficient to establish the accuracy of the federal income tax return of the corporation, including information, documents, or records to the extent they may be relevant to determine the correct U.S. tax treatment of transactions with related parties. See § 1.6038A–3.

The Act amended section 6038A by adding paragraph (b)(2), which authorizes regulations requiring information from a reporting corporation that is also a section 59A ''applicable taxpayer'' for purposes of administering section 59A. Section 6038A(b)(2) applies to taxable years beginning after December 31, 2017. These proposed regulations identify certain types of information that will be required to be reported on Form 5472 and Form 8991, *Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts,* and also provide the time and manner for reporting. While an applicable taxpayer that is not a reporting corporation would not be subject to monetary penalties and collateral provisions specific to sections 6038A and 6038C, the taxpayer remains subject to BEAT-related reporting obligations, including Form 8991, and applicable consequences for noncompliance.

Under section 59A(d)(4), the status of a foreign shareholder as a surrogate foreign corporation as defined in section 7874(a)(2)(B) or as a member of the same expanded affiliated group, as defined in section 7874(c)(1), as the surrogate foreign corporation can affect the treatment of payments from a taxpayer to that corporation under section 59A(d). If the reporting corporation is an expatriated entity as defined in section 7874(a)(2), the taxation of certain transactions between it and its foreign related persons as defined in section 7874(d)(3) may be affected. Consequently, the proposed regulations require all reporting corporations to state whether a foreign shareholder required to be listed on Form 5472 is a surrogate foreign corporation. The form may provide for reporting of whether the shareholder is a member of an expanded affiliated group including the surrogate foreign corporation.

In addition, to facilitate screening for important tax compliance concerns under section 59A as well as other provisions at the return filing stage, these proposed regulations clarify that the IRS may require by form or by form instructions the following information: (1) Reporting of particular details of the reporting corporation's relationships with related parties in regard to which it is required to file a Form 5472, (2) reporting of transactions within certain categories on a more detailed basis, (3) reporting of the manner (such as type of transfer pricing method used) in which the reporting corporation determined the amount of particular reportable transactions and items, and (4) summarization of a reporting corporation's reportable transactions and items with all foreign related parties on a schedule to its annual Form 5472 filing.

XVI. Partial Withdrawal of Proposed Regulations

The proposed regulations also withdraw, in part, a notice of proposed

rulemaking. Because of statutory changes in section 12001 of the Act, the proposed regulations would not incorporate the substance of § 1.1502–2, relating to the computation of a consolidated group's alternative minimum tax, of the notice of proposed rulemaking (IA–57–89) published in the **Federal Register** on December 30, 1992 (57 FR 62251). Accordingly, the Partial Withdrawal of Proposed Regulations section in this document withdraws that section of the notice of proposed rulemaking.

Proposed Applicability Date

Under section 7805(b)(2), and consistent with the applicability date of section 59A, these regulations (other than the proposed reporting requirements for QDPs in proposed § 1.6038A–2(b)(7)) are proposed to apply to taxable years beginning after December 31, 2017. Until finalization, a taxpayer may rely on these proposed regulations for taxable years beginning after December 31, 2017, provided the taxpayer and all related parties of the taxpayer (as defined in proposed § 1.59A–1(b)(17)) consistently apply the proposed regulations for all those taxable years that end before the finalization date.

With respect to the reporting requirements for QDPs, proposed § 1.6038A–2(b)(7)(ix) applies to taxable years beginning one year after final regulations are published in the **Federal Register**, although simplified QDP reporting requirements provided in § 1.6038A–2(g) are also proposed to apply to taxable years beginning after December 31, 2017.

If any provision is finalized after June 22, 2019, the Treasury Department and the IRS generally expect that such provision will apply only to taxable years ending on or after December 17, 2018. *See* section 7805(b)(1)(B).

Special Analyses

Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The preliminary Executive Order 13771 designation for this proposed rule is regulatory.

The proposed regulations have been designated by the Office of Management and Budget's (''OMB'') Office of Information and Regulatory Affairs (''OIRA'') as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and OMB regarding review of tax regulations. OIRA has determined that the proposed rulemaking is economically significant under section 1(c) of the Memorandum of Agreement and thereby subject to review. Accordingly, the proposed regulations have been reviewed by OMB.

A. Overview

The proposed regulations provide guidance under section 59A regarding the determination of the tax on base erosion payments for certain taxpayers with substantial gross receipts. They provide guidance for applicable taxpayers to determine the amount of BEAT liability and how to compute the components of the tax calculation. Among other benefits, this clarity helps ensure that all taxpayers apply section 59A in a similar manner, which promotes efficiency and equity with respect to the provisions of the overall Code.

The proposed regulations under sections 59A (proposed §§ 1.59A–1 through 1.59A–10) provide details for taxpayers regarding whether a taxpayer is an applicable taxpayer and the computation of certain components of the base erosion minimum tax, including the amount of base erosion payments, the amount of base erosion tax benefits arising from base erosion payments, and modified taxable income. The proposed regulations also provide guidance for banks, registered securities dealers, and insurance companies and provide guidance attributing partnership income and deductions involving partnerships to the owners of the partnerships (amounts paid by and to partnerships). These proposed regulations also establish anti-abuse rules to prevent taxpayers from taking measures to inappropriately avoid section 59A.

The proposed regulations under sections 383, 1502 and 6038A (proposed §§ 1.383–1, 1.502–2, 1.502–59A, 1.6038A–1, 1.6038A–2, and 1.6038–4) provide rules for the application of section 59A with respect to limitations on certain capital losses and excess credits, consolidated groups and their members, and reporting requirements, which include submitting, in certain cases, new Form 8991, Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts. This economic analysis describes the economic benefits and costs of the proposed regulations. The Treasury Department and the IRS anticipate that any final rule will contain the analysis prescribed by the Memorandum of Agreement (April 11, 2018) between the Treasury Department and OMB.

B. Economic Analysis of the Proposed Regulations

1. Background

Congress was concerned, in part, that foreign-owned U.S. subsidiaries are able to reduce their U.S. tax liability by making deductible payments to a foreign parent or foreign affiliates, eroding the U.S tax base if the payments are subject to little or no U.S. withholding tax. This result may favor foreign-headquartered companies over U.S. headquartered companies, creating a tax-driven incentive for foreign takeovers of U.S. firms and enhancing the pressure for U.S headquartered companies to re-domicile abroad and shift income to low-tax jurisdictions. Senate Committee on Finance, Explanation of the Bill, S. Rpt. 115–20, at 391. Section 59A was introduced, in part, as a minimum tax to prevent excessive reduction in corporate tax liability using deductible and certain other payments to foreign related parties.

The Treasury Department views section 59A as largely self-executing, which means that it is binding on taxpayers and the IRS without any regulatory action. The Treasury Department and the IRS recognize, however, that section 59A, while self-executing, provides interpretive latitude for taxpayers and the IRS that could, without further implementation guidance, prompt a variety of responses. Consequently, many of the details behind the relevant terms and necessary calculations required for the computation of an applicable taxpayer's BEAT liability would benefit from greater specificity. As is expected after the passage of major tax reform legislation, the proposed regulations answer unresolved questions and provide detail and specificity for the definitions and concepts described in section 59A, so that taxpayers can readily and accurately determine if they are applicable taxpayers and, if so, compute their BEMTA. For example, the proposed regulations define the scope of crucial terms such as applicable taxpayer, base erosion payments, base erosion tax benefits, de minimis exemptions, and modified taxable

income. Specific examples of where these proposed regulations provide clarification of the statute are discussed in this Part B of the Special Analyses section.

As explained in Part VI of the Explanation of Provisions section, an applicable taxpayer computes its BEMTA for the taxable year to determine its liability under section 59A(a). In general, the taxpayer's BEMTA is equal to the excess of (1) the applicable tax rate for the year at issue multiplied by the taxpayer's modified taxable income over (2) the taxpayer's adjusted regular tax liability for that year. Modified taxable income is a taxpayer's taxable income for the year calculated without regard to any base erosion tax benefit or the base erosion percentage of any allowable net operating loss deductions.

In general, the proposed regulations interpret the statute by answering two important questions: (1) To which taxpayers does the BEAT apply, and (2) how do the rules apply to those taxpayers?

a. Applicable Taxpayer

In order for the BEAT to apply, a taxpayer must be an applicable taxpayer, as described in Part II of the Explanation of Provisions section. In general, an applicable taxpayer is a corporation, other than a RIC, REIT, or an S corporation, that satisfies the gross receipts test and the base erosion percentage test. For purposes of these tests, members of a group of corporations related by stock ownership are aggregated. Section 59A(e)(3) refers to aggregation on the basis of persons treated as a single taxpayer under section 52(a) (controlled group of corporations), which includes both domestic and foreign persons. As discussed in Part II.A of the Explanation of Provisions section, the Treasury Department and the IRS determined that to implement the provisions of section 59A, it was necessary to treat foreign corporations as outside of the controlled group for purposes of applying the aggregation rules, except to the extent that the foreign corporation is subject to net income tax under section 882(a) (tax on income of foreign corporations connected with U.S. business). Upon aggregation of domestic and foreign controlled groups of corporations, intra-aggregate group transactions are eliminated. If aggregation were defined to include both domestic and all foreign persons (*i.e.,* a ''single employer'' under section 52(a)), this elimination would include most base erosion payments, which are defined by section 59A(d)(1) as ''any amount paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer and with respect to which a deduction is allowed under this chapter.'' Without these base erosion payments, virtually no taxpayer or aggregated group would satisfy the base erosion percentage test; thus substantially all taxpayers (or the aggregate group of which the taxpayer was a member) would be excluded from the requirement to pay a tax equal to the BEMTA.

A taxpayer, or the aggregate group of which the taxpayer is a member, satisfies the gross receipts test if it has average annual gross receipts of at least $500 million for the three taxable years ending with the preceding taxable year.

The base erosion percentage test is satisfied if the taxpayer (or aggregated group) has a base erosion percentage of three percent or more. A lower two percent base erosion percentage applies for banks and registered securities dealers. As explained in proposed § 1.52A–2(e), the base erosion percentage is computed by dividing (1) the aggregate amount of base erosion tax benefits by (2) the sum of the aggregate amount of deductions plus certain other base erosion tax benefits.

The statute is ambiguous or silent on certain details for determining whether a taxpayer is an applicable taxpayer, including the aggregation rule described in Part II.A. of the Explanation of Provisions section. Absent these proposed regulations, there would be uncertainty among taxpayers as to whether the tax equal to the BEMTA would apply to them. Without guidance, different taxpayers would likely take different positions regarding the determination of their status as an applicable taxpayer, which would result in inefficient decision-making and inconsistent application of the statute as taxpayers engage in corporate restructurings, or adjust investment and spending policies based on tax planning strategies to manage BEAT liability (as discussed in this Part B.2.b. of the Special Analyses section). The proposed regulations provide clarity by (1) defining the aggregate group to which the gross receipts and base erosion percentage tests apply, and (2) providing guidance on the definitions and computations necessary to apply those tests.

b. BEAT Calculation

Part III of the Explanation of Provisions section discusses the rules regarding the types of payments that are base erosion payments (as defined in proposed § 1.52A–3(b)). Section 59A(d)(5) provides an exception from the definition of a base erosion payment for an amount paid or accrued by a taxpayer for services if the services are eligible for the services cost method under section 482 (without regard to certain requirements under the section 482 regulations) and the amount constitutes the total services cost with no markup component. The statute is ambiguous as to whether the SCM exception (1) does not apply to a payment or accrual that includes a markup component, or (2) does apply to such a payment or accrual that includes a markup component, but only to the extent of the total services costs. The proposed regulations follow the latter approach as discussed in Part B.2.b. of this Special Analyses section.

As discussed in Part III.B.3 of the Explanation of Provisions section, the proposed regulations provide an exception from the definition of base erosion payment for payments to the U.S. branch of a foreign person to the extent that payments to the foreign related party are treated as effectively connected income. In general, whether a payment is a base erosion payment is determined based on whether the recipient is a foreign person (as defined in section 6038A(c)(3)) and a related party, and whether the payment is deductible to the payor. See section 59A(f). A foreign person means any person who is not a United States person. However, as discussed in Part III.B.3. of the Explanation of Provisions section, the Treasury Department and the IRS determined that establishing whether a payment is a base erosion payment based solely on the status of the recipient as a foreign person is inconsistent with the statute's intent of eliminating base erosion. Deductible payments to a foreign person that are treated as effectively connected income are subject to tax under section 871(b) and 882(a) in substantially the same manner as payments to a U.S. citizen or resident, or a domestic corporation, and, thus, such payments do not result in base erosion. Proposed § 1.52A–3(b)(3)(iii) adopts an exception for such amounts.

As described in this Part B.1. of the Special Analyses section, modified taxable income is a taxpayer's taxable income for the year calculated without regard to any base erosion tax benefit or the base erosion percentage of any allowable net operating loss deductions under section 172 (net operating loss deduction). As discussed in Part V.A. of the Explanation of Provisions section, modified taxable income is not calculated by recomputing the tax base without base erosion tax benefits under an approach similar to the alternative minimum tax, which the Act repealed

for corporations. To do so would require taxpayers to maintain records for separate carryforward balances for attributes, such as net operating loss deductions and business interest expense carryovers. These items are limited based on taxable income, so under the recomputation or alternative minimum tax-approach, there would most likely be different annual limitations and other computational differences for regular tax purposes and section 59A purposes.

As discussed in Part VII of the Explanation of Provisions section, the proposed regulations apply the aggregate approach to base erosion payments involving partnerships because partnerships are pass-through entities that are not themselves subject to U.S. income tax, but rather the income of the partnership is taxed to the partners in the partnership. Accordingly, the proposed regulations provide that payments by a corporation to a partnership, and payments by a partnership to a corporation, are treated in the first instance as payments to the partners in the partnership and in second instance as payments by the partners in the partnership. For example, in the absence of this aggregate approach rule, a payment by an applicable taxpayer (corporation) to a related foreign partnership could be a base erosion payment even if all of the partners in the partnership are domestic persons. Under this rule, which applies an aggregate approach to partnerships, the payment by the applicable taxpayer (corporation) to a related foreign partnership is only treated as a base erosion payment to the extent that the partners in the foreign partnership are themselves foreign related parties. Conversely, also in the absence of this aggregate approach rule, a payment by an applicable taxpayer (corporation) to a related domestic partnership could not be a base erosion payment even if some or all of the partners in the partnership are foreign related parties. Under the aggregate approach, the payment by an applicable taxpayer (corporation) to a related domestic partnership is treated as a base erosion payment to the extent that the partners in the domestic partnership are foreign related parties. This approach is thus neutral in both preventing potential abuse and preventing potential over breadth. The regulations thus eliminate a distortion that would otherwise be present if the status of base erosion payments is made by reference to the partnership, rather than by reference to the partners. For example, in the absence of the proposed regulations, taxpayers might be incentivized to route payments through a domestic partnership that is formed by foreign persons as an intermediary to avoid the BEAT. Conversely, in the absence of the proposed regulations, taxpayers would be incentivized to restructure to avoid making any payments to a foreign partnership that has partners that are solely domestic because such payment could be inappropriately classified as a base erosion payment. The Treasury Department requests comments on the approach to partnerships in the proposed regulations.

c. Anti-Abuse and Reporting Requirements

Section 59A(i) provides the Secretary authority to issue regulations and other guidance to prevent the avoidance of the purposes of section 59A. As such, proposed § 1.59A–9 provides rules recharacterizing certain specified transactions as necessary to prevent the avoidance of section 59A, and provides examples.

The proposed regulations also provide reporting requirements necessary to properly administer and enforce section 59A. In particular, the Treasury Department and the IRS have identified certain types of information from taxpayers who are applicable taxpayers for purposes of section 59A that will be required to be reported on Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code), and a new Form 8991, Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts. Further detail regarding anticipated paperwork burdens can be found in Part C (Paperwork Reduction Act) of this Special Analyses section, which includes a link to draft forms and guidance for providing comment on the proposed forms.

2. Anticipated Benefits and Costs of the Proposed Regulations

a. Baseline

The Treasury Department and the IRS have assessed the impacts, benefits, and costs of the proposed regulations against a ''no action'' baseline that reflects projected tax-related and other behavior in the absence of the proposed regulations.

The Treasury Department projects that the proposed regulations will have a non-revenue effect on the economy of at least $100 million per year ($2018) measured against this baseline. The Treasury Department requests comments on this conclusion.

b. Anticipated Benefits

The Treasury Department and IRS expect that the certainty and clarity provided by these proposed regulations, relative to the baseline, will enhance U.S. economic performance under the statute. Because a tax has not previously been imposed on base-eroding payments in this manner and the statute is silent on certain aspects of definitions and calculations, taxpayers can particularly benefit from enhanced specificity regarding the relevant terms and necessary calculations they are required to apply under the statute. In the absence of this enhanced specificity, similarly situated taxpayers might interpret the statutory rules of section 59A differently. For example, different taxpayers might pursue intercompany investment and payment policies based on different assumptions about whether such investments and payments are base eroding payments subject to section 59A, and some taxpayers may forego specific investments and payments that other taxpayers deem worthwhile based on different interpretations of the tax consequences alone. The guidance provided in these proposed regulations helps to ensure that taxpayers face more uniform incentives when making economic decisions, a tenet of economic efficiency. Consistent reporting across taxpayers also increases the IRS's ability to consistently enforce the tax rules, thus increasing equity and decreasing opportunities for tax evasion.

For example, as described in Part III.B.3 of the Explanation of Provisions section, the proposed regulations exclude from base erosion payments those payments made to a foreign related party that are treated as effectively connected income of the foreign payee. Such payments are treated as income to the recipient and subject to U.S. tax, substantially similar to any payment between related U.S. corporations. The payments are not base eroding because their receipt is taxable by the United States. Further, treatment of effectively connected income payments to a foreign related party would produce different tax results for two similarly situated U.S. taxpayers. That is, if the taxpayer were to make a payment to a related U.S. corporation, the payment generally would not be subject to the BEAT, but if a taxpayer were to make a payment to a foreign person with respect to its effectively connected income, it would give rise to BEAT liability, despite the fact that in both cases the recipients include the payment in U.S. taxable income.

The Treasury Department and the IRS also considered the benefits and costs of providing the specific proposed terms, calculations, and other details regarding the BEAT. In developing these proposed regulations, the Treasury Department and the IRS have generally aimed to apply the principle that an economically efficient tax system would treat income derived from similar economic decisions similarly, to the extent consistent with the statute and considerations of administrability of the tax system. For example, as noted in Part B.1.b. of this Special Analyses section, section 59A(d)(5) provides an exception to the definition of a base erosion payment for certain payments made to foreign related parties for services that meet the eligibility requirements for use of the SCM (under section 482). The proposed regulations adopt an approach that allows an SCM exception for the total cost of services even if there is a profit markup so long as a transaction meets certain other requirements for using the SCM (under section 482). The proposed regulations provide that the portion of any payment that exceeds the total cost of services is not eligible for the SCM exception and is a base eroding payment.

Alternatives would have been to disallow the SCM exception for the entire amount of any payment that includes a markup component, or to not provide any guidance at all regarding the SCM exception. The Treasury Department and the IRS rejected the former approach. The section 482 regulations mandate intercompany pricing under an ''arm's length standard.'' Under specific circumstances, the section 482 regulations provide that intercompany payments for services can be set by a taxpayer at the cost of providing the service with no profit markup. However, the section 482 regulations prohibit use of this cost-only SCM approach for services ''that contribute significantly to fundamental risks of business success or failure'' (the ''business judgment rule''). See § 1.482–9(b)(5). At arm's length, such services would generally be priced to include a profit element to satisfy the market's demand for, and supply of, services among recipients and providers. Section 59A(d)(5)(A) explicitly allows an exception from the BEAT for services that would be eligible for the SCM, ''determined without regard to [the business judgment rule].'' By allowing an exception from the BEAT for intercompany service payments that do not include a profit markup (*i.e.,* under the SCM transfer pricing method), but also for intercompany service payments that must apply a different transfer pricing method, and therefore generally would include a profit markup at arm's length (*i.e.,* those subject to the business judgment rule), the statute creates ambiguity about the SCM exception's application with respect to the portion of intercompany prices paid for services reflecting the cost of providing the services when there is also a mark-up component.

To promote the consistent application by taxpayers of a SCM exception to the BEAT, and to provide greater clarity, the proposed regulations provide that the SCM exception is available if there is a profit markup (provided that other requirements are satisfied), but the portion of any payment exceeding cost is not eligible for the SCM exception. The Treasury Department and the IRS also rejected the option of not providing any guidance at all regarding the SCM exception because if taxpayers relied on statutory language alone, taxpayers would adopt different approaches due to ambiguity in the statute, leaving it open to differing statutory interpretations and an inconsistent application of the statute. The Treasury Department and IRS expect that approximately one-half of taxpayers filing Form 8991 would avail themselves of the SCM exception. The Treasury Department and the IRS request comments about application of the SCM exception.

As discussed in Part V.A of the Explanation of Provisions section, the Treasury Department and the IRS also considered alternatives regarding the method by which modified taxable income could be calculated for purposes of the BEAT. The proposed regulations could have followed an add-back approach or an approach more similar to that used for the alternative minimum tax. As noted in Part B.1.b. of this Special Analyses section, the proposed regulations adopt the former approach, which is expected to be less costly for taxpayers to apply since taxpayers will not have to recompute their entire tax return on a different basis, or maintain separate sets of records to track annual limitations on attributes such as net operating loss carryforwards or business interest expense carryforwards.

In addition, the proposed regulations clarify that the computations of modified taxable income and BEMTA are done on a taxpayer-by-taxpayer basis. That is, the aggregate group concept is used solely for determining whether a taxpayer is an applicable taxpayer, and does not apply to the computations of modified taxable income and the BEMTA. In the absence of these clarifying definitions, taxpayers could calculate the BEMTA differently depending on their differing views of the base on which the BEAT should be calculated (*i.e.,* aggregated group, consolidated group, individual company), leading to inequitable results across otherwise similar taxpayers. Under the proposed regulations' approach for the calculation of modified taxable income and BEMTA, it is also expected to be less costly for taxpayers to calculate BEMTA since the statutory framework of section 59A applies in addition to the regular tax liability of a taxpayer. Calculation of BEAT liability at an aggregate level, for example, would require taxpayers to first aggregate regular taxable liabilities of the different taxpayers, calculate the BEMTA on an aggregated basis, and then reallocate any BEAT liability among the separate taxpayers. The approach of the proposed regulations, which clarify that the tax should be calculated on a separate taxpayer basis, simplifies these calculations.

The proposed regulations also include de minimis thresholds for partnerships and for registered securities dealers. In general, such thresholds reduce compliance costs for the large number of small taxpayers that would fall below such threshold without substantially affecting the BEAT base. For the de minimis exception for banks and registered securities dealers, in the absence of an exception, affiliated groups that are not principally engaged in banking or securities dealing would be incentivized to alter their business structure to eliminate minimal banks or registered securities dealers from their aggregate groups. These changes would give rise to tax-motivated, inefficient restructuring costs. A de minimis threshold reduces this potential inefficiency again without substantially affecting the BEAT base. In both cases, the thresholds were chosen to balance these competing concerns and to adhere to generally similar standards elsewhere in the Code. The Treasury Department and IRS request comment on the impact of this approach.

3. Anticipated Impacts on Administrative and Compliance Costs

Because the statute requires payment of tax regardless of the issuance of regulations or instructions, the new forms, revisions to existing forms, and other proposed regulations can lower the burden on taxpayers of determining their tax liability. The Treasury Department and the IRS expect that the proposed regulations will reduce the costs for taxpayers to comply with the

Act, on balance, relative to the baseline of no promulgated regulations.

Certain record-keeping requirements added by the proposed regulations derive directly from statutory changes that require information from a reporting corporation that is also a section 59A applicable taxpayer. Proposed § 1.6038A–2 increases record-keeping requirements for taxpayers because additional information is to be reported on Form 5472 and Form 8991.

Proposed § 1.59A–3(b)(3) also increases record-keeping requirements for taxpayers because additional information is required for taxpayers to satisfy a regulatory requirement of the SCM exception. The requirement added by these proposed regulations is consistent with the requirements for eligibility for the services cost method under section 482, including the existing requirements of § 1.482–9(b).

C. Paperwork Reduction Act

1. Collections of Information—Forms 8991, 5471, 5472, and 8858

The collections of information in these proposed regulations with respect to section 59A are in proposed §§ 1.59–3(b)(3) and 1.6038A–2. The information collection requirements pursuant to proposed § 1.59A–3(b)(3)(i)(C) are discussed further below. The IRS intends that the collections of information pursuant to section 59A, except with respect to information collected under proposed § 1.59A–3(b)(3), will be conducted by way of the following:

- Form 8991, Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts;
- Schedule G to the Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations;
- Part VIII of the updated Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business;
- Revised Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.

For purposes of the Paperwork Reduction Act, the reporting burden associated with the collections of information with respect to section 59A, other than with respect to proposed § 1.59A–3(b)(3), will be reflected in the IRS Forms 14029 Paperwork Reduction Act Submission, associated with Forms 5471 (OMB control numbers 1545–0123, and 1545–0074), 5472 (OMB control number 1545–0123), 8858 (OMB control numbers 1545–0123, 1545–0074, and 1545–1910), and 8991 (OMB control number 1545–0123).

The current status of the Paperwork Reduction Act submissions related to BEAT is provided in the following table. The BEAT provisions are included in aggregated burden estimates for the OMB control numbers listed below which, in the case of 1545–0123, represents a total estimated burden time, including all other related forms and schedules for corporations, of 3.157 billion hours and total estimated monetized costs of $58.148 billion ($2017) and, in the case of 1545–0074, a total estimated burden time, including all other related forms and schedules for individuals, of 1.784 billion hours and total estimated monetized costs of $31.764 billion ($2017). The burden estimates provided in the OMB control numbers below are aggregate amounts that relate to the entire package of forms associated with the OMB control number, and will in the future include but not isolate the estimated burden of only the BEAT requirements. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the proposed regulations. The Treasury Department and IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden that international tax provisions imposed prior to TCJA. No burden estimates specific to the proposed regulations are currently available. The Treasury Department has not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations. Those estimates would capture both changes made by the Act and those that arise out of discretionary authority exercised in the proposed regulations. The Treasury Department and the IRS request comment on all aspects of information collection burdens related to the proposed regulations. In addition, when available, drafts of IRS forms are posted for comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.htm.*

Form	Type of filer	OMB No.(s)	Status
Form 5471 (including Schedule G).	Business (NEW Model)	1545–0123	Published in the FRN on 10/8/18. Public Comment period closes on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
	Individual (NEW Model)	1545–0074	Limited Scope submission (1040 only) on 10/11/18 at OIRA for review. Full ICR submission for all forms in 3/2019. 60 Day FRN not published yet for full collection.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031.*		
Form 5472 (including Part VIII)	Business (NEW Model)	1545–0123	Published in the FRN on 10/11/18. Public Comment period closes on 12/10/18.
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
Form 8858	All other Filers (mainly trusts and estates) (Legacy system).	1545–1910	Published in the FRN on 10/30/18. Public Comment period closes on11/30/18. ICR in process by the Treasury Department as of 9/6/18.
	Link: *https://www.federalregister.gov/documents/2018/10/30/2018-23644/agency-information-collection-activities-submission-for-omb-review-comment-request-multiple-irs.*		
	Business (NEW Model)	1545–0123	Published in the FRN on 10/8/18. Public Comment period closes on 12/10/18.

Form	Type of filer	OMB No.(s)	Status
	Link: *https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.*		
	Individual (NEW Model)	1545–0074	Limited Scope submission (1040 only) on 10/11/18 at OIRA for review. Full ICR submission for all forms in 3–2019. 60 Day FRN not published yet for full collection.
	Link: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201808-1545-031.*		
Form 8991	Business (NEW Model)	1545–0123	Published in the FRN on 10/11/18. Public Comment period closes on 12/10/18.
	Link: https://www.federalregister.gov/documents/2018/10/09/2018-21846/proposed-collection-comment-request-for-forms-1065-1065-b-1066-1120-1120-c-1120-f-1120-h-1120-nd.		

RELATED NEW OR REVISED TAX FORMS

	New	Revision of existing form	Number of respondents (2018, estimated)
Form 8991	Y		3,500–4,500
Form 5471, Schedule G		Y	15,000–25,000
Form 5472, Part VIII	Y		80,000–100,000
Form 8858		Y	15,000–25,000

The numbers of respondents in the Related New or Revised Tax Forms table were estimated by Treasury's Office of Tax Analysis based on data from IRS Compliance Planning and Analytics using tax return data for tax years 2015 and 2016. Data for Form 8991 represent preliminary estimates of the total number of taxpayers which may be required to file the new Form 8991. Only certain large corporate taxpayers with gross receipts of at least $500 million are expected to file this form. Data for each of the Forms 5471, 5472, and 8858 represent preliminary estimates of the total number of taxpayers that are expected to file these information returns regardless of whether that taxpayer must also file Form 8991.

2. Collection of Information—Proposed § 1.59A–3(b)(3)

In contrast to the collections of information pursuant to other provisions of section 59A (as discussed above), the IRS intends that the information collection requirements pursuant to proposed § 1.59A–3(b)(3)(i)(C) will be satisfied by the taxpayer maintaining permanent books and records that are adequate to verify the amount charged for the services and the total services costs incurred by the renderer, including a description of the services in question, identification of the renderer and the recipient of the services, calculation of the amount of profit mark-up (if any) paid for the services, and sufficient documentation to allow verification of the methods used to allocate and apportion the costs to the services.

The collection of information contained in proposed § 1.59A–3(b)(3) has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1994 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 19, 2019.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (including underlying assumptions and methodology);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

The collection of information in proposed § 1.59A–3(b)(3) is mandatory for taxpayers seeking to exclude certain amounts paid or accrued to a foreign related party for services from treatment as base erosion payments for purposes of section 59A (the ''SCM exception to the BEAT'', as discussed this Part B.2.b. of the Special Analyses section). Taxpayers seeking to rely on the SCM exception to the BEAT are aggregate groups of corporations with average annual gross receipts of at least $500 million and that make payments to foreign related parties. The information required to be maintained will be used by the IRS for tax compliance purposes.

Estimated total annual reporting burden: 5,000 hours.

Estimated average annual burden hours per respondent: 2.5 hours.

Estimated average cost per respondent ($2017): $238.00.

Estimated number of respondents: 2,000. This estimate is based on the assumption that only a portion of taxpayers will qualify for the SCM exception, multiplied by the number of respondents shown above.

Estimated annual frequency of responses: Once.

Based on these estimates, the annual three-year reporting burden for those electing the SCM exemption is $0.16 mn/yr ($2017) ($238 × 2000/3, converted to millions).

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 control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

D. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will primarily affect aggregate groups of corporations with average annual gross receipts of at least $500 million and that make payments to foreign related parties. Generally only large businesses both have substantial gross receipts and make payments to foreign related parties.

Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public about the impact of this proposed rule on small entities.

Pursuant to section 7805(f), these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

F. Executive Order 13132: Federalism

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

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the ''Addresses'' heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules.

All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Statement of Availability of IRS Documents

IRS revenue procedures, revenue rulings, notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov.*

Drafting Information

The principal authors of the proposed regulations are Sheila Ramaswamy and Karen Walny of the Office of Associate Chief Counsel (International) and Julie Wang and John P. Stemwedel of the Office of Associate Chief Counsel (Corporate). However, other personnel from the Treasury Department and the IRS participated in their development.

Partial Withdrawal of Proposed Regulations

Accordingly, under the authority of 26 U.S.C. 7805 and 26 U.S.C. 1502, § 1.1502–2 of the notice of proposed rulemaking (IA–57–89) published in the **Federal Register** on December 30, 1992 (57 FR 62251) is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the entry for § 1.6038A–2 and adding entries for §§ 1.59A–1, 1.59A–2, 1.59A–3, 1.59A–4, 1.59A–5, 1.59A–6, 1.59A–7, 1.59A–8, 1.59A–9, 1.59A–10, 1.1502–59A, 1.1502–100, 1.6038A–2, and 1.6038A–2(a)(3) and (b)(7) to read in part as follows:

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

* * * * *

§ 1.59A–1 also issued under 26 U.S.C. 59A(i).

§ 1.59A–2 also issued under 26 U.S.C. 59A(i).

§ 1.59A–3 also issued under 26 U.S.C. 59A(i).

§ 1.59A–4 also issued under 26 U.S.C. 59A(i).

§ 1.59A–5 also issued under 26 U.S.C. 59A(i).

§ 1.59A–6 also issued under 26 U.S.C. 59A(i).

§ 1.59A–7 also issued under 26 U.S.C. 59A(i).

§ 1.59A–8 also issued under 26 U.S.C. 59A(i).

§ 1.59A–9 also issued under 26 U.S.C. 59A(i).

§ 1.59A–10 also issued under 26 U.S.C. 59A(i).

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§ 1.1502–59A also issued under 26 U.S.C. 1502.

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§ 1.1502–100 also issued under 26 U.S.C. 1502.

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§ 1.6038A–2 also issued under 26 U.S.C. 6001, 6038A, and 6038C.

§§ 1.6038A–2(a)(3) and (b)(7) also issued under 26 U.S.C. 6038A(b)(2).

* * * * *

■ **Par. 2.** Sections 1.59A–1 through 1.59A–10 are added to read as follows:

§ 1.59A–1 Base erosion and anti-abuse tax.

(a) *Purpose.* This section and §§ 1.59A–2 through 1.59A–10 (collectively, the ''section 59A regulations'') provide rules under section 59A to determine the amount of the base erosion and anti-abuse tax. Paragraph (b) of this section provides definitions applicable to the section 59A regulations. Section 1.59A–2 provides rules regarding how to determine whether a taxpayer is an applicable taxpayer. Section 1.59A–3 provides rules regarding base erosion payments and base erosion tax benefits. Section 1.59A–4 provides rules for calculating

modified taxable income. Section 1.59A–5 provides rules for calculating the base erosion minimum tax amount. Section 1.59A–6 provides rules relating to qualified derivative payments. Section 1.59A–7 provides rules regarding application of section 59A to partnerships. Section 1.59A–8 is reserved for rules regarding the application of section 59A to certain expatriated entities. Section 1.59A–9 provides an anti-abuse rule to prevent avoidance of section 59A. Finally, § 1.59A–10 provides the applicability date for the section 59A regulations.

(b) *Definitions.* For purposes of this section and §§ 1.59A–2 through 1.59A–10, the following terms have the meanings described in this paragraph (b).

(1) *Aggregate group.* The term *aggregate group* means the group of corporations determined by—

(i) Identifying a controlled group of corporations as defined in section 1563(a), except that the phrase ''more than 50 percent'' is substituted for ''at least 80 percent'' each place it appears in section 1563(a)(1) and the determination is made without regard to sections 1563(a)(4) and (e)(3)(C), and

(ii) Once the controlled group of corporations is determined, excluding foreign corporations except with regard to income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States under an applicable provision of the Internal Revenue Code or regulations published under 26 CFR chapter I. Notwithstanding the foregoing, if a foreign corporation determines its net taxable income under an applicable income tax treaty of the United States, it is excluded from the controlled group of corporations except with regard to income taken into account in determining its net taxable income.

(2) *Applicable section 38 credits.* The term *applicable section 38 credits* means the credits allowed under section 38 for the taxable year that are properly allocable to—

(i) The low-income housing credit determined under section 42(a),

(ii) The renewable electricity production credit determined under section 45(a), and

(iii) The investment credit determined under section 46, but only to the extent properly allocable to the energy credit determined under section 48.

(3) *Applicable taxpayer.* The term *applicable taxpayer* means a taxpayer that meets the requirements set forth in § 1.59A–2(b).

(4) *Bank.* The term *bank* means an entity defined in section 581.

(5) *Base erosion and anti-abuse tax rate.* The term *base erosion and anti-abuse tax rate* means the percentage that the taxpayer applies to its modified taxable income for the taxable year to calculate its base erosion minimum tax amount. See § 1.59A–5(c) for the base erosion and anti-abuse tax rate applicable to the relevant taxable year.

(6) *Business interest expense.* The term *business interest expense,* with respect to a taxpayer and a taxable year, has the meaning provided in § 1.163(j)–1(b)(2).

(7) *Deduction.* The term *deduction* means any deduction allowable under chapter 1 of subtitle A of the Internal Revenue Code.

(8) *Disallowed business interest expense carryforward.* The term *disallowed business interest expense carryforward* has the meaning provided in § 1.163(j)–1(b)(9).

(9) *Domestic related business interest expense.* The term *domestic related business interest expense* for any taxable year is the taxpayer's business interest expense paid or accrued to a related party that is not a foreign related party.

(10) *Foreign person.* The term *foreign person* means any person who is not a United States person. For purposes of the preceding sentence, a United States person has the meaning provided in section 7701(a)(30), except that any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States is not a United States person. See § 1.59A–7(b) for rules applicable to partnerships.

(11) *Foreign related business interest expense.* The term *foreign related business interest expense* for any taxable year is the taxpayer's business interest expense paid or accrued to a foreign related party.

(12) *Foreign related party.* The term *foreign related party* means a foreign person, as defined in paragraph (b)(10) of this section, that is a related party, as defined in paragraph (b)(17) of this section, with respect to the taxpayer. In addition, for purposes of § 1.59A–3(b)(4)(v)(B), a foreign related party also includes the foreign corporation's home office or a foreign branch of the foreign corporation. See § 1.59A–7(c) for rules applicable to partnerships.

(13) *Gross receipts.* The term *gross receipts* has the meaning provided in § 1.448–1T(f)(2)(iv).

(14) *Member of an aggregate group.* The term *member of an aggregate group* means a corporation that is included in an aggregate group, as defined in paragraph (b)(1) of this section.

(15) *Registered securities dealer.* The term *registered securities dealer* means any dealer as defined in section 3(a)(5) of the Securities Exchange Act of 1934 that is registered, or required to be registered, under section 15 of the Securities Exchange Act of 1934.

(16) *Regular tax liability.* The term *regular tax liability* has the meaning provided in section 26(b).

(17) *Related party*—(i) *In general.* A *related party,* with respect to an applicable taxpayer, is—

(A) Any 25-percent owner of the taxpayer;

(B) Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or any 25-percent owner of the taxpayer; or

(C) A controlled taxpayer within the meaning of § 1.482–1(i)(5) together with, or with respect to, the taxpayer.

(ii) *25-percent owner.* With respect to any corporation, a *25-percent owner* means any person who owns at least 25 percent of—

(A) The total voting power of all classes of stock of the corporation entitled to vote; or

(B) The total value of all classes of stock of the corporation.

(iii) *Application of section 318.* Section 318 applies for purposes of paragraphs (b)(17)(i) and (ii) of this section, except that—

(A) ''10 percent'' is substituted for ''50 percent'' in section 318(a)(2)(C); and

(B) Section 318(a)(3)(A) through (C) are not applied so as to consider a United States person as owning stock that is owned by a person who is not a United States person.

(18) *TLAC long-term debt required amount.* The term *TLAC long-term debt required amount* means the specified minimum amount of debt that is required pursuant to 12 CFR 252.162(a).

(19) *TLAC securities amount.* The term *TLAC securities amount* is the sum of the adjusted issue prices (as determined for purposes of § 1.1275–1(b)) of all TLAC securities issued and outstanding by the taxpayer.

(20) *TLAC security.* The term *TLAC security* means an eligible internal debt security, as defined in 12 CFR 252.161.

(21) *Unrelated business interest expense.* The term *unrelated business interest expense* for any taxable year is the taxpayer's business interest expense paid or accrued to a party that is not a related party.

§ 1.59A–2 Applicable taxpayer.

(a) *Scope.* This section provides rules for determining whether a taxpayer is an applicable taxpayer. Paragraph (b) of this section defines an applicable taxpayer. Paragraph (c) of this section

provides rules for determining whether a taxpayer is an applicable taxpayer by reference to the aggregate group of which the taxpayer is a member. Paragraph (d) of this section provides rules regarding the gross receipts test. Paragraph (e) of this section provides rules regarding the base erosion percentage calculation. Paragraph (f) of this section provides examples illustrating the rules of this section.

(b) *Applicable taxpayer.* For purposes of section 59A, a taxpayer is an applicable taxpayer with respect to any taxable year if the taxpayer—

(1) Is a corporation, but not a regulated investment company, a real estate investment trust, or an S corporation;

(2) Satisfies the gross receipts test of paragraph (d) of this section; and

(3) Satisfies the base erosion percentage test of paragraph (e) of this section.

(c) *Aggregation rules.* A taxpayer that is a member of an aggregate group determines its gross receipts and its base erosion percentage on the basis of the aggregate group as of the end of the taxpayer's taxable year. For these purposes, transactions that occur between members of the taxpayer's aggregate group that were members of the aggregate group as of the time of the transaction are not taken into account. In the case of a foreign corporation that is a member of an aggregate group, only transactions that relate to income effectively connected with, or treated as effectively connected with, the conduct of a trade or business in the United States are disregarded for this purpose. In the case of a foreign corporation that is a member of an aggregate group and that determines its net taxable income under an applicable income tax treaty of the United States, only transactions that are taken into account in determining its net taxable income are disregarded for this purpose.

(d) *Gross receipts test*—(1) *Amount of gross receipts.* A taxpayer, or the aggregate group of which the taxpayer is a member, satisfies the gross receipts test if it has average annual gross receipts of at least $500,000,000 for the three-taxable-year period ending with the preceding taxable year.

(2) *Period for measuring gross receipts for an aggregate group*—(i) *Calendar year taxpayers that are members of an aggregate group.* In the case of a corporation that has a calendar year and that is a member of an aggregate group, the corporation applies the gross receipts test in paragraph (d)(1) of this section on the basis of the gross receipts of the aggregate group for the three-calendar-year period ending with the preceding calendar year, without regard to the taxable year of any other member of the aggregate group.

(ii) *Fiscal year taxpayers that are members of an aggregate group.* In the case of a corporation that has a fiscal year and that is a member of an aggregate group, the corporation applies the gross receipts test in paragraph (d)(1) of this section on the basis of the gross receipts of the aggregate group for the three-fiscal-year period ending with the preceding fiscal year of the corporation, without regard to the taxable year of any other member of the aggregate group.

(3) *Gross receipts of foreign corporations.* With respect to any foreign corporation, only gross receipts that are taken into account in determining income that is effectively connected with the conduct of a trade or business within the United States are taken into account for purposes of paragraph (d)(1) of this section. In the case of a foreign corporation that is a member of an aggregate group and that determines its net taxable income under an applicable income tax treaty of the United States, the foreign corporation includes only gross receipts that are attributable to transactions taken into account in determining its net taxable income.

(4) *Gross receipts of an insurance company.* For any corporation that is subject to tax under subchapter L or any corporation that would be subject to tax under subchapter L if that corporation were a domestic corporation, gross receipts are reduced by return premiums, but are not reduced by any reinsurance premiums paid or accrued.

(5) *Gross receipts from partnerships.* See § 1.59A–7(b)(5)(ii).

(6) *Taxpayer not in existence for entire three-year period.* If a taxpayer was not in existence for the entire three-year period referred to in paragraph (d)(1) of this section, the taxpayer determines a gross receipts average for the period that it was in existence, taking into account paragraph (d)(7) of this section.

(7) *Treatment of short taxable year.* If a taxpayer has a taxable year of fewer than 12 months (a short period), gross receipts are annualized by multiplying the gross receipts for the short period by 365 and dividing the result by the number of days in the short period.

(8) *Treatment of predecessors.* For purposes of determining gross receipts under this paragraph (d), any reference to a taxpayer includes a reference to any predecessor of the taxpayer. For this purpose, a predecessor includes the distributor or transferor corporation in a transaction described in section 381(a) in which the taxpayer is the acquiring corporation.

(9) *Reductions in gross receipts.* Gross receipts for any taxable year are reduced by returns and allowances made during that taxable year.

(10) *Gross receipts of consolidated groups.* For purposes of section 59A, the gross receipts of a consolidated group are determined by aggregating the gross receipts of all of the members of the consolidated group. See § 1.1502–59A(b).

(e) *Base erosion percentage test*—(1) *In general.* A taxpayer, or the aggregate group of which the taxpayer is a member, satisfies the base erosion percentage test if its base erosion percentage is three percent or higher.

(2) *Base erosion percentage test for banks and registered securities dealers*—(i) *In general.* A taxpayer that is a member of an affiliated group (as defined in section 1504(a)(1)) that includes a bank (as defined in § 1.59A–1(b)(4)) or a registered securities dealer (as defined in section § 1.59A–1(b)(15)) satisfies the base erosion percentage test if its base erosion percentage is two percent or higher.

(ii) *Aggregate groups.* An aggregate group of which a taxpayer is a member and that includes a bank or a registered securities dealer that is a member of an affiliated group (as defined in section 1504(a)(1)) will be subject to the base erosion percentage threshold described in paragraph (e)(2)(i) of this section.

(iii) *De minimis exception for banking and registered securities dealer activities.* An aggregate group that includes a bank or a registered securities dealer that is a member of an affiliated group (as defined in section 1504(a)(1)) is not treated as including a bank or registered securities dealer for purposes of paragraph (e)(2)(i) of this section for a taxable year, if, in that taxable year, the total gross receipts of the aggregate group attributable to the bank or the registered securities dealer represent less than two percent of the total gross receipts of the aggregate group, as determined under paragraph (d) of this section. When there is no aggregate group, a consolidated group that includes a bank or a registered securities dealer is not treated as including a bank or registered securities dealer for purposes of paragraph (e)(2)(i) of this section for a taxable year, if, in that taxable year, the total gross receipts of the consolidated group attributable to the bank or the registered securities dealer represent less than two percent of the total gross receipts of the consolidated group, as determined under paragraph (d) of this section.

(3) *Computation of base erosion percentage*—(i) *In general.* The taxpayer's base erosion percentage for any taxable year is determined by dividing—

(A) The aggregate amount of the taxpayer's (or in the case of a taxpayer that is a member of an aggregate group, the aggregate group's) base erosion tax benefits (as defined in § 1.59A–3(c)(1)) for the taxable year, by

(B) The sum of—

(*1*) The aggregate amount of the deductions (including deductions for base erosion tax benefits described in § 1.59A–3(c)(1)(i) and base erosion tax benefits described in § 1.59A–3(c)(1)(ii)) allowable to the taxpayer (or in the case of a taxpayer that is a member of an aggregate group, any member of the aggregate group) under chapter 1 of Subtitle A for the taxable year;

(*2*) The base erosion tax benefits described in § 1.59A–3(c)(1)(iii) with respect to any premiums or other consideration paid or accrued by the taxpayer (or in the case of a taxpayer that is a member of an aggregate group, any member of the aggregate group) to a foreign related party for any reinsurance payment taken into account under sections 803(a)(1)(B) or 832(b)(4)(A) for the taxable year; and

(*3*) Any amount paid or accrued by the taxpayer (or in the case of a taxpayer that is a member of an aggregate group, any member of the aggregate group) resulting in a reduction of gross receipts described in § 1.59A–3(c)(1)(iv) for the taxable year.

(ii) *Certain items not taken into account in denominator.* Except as provided in paragraph (e)(3)(viii) of this section, the amount under paragraph (e)(3)(i)(B) of this section is determined by not taking into account—

(A) Any deduction allowed under section 172, 245A, or 250 for the taxable year;

(B) Any deduction for amounts paid or accrued for services to which the exception described in § 1.59A–3(b)(3)(i) applies;

(C) Any deduction for qualified derivative payments that are not treated as base erosion payments by reason of § 1.59A–3(b)(3)(ii);

(D) Any exchange loss within the meaning of § 1.988–2 from a section 988 transaction as described in § 1.988–1(a)(1);

(E) Any deduction for amounts paid or accrued to foreign related parties with respect to TLAC securities that are not treated as base erosion payments by reason of § 1.59A–3(b)(3)(v); and

(F) Any deduction not allowed in determining taxable income from the taxable year.

(iii) *Effect of treaties on base erosion percentage determination.* In computing the base erosion percentage, the amount of the base erosion tax benefit with respect to a base erosion payment on which tax is imposed by section 871 or 881 and with respect to which tax has been deducted and withheld under section 1441 or 1442 is equal to the gross amount of the base erosion tax benefit before the application of the applicable treaty multiplied by a fraction equal to—

(A) The rate of tax imposed without regard to the treaty, reduced by the rate of tax imposed under the treaty; over

(B) The rate of tax imposed without regard to the treaty.

(iv) *Amounts paid or accrued between members of a consolidated group.* See § 1.1502–59A(b).

(v) *Deductions and base erosion tax benefits from partnerships.* See § 1.59A–7(b).

(vi) *Mark-to-market positions.* For any position with respect to which the taxpayer (or in the case of a taxpayer that is a member of an aggregate group, a member of the aggregate group) applies a mark-to-market method of accounting for federal income tax purposes, the taxpayer must determine its gain or loss with respect to that position for any taxable year by combining all items of income, gain, loss, or deduction arising with respect to the position during the taxable year, regardless of how each item arises (including from a payment, accrual, or mark) for purposes of paragraph (e)(3) of this section. See paragraph (f)(1) of this section (*Example 1*) for an illustration of this rule. For purposes of section 59A, a taxpayer computes its losses resulting from positions subject to a mark-to-market regime under the Internal Revenue Code based on a single mark for the taxable year on the earlier of the last business day of the taxpayer's taxable year and the disposition (whether by sale, offset, exercise, termination, expiration, maturity, or other means) of the position, regardless of how frequently a taxpayer marks to market for other purposes. See § 1.59A–3(b)(2)(iii) for the application of this rule for purposes of determining the amount of base erosion payments.

(vii) *Computing the base erosion percentage when members of an aggregate group have different taxable years*—(A) *Calendar year taxpayers that are members of an aggregate group.* In the case of a taxpayer that has a calendar year and that is a member of an aggregate group, the taxpayer applies the base erosion percentage in paragraph (e)(1) or (2) of this section (and determines the base erosion percentage used in § 1.59A–4(b)(2)(ii)) on the basis of the base erosion percentage for the calendar year in the manner set forth in paragraph (e)(3) of this section, without regard to the taxable year of any other member of the aggregate group. See paragraph (f)(2) of this section (*Example 2*) for an illustration of this rule. For purposes of applying paragraph (e)(3)(vi) of this section, all members of the aggregate group are treated as having a calendar year.

(B) *Fiscal year taxpayers that are members of an aggregate group.* In the case of a taxpayer that has a fiscal year and that is a member of an aggregate group, the taxpayer applies the base erosion percentage test in paragraph (e)(1) or (2) of this section (and determines the base erosion percentage used in § 1.59A–4(b)(2)(ii)) on the basis of the base erosion percentage for its fiscal year in the manner set forth in paragraph (e)(3) of this section, without regard to the taxable year of any other member of the aggregate group. See paragraph (f)(2) of this section (*Example 2*) for an illustration of this rule. For purposes of applying paragraph (e)(3)(vi) of this section, all members of the aggregate group are treated as having the taxpayer's fiscal year.

(C) *Transition rule for aggregate group members with different taxable years.* For purposes of this paragraph (e)(3)(vii), if the taxpayer has a different taxable year than another member of the taxpayer's aggregate group, each taxpayer that is a member of the aggregate group determines the availability of the exception in § 1.59A–3(b)(3)(vi) (amounts paid or accrued in taxable years beginning before January 1, 2018) by using the taxpayer's taxable year for all members of the taxpayer's aggregate group.

(viii) *Certain payments that qualify for the effectively connected income exception and another base erosion payment exception.* Subject to paragraph (c) of this section (transactions that occur between members of the taxpayer's aggregate group), a payment that qualifies for the effectively connected income exception described in § 1.59A–3(b)(3)(iii) and either the service cost method exception described in § 1.59A–3(b)(3)(i), the qualified derivative payment exception described in § 1.59A–3(b)(3)(ii), or the TLAC exception described in § 1.59A–3(b)(3)(v) is not subject to paragraph (e)(3)(ii)(B), (C), or (E) of this section and those amounts are included in the denominator of the base erosion percentage if the foreign related party who received the payment is not a member of the aggregate group.

(f) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1: Mark-to-market.* (i) *Facts.* (A) Foreign Parent (FP) is a foreign corporation that owns all of the stock of domestic corporation (DC) and foreign corporation (FC). FP and FC are foreign related parties of DC under § 1.59A–1(b)(12) but not members of the aggregate group. DC is a registered securities dealer that does not hold any securities for investment. On January 1 of year 1, DC enters into two interest rate swaps for a term of two years, one with unrelated Customer A as the counterparty (position A) and one with unrelated Customer B as the counterparty (position B). Each of the swaps provides for semiannual periodic payments to be made or received on June 30 and December 31. No party makes any payment to any other party upon initiation of either of the swaps (that is, they are entered into at-the-money). DC is required to mark-to-market positions A and B for federal income tax purposes. DC is a calendar year taxpayer.

(B) For position A in year 1, DC makes a payment of $150 on June 30, and receives a payment of $50 on December 31. There are no other payments in year 1. On December 31, position A has a value to DC of $110 (that is, position A is in-the-money by $110).

(C) For position B in year 1, DC receives a payment of $120 on June 30, and makes a payment of $30 on December 31. There are no other payments in year 1. On December 31, position B has a value to DC of ($130) (that is, position B is out-of-the-money by $130).

(ii) *Analysis.* (A) With respect to position A, based on the total amount of payments made and received in year 1, DC has a net deduction of $100. In addition, DC has a mark-to-market gain of $110. As described in paragraph (e)(3)(vi) of this section, the mark-to-market gain of $110 is combined with the net deduction of $100 resulting from the payments. Therefore, with respect to position A, DC has a gain of $10, and thus has no deduction in year 1 for purposes of section 59A.

(B) With respect to position B, based on the total amount of payments made and received in year 1, DC has net income of $90. In addition, DC has a mark-to-market loss of $130. As described in paragraph (e)(3)(vi) of this section, the mark-to-market loss of $130 is combined with the net income of $90 resulting from the payments. Therefore, with respect to position B, DC has a loss of $40, and thus has a $40 deduction in year 1 for purposes of section 59A.

(2) *Example 2: Determining gross receipts test and base erosion percentage when aggregate group members have different taxable years.* (i) *Facts.* Foreign Parent (FP) is a foreign corporation that owns all of the stock of a domestic corporation that uses a calendar year (DC1) and a domestic corporation that uses a fiscal year ending on January 31 (DC2). FP does not have income effectively connected with the conduct of a trade or business within the United States. DC2 is a member of DC1's aggregate group, and DC1 is a member of DC2's aggregate group.

(ii) *Analysis.* (A) For DC1's tax return filed for the calendar year ending December 31, 2026, DC1 determines its gross receipts based on gross receipts of DC1 and DC2 for the calendar years ending December 31, 2023, December 31, 2024, and December 31, 2025. Further, DC1 determines its base erosion percentage for the calendar year ending December 31, 2026, on the basis of transactions of DC1 and DC2 for the calendar year ending December 31, 2026.

(B) For DC2's tax return filed for the fiscal year ending January 31, 2027, DC2 determines its gross receipts based on gross receipts of DC2 and DC1 for the fiscal years ending January 31, 2024, January 31, 2025, and January 31, 2026. Further, DC2 determines its base erosion percentage for the fiscal year ending January 31, 2027, on the basis of transactions of DC2 and DC1 for the fiscal year ending January 31, 2027.

§ 1.59A–3 Base erosion payments and base erosion tax benefits.

(a) *Scope.* This section provides definitions and related rules regarding base erosion payments and base erosion tax benefits. Paragraph (b) of this section provides definitions and rules regarding base erosion payments. Paragraph (c) of this section provides rules for determining the amount of base erosion tax benefits. Paragraph (d) of this section provides examples illustrating the rules described in this section.

(b) *Base erosion payments*—(1) *In general.* Except as provided in paragraph (b)(3) of this section, a *base erosion payment* means—

(i) Any amount paid or accrued by the taxpayer to a foreign related party of the taxpayer and with respect to which a deduction is allowable under chapter 1 of subtitle A of the Internal Revenue Code;

(ii) Any amount paid or accrued by the taxpayer to a foreign related party of the taxpayer in connection with the acquisition of property by the taxpayer from the foreign related party if the character of the property is subject to the allowance for depreciation (or amortization in lieu of depreciation);

(iii) Any premium or other consideration paid or accrued by the taxpayer to a foreign related party of the taxpayer for any reinsurance payments that are taken into account under section 803(a)(1)(B) or 832(b)(4)(A); or

(iv) Any amount paid or accrued by the taxpayer that results in a reduction of the gross receipts of the taxpayer if the amount paid or accrued is with respect to—

(A) A surrogate foreign corporation, as defined in section 59A(d)(4)(C)(i), that is a related party of the taxpayer (but only if the corporation first became a surrogate foreign corporation after November 9, 2017); or

(B) A foreign person that is a member of the same expanded affiliated group, as defined in section 59A(d)(4)(C)(ii), as the surrogate foreign corporation.

(2) *Operating rules*—(i) *Amounts paid or accrued in cash and other consideration.* For purposes of paragraph (b)(1) of this section, an amount paid or accrued includes an amount paid or accrued using any form of consideration, including cash, property, stock, or the assumption of a liability.

(ii) *Transactions providing for net payments.* Except as otherwise provided in paragraph (b)(2)(iii) of this section or as permitted by the Internal Revenue Code or the regulations, the amount of any base erosion payment is determined on a gross basis, regardless of any contractual or legal right to make or receive payments on a net basis. For this purpose, a right to make or receive payments on a net basis permits the parties to a transaction or series of transactions to settle obligations by offsetting any amounts to be paid by one party against amounts owed by that party to the other party. For example, any premium or other consideration paid or accrued by a taxpayer to a foreign related party for any reinsurance payments is not reduced by or netted against other amounts owed to the taxpayer from the foreign related party or by reserve adjustments or other returns.

(iii) *Amounts paid or accrued with respect to mark-to-market position.* For any transaction with respect to which the taxpayer applies the mark-to-market method of accounting for federal income tax purposes, the rules set forth in § 1.59A–2(e)(3)(vi) apply to determine the amount of base erosion payment.

(iv) *Coordination among categories of base erosion payments.* A payment that does not satisfy the criteria of one category of base erosion payment may be a base erosion payment described in one of the other categories.

(v) *Certain domestic passthrough entities*—(A) *In general.* If an applicable taxpayer pays or accrues an amount that would be a base erosion payment except for the fact that the payment is made to a specified domestic passthrough, then the applicable taxpayer will be treated as making a base erosion payment to each specified foreign related party for purposes of section 59A and §§ 1.59A–2 through 1.59A–10. This rule has no effect on the taxation of the specified domestic passthrough under subchapter J or subchapter M of the Code (as applicable).

(B) *Amount of base erosion payment.* The amount of the base erosion payment is equal to the lesser of the amount paid or accrued by the applicable taxpayer to or for the benefit of the specified

domestic passthrough and the amount of the deduction allowed under section 561, 651 or 661 to the specified domestic passthrough with respect to amounts paid, credited, distributed, deemed distributed or required to be distributed to a specified foreign related party.

(C) *Specified domestic passthrough.* For purposes of this paragraph (b)(2)(v), specified domestic passthrough means:

(*1*) A domestic trust that is not a grantor trust under subpart E of subchapter J of Chapter 1 of the Code (''domestic trust'') and which domestic trust is allowed a deduction under section 651 or section 661 with respect to amounts paid, credited, or required to be distributed to a specified foreign related party;

(*2*) A real estate investment trust (as defined in § 1.856–1(a)) that pays, or is deemed to pay, a dividend to a specified foreign related party for which a deduction is allowed under section 561; or

(*3*) A regulated investment company (as defined in § 1.851–1(a)) that pays, or is deemed to pay, a dividend to a specified foreign related party for which a deduction is allowed under section 561.

(D) *Specified foreign related party.* For purposes of this paragraph (b)(2)(v), specified foreign related party means, with respect to a specified domestic passthrough, any foreign related party of an applicable taxpayer that is a direct or indirect beneficiary or shareholder of the specified domestic passthrough.

(vi) *Transfers of property to related taxpayers.* If a taxpayer owns property of a character subject to the allowance for depreciation (or amortization in lieu of depreciation) with respect to which paragraph (c)(1)(ii) of this section applies, and the taxpayer sells, exchanges, or otherwise transfers the property to another taxpayer that is a member of an aggregate group that includes the taxpayer, any deduction for depreciation (or amortization in lieu of deprecation) by the transferee taxpayer remains subject to paragraph (c)(1)(ii) of this section to the same extent the amounts would have been so subject in the hands of the transferor. See paragraph (d)(7) of this section (*Example 7*) for an illustration of this rule.

(3) *Exceptions to base erosion payment.* Paragraph (b)(1) of this section does not apply to the types of payments or accruals described in paragraphs (b)(3)(i) through (vii) of this section.

(i) *Certain services cost method amounts*—(A) *In general.* Amounts paid or accrued by a taxpayer to a foreign related party for services that meet the requirements in paragraph (b)(3)(i)(B) of this section, but only to the extent of the total services cost of those services. Thus, any amount paid or accrued to a foreign related party in excess of the total services cost of services eligible for the services cost method exception (the mark-up component) remains a base erosion payment. For this purpose, services are an activity as defined in § 1.482–9(l)(2) performed by a foreign related party (the renderer) that provides a benefit as defined in § 1.482–9(l)(3) to the taxpayer (the recipient).

(B) *Eligibility for the services cost method exception.* To be eligible for the services cost method exception, all of the requirements of § 1.482–9(b) must be satisfied, except that:

(*1*) The requirements of § 1.482–9(b)(5) do not apply for purposes of determining eligibility for the service cost method exception in this section; and

(*2*) Adequate books and records must be maintained as described in paragraph (b)(3)(i)(C) of this section, instead of as described in § 1.482–9(b)(6).

(C) *Adequate books and records.* Permanent books of account and records must be maintained for as long as the costs with respect to the services are incurred by the renderer. The books and records must be adequate to permit verification by the Commissioner of the amount charged for the services and the total services costs incurred by the renderer, including a description of the services in question, identification of the renderer and the recipient of the services, calculation of the amount of profit mark-up (if any) paid for the services, and sufficient documentation to allow verification of the methods used to allocate and apportion the costs to the services in question in accordance with § 1.482–9(k).

(D) *Total services cost.* For purposes of this section, total services cost has the same meaning as total services costs in § 1.482–9(j).

(ii) *Qualified derivative payments.* Any qualified derivative payment as described in § 1.59A–6.

(iii) *Effectively connected income*—(A) *In general.* Amounts paid or accrued to a foreign related party that are subject to federal income taxation as income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States under an applicable provision of the Internal Revenue Code or regulations. This paragraph (b)(3)(iii) applies only if the taxpayer receives a withholding certificate on which the foreign related party claims an exemption from withholding under section 1441 or 1442 because the amounts are effectively connected income.

(B) *Application to certain treaty residents.* Notwithstanding paragraph (b)(3)(iii)(A) of this section, if a foreign related party determines its net taxable income under an applicable income tax treaty, amounts paid or accrued to the foreign related party taken into account in determining its net taxable income.

(iv) *Exchange loss on a section 988 transaction.* Any exchange loss within the meaning of § 1.988–2 from a section 988 transaction described in § 1.988–1(a)(1) that is an allowable deduction and that results from a payment or accrual by the taxpayer to a foreign related party of the taxpayer.

(v) *Amounts paid or accrued with respect to TLAC securities*—(A) *In general.* Except as provided in paragraph (b)(3)(v)(B) of this section, amounts paid or accrued to foreign related parties with respect to TLAC securities.

(B) *Limitation on exclusion for TLAC securities.* The amount excluded under paragraph (b)(3)(v)(A) of this section is no greater than the product of the scaling ratio and amounts paid or accrued to foreign related parties with respect to TLAC securities for which a deduction is allowed.

(C) *Scaling ratio.* For purposes of this paragraph (b)(3)(v), the scaling ratio for a taxable year of a taxpayer is a fraction the numerator of which is the average TLAC long-term debt required amount and the denominator of which is the average TLAC securities amount. The scaling ratio may in no event be greater than one.

(D) *Average TLAC securities amount.* The average TLAC securities amount for a taxable year is the average of the TLAC securities amounts for the year, computed at regular time intervals in accordance with this paragraph. The TLAC securities amounts used in calculating the average TLAC securities amount is computed on a monthly basis.

(E) *Average TLAC long-term debt required amount.* The average TLAC long-term debt required amount for a taxable year is the average of the TLAC long-term debt required amounts, computed on a monthly basis.

(vi) *Amounts paid or accrued in taxable years beginning before January 1, 2018.* Any amount paid or accrued in taxable years beginning before January 1, 2018.

(vii) *Business interest carried forward from taxable years beginning before January 1, 2018.* Any disallowed business interest described in section 163(j)(2) that is carried forward from a taxable year beginning before January 1, 2018.

(4) *Rules for determining the amount of certain base erosion payments.* The following rules apply in determining the deductible amount that is a base erosion payment.

(i) *Interest expense allocable to a foreign corporation's effectively connected income*—(A) *Method described in § 1.882–5(b) through (d).* A foreign corporation that has interest expense allocable under section 882(c) to income that is, or is treated as, effectively connected with the conduct of a trade or business within the United States applying the method described in § 1.882–5(b) through (d) has base erosion payments under paragraph (b)(1)(i) of this section for the taxable year equal to the sum of—

(*1*) The interest expense on a liability described in § 1.882–5(a)(1)(ii)(A) or (B) (direct allocations) or interest expense on U.S.-booked liabilities, as described in § 1.882–5(d)(2), that is paid or accrued by the foreign corporation to a foreign related party; and

(*2*) The interest expense on U.S.-connected liabilities in excess of U.S.-booked liabilities (hereafter, excess U.S.-connected liabilities), as described in § 1.882–5(d)(5), multiplied by a fraction, the numerator of which is the foreign corporation's average worldwide liabilities due to a foreign related party, and the denominator of which is the foreign corporation's average total worldwide liabilities. For purposes of this fraction, any liability that is a U.S.-booked liability or is subject to a direct allocation is excluded from both the numerator and the denominator of the fraction.

(B) *Separate currency pools method.* A foreign corporation that has interest expense allocable under section 882(c) to income that is, or is treated as, effectively connected with the conduct of a trade or business within the United States applying the separate currency pools method described in § 1.882–5(e) has a base erosion payment under paragraph (b)(1)(i) of this section for the taxable year equal to the sum of—

(*1*) The interest expense on a liability described in § 1.882–5(a)(1)(ii)(A) or (B) (direct allocations) that is paid or accrued by the foreign corporation to a foreign related party; and

(*2*) The interest expense attributable to each currency pool, as described in § 1.882–5(e)(1)(iii), multiplied by a fraction equal to the foreign corporation's average worldwide liabilities denominated in that currency and that is due to a foreign related party over the foreign corporation's average total worldwide liabilities denominated in that currency. For purposes of this fraction, any liability that has a direct allocation is excluded from both the numerator and the denominator.

(C) *U.S.-booked liabilities in excess of U.S.-connected liabilities.* A foreign corporation that is computing its interest expense under the method described in § 1.882–5(b) through (d) and that has U.S.-booked liabilities in excess of U.S.-connected liabilities must apply the scaling ratio pro-rata to all interest expense consistent with § 1.882–5(d)(4) for purposes of determining the amount of allocable interest expense that is a base erosion payment.

(D) *Liability reduction election.* A foreign corporation that elects to reduce its liabilities under § 1.884–1(e)(3) must reduce its liabilities on a pro-rata basis, consistent with the requirements under § 1.884–1(e)(3)(iii), for purposes of determining the amount of allocable interest expense that is a base erosion payment.

(ii) *Other deductions allowed with respect to effectively connected income.* A deduction allowed under § 1.882–4 for an amount paid or accrued by the foreign corporation to a foreign related party (including a deduction for an amount apportioned in part to effectively connected income and in part to income that is not effectively connected income) is treated as a base erosion payment under paragraph (b)(1) of this section.

(iii) *Depreciable property.* Any amount paid or accrued by the foreign corporation to a foreign related party of the taxpayer in connection with the acquisition of property by the foreign corporation from the foreign related party if the character of the property is subject to the allowance for depreciation (or amortization in lieu of depreciation) is a base erosion payment to the extent the property so acquired is used, or held for use, in the conduct of a trade or business within the United States.

(iv) *Coordination with ECI exception.* For purposes of this paragraph (b)(4), amounts paid or accrued to a foreign related party treated as effectively connected income (or, in the case of foreign related party that determines net taxable income under an applicable income tax treaty, such amounts that are taken into account in determining net taxable income) are not treated as paid to a foreign related party. Additionally, for purposes of paragraph (b)(4)(i)(A)(*2*) or (b)(4)(i)(B)(*2*) of this section, a liability with interest paid or accrued to a foreign related party that is treated as effectively connected income (or, in the case of foreign related party that determines net taxable income under an applicable income tax treaty, interest taken into account in determining net taxable income) is treated as a liability not due to a foreign related party.

(v) *Coordination with certain tax treaties*—(A) *Allocable expenses.* If a foreign corporation elects to determine its taxable income pursuant to business profits provisions of an income tax treaty rather than provisions of the Internal Revenue Code, or the regulations published under 26 CFR chapter I, for determining effectively connected income, and the foreign corporation does not apply §§ 1.882–5 and 1.861–8 to allocate interest and other deductions, then in applying paragraphs (b)(4)(i) and (ii) of this section, the foreign corporation must determine whether each allowable deduction attributed to the permanent establishment in its determination of business profits is a base erosion payment under paragraph (b)(1) of this section.

(B) *Internal dealings under certain income tax treaties.* If, pursuant to the terms of an applicable income tax treaty, a foreign corporation determines the profits attributable to a permanent establishment based on the assets used, risks assumed, and functions performed by the permanent establishment, then any deduction attributable to any amount paid or accrued (or treated as paid or accrued) by the permanent establishment to the foreign corporation's home office or to another branch of the foreign corporation (an ''internal dealing'') is a base erosion payment to the extent such payment or accrual is described under paragraph (b)(1) of this section.

(vi) *Business interest expense arising in taxable years beginning after December 31, 2017.* Any disallowed business interest expense described in section 163(j)(2) that resulted from a payment or accrual to a foreign related party that first arose in a taxable year beginning after December 31, 2017, is treated as a base erosion payment under paragraph (b)(1)(i) of this section in the year that the business interest expense initially arose. See paragraph (c)(4) of this section for rules that apply when business interest expense is limited under section 163(j)(1) in order to determine whether the disallowed business interest is attributed to business interest expense paid to a person that is not a related party, a foreign related party, or a domestic related party.

(c) *Base erosion tax benefit*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, a base erosion tax benefit means:

(i) In the case of a base erosion payment described in paragraph (b)(1)(i) of this section, any deduction that is

allowed under chapter 1 of subtitle A of the Internal Revenue Code for the taxable year with respect to that base erosion payment;

(ii) In the case of a base erosion payment described in paragraph (b)(1)(ii) of this section, any deduction allowed under chapter 1 of subtitle A of the Internal Revenue Code for the taxable year for depreciation (or amortization in lieu of depreciation) with respect to the property acquired with that payment;

(iii) In the case of a base erosion payment described in paragraph (b)(1)(iii) of this section, any reduction under section 803(a)(1)(B) in the gross amount of premiums and other consideration on insurance and annuity contracts for premiums and other consideration arising out of indemnity insurance, or any deduction under section 832(b)(4)(A) from the amount of gross premiums written on insurance contracts during the taxable year for premiums paid for reinsurance; or

(iv) In the case of a base erosion payment described in paragraph (b)(1)(iv) of this section, any reduction in gross receipts with respect to the payment in computing gross income of the taxpayer for the taxable year for purposes of chapter 1 of subtitle A of the Internal Revenue Code.

(2) *Withholding tax exception to base erosion tax benefit.* Except as provided in paragraph (c)(3) of this section, any base erosion tax benefit attributable to any base erosion payment is not taken into account as a base erosion tax benefit if tax is imposed on that payment under section 871 or 881, and the tax has been deducted and withheld under section 1441 or 1442.

(3) *Effect of treaty on base erosion tax benefit.* If any treaty between the United States and any foreign country reduces the rate of tax imposed by section 871 or 881, the amount of base erosion tax benefit that is not taken into account under paragraph (c)(2) of this section is equal to the amount of the base erosion tax benefit before the application of paragraph (c)(2) of this section multiplied by a fraction of—

(i) The rate of tax imposed without regard to the treaty, reduced by the rate of tax imposed under the treaty; over

(ii) The rate of tax imposed without regard to the treaty.

(4) *Application of section 163(j) to base erosion payments*—(i) *Classification of payments or accruals of business interest expense based on the payee.* The following rules apply for corporations and partnerships:

(A) *Classification of payments or accruals of business interest expense of a corporation.* For purposes of this section, in the year that business interest expense of a corporation is paid or accrued the business interest expense is classified as foreign related business interest expense, domestic related business interest expense, or unrelated business interest expense.

(B) *Classification of payments or accruals of business interest expense by a partnership.* For purposes of this section, in the year that business interest expense of a partnership is paid or accrued, the business interest expense that is allocated to a partner is classified separately with respect to each partner in the partnership as foreign related business interest expense, domestic related business interest expense, or unrelated business interest expense.

(C) *Classification of payments or accruals of business interest expense that is subject to the exception for effectively connected income.* For purposes of paragraph (c)(4)(i)(A) and (B) of this section, business interest expense paid or accrued to a foreign related party to which the exception in paragraph (b)(3)(iii) of this section (effectively connected income) applies is classified as domestic related business interest expense.

(ii) *Ordering rules for business interest expense that is limited under section 163(j)(1) to determine which classifications of business interest expense are deducted and which classifications of business interest expense are carried forward*—(A) *In general.* Section 163(j) and the regulations published under 26 CFR chapter I provide a limitation on the amount of business interest expense allowed as a deduction in a taxable year by a corporation or a partner in a partnership. In the case of a corporation with a disallowed business interest expense carryforward, the regulations under section 163(j) determine the ordering of the business interest expense deduction that is allowed on a year-by-year basis by reference first to business interest expense incurred in the current taxable year and then to disallowed business interest expense carryforwards from prior years. To determine the amount of base erosion tax benefit under paragraph (c)(1) of this section, this paragraph (c)(4)(ii) sets forth ordering rules that determine the amount of the deduction of business interest expense allowed under section 163(j) that is classified as paid or accrued to a foreign related party for purposes of paragraph (c)(1)(i) of this section. This paragraph (c)(4)(ii) also sets forth similar ordering rules that apply to disallowed business interest expense carryforwards for which a deduction is permitted under section 163(j) in a later year.

(B) *Ordering rules for treating business interest expense deduction and disallowed business interest expense carryforwards as foreign related business interest expense, domestic related business interest expense, and unrelated business interest expense*—(*1*) *General ordering rule for allocating business interest expense deduction between classifications.* For purposes of paragraph (c)(1) of this section, if a deduction for business interest expense is not subject to the limitation under section 163(j)(1) in a taxable year, the deduction is treated first as foreign related business interest expense and domestic related business interest expense (on a pro-rata basis), and second as unrelated business interest expense. The same principle applies to business interest expense of a partnership that is deductible at the partner level under § 1.163(j)–6(f).

(*2*) *Ordering of business interest expense incurred by a corporation.* If a corporation's business interest expense deduction allowed for any taxable year is attributable to business interest expense paid or accrued in that taxable year and to disallowed business interest expense carryforwards from prior taxable years, the ordering of business interest expense deduction provided in paragraph (c)(4)(ii)(B)(*1*) of this section among the classifications described therein applies separately for the carryforward amount from each taxable year, following the ordering set forth in § 1.163(j)–5(b)(2). Corresponding adjustments to the classification of disallowed business interest expense carryforwards are made consistent with this year-by-year approach. For purposes of section 59A and this section, an acquiring corporation in a transaction described in section 381(a) will succeed to and take into account the classification of any disallowed business interest expense carryforward. See § 1.381(c)(20)–1.

(*3*) *Ordering of business interest expense incurred by a partnership and allocated to a corporate partner.* For a corporate partner in a partnership that is allocated a business interest expense deduction under § 1.163(j)–6(f), the ordering rule provided in paragraph (c)(4)(ii)(B)(*1*) of this section applies separately to the corporate partner's allocated business interest expense deduction from the partnership; that deduction is not comingled with the business interest expense deduction addressed in paragraph (c)(4)(ii)(B)(*1*) or (*2*) of this section or the corporate partner's items from any other partnership. Similarly, when a corporate

partner in a partnership is allocated excess business interest expense from a partnership under the rules set forth in § 1.163(j)–6(f) and the excess interest expense becomes deductible to the corporate partner, that partner applies the ordering rule provided in paragraph (c)(4)(ii)(B)(*1*) of this section separately to that excess interest expense on a year-by-year basis. Corresponding adjustments to the classification of disallowed business interest expense carryforwards are made consistent with this year-by-year and partnership-by-partnership approach.

(d) *Examples.* The following examples illustrate the application of this section. For purposes of all the examples, assume that the taxpayer is an applicable taxpayer and all payments apply to a taxable year beginning after December 31, 2017.

(1) *Example 1: Determining a base erosion payment.* (i) *Facts.* FP is a foreign corporation that owns all of the stock of FC, a foreign corporation, and DC, a domestic corporation. FP has a trade or business in the United States with effectively connected income (USTB). DC owns FDE, a foreign disregarded entity. DC pays interest to FDE and FC. FDE pays interest to USTB. All interest paid by DC to FC and by FDE to USTB is deductible by DC in the current year for regular income tax purposes. FDE also acquires depreciable property from FP during the taxable year. FP's income from the sale of the depreciable property is not effectively connected with the conduct of FP's trade or business in the United States. DC and FP (based only on the activities of USTB) are applicable taxpayers under § 1.59A–2(b).

(ii) *Analysis.* The payment of interest by DC to FC is a base erosion payment under paragraph (b)(1)(i) of this section because the payment is made to a foreign related party and the interest payment is deductible. The payment of interest by DC to FDE is not a base erosion payment because the transaction is not a payment to a foreign person and the transaction is not a deductible payment. With respect to the payment of interest by FDE to USTB, if FP's USTB treats the payment of interest by FDE to USTB as income that is effectively connected with the conduct of a trade or business in the United States pursuant to section 864 or as profits attributable to a U.S. permanent establishment of a tax treaty resident, and if DC receives a withholding certificate from FP with respect to the payment, then the exception in paragraph (b)(3)(iii) of this section applies. Accordingly, the payment from DC, through FDE, to USTB is not a base erosion payment even though the payment is to the USTB of FP, a foreign related party. The acquisition of depreciable property by DC, through FDE, is a base erosion payment under paragraph (b)(1)(ii) of this section because there is a payment to a foreign related party in connection with the acquisition by the taxpayer of property of a character subject to the allowance for depreciation and the exception in paragraph (b)(3)(iii) of this section does not apply because FP's income from the sale of the depreciable property is not effectively connected with the conduct of FP's trade or business in the United States. See § 1.59A–2 for the application of the aggregation rule with respect to DC and FP's USTB.

(2) *Example 2: Interest allocable under § 1.882–5.* (i) *Facts.* FC, a foreign corporation, has income that is effectively connected with the conduct of a trade or business within the United States. FC determines its interest expense under the three-step process described in §§ 1.882–5(b) through (d) with a total interest expense of $125x. The total interest expense is comprised of interest expense of $100x on U.S.-booked liabilities ($60x paid to a foreign related party and $40x paid to unrelated persons) and $25x of interest on excess U.S.-connected liabilities. FC has average total liabilities (that are not U.S.-booked liabilities) of $10,000x and of that number $2000x are liabilities held by a foreign related party. FC is an applicable taxpayer with respect to its effectively connected income. Assume all of the interest expense is deductible in the current taxable year and that none of the interest is subject to the effectively connected income exception in paragraph (b)(3)(iii) of this section.

(ii) *Analysis.* Under paragraph (b)(4)(i) of this section, the total amount of interest expense determined under § 1.882–5 that is a base erosion payment is $65x ($60x + 5x). FC has $60x of interest on U.S.-booked liabilities that is paid to a foreign related party and that is treated as a base erosion payment under paragraph (b)(4)(i)(A)(*1*) of this section. Additionally, $5x of the $25x of interest on excess U.S.-connected liabilities is treated as a base erosion payment under paragraph (b)(4)(i)(A)(*2*) of this section ($25x * ($2000x/$10,000x)).

(3) *Example 3: Interaction with section 163(j).* (i) *Facts.* Foreign Parent (FP) is a foreign corporation that owns all of the stock of DC, a domestic corporation that is an applicable taxpayer. In Year 1, DC has adjusted taxable income, as defined in section 163(j)(8), of $1000x and pays the following amounts of business interest expense: $420x that is paid to unrelated Bank, and $360x that is paid to FP. DC does not earn any business interest income or incur any floor plan financing interest expense in Year 1. None of the exceptions in paragraph (b)(3) of this section apply, and the interest is not subject to withholding.

(ii) *Analysis*—(A) *Classification of business interest.* In Year 1, DC is only permitted to deduct $300x of business interest expense under section 163(j)(1) ($1000x × 30%). Paragraph (c)(4)(ii)(B) of this section provides that for purposes of paragraph (c)(1) of this section the deduction is treated first as foreign related business interest expense and domestic related business interest expense (here, only FP); and second as unrelated business interest expense (Bank). As a result, the $300x of business interest expense that is permitted under section 163(j)(1) is treated entirely as the business interest paid to the related foreign party, FP. All of DC's $300x deductible interest is treated as an add-back to modified taxable income in the Year 1 taxable year for purposes of § 1.59A–4(b)(2)(i).

(B) *Ordering rules for business interest expense carryforward.* Under section 163(j)(2), the $480x of disallowed business interest ($420x + $360x − $300x) is carried forward to the subsequent year. Under paragraph (c)(4)(ii)(B)(*1*) and (*2*) of this section, the interest carryforward is correspondingly treated first as unrelated business interest expense, and second pro-rata as foreign related business interest expense and domestic related business interest expense. As a result, $420x of the $480x business interest expense carryforward is treated first as business interest expense paid to Bank and the remaining $60x of the $480x business interest expense carryforward is treated as interest paid to FP and as an add-back to modified taxable income.

(4) *Example 4: Interaction with section 163(j); carryforward.* (i) *Facts.* The facts are the same as in paragraph (d)(3) of this section (the facts in *Example 3*), except that in addition, in Year 2, DC has adjusted taxable income of $250x, and pays the following amounts of business interest expense: $50x that is paid to unrelated Bank, and $45x that is paid to FP. DC does not earn any business interest income or incur any floor plan financing interest expense in Year 2. None of the exceptions in paragraph (b)(3) of this section apply.

(ii) *Analysis*—(A) *Classification of business interest.* In Year 2, for purposes of section 163(j)(1), DC is treated as having paid or accrued total business interest of $575x, consisting of $95x business interest expense actually paid in Year 2 and $480x of business interest expense that is carried forward from Year 1. DC is permitted to deduct $75x of business interest expense in Year 2 under the limitation in section 163(j)(1) ($250x × 30%). Section 1.163(j)–5(b)(2) provides that, for purposes of section 163(j), the allowable business interest expense is first attributed to amounts paid or accrued in the current year, and then attributed to amounts carried over from earlier years on a first-in-first-out basis from the earliest year. Accordingly, the $75x of deductible business interest expense is deducted entirely from the $95x business interest expense incurred in Year 2 for section 163(j) purposes. Because DC's business interest expense deduction is limited under section 163(j)(1) and because DC's total business interest expense is attributable to more than one taxable year, paragraph (c)(4)(ii)(B)(*2*) of this section provides that the ordering rule in paragraph (c)(4)(ii)(B)(*1*) of this section is applied separately to each annual amount of section 163(j) disallowed business interest expense carryforward. With respect to the Year 2 layer, which is deducted first, paragraph (c)(4)(ii)(B) of this section provides that, for purposes of paragraph (c)(1) of this section, the Year 2 $75x deduction is treated first as foreign related business interest expense and domestic related business interest expense (here, only FP, $45x); and second as unrelated business interest expense (Bank, $30x). Consequentially, all of the $45x deduction of business interest expense that was paid to FP in Year 2 is treated as a base erosion tax benefit and an add-back to

modified taxable income for the Year 2 taxable year for purposes of § 1.59A–4(b)(2)(i).

(B) *Ordering rules for business interest expense carryforward.* The disallowed business interest expense carryforward of $20x from Year 2 is correspondingly treated first as interest paid to Bank under paragraph (c)(4)(i) of this section. The disallowed business interest expense carryforward of $480x from the Year 1 layer that is also not allowed as a deduction in Year 2 remains treated as $420x paid to Bank and $60 paid to FP.

(5) *Example 5: Interaction with section 163(j); carryforward.* (i) *Facts.* The facts are the same as in paragraph (d)(4) of this section (the facts in *Example 4*), except that in addition, in Year 3, DC has adjusted taxable income of $4000x and pays no business interest expense. DC does not earn any business interest income or incur any floor plan financing interest expense in Year 3.

(ii) *Analysis.* In Year 3, DC is treated as having paid or accrued total business interest expense of $500x, consisting of $480x of business interest expense that is carried forward from Year 1 and $20x of business interest expense that is carried forward from Year 2 for purposes of section 163(j)(1). DC is permitted to deduct $1200x of business interest expense in Year 3 under the limitation in section 163(j)(1) ($4000x × 30%). For purposes of section 163(j), DC is treated as first deducting the business interest expense from Year 1 then the business interest expense from Year 2. See § 1.163(j)–5(b)(2). Because none of DC's $500x business interest expense is limited under section 163(j), the stacking rule in paragraph (c)(4)(ii) of this section for allowed and disallowed business interest expense does not apply. For purposes of § 1.59A–4(b)(2)(i), DC's add-back to modified taxable income is $60x determined by the classifications in paragraph (c)(4)(i)(A) of this section ($60x treated as paid to FP from Year 1).

(6) *Example 6: Interaction with section 163(j); partnership.* (i) *Facts.* The facts are the same as in paragraph (d)(4) of this section (the facts in *Example 4*), except that in addition, in Year 2, DC forms a domestic partnership (PRS) with Y, a domestic corporation that is not related to DC within the meaning of § 1.59A–1(b)(17). DC and Y are equal partners in partnership PRS. In Year 2, PRS has ATI of $100x and $48x of business interest expense. $12x of PRS's business interest expense is paid to Bank, and $36x of PRS's business interest expense is paid to FP. PRS allocates the items comprising its $100x of ATI $50x to DC and $50x to Y. PRS allocates its $48x of business interest expense $24x to DC and $24x to Y. DC classifies its $24x of business interest expense as $6x unrelated business interest expense (Bank) and $18x as foreign related business interest expense (FP) under paragraph (c)(4)(i)(B) of this section. Y classifies its $24x of business interest expense as entirely unrelated business interest expense of Y (Bank and FP) under paragraph (c)(4)(i)(B) of this section. None of the exceptions in paragraph (b)(3) of this section apply.

(ii) *Partnership level analysis.* In Year 2, PRS's section 163(j) limit is 30 percent of its ATI, or $30x ($100x × 30 percent). Thus, PRS has $30x of deductible business interest expense and $18x of excess business interest expense ($48x − $30x). The $30x of deductible business interest expense is includible in PRS's non-separately stated income or loss, and is not subject to further limitation under section 163(j) at the partners' level.

(iii) *Partner level allocations analysis.* Pursuant to § 1.163(j)–6(f)(2), DC and Y are each allocated $15x of deductible business interest expense and $9x of excess business interest expense. At the end of Year 2, DC and Y each have $9x of excess business interest expense from PRS, which under § 1.163(j)–6 is not treated as paid or accrued by the partner until such partner is allocated excess taxable income or excess business interest income from PRS in a succeeding year. Pursuant to § 1.163(j)–6(e), DC and Y, in computing their limit under section 163(j), do not increase any of their section 163(j) items by any of PRS's section 163(j) items.

(iv) *Partner level allocations for determining base erosion tax benefits.* The $15x of deductible business interest expense allocated to DC is treated first as foreign related business interest expense (FP) under paragraph (c)(4)(ii)(B) of this section. DC's excess business interest expense from PRS of $9x is classified first as the unrelated business interest expense with respect to Bank ($6x) and then as the remaining portion of the business interest expense paid to FP ($3x, or $18x − $15x). Under paragraph (c)(4)(ii)(B)(*3*) of this section, these classifications of the PRS items apply irrespective of the classifications of DC's own interest expense as set forth in paragraph (d)(4) of this section (*Example 4*).

(v) *Computation of modified taxable income.* For Year 2, DC is treated as having incurred base erosion tax benefits of $60x, consisting of the $15x base erosion tax benefit with respect to its interest in PRS that is computed in paragraph (d)(6)(iii) of this section (*Example 6*) and $45x that is computed in paragraph (d)(4) of this section (*Example 4*).

(7) *Example 7: Transfers of property to related taxpayers.* (i) *Facts.* FP is a foreign corporation that owns all of the stock of DC1 and DC2, both domestic corporations. DC1 and DC2 are both members of the same aggregate group but are not members of the same consolidated tax group under section 1502. In Year 1, FP sells depreciable property to DC1. On the first day of the Year 2 tax year, DC1 sells the depreciable property to DC2.

(ii) *Analysis*—(A) *Year 1.* The acquisition of depreciable property by DC1 from FP is a base erosion payment under paragraph (b)(1)(ii) of this section because there is a payment to a foreign related party in connection with the acquisition by the taxpayer of property of a character subject to the allowance for depreciation.

(B) *Year 2.* The acquisition of the depreciable property in Year 2 by DC2 is not itself a base erosion payment because DC2 did not acquire the property from a foreign related party. However, under paragraph (b)(2)(vi) of this section any depreciation expense taken by DC2 on the property acquired from DC1 is a base erosion payment and a base erosion tax benefit under paragraph (c)(1)(ii) of this section because the acquisition of the depreciable property was a base erosion payment by DC1 and the property was sold to a member of the aggregate group; therefore, the depreciation expense continues as a base erosion tax benefit to DC2 as it would have been to DC1 if it continued to own the property.

§ 1.59A–4 Modified taxable income.

(a) *Scope.* Paragraph (b)(1) of this section provides rules for computing modified taxable income. Paragraph (b)(2) of this section provides rules addressing how base erosion tax benefits and net operating losses affect modified taxable income. Paragraph (b)(3) of this section provides a rule for a holder of a residual interest in a REMIC. Paragraph (c) of this section provides examples illustrating the rules described in this section.

(b) *Computation of modified taxable income*—(1) *In general.* The term *modified taxable income* means a taxpayer's taxable income, as defined in section 63(a), determined with the additions described in paragraph (b)(2) of this section. Notwithstanding the foregoing, the taxpayer's taxable income may not be reduced to an amount less than zero as a result of a net operating loss deduction allowed under section 172. See paragraphs (c)(1) and (2) of this section (*Examples 1* and *2*).

(2) *Modifications to taxable income.* The amounts described in this paragraph (b)(2) are added back to a taxpayer's taxable income to determine its modified taxable income.

(i) *Base erosion tax benefits.* The amount of any base erosion tax benefit as defined in § 1.59A–3(c)(1).

(ii) *Certain net operating loss deductions.* The base erosion percentage, as described in § 1.59A–2(e)(3), of any net operating loss deduction allowed to the taxpayer under section 172 for the taxable year. For purposes of determining modified taxable income, the net operating loss deduction allowed does not exceed taxable income before taking into account the net operating loss deduction. See paragraph (c)(1) and (2) of this section (*Examples 1* and *2*). The base erosion percentage for the taxable year that the net operating loss arose is used to determine the addition under this paragraph (b)(2)(ii). For a net operating loss that arose in a taxable year beginning before January 1, 2018, the base erosion percentage for the taxable year is zero.

(3) *Rule for holders of a residual interest in a REMIC.* For purposes of

paragraph (b)(1) of this section, the limitation in section 860E(a)(1) is not taken into account for determining the taxable income amount that is used to compute modified taxable income for the taxable year.

(c) *Examples.* The following examples illustrate the rules of paragraph (b) of this section.

(1) *Example 1: Current year loss.* (i) *Facts.* A domestic corporation (DC) is an applicable taxpayer that has a calendar taxable year. In 2020, DC has gross income of $100x, a deduction of $80x that is not a base erosion tax benefit, and a deduction of $70x that is a base erosion tax benefit. In addition, DC has a net operating loss carryforward to 2020 of $400x that arose in 2016.

(ii) *Analysis.* DC's starting point for computing modified taxable income is $(50x), computed as gross income of $100x, less a deduction of $80x (non-base erosion tax benefit) and a deduction of $70x (base erosion tax benefit). Under paragraph (b)(2)(ii) of this section, DC's starting point for computing modified taxable income does not take into account the $400x net operating loss carryforward because the allowable deductions for 2020, not counting the NOL deduction, exceed the gross income for 2020. DC's modified taxable income for 2020 is $20x, computed as $(50x) + $70x base erosion tax benefit.

(2) *Example 2: Net operating loss deduction.* (i) *Facts.* The facts are the same as in paragraph (c)(1)(i) of this section (the facts in *Example 1*), except that DC's gross income in 2020 is $500x.

(ii) *Analysis.* DC's starting point for computing modified taxable income is $0x, computed as gross income of $500x, less: A deduction of $80x (non-base erosion tax benefit), a deduction of $70x (base erosion tax benefit), and a net operating loss deduction of $350x (which is the amount of taxable income before taking into account the net operating loss deduction, as provided in paragraph (b)(2)(ii) of this section ($500x − $150x)). DC's modified taxable income for 2020 is $70x, computed as $0x + $70x base erosion tax benefit. DC's modified taxable income is not increased as a result of the $350x net operating loss deduction in 2020 because the base erosion percentage of the net operating loss that arose in 2016 is zero under paragraph (b)(2)(ii) of this section.

§ 1.59A–5 Base erosion minimum tax amount.

(a) *Scope.* Paragraph (b) of this section provides rules regarding the calculation of the base erosion minimum tax amount. Paragraph (c) of this section describes the base erosion and anti-abuse tax rate applicable to the taxable year.

(b) *In general.* With respect to any applicable taxpayer, the base erosion minimum tax amount for any taxable year is, the excess (if any) of—

(1) An amount equal to the base erosion and anti-abuse tax rate multiplied by the modified taxable income of the taxpayer for the taxable year, over

(2) An amount equal to the regular tax liability as defined in § 1.59A–1(b)(16) of the taxpayer for the taxable year, reduced (but not below zero) by the excess (if any) of—

(i) The credits allowed under chapter 1 of subtitle A of the Code against regular tax liability over

(ii) The sum of the credits described in paragraph (b)(3) of this section.

(3) *Credits that do not reduce regular tax liability.* The sum of the following credits are used in paragraph (b)(2)(ii) of this section to limit the amount by which the credits allowed under chapter 1 of subtitle A of the Internal Revenue Code reduce regular tax liability—

(i) *Taxable years beginning on or before December 31, 2025.* For any taxable year beginning on or before December 31, 2025—

(A) The credit allowed under section 38 for the taxable year that is properly allocable to the research credit determined under section 41(a);

(B) The portion of the applicable section 38 credits not in excess of 80 percent of the lesser of the amount of those applicable section 38 credits or the base erosion minimum tax amount (determined without regard to this paragraph (b)(3)(i)(B)); and

(C) Any credits allowed under sections 33 and 37.

(ii) *Taxable years beginning after December 31, 2025.* For any taxable year beginning after December 31, 2025, any credits allowed under sections 33 and 37.

(c) *Base erosion and anti-abuse tax rate*—(1) *In general.* For purposes of calculating the base erosion minimum tax amount, the base erosion and anti-abuse tax rate is—

(i) *Calendar year 2018.* For taxable years beginning in calendar year 2018, five percent.

(ii) *Calendar years 2019 through 2025.* For taxable years beginning after December 31, 2018, through taxable years beginning before January 1, 2026, 10 percent.

(iii) *Calendar years after 2025.* For taxable years beginning after December 31, 2025, 12.5 percent.

(2) *Increased rate for banks and registered securities dealers.* In the case of a taxpayer that is a member of an affiliated group (as defined in section 1504(a)(1)) that includes a bank or a registered securities dealer, the percentage otherwise in effect under paragraph (c)(1) of this section is increased by one percentage point.

(3) *Application of section 15.* Section 15 does not apply to any taxable year that includes January 1, 2018. See § 1.15–1(d). For a taxpayer using a taxable year other than the calendar year, section 15 applies to any taxable year beginning after January 1, 2018.

§ 1.59A–6 Qualified derivative payment.

(a) *Scope.* This section provides additional guidance regarding qualified derivative payments. Paragraph (b) of this section defines the term qualified derivative payment. Paragraph (c) of this section provides guidance on certain payments that are not treated as qualified derivative payments. Paragraph (d) defines the term derivative for purposes of section 59A. Paragraph (e) of this section provides an example illustrating the rules of this section.

(b) *Qualified derivative payment*—(1) *In general.* A *qualified derivative payment* means any payment made by a taxpayer to a foreign related party pursuant to a derivative with respect to which the taxpayer—

(i) Recognizes gain or loss as if the derivative were sold for its fair market value on the last business day of the taxable year (and any additional times as required by the Internal Revenue Code or the taxpayer's method of accounting);

(ii) Treats any gain or loss so recognized as ordinary; and

(iii) Treats the character of all items of income, deduction, gain, or loss with respect to a payment pursuant to the derivative as ordinary.

(2) *Reporting requirements*—(i) *In general.* No payment is a qualified derivative payment under paragraph (b)(1) of this section for any taxable year unless the taxpayer reports the information required in § 1.6038A–2(b)(7)(ix) for the taxable year.

(ii) *Failure to satisfy the reporting requirement.* If a taxpayer fails to satisfy the reporting requirement described in paragraph (b)(2)(i) of this section with respect to any payments, those payments will not be eligible for the qualified derivative payment exception described in § 1.59A–3(b)(3)(ii). A taxpayer's failure to report a payment as a qualified derivative payment does not impact the eligibility of any other payment which the taxpayer properly reported under paragraph (b)(2)(i) of this section from being a qualified derivative payment.

(3) *Amount of any qualified derivative payment.* The amount of any qualified derivative payment excluded from the denominator of the base erosion percentage as provided in § 1.59A–2(e)(3)(ii)(C) is determined as provided in § 1.59A–2(e)(3)(vi).

(c) *Exceptions for payments otherwise treated as base erosion payments.* A

payment does not constitute a qualified derivative payment if—

(1) The payment would be treated as a base erosion payment if it were not made pursuant to a derivative, including any interest, royalty, or service payment; or

(2) In the case of a contract that has derivative and nonderivative components, the payment is properly allocable to the nonderivative component.

(d) *Derivative defined*—(1) *In general.* For purposes of this section, the term *derivative* means any contract (including any option, forward contract, futures contract, short position, swap, or similar contract) the value of which, or any payment or other transfer with respect to which, is (directly or indirectly) determined by reference to one or more of the following:

(i) Any share of stock in a corporation;

(ii) Any evidence of indebtedness;

(iii) Any commodity that is actively traded;

(iv) Any currency; or

(v) Any rate, price, amount, index, formula, or algorithm.

(2) *Exceptions.* The following contracts are not treated as derivatives for purposes of section 59A.

(i) *Direct interest.* A derivative contract does not include a direct interest in any item described in paragraph (d)(1)(i) through (v) of this section.

(ii) *Insurance contracts.* A derivative contract does not include any insurance, annuity, or endowment contract issued by an insurance company to which subchapter L applies (or issued by any foreign corporation to which the subchapter would apply if the foreign corporation were a domestic corporation).

(iii) *Securities lending and sale-repurchase transactions.* A derivative contract does not include any securities lending transaction, sale-repurchase transaction, or substantially similar transaction. Securities lending transaction and sale-repurchase transaction have the same meaning as provided in § 1.861–2(a)(7).

(3) *American depository receipts.* For purposes of section 59A, American depository receipts (or any similar instruments) with respect to shares of stock in a foreign corporation are treated as shares of stock in that foreign corporation.

(e) *Example.* The following example illustrates the rules of this section.

(1) *Facts.* Domestic Corporation (DC) is a dealer in securities within the meaning of section 475. On February 1, 2019, DC enters into a contract (Interest Rate Swap) with Foreign Parent (FP), a foreign related party, for a term of five years. Under the Interest Rate Swap, DC is obligated to make a payment to FP each month, beginning March 1, 2019, in an amount equal to a variable rate determined by reference to the prime rate, as determined on the first business day of the immediately preceding month, multiplied by a notional principal amount of $50 million. Under the Interest Rate Swap, FP is obligated to make a payment to DC each month, beginning March 1, 2019, in an amount equal to 5% multiplied by the same notional principal amount. The Interest Rate Swap satisfies the definition of a notional principal contract under § 1.446–3(c). DC recognizes gain or loss on the Interest Rate Swap pursuant to section 475. DC reports the information required to be reported for the taxable year under § 1.6038A–2(b)(7)(ix).

(2) *Analysis.* The Interest Rate Swap is a derivative as described in paragraph (d) of this section because it is a contract that references the prime rate and a fixed rate for determining the amount of payments. The exceptions described in paragraph (c) of this section do not apply to the Interest Rate Swap. Because DC recognizes ordinary gain or loss on the Interest Rate Swap pursuant to section 475(d)(3), it satisfies the condition in paragraph (b)(1)(ii) of this section. Because DC satisfies the requirement relating to the information required to be reported under paragraph (b)(2) of this section, any payment to FP with respect to the Interest Rate Swap will be a qualified derivative payment. Therefore, under § 1.59A–3(b)(3)(ii), the payments to FP are not base erosion payments.

§ 1.59A–7 Application of base erosion and anti-abuse tax to partnerships.

(a) *Scope.* This section provides rules regarding how partnerships and their partners are treated for purposes of section 59A. Paragraph (b) of this section provides the general application of an aggregate approach to partnerships for purposes of section 59A, including specific rules addressing the application of section 59A to amounts paid or accrued by a partnership to a related party, rules addressing the application of section 59A to amounts paid or accrued to a partnership from a related party, and other operating rules. Paragraph (c) of this section provides rules for determining whether a party is a foreign related party.

(b) *Application of section 59A to a partnership*—(1) *In general.* Except as otherwise provided in this section, section 59A is applied at the partner level in the manner described in this section. The provisions of section 59A must be interpreted in a manner consistent with this approach.

(2) *Payment made by a partnership.* Except as provided in paragraph (b)(4) of this section, for purposes of determining whether a payment or accrual by a partnership is a base erosion payment, any amount paid or accrued by a partnership is treated as paid or accrued by each partner based on the partner's distributive share of items of deduction (or other amounts that could be base erosion tax benefits) with respect to that amount (as determined under section 704).

(3) *Payment received by a partnership.* For purposes of determining whether a payment or accrual to a partnership is a base erosion payment of the payor, any amount paid or accrued to a partnership is treated as paid or accrued to each partner based on the partner's distributive share of the income or gain with respect to that amount (as determined under section 704).

(4) *Exception for base erosion tax benefits of certain partners*—(i) *In general.* For purposes of determining a partner's amount of base erosion tax benefits, a partner does not take into account its distributive share of any partnership amount of base erosion tax benefits for the taxable year if—

(A) The partner's interest in the partnership represents less than ten percent of the capital and profits of the partnership at all times during the taxable year;

(B) The partner is allocated less than ten percent of each partnership item of income, gain, loss, deduction, and credit for the taxable year; and

(C) The partner's interest in the partnership has a fair market value of less than $25 million on the last day of the partner's taxable year, determined using a reasonable method.

(ii) *Attribution.* For purposes of paragraph (b)(4)(i) of this section, a partner's interest in a partnership or partnership item is determined by adding the interests of the partner and any related party of the partner (as determined under section 59A), taking into account any interest owned directly, indirectly, or through constructive ownership (applying the section 318 rules as modified by section 59A (except section 318(a)(3)(A) through (C) will also apply so as to consider a United States person as owning stock that is owned by a person who is not a United States person), but excluding any interest to the extent already taken into account).

(5) *Other relevant items*—(i) *In general.* For purposes of section 59A, subject to paragraph (b)(4) of this section, each partner is treated as owning its share of the partnership items determined under section 704, including the assets of the partnership, using a reasonable method with respect to the assets. For items that are allocated to the partners, the partner is treated as owning its distributive share (including of deductions and base erosion tax

benefits). For items that are not allocated to the partners, the partner is treated as owning an interest proportionate with the partner's distributive share of partnership income.

(ii) *Gross receipts*—(A) *In general.* For purposes of section 59A, each partner in the partnership includes a share of partnership gross receipts in proportion to the partner's distributive share (as determined under section 704) of items of gross income that were taken into account by the partnership under section 703.

(B) *Foreign corporation.* A foreign corporation takes into account a share of gross receipts only with regard to receipts that produce income that is effectively connected with the conduct of a trade or business within the United States. In the case of a foreign corporation that determines its net taxable income under an applicable income tax treaty, the foreign corporation takes into account its share of gross receipts only with regard to such gross receipts that are taken into account in determining its net taxable income.

(iii) *Registered securities dealers.* If a partnership, or a branch of the partnership, is a registered securities dealer, each partner is treated as a registered securities dealer unless the partner's interest in the registered securities dealer would satisfy the criteria for the exception in paragraph (b)(4) of this section. For purposes of applying the de minimis exception in § 1.59A–2(e)(2)(iii), the partner takes into account its distributive share of the relevant partnership items.

(iv) *Application of sections 163(j) and 59A(c)(3) to partners of partnerships.* See § 1.59A–3(c)(4).

(6) *Tiered partnerships.* If the partner of a partnership is a partnership, then paragraphs (b) and (c) of this section are applied again at the level of the partner, applying this paragraph successively until the partner is not a partnership. Paragraph (b)(4) of this section is only applied at the level where the partner is not itself a partnership.

(c) *Foreign related party.* With respect to any person that owns an interest in a partnership, the related party determination in section 59A(g) applies at the partner level.

§ 1.59A–8 Application of base erosion and anti-abuse tax to certain expatriated entities. [Reserved]

§ 1.59A–9 Anti-abuse and recharacterization rules.

(a) *Scope.* This section provides rules for recharacterizing certain transactions according to their substance for purposes of applying section 59A and the section 59A regulations. Paragraph (b) of this section provides specific anti-abuse rules. Paragraph (c) of this section provides examples illustrating the rules of paragraph (b) of this section.

(b) *Anti-abuse rules*—(1) *Transactions involving unrelated persons, conduits, or intermediaries.* If a taxpayer pays or accrues an amount to one or more intermediaries (including an intermediary unrelated to the taxpayer) that would have been a base erosion payment if paid or accrued to a foreign related party, and one or more of the intermediaries makes (directly or indirectly) corresponding payments to or for the benefit of a foreign related party as part of a transaction (or series of transactions), plan or arrangement that has as a principal purpose avoiding a base erosion payment (or reducing the amount of a base erosion payment), the role of the intermediary or intermediaries is disregarded as a conduit, or the amount paid or accrued to the intermediary is treated as a base erosion payment, as appropriate.

(2) *Transactions to increase the amount of deductions taken into account in the denominator of the base erosion percentage computation.* A transaction (or component of a transaction or series of transactions), plan or arrangement that has a principal purpose of increasing the deductions taken into account for purposes of § 1.59A–2(e)(3)(i)(B) (the denominator of the base erosion percentage computation) is disregarded for purposes of § 1.59A–2(e)(3).

(3) *Transactions to avoid the application of rules applicable to banks and registered securities dealers.* A transaction (or series of transactions), plan or arrangement that occurs among related parties that has a principal purpose of avoiding the rules applicable to certain banks and registered securities dealers in § 1.59A–2(e)(2) (base erosion percentage test for banks and registered securities dealers) or § 1.59A–5(c)(2) (increased base erosion and anti-abuse tax rate for banks and registered securities dealers) is not taken into account for purposes of § 1.59A–2(e)(2) or § 1.59A–5(c)(2).

(c) *Examples.* The following examples illustrate the application of paragraph (b) of this section. For purposes of all of the examples, assume that FP, a foreign corporation, owns all the stock of DC, a domestic corporation and an applicable taxpayer and that none of the foreign corporations are subject to federal income taxation with respect to income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States under an applicable provision of the Internal Revenue Code or regulations thereunder. Also assume that all payments occur in a taxable year beginning after December 31, 2017.

(1) *Example 1: Substitution of payments that are not base erosion payments for payments that otherwise would be base erosion payments through a conduit or intermediary.* (i) *Facts.* FP owns Property 1 with a fair market value of $95x, which FP intends to transfer to DC. A payment from DC to FP for Property 1 would be a base erosion payment. Corp A is a domestic corporation that is not a related party with respect to DC. As part of a plan with a principal purpose of avoiding a base erosion payment, FP enters into an arrangement with Corp A to transfer Property 1 to Corp A in exchange for $95x. Pursuant to the same plan, Corp A transfers Property 1 to DC in exchange for $100x. Property 1 is subject to the allowance for depreciation (or amortization in lieu of depreciation) in the hands of DC.

(ii) *Analysis.* The arrangement between FP, DC, and Corp A is deemed to result in a $95x base erosion payment under paragraph (b)(1) of this section because DC's payment to Corp A would have been a base erosion payment if paid to a foreign related person, and Corp A makes a corresponding payment to FP as part of the series of transactions that has as a principal purpose avoiding a base erosion payment.

(2) *Example 2: Alternative transaction to base erosion payment.* (i) *Facts.* The facts are the same as in paragraph (c)(1)(i) of this section (the facts in *Example 1*), except that DC does not purchase Property 1 from FP or Corp A. Instead, DC purchases Property 2 from Corp B, a domestic corporation that is not a related party with respect to DC and that originally produced or acquired Property 2 for Corp B's own account. Property 2 is substantially similar to Property 1, and DC uses Property 2 in substantially the same manner that DC would have used Property 1.

(ii) *Analysis.* Paragraph (b)(1) of this section does not apply to the transaction between DC and Corp B because Corp B does not make a corresponding payment to or for the benefit of FP as part of a transaction, plan or arrangement.

(3) *Example 3: Alternative financing source.* (i) *Facts.* On Date 1, FP loaned $200x to DC in exchange for Note A. DC pays or accrues interest annually on Note A, and the payment or accrual is a base erosion payment within the meaning of § 1.59A–3(b)(1)(i). On Date 2, DC borrows $200x from Bank, a corporation that is not a related party with respect to DC, in exchange for Note B. The terms of Note B are substantially similar to the terms of Note A. DC uses the proceeds from Note B to repay Note A.

(ii) *Analysis.* Paragraph (b)(1) of this section does not apply to the transaction between DC and Bank because Bank does not make a corresponding payment to or for the benefit of FP as part of the series of transactions.

(4) *Example 4: Alternative financing source that is a conduit.* (i) *Facts.* The facts are the same as in paragraph (c)(3)(i) of this section (the facts in *Example 3*) except that in

addition, with a principal purpose of avoiding a base erosion payment, and as part of the same plan or arrangement as the Note B transaction, FP deposits $250x with Bank. The difference between the interest rate paid by Bank to FP on FP's deposit and the interest rate paid by DC to Bank is less than one percentage point. The interest rate charged by Bank to DC would have differed absent the deposit by FP.

(ii) *Analysis.* The transactions between FP, DC, and Bank are deemed to result in a base erosion payment under paragraph (b)(1) of this section because DC's payment to Bank would have been a base erosion payment if paid to a foreign related person, and Bank makes a corresponding payment to FP as part of the series of transactions that has as a principal purpose avoiding a base erosion payment. See Rev. Rul. 87–89, 1987–2 C.B. 195, Situation 3.

(5) *Example 5: Transactions to increase the amount of deductions taken into account in the denominator of the base erosion percentage computation.* (i) *Facts.* With a principal purpose of increasing the deductions taken into account by DC for purposes of § 1.59A–2(e)(3)(i)(B), DC enters into a long position with respect to Asset with Financial Institution 1 and simultaneously enters into a short position with respect to Asset with Financial Institution 2. Financial Institution 1 and Financial Institution 2 are not related to DC and are not related to each other.

(ii) *Analysis.* Paragraph (b)(2) of this section applies and the transactions between DC and Financial Institution 1 and DC and Financial Institution 2. These transactions are not taken into account for purposes of § 1.59A–2(e)(3)(i)(B) because the transactions have a principal purpose of increasing the deductions taken into account for purposes of § 1.59A–2(e)(3)(i)(B).

§ 1.59A–10 Applicability date.

Sections 1.59A–1 through 1.59A–9 apply to taxable years beginning after December 31, 2017.

■ **Par. 3.** Section 1.383–1 is amended by adding two sentences at the end of paragraph (d)(3)(i) to read as follows:

§ 1.383–1 Special limitations on certain capital losses and excess credits.

* * * * *

(d) * * *

(3) * * *

(i) * * * The application of section 59A is not a limitation contained in subtitle A for purposes of this paragraph (d)(3)(i). Therefore, the treatment of pre-change losses and pre-change credits in the computation of the base erosion minimum tax amount will not affect whether such losses or credits result in absorption of the section 382 limitation and the section 383 credit limitation.

* * * * *

■ **Par. 4.** Section 1.1502–2 is revised to read as follows:

§ 1.1502–2 Computation of tax liability.

(a) *Taxes imposed.* The tax liability of a group for a consolidated return year is determined by adding together—

(1) The tax imposed by section 11(a) in the amount described in section 11(b) on the consolidated taxable income for the year (reduced by the taxable income of a member described in paragraphs (a)(5) through (8) of this section);

(2) The tax imposed by section 541 on the consolidated undistributed personal holding company income;

(3) If paragraph (a)(2) of this section does not apply, the aggregate of the taxes imposed by section 541 on the separate undistributed personal holding company income of the members which are personal holding companies;

(4) If neither paragraph (a)(2) nor (3) of this section apply, the tax imposed by section 531 on the consolidated accumulated taxable income (see § 1.1502–43);

(5) The tax imposed by section 594(a) in lieu of the taxes imposed by section 11 on the taxable income of a life insurance department of the common parent of a group which is a mutual savings bank;

(6) The tax imposed by section 801 on consolidated life insurance company taxable income;

(7) The tax imposed by section 831(a) on consolidated insurance company taxable income of the members which are subject to such tax;

(8) Any increase in tax described in section 1351(d)(1) (relating to recoveries of foreign expropriation losses); and

(9) The tax imposed by section 59A on base erosion payments of taxpayers with substantial gross receipts.

(b) *Credits.* A group is allowed as a credit against the taxes described in paragraph (a) (except for paragraph (a)(9) of this section) of this section: the general business credit under section 38 (see § 1.1502–3), the foreign tax credit under section 27 (see § 1.1502–4), and any other applicable credits provided under the Internal Revenue Code. Any increase in tax due to the recapture of a tax credit will be taken into account. See section 59A and the regulations thereunder for credits allowed against the tax described in paragraph (a)(9) of this section.

(c) *Allocation of dollar amounts.* For purposes of this section, if a member or members of the consolidated group are also members of a controlled group that includes corporations that are not members of the consolidated group, any dollar amount described in any section of the Internal Revenue Code is apportioned among all members of the controlled group in accordance with the provisions of the applicable section and the regulations thereunder.

(d) *Applicability date*—(1) Except as provided in paragraph (d)(2) of this section, this section applies to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

(2) Paragraph (a)(9) of this section applies to consolidated return years beginning after December 31, 2017.

■ **Par.5.** Section 1.1502–4 is amended by revising paragraph (d)(3) to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(d) * * *

(3) *Computation of tax against which credit is taken.* The tax against which the limiting fraction under section 904(a) is applied will be the consolidated tax liability of the group determined under § 1.1502–2, but without regard to paragraphs (a)(2), (3), (4), (8), and (9) of that section, and without regard to any credit against such liability.

* * * * *

■ **Par.6.** Section 1.1502–43 is amended by revising paragraph (b)(2)(i)(A) to read as follows:

§ 1.1502–43 Consolidated accumulated earnings tax.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The consolidated liability for tax determined without § 1.1502–2(a)(2) through (a)(4), and without the foreign tax credit provided by section 27, over

* * * * *

■ **Par.7.** Section 1.1502–47 is amended by revising paragraph (f)(7)(iii) to read as follows.

§ 1.1502–47 Consolidated returns by life-nonlife groups.

* * * * *

(f) * * *

(7) * * *

(iii) Any taxes described in § 1.1502–2 (other than by paragraphs (a)(1) and (d)(6) of that section).

* * * * *

■ **Par.8.** Section 1.1502–59A is added to read as follows:

§ 1.1502–59A Application of section 59A to consolidated groups.

(a) *Scope.* This section provides rules for the application of section 59A and the regulations thereunder (the *section*

59A regulations, see §§ 1.59A–1 through 1.59A–10) to consolidated groups and their members (as defined in § 1.1502–1(h) and (b), respectively). Rules in the section 59A regulations apply to consolidated groups except as modified in this section. Paragraph (b) of this section provides rules treating a consolidated group (rather than each member of the group) as a single taxpayer, and a single applicable taxpayer, as relevant, for certain purposes. Paragraph (c) of this section coordinates the application of the business interest stacking rule under § 1.59A–3(c)(4) to consolidated groups. Paragraph (d) of this section addresses how the base erosion minimum tax amount is allocated among members of the consolidated group. Paragraph (e) of this section sets forth definitions. Paragraph (f) of this section provides examples. Paragraph (g) of this section provides the applicability date and a transition rule.

(b) *Consolidated group as the applicable taxpayer*—(1) *In general.* For purposes of determining whether the consolidated group is an applicable taxpayer (within the meaning of § 1.59A–2(b)) and the amount of tax due pursuant to section 59A(a), all members of a consolidated group are treated as a single taxpayer. Thus, for example, members' deductions are aggregated in making the required computations under section 59A. In addition, items resulting from intercompany transactions (as defined in § 1.1502–13(b)(1)(i)) are disregarded for purposes of making the required computations. For example, additional depreciation deductions resulting from intercompany asset sales are not taken into account for purposes of applying the base erosion percentage test under § 1.59A–2(e).

(2) *Consolidated group as member of the aggregate group.* The consolidated group is treated as a single member of an aggregate group for purposes of § 1.59A–2(c).

(3) *Related party determination.* For purposes of section 59A and the section 59A regulations, if a person is a related party with respect to any member of a consolidated group, that person is a related party of the group and of each of its members.

(c) *Coordination of section 59A(c)(3) and section 163(j) in a consolidated group*—(1) *Overview.* This paragraph (c) provides rules regarding the application of § 1.59A–3(c)(4) to a consolidated group's section 163(j) interest deduction. The classification rule in paragraph (c)(3) of this section addresses how to determine if, and to what extent, the group's section 163(j) interest deduction is a base erosion tax benefit. These regulations contain a single-entity classification rule with regard to the deduction of the consolidated group's aggregate current year business interest expense (''BIE''), but a separate-entity classification rule for the deduction of the consolidated group's disallowed BIE carryforwards. Paragraph (c)(3) of this section classifies the group's aggregate current year BIE deduction, in conformity with § 1.59A–3(c)(4), as constituting domestic related current year BIE deduction, foreign related current year BIE deduction, or unrelated current year BIE deduction. The allocation rules in paragraph (c)(4) of this section then allocate to specific members of the group the domestic related current year BIE deduction, foreign related current year BIE deduction, and unrelated current year BIE deduction taken in the taxable year. Any member's current year BIE that is carried forward to the succeeding taxable year as a disallowed BIE carryforward is allocated a status as domestic related BIE carryforward, foreign related BIE carryforward, or unrelated BIE carryforward under paragraph (c)(5) of this section. The status of any disallowed BIE carryforward deducted by a member in a later year is classified on a separate-entity basis by the deducting member under paragraph (c)(3) of this section, based on the status allocated to the member's disallowed BIE carryforward under paragraph (c)(5) of this section. This paragraph (c) also provides rules regarding the consequences of the deconsolidation of a corporation that has been allocated a domestic related BIE carryforward status, a foreign related BIE carryforward status, or an unrelated BIE carryforward status; and the consolidation of a corporation with a disallowed BIE carryforward classified as from payments to a domestic related party, foreign related party, or unrelated party.

(2) *Absorption rule for the group's business interest expense.* To determine the amount of the group's section 163(j) interest deduction, and to determine the year in which the member's business interest expense giving rise to the deduction was incurred or accrued, see §§ 1.163(j)–4(d) and 1.163(j)–5(b)(3).

(3) *Classification of the group's section 163(j) interest deduction*—(i) *In general.* Consistent with § 1.59A–3(c)(4)(i) and paragraph (b) of this section, the classification rule of this paragraph (c)(3) determines whether the consolidated group's section 163(j) interest deduction is a base erosion tax benefit. To the extent the consolidated group's business interest expense is permitted as a deduction under section 163(j)(1) in a taxable year, the deduction is classified first as from business interest expense paid or accrued to a foreign related party and business interest expense paid or accrued to a domestic related party (on a pro-rata basis); any remaining deduction is treated as from business interest expense paid or accrued to an unrelated party.

(ii) *Year-by-year application of the classification rule.* If the consolidated group's section 163(j) interest deduction in any taxable year is attributable to business interest expense paid or accrued in more than one taxable year (for example, the group deducts the group's aggregate current year BIE, the group's disallowed BIE carryforward from year 1, and the group's disallowed BIE carryforward from year 2), the classification rule in paragraph (c)(3)(i) of this section applies separately to each of those years, pursuant to paragraphs (c)(3)(iii) and (iv) of this section.

(iii) *Classification of current year BIE deductions.* Current year BIE deductions are classified under the section 59A regulations and this paragraph (c) as if the consolidated group were a single taxpayer that had paid or accrued the group's aggregate current year BIE to domestic related parties, foreign related parties, and unrelated parties. The rules of paragraph (c)(4) of this section apply for allocating current year BIE deductions among members of the consolidated group. To the extent the consolidated group's aggregate current year BIE exceeds its section 163(j) limitation, the rules of paragraph (c)(5) of this section apply.

(iv) *Classification of deductions of disallowed BIE carryforwards.* Each member of the group applies the classification rule in this paragraph (c)(3) to its deduction of any part of a disallowed BIE carryforward from a year, after the group applies paragraph (c)(5) of this section to the consolidated group's disallowed BIE carryforward from that year. Therefore, disallowed BIE carryforward that is actually deducted by a member is classified based on the status of the components of that carryforward, assigned pursuant to paragraph (c)(5) of this section.

(4) *Allocation of domestic related current year BIE deduction status and foreign related current year BIE deduction status among members of the consolidated group*—(i) *In general.* This paragraph (c)(4) applies if the group has domestic related current year BIE deductions, foreign related current year BIE deductions, or both, as a result of the application of the classification rule in paragraph (c)(3) of this section. Under this paragraph (c)(4), the domestic

related current year BIE, foreign related current year BIE, or both, that is treated as deducted in the current year are deemed to have been incurred pro-rata by all members that have current year BIE deduction in that year, regardless of which member or members actually incurred the current year BIE to a domestic related party or a foreign related party.

(ii) *Domestic related current year BIE deduction*—(A) *Amount of domestic related current year BIE deduction status allocable to a member.* The amount of domestic related current year BIE deduction status that is allocated to a member is determined by multiplying the group's domestic related current year BIE deduction (determined pursuant to paragraph (c)(3) of this section) by the percentage of current year BIE deduction allocable to such member in that year.

(B) *Percentage of current year BIE deduction allocable to a member.* The percentage of current year BIE deduction allocable to a member is equal to the amount of the member's current year BIE deduction divided by the amount of the group's aggregate current year BIE deduction.

(iii) *Amount of foreign related current year BIE deduction status allocable to a member.* The amount of foreign related current year BIE deduction status that is allocated to a member is determined by multiplying the group's foreign related current year BIE deduction (determined pursuant to paragraph (c)(3) of this section) by the percentage of current year BIE deduction allocable to such member (defined in paragraph (c)(4)(ii)(B) of this section).

(iv) *Treatment of amounts as having unrelated current year BIE deduction status.* To the extent the amount of a member's current year BIE that is absorbed under paragraph (c)(2) of this section exceeds the domestic related current year BIE deduction status and foreign related current year BIE deduction status allocated to the member under paragraph (c)(4)(ii) and (iii) of this section, such excess amount is treated as from payments or accruals to an unrelated party.

(5) *Allocation of domestic related BIE carryforward status and foreign related BIE carryforward status to members of the group*—(i) *In general.* This paragraph (c)(5) applies in any year the consolidated group's aggregate current year BIE exceeds its section 163(j) limitation. After the application of paragraph (c)(4) of this section, any remaining domestic related current year BIE, foreign related current year BIE, and unrelated current year BIE is deemed to have been incurred pro-rata by members of the group pursuant to the rules in paragraph (c)(5)(ii), (iii), and (iv) of this section, regardless of which member or members actually incurred the business interest expense to a domestic related party, foreign related party, or unrelated party.

(ii) *Domestic related BIE carryforward*—(A) *Amount of domestic related BIE carryforward status allocable to a member.* The amount of domestic related BIE carryforward status that is allocated to a member equals the group's domestic related BIE carryforward from that year multiplied by the percentage of disallowed BIE carryforward allocable to the member.

(B) *Percentage of disallowed BIE carryforward allocable to a member.* The percentage of disallowed BIE carryforward allocable to a member for a taxable year equals the member's disallowed BIE carryforward from that year divided by the consolidated group's disallowed BIE carryforwards from that year.

(iii) *Amount of foreign related BIE carryforward status allocable to a member.* The amount of foreign related BIE carryforward status that is allocated to a member equals the group's foreign related BIE carryforward from that year multiplied by the percentage of disallowed BIE carryforward allocable to the member (as defined in paragraph (c)(5)(ii)(B) of this section).

(iv) *Treatment of amounts as having unrelated BIE carryforward status.* If a member's disallowed BIE carryforward for a year exceeds the amount of domestic related BIE carryforward status and foreign related BIE carryforward status that is allocated to the member pursuant to paragraphs (c)(5)(ii) and (iii) of this section, respectively, the excess carryforward amount is treated as from payments or accruals to an unrelated party.

(v) *Coordination with section 381.* If a disallowed BIE carryforward is allocated a status as a domestic related BIE carryforward, foreign related BIE carryforward, or unrelated BIE carryforward under the allocation rule of paragraph (c)(5) of this section, the acquiring corporation in a transaction described in section 381(a) will succeed to and take into account the allocated status of the carryforward for purposes of section 59A. See § 1.381(c)(20)–1.

(6) *Member deconsolidates from a consolidated group.* When a member deconsolidates from a group (the original group), the member's disallowed BIE carryforwards retain their allocated status, pursuant to paragraph (c)(5) of this section, as a domestic related BIE carryforward, foreign related BIE carryforward, or unrelated BIE carryforward (as applicable). Following the member's deconsolidation, no other member of the original group is treated as possessing the domestic related BIE carryforward status, foreign related BIE carryforward status, or unrelated BIE carryforward status that is carried forward by the departing member.

(7) *Corporation joins a consolidated group.* If a corporation joins a consolidated group (the acquiring group), and that corporation was allocated a domestic related BIE carryforward status, foreign related BIE carryforward status, or unrelated BIE carryforward status pursuant to paragraph (c)(5) of this section from another consolidated group (the original group), or separately has a disallowed BIE carryforward that is classified as from payments or accruals to a domestic related party, foreign related party, or unrelated party, the status of the carryforward is taken into account in determining the acquiring group's base erosion tax benefit when the corporation's disallowed BIE carryforward is absorbed.

(d) *Allocation of the base erosion minimum tax amount to members of the consolidated group.* For rules regarding the allocation of the base erosion minimum tax amount, see section 1552. Allocations under section 1552 take into account the classification and allocation provisions of paragraphs (c)(3) through (5) of this section.

(e) *Definitions.* The following definitions apply for purposes of this section—

(1) *Aggregate current year BIE.* The consolidated group's *aggregate current year BIE* is the aggregate of all members' current year BIE.

(2) *Aggregate current year BIE deduction.* The consolidated group's *aggregate current year BIE deduction* is the aggregate of all members' current year BIE deductions.

(3) *Applicable taxpayer.* The term *applicable taxpayer* has the meaning provided in § 1.59A–2(b).

(4) *Base erosion minimum tax amount.* The consolidated group's *base erosion minimum tax amount* is the tax imposed under section 59A.

(5) *Base erosion tax benefit.* The term *base erosion tax benefit* has the meaning provided in § 1.59A–3(c)(1).

(6) *Business interest expense.* The term *business interest expense,* with respect to a member and a taxable year, has the meaning provided in § 1.163(j)–1(b)(2), and with respect to a consolidated group and a taxable year, has the meaning provided in § 1.163(j)–4(d)(2)(iii).

(7) *Consolidated group's disallowed BIE carryforwards.* The term *consolidated group's disallowed BIE carryforwards* has the meaning provided in § 1.163(j)–5(b)(3)(i).

(8) *Current year BIE.* A member's *current year BIE* is the member's business interest expense that would be deductible in the current taxable year without regard to section 163(j) and that is not a disallowed business interest expense carryforward from a prior taxable year.

(9) *Current year BIE deduction.* A member's *current year BIE deduction* is the member's current year BIE that is permitted as a deduction in the taxable year.

(10) *Domestic related BIE carryforward.* The consolidated group's *domestic related BIE carryforward* for any taxable year is the excess of the group's domestic related current year BIE over the group's domestic related current year BIE deduction (if any).

(11) *Domestic related current year BIE.* The consolidated group's *domestic related current year BIE* for any taxable year is the consolidated group's aggregate current year BIE paid or accrued to a domestic related party.

(12) *Domestic related current year BIE deduction.* The consolidated group's *domestic related current year BIE deduction* for any taxable year is the portion of the group's aggregate current year BIE deduction classified as from interest paid or accrued to a domestic related party under paragraph (c)(3) of this section.

(13) *Domestic related party.* A *domestic related party* is a related party that is not a foreign related party and is not a member of the same consolidated group.

(14) *Disallowed BIE carryforward.* The term *disallowed BIE carryforward* has the meaning provided in § 1.163(j)–1(b)(9).

(15) *Foreign related BIE carryforward.* The consolidated group's *foreign related BIE carryforward* for any taxable year, is the excess of the group's foreign related current year BIE over the group's foreign related current year BIE deduction (if any).

(16) *Foreign related current year BIE.* The consolidated group's *foreign related current year BIE* for any taxable year is the consolidated group's aggregate current year BIE paid or accrued to a foreign related party.

(17) *Foreign related current year BIE deduction.* The consolidated group's *foreign related current year BIE deduction* for any taxable year is the portion of the consolidated group's aggregate current year BIE deduction classified as from interest paid or accrued to a foreign related party under paragraph (c)(3) of this section.

(18) *Foreign related party.* A *foreign related party* has the meaning provided in § 1.59A–1(b)(12).

(19) *Related party.* The term *related party* has the meaning provided in § 1.59A–1(b)(17), but excludes members of the same consolidated group.

(20) *Section 163(j) interest deduction.* The term *section 163(j) interest deduction* means, with respect to a taxable year, the amount of the consolidated group's business interest expense permitted as a deduction pursuant to § 1.163(j)–5(b)(3) in the taxable year.

(21) *Section 163(j) limitation.* The term *section 163(j) limitation* has the meaning provided in § 1.163(j)–1(b)(31).

(22) *Unrelated BIE carryforward.* The consolidated group's *unrelated BIE carryforward* for any taxable year is the excess of the group's unrelated current year BIE over the group's unrelated current year BIE deduction.

(23) *Unrelated current year BIE.* The consolidated group's *unrelated current year BIE* for any taxable year is the consolidated group's aggregate current year BIE paid or accrued to an unrelated party.

(24) *Unrelated current year BIE deduction.* The consolidated group's *unrelated current year BIE deduction* for any taxable year is the portion of the group's aggregate current year BIE deduction classified as from interest paid or accrued to an unrelated party under paragraph (c)(3) of this section.

(25) *Unrelated party.* An *unrelated party* is a party that is not a related party.

(f) *Examples.* The following examples illustrate the general application of this section. For purposes of the examples, a foreign corporation (FP) wholly owns domestic corporation (P), which in turn wholly owns S1 and S2. P, S1, and S2 are members of a consolidated group. The consolidated group is a calendar year taxpayer.

(1) *Example 1:* Computation of the consolidated group's base erosion minimum tax amount. (i) *The consolidated group is the applicable taxpayer.* (A) *Facts.* The members have never engaged in intercompany transactions. For the 2019 taxable year, P, S1, and S2 were permitted the following amounts of deductions (within the meaning of section 59A(c)(4)), $2,400x, $1,000x, and $2,600x; those deductions include base erosion tax benefits of $180x, $370x, and $230x. The group's consolidated taxable income for the year is $150x. In addition, the group satisfies the gross receipts test in § 1.59A–2(d).

(B) *Analysis.* Pursuant to paragraph (b) of this section, the receipts and deductions of P, S1, and S2 are aggregated for purposes of making the computations under section 59A. The group's base erosion percentage is 13% (($180x + $370x + $230x)/($2,400x + $1,000x + $2,600x)). The consolidated group is an applicable taxpayer under § 1.59A–2(b) because the group satisfies the gross receipts test and the group's base erosion percentage (13%) is higher than 3%. The consolidated group's modified taxable income is computed by adding back the members' base erosion tax benefits (and, when the consolidated group has consolidated net operating loss available for deduction, the consolidated net operating loss allowed times base erosion percentage) to the consolidated taxable income, $930x ($150x + $180x + $370x + $230x). The group's base erosion minimum tax amount is then computed as 10 percent of the modified taxable income less the regular tax liability, $61.5x ($930x × 10% − $150x × 21%).

(ii) *The consolidated group engages in intercompany transactions.* (A) *Facts.* The facts are the same as in paragraph (f)(1)(i)(A) of this section (the facts in *Example 1*(i)), except that S1 sold various inventory items to S2 during 2019. Such items are depreciable in the hands of S2 (but would not have been depreciable in the hands of S1) and continued to be owned by S2 during 2019.

(B) *Analysis.* The result is the same as paragraph (f)(1)(i)(A) of this section (the facts in *Example 1*(i)). Pursuant to paragraph (b)(2) of this section, items resulting from the intercompany sale (for example, gross receipts, depreciation deductions) are not taken into account in computing the group's gross receipts under § 1.59A–2(d) and base erosion percentage under § 1.59A–2(e)(3).

(2) *Example 2: Business interest expense subject to section 163(j) and the group's domestic related current year BIE and foreign related current year BIE for the year equals its section 163(j) limitation.* (i) *Facts.* During the current year (Year 1), P incurred $150x of business interest expense to domestic related parties; S1 incurred $150x of business interest expense to foreign related parties; and S2 incurred $150x of business interest expense to unrelated parties. The group's section 163(j) limitation for the year is $300x. After applying the rules in § 1.163(j)–5(b)(3), the group deducts $150x of P's Year 1 business interest expense, and $75x each of S1 and S2's Year 1 business interest expense. Assume the group is an applicable taxpayer for purposes of section 59A.

(ii) *Analysis*—(A) *Application of the absorption rule in paragraph (c)(2) of this section.* Following the rules in section 163(j), the group's section 163(j) interest deduction for Year 1 is $300x, and the entire amount is from members' Year 1 business interest expense.

(B) *Application of the classification rule in paragraph (c)(3) of this section.* Under paragraph (c)(3) of this section, the group's aggregate current year BIE deduction of $300x is first classified as payments or accruals to related parties (pro-rata among domestic related parties and foreign related parties), and second as payments or accruals to unrelated parties. For Year 1, the group has $150x of domestic related current year BIE and $150x of foreign related current year BIE, and the group's aggregate current year

BIE deduction will be classified equally among the related party expenses. Therefore, $150x of the group's deduction is classified as domestic related current year BIE deduction and $150x is classified as a foreign related current year BIE deduction.

(C) *Application of the allocation rule in paragraph (c)(4) of this section.* After the application of the classification rule in paragraph (c)(3) of this section, the group has $150x each of domestic related current year BIE deduction and foreign related current year BIE deduction from the group's aggregate current year BIE in Year 1. The domestic related current year BIE deduction and foreign related current year BIE deduction will be allocated to P, S1, and S2 based on each member's deduction of its Year 1 business interest expense.

(*1*) *Allocations to P.* The percentage of current year BIE deduction attributable to P is 50% (P's deduction of its Year 1 current year BIE, $150x, divided by the group's aggregate current year BIE deduction for Year 1, $300x). Thus, the amount of domestic related current year BIE deduction status allocated to P is $75x (the group's domestic related current year BIE deduction, $150x, multiplied by the percentage of current year BIE deduction allocable to P, 50%); and the amount of foreign related current year BIE deduction status allocated to P is $75x (the group's foreign related current year BIE deduction, $150x, multiplied by the percentage of current year BIE deduction allocable to P, 50%).

(*2*) *Allocations to S1 and S2.* The percentage of current year BIE deduction attributable to S1 is 25% (S1's deduction of its Year 1 current year BIE, $75x, divided by the group's aggregate current year BIE deduction for Year 1, $300x). Thus, the amount of domestic related current year BIE deduction status allocated to S1 is $37.5x (the group's domestic related current year BIE deduction, $150x, multiplied by the percentage of current year BIE deduction allocable to S1, 25%); and the amount of foreign related current year BIE deduction status allocated to S1 is $37.5x (the group's foreign related current year BIE deduction, $150x, multiplied by the percentage of current year BIE deduction allocable to S1, 25%). Because S2 also deducted $75 of its Year 1 current year BIE, S2's deductions are allocated the same pro-rata status as those of S1 under this paragraph (f)(2)(ii)(C)(*2*).

(D) *Application of the allocation rule in paragraph (c)(5) of this section.* Although the group will have disallowed BIE carryforwards after Year 1 (the group's aggregate current year BIE of $450x ($150x + $150x + $150x) exceeds the section 163(j) limitation of $300x), all of the domestic related current year BIE and foreign related current year BIE in Year 1 has been taken into account pursuant to the classification rule in paragraph (c)(3) of this section. Thus, under paragraph (c)(5)(iv) of this section, each member's disallowed BIE carryforward is treated as from payments or accruals to unrelated parties.

(3) *Example 3: Business interest expense subject to section 163(j).* (i) *The group's domestic related current year BIE and foreign related current year BIE for the year exceeds its section 163(j) limitation.* (A) *Facts.* During the current year (Year 1), P incurred $60x of business interest expense to domestic related parties; S1 incurred $40x of business interest expense to foreign related parties; and S2 incurred $80x of business interest expense to unrelated parties. The group's section 163(j) limitation for the year is $60x. After applying the rules in § 1.163(j)–5(b)(3), the group deducts $20x each of P, S1, and S2's current year business interest expense. Assume the group is an applicable taxpayer for purposes of section 59A.

(B) *Analysis*—(*1*) *Application of the absorption rule in paragraph (c)(2) of this section.* Following the rules in section 163(j), the group's section 163(j) interest deduction is $60x, and the entire amount is from members' Year 1 business interest expense.

(*2*) *Application of the classification rule in paragraph (c)(3) of this section.* Under paragraph (c)(3) of this section, the group's $60x of aggregate current year BIE deduction is first classified as payments or accruals to related parties (pro-rata among domestic related parties and foreign related parties), and second as payments or accruals from unrelated parties. The group's total related party interest expense in Year 1, $100x (sum of the group's Year 1 domestic related current year BIE, $60x, and the group's Year 1 foreign related current year BIE, $40x), exceeds the group's aggregate current year BIE deduction of $60x. Thus, the group's aggregate current year BIE deduction will be classified, pro-rata, as from payments or accruals to domestic related parties and foreign related parties. Of the group's aggregate current year BIE deduction in Year 1, $36x is classified as a domestic related current year BIE deduction (the group's aggregate current year BIE deduction, $60x, multiplied by the ratio of domestic related current year BIE over the group's total Year 1 related party interest expense ($60x/($60x + $40x))); and $24x of the group's aggregate current year BIE deduction is classified as a foreign related current year BIE deduction (the group's section 163(j) interest deduction, $60x, multiplied by the ratio of foreign related current year BIE over the group's total Year 1 related party interest expense ($40x/($60x + $40x))).

(*3*) *Application of the allocation rule in paragraph (c)(4) of this section.* After the application of the classification rule in paragraph (c)(3) of this section, the group has $36x of domestic related current year BIE deduction and $24x of foreign related current year BIE deduction from the group's aggregate current year BIE in Year 1. The domestic related current year BIE deduction and foreign related current year BIE deduction will be allocated to P, S1, and S2 based on each member's current year BIE deduction in Year 1.

(*i*) *Allocation of the group's domestic related current year BIE deduction status.* Because each member is deducting $20x of its Year 1 business interest expense, all three members have the same percentage of current year BIE deduction attributable to them. The percentage of current year BIE deduction attributable to each of P, S1, and S2 is 33.33% (each member's current year BIE deduction in Year 1, $20x, divided by the group's aggregate current year BIE deduction for Year 1, $60x). Thus, the amount of domestic related current year BIE deduction status allocable to each member is $12x (the group's domestic related current year BIE deduction, $36x, multiplied by the percentage of current year BIE deduction allocable to each member, 33.33%).

(*ii*) *Allocations of the group's foreign related current year BIE deduction status.* The amount of foreign related current year BIE deduction status allocable to each member is $8x (the group's foreign related current year BIE deduction, $24x, multiplied by the percentage of current year BIE deduction allocable to each member, 33.33%, as computed earlier in paragraph (f)(3) of this section (*Example 3*).

(*4*) *Application of the allocation rule in paragraph (c)(5) of this section.* In Year 1 the group has $60x of domestic related current year BIE, of which $36x is deducted in the year (by operation of the classification rule). Therefore, the group has $24x of domestic related BIE carryforward. Similarly, the group has $40x of foreign related current year BIE in Year 1, of which $24x is deducted in the year. Therefore, the group has $16x of foreign related BIE carryforward. The $24x domestic related BIE carryforward status and $16x foreign related BIE carryforward status will be allocated to P, S1, and S2 in proportion to the amount of each member's disallowed BIE carryforward.

(*i*) *Allocation to P.* The percentage of disallowed BIE carryforward allocable to P is 33.33% (P's Year 1 disallowed BIE carryforward, $40x ($60x − $20x), divided by the group's Year 1 disallowed BIE carryforward, $120x ($60x + $40x + 80x − $60x)). Thus, the amount of domestic related BIE carryforward status allocated to P is $8x (the group's domestic related BIE carryforward, $24x, multiplied by the percentage of disallowed BIE carryforward allocable to P, 33.33%); and the amount of foreign related BIE carryforward status allocated to P is $5.33x (the group's foreign related BIE carryforward, $16x, multiplied by the percentage of disallowed BIE carryforward allocable to P, 33.33%). Under paragraph (c)(5)(iv) of this section, P's disallowed BIE carryforward that has not been allocated a status as either a domestic related BIE carryforward or a foreign related BIE carryforward will be treated as interest paid or accrued to an unrelated party. Therefore, $26.67x ($40x P's disallowed BIE carryforward − $8x domestic related BIE carryforward status allocated to P − $5.33x foreign related BIE carryforward status allocated to P) is treated as interest paid or accrued to an unrelated party.

(*ii*) *Allocation to S1.* The percentage of disallowed BIE carryforward allocable to S1 is 16.67% (S1's Year 1 disallowed BIE carryforward, $20x ($40x − $20x), divided by the group's Year 1 disallowed BIE carryforward, $120x ($60x + $40x + 80x − $60x). Thus, the amount of domestic related BIE carryforward status allocated to S1 is $4x (the group's domestic related BIE carryforward, $24x, multiplied by the percentage of disallowed BIE carryforward allocable to S1, 16.67%); and the amount of foreign related BIE carryforward status

allocated to S1 is $2.67x (the group's foreign related BIE carryforward, $16x, multiplied by the percentage of disallowed BIE carryforward allocable to S1, 16.67%). Under paragraph (c)(5)(iv) of this section, S1's disallowed BIE that has not been allocated a status as either a domestic related BIE carryforward or a foreign related BIE carryforward will be treated as interest paid or accrued to an unrelated party. Therefore, $13.33x ($20x S1's disallowed BIE carryforward − $4x domestic related BIE carryforward status allocated to S1 − $2.67x foreign related BIE carryforward status allocated to S1) is treated as interest paid or accrued to an unrelated party.

(*iii*) *Allocation to S2.* The percentage of disallowed BIE carryforward allocable to S2 is 50% (S2's Year 1 disallowed BIE carryforward, $60x ($80x − $20x), divided by the group's Year 1 disallowed BIE carryforward, $120x ($60x + $40x + 80x − $60x). Thus, the amount of domestic related BIE carryforward status allocated to S2 is $12x (the group's domestic related BIE carryforward, $24x, multiplied by the percentage of disallowed BIE carryforward allocable to S2, 50%); and the amount of foreign related BIE carryforward status allocated to S2 is $8x (the group's foreign related BIE carryforward, $16x, multiplied by the percentage of disallowed BIE carryforward allocable to S2, 50%). Under paragraph (c)(5)(iv) of this section, S2's disallowed BIE that has not been allocated a status as either a domestic related BIE carryforward or a foreign related BIE carryforward will be treated as interest paid or accrued to an unrelated party. Therefore, $40x ($60x S2's disallowed BIE carryforward − $12x domestic related BIE carryforward status allocated to S2 − $8x foreign related BIE carryforward status allocated to S2) is treated as interest paid or accrued to an unrelated party.

(ii) *The group deducting its disallowed BIE carryforwards.* (A) *Facts.* The facts are the same as in paragraph (f)(3)(i)(A) of this section (the facts in *Example 3*(i)), and in addition, none of the members incurs any business interest expense in Year 2. The group's section 163(j) limitation for Year 2 is $30x.

(B) *Analysis*—(*1*) *Application of the absorption rule in paragraph (c)(2) of this section.* Following the rules in section 163(j), each member of the group is deducting $10x of its disallowed BIE carryforward from Year 1. Therefore, the group's section 163(j) deduction for Year 2 is $30x.

(*2*) *Application of the classification rule in paragraph (c)(3) of this section.* Under paragraph (c)(3)(iv) of this section, to the extent members are deducting their Year 1 disallowed BIE carryforward in Year 2, the classification rule will apply to the deduction in Year 2 after the allocation rule in paragraph (c)(5) of this section has allocated the related and unrelated party status to the member's disallowed BIE carryforward in Year 1. The allocation required under paragraph (c)(5) of this section is described in paragraph (f)(3)(i)(B)(*4*) of this section.

(*i*) *Use of P's allocated domestic related BIE carryforward status and foreign related BIE carryforward status.* P has $40x of Year 1 disallowed BIE carryforward, and P was allocated $8x of domestic related BIE carryforward status and $5.33x of foreign related BIE carryforward status. In Year 2, P deducts $10x of its Year 1 disallowed BIE carryforward. Under the classification rule of paragraph (c)(3) of this section, P is treated as deducting pro-rata from its allocated status of domestic related BIE carryforward and foreign related BIE carryforward. Therefore, P is treated as deducting $6x of its allocated domestic related BIE carryforward ($10x × $8x/($8x + $5.33x)), and $4x of its allocated foreign related BIE carryforward ($10x × $5.33x/$8x + $5.33x)). After Year 2, P has remaining $30x of Year 1 disallowed BIE carryforward, of which $2x has a status of domestic related BIE carryforward, $1.33x has the status of foreign related BIE carryforward, and $26.67x of interest treated as paid or accrued to unrelated parties.

(*ii*) *Use of S1's allocated domestic related BIE carryforward status and foreign related BIE carryforward status.* S1 has $20x of Year 1 disallowed BIE carryforward, and S1 was allocated $4x of domestic related BIE carryforward status and $2.67x of foreign related BIE carryforward status. In Year 2, S2 deducts $10x of its Year 1 disallowed BIE carryforward. Because S2's deduction of its Year 1 disallowed BIE carryforward, $10x, exceeds its allocated domestic related BIE carryforward status ($4x) and foreign related BIE carryforward status ($2.67x), all of the allocated related party status are used up. After Year 2, all of S1's Year 1 disallowed BIE carryforward, $10x, is treated as interest paid or accrued to an unrelated party.

(*iii*) *Use of S2's allocated domestic related BIE carryforward status and foreign related BIE carryforward status.* S2 has $60x of Year 1 disallowed BIE carryforward, and S2 was allocated $12x of domestic related BIE carryforward status and $8x of foreign related BIE carryforward status. In Year 2, S2 deducts $10x of its Year 1 disallowed BIE carryforward. Under the classification rule of paragraph (c)(3) of this section, S2 is treated as deducting $6x of its allocated domestic related BIE carryforward ($10x × $12x/($12x + $8x)), and $4x of its allocated foreign related BIE carryforward ($10x × $8x/$8x + $12x)). After Year 2, P has remaining $50x of Year 1 disallowed BIE carryforward, of which $6x has a status of domestic related BIE carryforward, $4x has the status of foreign related BIE carryforward, and $40x of interest treated as paid or accrued to unrelated parties.

(g) *Applicability date*—(1) *In general.* Except as provided in this paragraph (g), this section applies to taxable years beginning after December 31, 2017.

(2) *Application of section 59A if S joins a consolidated group with a taxable year beginning before January 1, 2018.* If during calendar year 2018 a corporation (S) joins a consolidated group during a consolidated return year beginning before January 1, 2018, then section 59A will not apply to S's short taxable year that is included in the group's consolidated return year, even though S's short taxable year begins after December 31, 2017.

■ **Par. 9.** Section 1.1502–100 is amended by revising paragraph (b) to read as follows:

§ 1.1502–100 Corporations exempt from tax.

* * * * *

(b) The tax liability for a consolidated return year of an exempt group is the tax imposed by section 511(a) on the consolidated unrelated taxable income for the year (determined under paragraph (c) of this section), and by allowing the credits provided in § 1.1502–2(b).

* * * * *

■ **Par. 10.** Section 1.6038A–1 is amended by adding a sentence to the end of paragraph (n)(2) and revising the last sentence of paragraph (n)(3) to read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(n) * * *

(2) * * * Section 1.6038A–2(a)(3), (b)(6), and (b)(7) apply for taxable years beginning after December 31, 2017.

(3) * * * For taxable years ending on or before December 31, 2017, see § 1.6038A–4 as contained in 26 CFR part 1 revised as of April 1, 2018.

* * * * *

■ **Par. 11.** Section 1.6038A–2 is amended by

■ 1. Revising the headings for paragraphs (a) and (a)(1).

■ 2. Revising paragraph (a)(2).

■ 3. Adding paragraph (a)(3).

■ 4. Revising paragraphs (b)(1)(ii), (b)(2)(iv), and the second sentence of paragraph (b)(3).

■ 5. Redesignating paragraphs (b)(6) through (b)(9) as paragraphs (b)(8) through (b)(11).

■ 6. Adding new paragraphs (b)(6) and (7).

■ 7. Revising paragraph (c) and the first sentence of paragraph (d).

■ 8. Removing the language ''Paragraph (b)(8)'' from the second sentence of paragraph (g) and adding the language ''Paragraph (b)(10)'' in its place.

■ 9. Adding two sentences to the end of paragraph (g).

The revisions and additions read as follows:

§ 1.6038A–2 Requirement of return.

(a) *Forms required.* (1) *Form 5472.* * * *

(2) *Reportable transaction.* A reportable transaction is any transaction of the types listed in paragraphs (b)(3) and (4) of this section, and, in the case of a reporting corporation that is an applicable taxpayer, as defined under § 1.59A–2(b), any other arrangement

that, to prevent avoidance of the purposes of section 59A, is identified on Form 5472 as a reportable transaction. However, except as the Secretary may prescribe otherwise for an applicable taxpayer, the transaction is not a reportable transaction if neither party to the transaction is a United States person as defined in section 7701(a)(30) (which, for purposes of section 6038A, includes an entity that is a reporting corporation as a result of being treated as a corporation under § 301.7701–2(c)(2)(vi) of this chapter) and the transaction—

(i) Will not generate in any taxable year gross income from sources within the United States or income effectively connected, or treated as effectively connected, with the conduct of a trade or business within the United States, and

(ii) Will not generate in any taxable year any expense, loss, or other deduction that is allocable or apportionable to such income.

(3) *Form 8991.* Each reporting corporation that is an applicable taxpayer, as defined under § 1.59A–2(b), must make an annual information return on Form 8991. The obligation of an applicable taxpayer to report on Form 8991 does not depend on applicability of tax under section 59A or obligation to file Form 5472.

(b) * * *

(1) * * *

(ii) The name, address, and U.S. taxpayer identification number, if applicable, of all its direct and indirect foreign shareholders (for an indirect 25-percent foreign shareholder, explain the attribution of ownership); whether any 25-percent foreign shareholder is a surrogate foreign corporation under section 7874(a)(2)(B) or a member of an expanded affiliated group as defined in section 7874(c)(1); each country in which each 25-percent foreign shareholder files an income tax return as a resident under the tax laws of that country; the places where each 25-percent shareholder conducts its business; and the country or countries of organization, citizenship, and incorporation of each 25-percent foreign shareholder.

* * * * *

(2) * * *

(iv) The relationship of the reporting corporation to the related party (including, to the extent the form may prescribe, any intermediate relationships).

(3) * * * The total amount of such transactions, as well as the separate amounts for each type of transaction described below, and, to the extent the form may prescribe, any further description, categorization, or listing of transactions within these types, must be reported on Form 5472, in the manner the form prescribes. * * *

* * * * *

(6) *Compilation of reportable transactions across multiple related parties.* A reporting corporation must, to the extent and in the manner Form 5472 may prescribe, include a schedule tabulating information with respect to related parties for which the reporting corporation is required to file Forms 5472. The schedule will not require information (beyond totaling) that is not required for the individual Forms 5472. The schedule may include the following:

(i) The identity and status of the related parties;

(ii) The reporting corporation's relationship to the related parties;

(iii) The reporting corporation's reportable transactions with the related parties; and

(iv) Other items required to be reported on Form 5472.

(7) *Information on Form 5472 and Form 8991 regarding base erosion payments.* If any reporting corporation is an applicable taxpayer, as defined under § 1.59A–2(b), it must report the information required by Form 8991 and by any Form 5472 it is required to file, regarding:

(i) Determination of whether a taxpayer is an applicable taxpayer;

(ii) Computation of base erosion minimum tax amount, including computation of regular tax liability as adjusted for purposes of computing base erosion minimum tax amount;

(iii) Computation of modified taxable income;

(iv) Base erosion tax benefits;

(v) Base erosion percentage calculation;

(vi) Base erosion payments;

(vii) Amounts with respect to services as described in § 1.59A–3(b)(3)(i), including a breakdown of the amount of the total services cost and any mark-up component;

(viii) Arrangements or transactions described in § 1.59A–9;

(ix) Any qualified derivative payment, including:

(A) The aggregate amount of qualified derivative payments for the taxable year, including as determined by type of derivative contract;

(B) The identity of each counterparty and the aggregate amount of qualified derivative payments made to that counterparty; and

(C) A representation that all payments satisfy the requirements of § 1.59A–6(b)(2), and

(x) Any other information necessary to carry out section 59A.

* * * * *

(c) *Method of reporting.* All statements required on or with the Form 5472 or Form 8991 under this section and § 1.6038A–5 must be in the English language. All amounts required to be reported under paragraph (b) of this section must be expressed in United States currency, with a statement of the exchange rates used, and, to the extent the forms may require, must indicate the method by which the amount of a reportable transaction or item was determined.

(d) * * * A Form 5472 and Form 8991 required under this section must be filed with the reporting corporation's income tax return for the taxable year by the due date (including extensions) of that return. * * *

* * * * *

(g) * * * Paragraph (b)(7)(ix) of this section applies to taxable years beginning one year after final regulations are published in the **Federal Register**. Before these regulations are applicable, a taxpayer will be treated as satisfying the reporting requirement described in § 1.59A–6(b)(2) only to the extent that it reports the aggregate amount of qualified derivative payments on Form 8991.

§ 1.6038A–4 [Amended]

■ **Par. 12.** For each paragraph listed in the table, remove the language in the ''Remove'' column from wherever it appears and add in its place the language in the ''Add'' column as set forth below:

Section	Remove	Add
Section 1.6038A–4(a)(1)	$10,000	$25,000
Section 1.6038A–4(a)(3)	10,000	25,000
Section 1.6038A–4(d)(1)	10,000	25,000
Section 1.6038A–4(d)(4)	10,000	25,000
Section 1.6038A–4(f)	10,000	25,000
Section 1.6038A–4(f)	30,000	75,000

Section	Remove	Add
Section 1.6038A–4(f)	90,000	225,000

§ 1.6655–5 [Amended]

■ **Par. 13.** Section 1.6655–5 is amended by removing the language ''§ 1.1502–2(h)'' in paragraph (e) *Example 10* and adding the language''§ 1.1502–1(h)'' in its place.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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Part VI

Department of Energy

10 CFR Part 1045
Nuclear Classification and Declassification; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 1045

[AU60–2016–1045]

RIN 1992–AA49

Nuclear Classification and Declassification

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Energy (DOE) revises its regulations concerning the requirements for classification and declassification of Restricted Data (RD) and Formerly Restricted Data (FRD). Since 1997, when DOE issued the regulation, changes in legislation and DOE and national policies have rendered portions of the existing regulations outdated. In this final rule, DOE addresses these changes. Additional changes clarify requirements, as well as allow agencies more flexibility in implementing RD/FRD programs. DOE has also made revisions for clarity and reorganized for ease of use.

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

FOR FURTHER INFORMATION CONTACT: Lesley Nelson-Burns, Office of Quality Management, Department of Energy, AU–61/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585, (301) 903–4861 or *lesley.nelson-burns@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority and Reasons for Regulation

The Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (AEA), is the basis for the classification of nuclear-weapons related information as Restricted Data (RD), and information transclassified from the RD category. The AEA grants the Department of Energy (DOE) Government-wide authority for RD and the control of information as RD. Title 10 of the Code of Federal Regulations (CFR) part 1045 (this part) implements DOE authority under the AEA to manage the Government-wide system of classifying and declassifying RD. This part prescribes procedures for the identification of RD, FRD, and TFNI, describes how members of the public may request the release of RD, FRD, TFNI, and DOE National Security Information (NSI), and sets forth the process to appeal decisions regarding such requests.

In 1997, DOE issued a final rule in 10 CFR part 1045 that established the Government-wide responsibilities and requirements for RD and FRD. 62 FR 68502 (Dec. 31, 1997). The DOE affirmed in the preamble to the final rule that this DOE rule would establish the policies and procedures implementing the requirements of the AEA for the classification and declassification of RD and FRD. The rule also implemented the provisions of the E.O. 12958 pertaining to NSI that directly affect the public. The final rule included several requirements intended to provide increased transparency and accountability to the process of classifying and declassifying RD and FRD. These included options for the public to submit suggestions and complaints about classification policy, and for persons to submit challenges to classification determinations and declassification proposals. The rule also identified the specific criteria to be used to determine if information is RD, to declassify RD, and prohibitions on the application of classification.

B. Reasons for Revisions

On April 23, 2018, DOE issued a proposed rule to amend part 1045 (2018–07990). For background on the proposed rule and a discussion of the changes DOE proposed and the reasons for those changes, please see proposed rule. DOE received comments on the rule and has addressed those comments in section II. DOE made changes to the proposal in response to the comments, as described in section I.C.

In this final rule, DOE revises this part to: update DOE organizational responsibilities; incorporate changes in the Atomic Energy Act; Executive Order 13526, *Classified National Security Information;* and 32 CFR part 2001, *Classified National Security Information; Final Rule,* as well as to improve policies and procedures due to lessons learned and feedback from other Federal agencies (agencies).

Section 142(e) of the AEA authorizes the transclassification of information concerning the atomic programs of other nations. Under section 142(e), RD concerning the atomic energy programs of other nations is transclassified by joint agreement with the Director of Central Intelligence (DCI) or the DNI to facilitate sharing in the Intelligence Community (IC). Information transclassified under section 142 of the AEA, did not have a unique name or marking prior to being named TFNI in 2010 under 32 CFR part 2001. Prior to 2010, documents containing this information had no special identifier, were handled in a manner similar to NSI, and were not marked as exempt from automatic declassification. Although the information concerns foreign nuclear programs, the information may be the same or similar to U.S. RD, which is never automatically declassified due to its sensitivity. To ensure this information is not automatically declassified and inadvertently released, E.O. 13526 recognized the Secretary of Energy's authority to determine its declassification. The Information Security Oversight Office (ISOO) of the National Archives and Records Administration, in coordination with DOE, developed language to incorporate TFNI marking requirements into 32 CFR 2001.24(i).

Revisions to this part mirror the marking policies jointly developed by DOE and ISOO contained in 32 CFR part 2001 and ISOO Notice 2011–02. These policies ensure matter containing RD, FRD, and TFNI are not automatically declassified. These policies are publicly available from the ISOO website at *https://www.archives.gov/isoo.*

In addition, revisions to this part define specific responsibilities and authorities for TFNI, authorities for the return of FRD and TFNI to the RD category as permitted by changes to Section 142 of the AEA, and the marking of matter that commingles RD/FRD/TFNI with NSI or Controlled Unclassified Information (CUI). Many changes are based on DOE's experience assisting other agencies in implementing this part.

E.O. 12866 states regulations must be ''simple and easy to understand, with the goal of minimizing uncertainty and

litigation. . .'' (Sec. 1, Par. (b)(12)) and E.O. 12988 states that each regulation must specify its effect ''in clear language'' (Sec. 3 Par. (b)(2)). In accordance with these E.O.s, this regulation is rewritten for clarity and reorganized for ease of use.

DOE consulted with other agencies and incorporated many of their recommendations in the revision to this part. For example, the rule permits RD Derivative Classifiers to remove RD, FRD, and TFNI from matter under certain circumstances when the resulting matter remains classified. The changes to this part do not significantly impact current practices and many of the changes provide greater flexibility for agencies in implementing their RD programs.

C. Summary of Revisions

For ease of use, this section serves as a crosswalk from the previous rule to this final rule. Each subpart notes the location of content in the previous rule and its new location. Changes to the content are discussed where the new location is noted.

1. Subpart A

Subpart A, previously titled, ''Program Management of the Restricted Data and Formerly Restricted Data Classification System,'' was renamed ''Introduction.'' Subpart A previously contained § 1045.1 to § 1045.9. It now contains § 1045.5 to § 1045.35. Sections are now numbered by fives to allow for future additions. The new sections contain introductory information on this part including: the purpose and application of this part; how to submit comments and requests for equivalencies and exemptions; sanctions that may be implemented against violators of this regulation; and definitions and acronyms used in this part. Information concerning program management and individual responsibilities was moved to Subpart B.

The sections of Subpart A were changed as follows:

—§ 1045.1: This content was moved to § 1045.5.
—§ 1045.2: This content was moved to § 1045.10(a).
—§ 1045.3: This content was moved to § 1045.30.
—§ 1045.4: This content was moved to § 1045.45.
—§ 1045.5: This content was moved to § 1045.25.
—§ 1045.6: This content was deleted. The Openness Advisory Panel (OAP) was a subcommittee of the Secretary of Energy Advisory Board (SEAB). In May 2006, the Secretary abolished the SEAB and the OAP was not reconstituted when the SEAB was re-established in 2010. To encourage persons with access to RD, FRD, or TFNI and the public to inform DOE of records of interest, DOE has revised the sections in this part on classification challenges and declassification proposals to provide more information on these processes.
—§ 1045.7: This content was moved to § 1045.15.
—§ 1045.8: This content was moved to § 1045.20.
—§ 1045.9: This content was moved to § 1045.45(g).

The sections of Subpart A are now as follows:

—§ 1045.5: This content was previously in sections § 1045.1, § 1045.10, and § 1045.30. It now addresses the purpose of 10 CFR part 1045 and its subparts. The descriptions of the purpose of each subpart have been changed to reflect the new content and organization of each subpart.
—§ 1045.10: To lessen duplication, this content now consolidates the applicability sections of each subpart, (formerly § 1045.2, § 1045.11, § 1045.31, and § 1045.51). The requirements for generating information and matter are in separate sections in the rule to clarify the distinct authorities and processes for each.
—§ 1045.15: This content was previously in § 1045.7. The address for the DOE Office of Classification was updated.
—§ 1045.20: This content was previously in § 1045.8. The term ''procedural exemption'' has been changed to ''equivalencies and exemptions'' for greater clarity and to increase flexibility. Rather than requesting a complete exemption to a requirement, DOE permits agencies request an equivalency, by providing an alternate but sufficient method of meeting a requirement. Due to the addition of equivalencies, the information required in a submission for an exemption or equivalency has been expanded. The addresses were also updated.
—§ 1045.25: This content was previously in § 1045.5. There have been no substantive changes to this content.
—§ 1045.30: This content was previously in § 1045.3. Several definitions were added, removed, or revised as follows:
—Associate RD Management Official (ARDMO)—added to formalize existing practice of Restricted Data Management Officials (RDMOs) acting through deputies.
—Associate Under Secretary for Environment, Health, Safety and Security replaced ''Chief Health, Safety and Security officer'' to reflect DOE reorganizations.
—Classification Category—new definition to clarify the specific authority for RD, FRD, and TFNI.
—Classification Guidance—new definition to clarify that guidance is approved by an appropriate authority and to provide examples of types of guidance.
—Classified Matter—replaced ''documents and material'' to be consistent with current policies.
—Downgrading—defined to describe downgrading of information and matter.
—Initial Determination—defined to identify the process by which new information is determined to be RD.
—Originating Activity—defined to clarify the circumstances in which matter may be distributed as a working paper.
—Restricted Data Derivative Classifier—replaced Restricted Data Classifier to clarify all decisions of an RD Classifier are derivative.
—TFNI—added to define information removed from the RD category under section 142(e) of the AEA.
—TFNI Guidelines—added to define TFNI-specific policies issued by agencies.
—Upgrading—added for persons to better understand the difference between upgrading information (DOE-only) and matter (any RD Derivative Classifier) to ensure in both cases the appropriate authority is exercised.
—The following existing definitions were revised for clarity:
—Agency—added TFNI.
—Automatic Declassification—revised to reflect E.O. 13526.
—Classification—includes information classified by statute (the AEA).
—Classification Guide—edited for clarity.
—Classification Level
—Added TFNI.
—Removed definition of Confidential for NSI because this is defined in E.O. 13526 and should not be duplicated here because it does not apply to RD, FRD, or TFNI.
—Classified Information—added TFNI; clarified that classified NSI includes information classified under E.O. 13526.
—Declassification—edited for clarity.
—Director, Office of Classification—removed reference to organizational placement of Director, Office of Classification as it is not necessary
—Interagency Security Classification Appeals Panel (ISCAP)—updated to reflect E.O. 13526.

—National Security—definition changed to refer to definition used by E.O. 13526.
—National Security Information—defined as pursuant to E.O. 13526. Removed clause describing ''defense information'' as used in the AEA because it is obsolete and not pertinent to this rule.
—Portion Marking—edited for clarity.
—RD Management Official—edited to streamline definition.
—Source Document—edited to emphasize the requirement for RD Derivative Classifiers to use only portion marked source documents.

The following definitions were deleted as they are not used in this part:

—Authorized Holder—this term was replaced by ''person with access.''
—Document—removed. All references are now to ''matter.''
—§ 1045.35: This new content contains the acronyms used in the regulation.

2. Subpart B

Subpart B, previously titled, ''Identification of Restricted Data and Formerly Restricted Data Information,'' was renamed ''Program Management of Restricted Data (RD), Formerly Restricted Data (FRD), and Transclassified Foreign Nuclear Information (TFNI) Classification Programs.'' Subpart B previously contained § 1045.10 to § 1045.22. It now contains Sections from § 1045.40 to § 1045.65. Sections from Subparts A, B, and C were moved to this Subpart to locate agency and individual responsibilities and authorities in a single subpart. The section of Subpart B describing processes for classification and declassification of RD and FRD (formerly § 1045.14) has been broken up and distributed throughout the regulation, with each component relocated to its appropriate section. The Subpart also includes new sections on responsibility for TFNI and reflects the comprehensive development of TFNI policy by generally including TFNI wherever it should be included with RD and FRD.

The existing sections of Subpart B were changed as follows:

—§ 1045.10: This content was moved to § 1045.5.
—§ 1045.11: This content was moved to § 1045.10.
—§ 1045.12: This content was moved to § 1045.45.
—§ 1045.13: This content was moved to § 1045.75.
—§ 1045.14: This was moved and subdivided in the following manner:
—Content regarding the initial classification of RD was moved to § 1045.45(c), § 1045.70, and § 1045.135.
—Content regarding the declassification of RD was moved to § 1045.45(b), § 1045.100, and § 1045.105(a) and (b).
—Content regarding the classification of FRD was moved to § 1045.45(b) and § 1045.85(a).
—Content regarding the declassification of FRD was moved to § 1045.45(b), § 1045.100, and § 1045.105.
—§ 1045.15: This content was moved to § 1045.80.
—§ 1045.16: This content was moved to § 1045.70.
—§ 1045.17: This content was moved to § 1045.45(c) and § 1045.95.
—§ 1045.18: This content was moved to § 1045.45(c).
—§ 1045.19: This content was deleted. Classification determinations concerning RD or FRD, as specified in paragraph (a), follow the criteria in § 1045.80, which provides the rationale for classification and declassification of RD or FRD. Justifications for the exemptions are removed because the presumptions are a starting point to classify or declassify information as the Director, Office of Classification evaluates the criteria, he or she would also justify any exception to the presumptions. No separate justification is necessary. The annual report required by paragraph (b) has not been of interest to the public. DOE has had only one request for the annual report since 1997. Any specific information of interest to the public may be requested under the FOIA.
—§ 1045.20: The content of this paragraph was moved to § 1045.105.
—§ 1045.21: This content was moved to § 1045.90.
—§ 1045.22: This content was moved to § 1045.60 and § 1045.65.

The sections of Subpart B are now as follows:

—§ 1045.40: This content was previously in § 1045.33. A timeframe for agencies to notify the Director, Office of Classification, of new RDMO appointments was added. This change ensures that points of contact are accurate and that a senior point of contact is available to address questions or concerns.
—§ 1045.45: This content was previously in § 1045.4, § 1045.14, § 1045.17, § 1045.18, and § 1045.32. The section on responsibilities incorporates changes that describe current obligations in more detail. Responsibilities concerning the return of FRD or TFNI to the RD category were added. This addition was due to an amendment to sections 142(d) and (e) of the AEA which permits this action. Other changes were due to the implementation of TFNI and the consolidation of responsibilities which were previously distributed throughout the regulation. Additional changes were made to clarify or codify existing practices. The description of the authority of the Associate Under Secretary for Environment, Health, Safety and Security now appears in § 1045.45(b). The substantive changes are as follows:
—§ 1045.45(b): Changed title of position to reflect DOE reorganizations. Implied responsibilities are now explicitly stated. The content was edited to include additional information on cooperation with DoD in the classification and declassification of FRD and to codify existing practices.
—§ 1045.45(c): This content was previously in § 1045.4(a), Director, Office of Classification:
—Added TFNI guidelines in the development of joint classification guides (to include clarification of who must perform assigned duties).
—Content was expanded to address agency and Director, Office of Classification roles in implementing this part.
—§ 1045.45(g): This content was previously in § 1045.4(e), Head of Agencies with Access to RD, FRD, and TFNI, with the following changes:
—Added requirement to develop and promulgate procedures for classification challenges and declassification proposals for RD, FRD, and TFNI.
—Deleted redundant information about parallel procedures for NSI. This information is governed by E.O. 13526 and should not be duplicated here.
—Added responsibilities of DOE, DNI, and the IC for TFNI;
—Added responsibility for review of NSI records of permanent historical value under the ''Special Historical Records Review Plan (Supplement)'' (established under Public L. (Pub. Laws 105–261 and 106–65); and
—Added requirement for contacting officer to be notified of contracts that have access to or generate matter containing RD, FRD, or TFNI, to ensure agencies are aware of such contracts and that contracts incorporate the requirements of 10 CFR part 1045.
—§ 1045.45(h): This content was previously in § 1045.4(f), RDMOs, with the following changes:
—Established procedures for the designation of Associate RDMOs (ARDMOs). This codifies current

practices and allows agencies flexibility in delegating the responsibilities of RDMOs;
—Incorporates RDMO responsibilities for TFNI;
—Adds responsibility for periodic reviews of agency classification decisions of matter containing RD, FRD, or TFNI. Agencies currently conduct annual reviews of classification decisions under 32 CFR part 2001 to ensure the appropriate identification and marking of National Security Information. The periodic review of matter containing RD, FRD, or TFNI may be done during these reviews to ensure agencies are aware of any systematic issues regarding compliance with this part; and
—Added the Director of National Intelligence (DNI) responsibility for IC elements.
—§ 1045.45(i), (j), and (k): This content was previously in § 1045.32
—Added descriptions of the limits of the authority regarding declassification, downgrading, and using portion-marked source documents. This description was added to clarify requirements and allow agencies greater flexibility in the classification of documents containing RD, FRD, or TFNI, while ensuring documents are coordinated with DOE or DoD, when necessary. For clarity, the list of responsibilities for RD DCs now explicitly requires that source documents be portion-marked, and gives examples of classification upgrading and downgrading.
—Added training required for access to and to derivatively classify TFNI.
—§ 1045.55: This content was moved from § 1045.37 and § 1045.43. The language was edited for clarity, and the mailing address for the Director of Classification was added for accuracy. The requirement for declassification proposals from persons with access to RD, FRD, or TFNI to be transmitted through secure means was added to ensure the proper protection of classified information.
—§ 1045.60: This content was moved from § 1045.22. The content did not change.
—§ 1045.65: This content was moved from § 1045.22. To be consistent with DOE policies and for accuracy, the term ''public domain'' was replaced by ''open literature.'' The content also now explains:
—The possible damage to national security resulting from commenting on information in the open literature that is or may be RD, FRD or TFNI; and
—Required reviews of new documents which incorporate information from the open literature which may be classified.

3. Subpart C

Subpart C, previously titled, ''Generation and Review of Documents Containing Restricted Data and Formerly Restricted Data,'' was renamed ''Determining if Information is RD, FRD, or TFNI.'' Subpart C previously contained § 1045.30 to § 1045.46. It now contains § 1045.70 to § 1045.110. Subpart C consolidates content from other subparts on the following subjects: The processes for classification and declassification; the presumptions that guide those processes; the status of privately generated information in the RD realm; classification levels; and classification challenges. Subpart C also contains a new section on the transclassification of information from the RD category into the TFNI category which is part of the addition of TFNI policy.

The existing sections of Subpart C were changed as follows:

—§ 1045.30: This content was moved to § 1045.5.
—§ 1045.31: This content was moved to § 1045.10(a).
—§ 1045.32: This content was moved to § 1045.45(i) and § 1045.155.
—§ 1045.33: This content was moved to § 1045.40.
—§ 1045.34: This content was moved to § 1045.115(b) and (c).
—§ 1045.35: This paragraph was moved to § 1045.45(c) and § 1045.120.
—§ 1045.36: This content was moved to § 1045.45(c).
—§ 1045.37: The content regarding classification guides was moved to § 1045.45. The requirement regarding the 5-year review of guides was moved to § 1045.45(g)(9).
—§ 1045.38: This content was moved to § 1045.155.
—§ 1045.39: This content was moved to § 1045.110.
—§ 1045.40: This content was moved to § 1045.140 and § 1045.165.
—§ 1045.41: This content was moved to § 1045.130(d).
—§ 1045.42: This content was moved to § 1045.170, § 1045.175, and § 1045.180.
—§ 1045.43: This content was moved to § 1045.55.
—§ 1045.44: This content was moved to § 1045.125(b).
—§ 1045.45: This content was moved to § 1045.125.
—§ 1045.46: This content was moved to 1045.130(c) and (d).

The sections of Subpart C are now as follows:

—§ 1045.70: This content was previously in § 1045.14 and § 1045.16. To address current concerns, the consideration as to whether declassification would assist terrorism was added.
—§ 1045.75: This content was previously in § 1045.13. There are no changes to the content.
—§ 1045.80: This content was previously in § 1045.15. The introduction was revised for clarity.
—§ 1045.85: This content was previously in § 1045.14. The content was edited to include information on coordination with DoD in the classification of FRD, to codify existing practices. It also adds content concerning the transclassification of TFNI, which is added due to the comprehensive implementation of TFNI. Lastly, it adds content regarding the return of FRD or TFNI information to the RD category, codifying a revision to sections 142(d) and (e) of the AEA that allows this action.
—§ 1045.90: This content was previously in § 1045.21. The content was reworded for clarity.
—§ 1045.95: This content was previously in § 1045.17. Examples of RD in each classification level were removed as unnecessary and the language was revised and reorganized for clarity.
—§ 1045.100: This content was previously in § 1045.14. There have been no substantive changes to this content.
—§ 1045.105: This content was previously in § 1045.14 and § 1045.20. To give more detail on an existing process, the paragraph now specifies that declassification proposals must be in writing, and include a reason for the proposal. The paragraph also provides greater detail on the process used to adjudicate declassification proposals to codify existing practices. Information on coordination with DoD in FRD declassification was added to codify existing practices.
—§ 1045.110: This content was previously in § 1045.39. The changes are: Additional content on agency responsibilities regarding classification challenges for RD, FRD, and TFNI information; an emphasis on the right of challengers to submit challenges directly to the Director, Office of Classification, at any time; more information on the actions required of the Director, Office of Classification; and the challenger's appeal rights. This section also clarifies that agency responses to challenges (except for DoD for FRD) are limited to interpreting the

application of guidance to derivatively classify matter. This is to ensure RD, FRD, and TFNI challenges are referred to the appropriate agency for consideration and any changes to guidance based on a challenge will be promulgated.

4. Subpart D

Subpart D, previously titled, ''Executive Order 12958: 'Classified National Security Information'' Requirements Affecting the Public,'' was renamed ''Classifying and Declassifying Matter Containing RD, FRD, or TFNI.'' Subpart D previously contained § 1045.50 to § 1045.53. It now contains § 1045.115 to § 1045.165. The sections of Subpart D that deal with DOE's NSI classification program were moved to Subpart F. Sections from Subparts B and C were moved into Subpart D.

Subpart D contains a number of new sections. The new sections addressing TFNI cover: The requirement for a person trained to classify TFNI to review any matter that could potentially contain TFNI; the requirement for classification of TFNI by a person with appropriate authority; and the appropriate procedure for when TFNI guidance cannot be located.

A description of authorities and procedures for redacting RD, FRD, or TFNI from a document was also added to this Subpart. Authorities and procedures for redacting RD, FRD, or TFNI were added to clarify when other agencies may remove RD, FRD, or TFNI from matter.

To assist agencies in developing proper training materials, detail was added to descriptions of training requirements for RD Derivative Classifiers and for persons with access to RD, FRD, or TFNI. The section describing classification by compilation or association provides more detail about these training requirements.

The existing sections of Subpart D were changed as follows:

—§ 1045.50: This content was moved to § 1045.5.

—§ 1045.51: This content was moved to § 1045.10(a).

—§ 1045.52: This content was moved to § 1045.185 and § 1045.190.

—§ 1045.53: This content was moved to § 1045.205 and § 1045.210.

The sections of Subpart D are now as follows:

—§ 1045.115: This content was previously in § 1045.34. It contains two amendments. The authority for agencies to recognize RD DC authorities granted by other agencies was added to allow agencies flexibility and save agencies the time and resources spent repeating training already provided when the previous authority is the same and to allow agencies greater flexibility in authorities for Strategic Partnership Projects when persons may require classification authority for other agency work. Content was added to address authority and training to classify matter containing TFNI.

—§ 1045.120: This content was previously in § 1045.35. Content was added to provide more detail regarding training for persons with access to RD, FRD, or TFNI, and for RD DC training. Periodic refresher training was added for persons with access to RD, FRD, or TFNI and refresher training every 2 years is required for RD DCs. This requirement is consistent with requirements for other classified information. Content was also added concerning officials and training for TFNI classification which was added to implement TFNI.

—§ 1045.125: This content was previously in § 1045.44. To codify existing practices, the section provides greater detail on the process for reviewing matter that potentially contains RD, FRD or TFNI. The requirement for review of such matter by an RD DC was changed from ''any authorized holder who believes he or she has information which may be RD shall submit it to an RD Classifier for evaluation'' to ''Matter that potentially contains RD or FRD must be reviewed by an RD Derivative Classifier.'' This change reflects the current DOE requirement for classification reviews, and adds FRD because FRD and RD often have similar content. The requirement for review no longer relies on the authorized holder's subjective belief that information may be RD, since it may be unreliable. New content was added to address TFNI.

—§ 1045.130: This content was previously § 1045.41 and § 1045.46. Content, was added to address classification of TFNI. Content was also added to address when source documents may be used as a basis for classifying matter containing RD or FRD. The section provides more detail for existing practices dealing with the process of classification by association or compilation.

—§ 1045.135: This content was previously in § 1045.14. For the RDMO to be aware of guidance available to RD DCs and to resolve issues at the agency level, when possible, the RDMO and ARDMO were added as contacts for when RD DCs have potentially classified information for which they cannot find guidance. Also, the Director, Office of Classification, is now explicitly required to notify the RDMO of the agency originating information of the results of any initial determination requests transmitted to the Director. Potentially classified documents pending determination are now protected at a minimum of SRD or SFRD, instead of CRD required by the current regulation. This is due to the fact that since the majority of RD is Secret, this is the most appropriate level of protection until the specific level is identified. Additional information was added regarding the proper procedure when TFNI guidance cannot be located.

—§ 1045.140: This content was previously in § 1045.40. New sub-paragraphs were added to cover markings for: The IC; working papers containing RD, FRD, or TFNI; commingled RD/FRD/TFNI with NSI or CUI; special format matter; and TFNI markings. All revisions to the marking sections were based on national policy, with content added to fully address and clarify requirements.

—§ 1045.145: This section was added to address matter printed from an IT system.

—§ 1045.150: This new section addresses authorities and procedures for redacting RD, FRD, or TFNI from matter. This content was added to clarify procedures for removing RD, FRD, or TFNI from matter and ensure the resulting document does not potentially contain RD, FRD, or TFNI.

—§ 1045.155: This content was previously in § 1045.32 and § 1045.38. TFNI was added and new content addresses who may redact RD, FRD, or TFNI from a document being prepared for public release. This was added to ensure matter containing RD, FRD, or TFNI is reviewed by a person with subject matter expertise and authority so that RD, FRD, or TFNI is not inadvertently released.

—§ 1045.160: This content is a new addition. It was added at the request of other agencies to ensure documents from which RD, FRD, or TFNI is removed that still contain NSI are reviewed and marked appropriately.

—§ 1045.165: This content was previously in § 1045.40. TFNI was added.

5. Subpart E

Subpart E, ''Government-wide Procedures for Handling Freedom of Information Act (FOIA) and Mandatory Declassification Review (MDR) Requests

for Matter Marked as or Potentially Containing RD, FRD, or TFNI,'' is a new addition containing content currently contained in Subpart C and new content. This section describes requirements for other Government agencies when they receive a FOIA or MDR request that potentially contains RD, FRD, or TFNI. Subpart E contains § 1045.170 to § 1045.180. Sections from Subpart C that deal with RD and FRD under a FOIA or an MDR request were moved to this subpart. These sections were also expanded to provide greater detail regarding the processes for appeals and requests.

The sections of Subpart E are as follows:

—§ 1045.170—This section was added to clarify that this section applies to other Government agencies who receive FOIA and MDR requests for matter that is marked as or potentially contains RD, FRD, or TFNI. RD, FRD, and TFNI, is classified under the Atomic Energy Act and therefore does not fall under the MDR provisions of E.O. 13526, which only applies to NSI. This section ensures that RD, FRD, and TFNI are also considered for declassification and the appropriate authority reviews matter that is marked as or potentially contains this information.

—§ 1045.175: This content was previously in § 1045.42. This section now clarifies that it applies to matter that potentially contains RD, FRD, or TFNI as well as matter marked as containing RD, FRD, or TFNI. The Denying Official for Naval Nuclear Propulsion was changed to the Deputy Director, Deputy Administrator for Naval Reactors, so that the Denying Official and the appeal authority are no longer the same. Language for the DoD Initial Denying Authority was incorporated from DoD Manual 5400.07, DoD Freedom of Information Act (FOIA) Program.

—§ 1045.180: This content was previously in § 1045.42. The content was expanded to clarify the process and provide greater detail regarding FOIA and MDR appeals for matter containing RD, FRD, or TFNI and to ensure RD, FRD, or TFNI portions are not included in NSI appeals to ISCAP. Since DOE may receive appeals from individuals or from agencies, both circumstances are now addressed to ensure all appeals for RD and TFNI are sent to DOE and all appeals for FRD are sent to DOE or DoD. Paragraph (a) was revised to clarify that FOIA appeals involving RD, FRD or TFNI are required to be submitted within 90 days of receipt of the denial, consistent with the procedures in DOE's FOIA regulations in 10 CFR part 1004. In 2016, DOE revised its regulations in part 1004 to implement the requirement in the FOIA Improvement Act of 2016 that FOIA appeals are required to be submitted within 90 days. Paragraph (b) was revised to clarify that appeal timeframes for MDR Appeals are 60 days. For consistency with the MDR appeal procedures involving NSI, which are contained in 32 CFR 2001.33(a)(2), and require submission of an appeal within 60 days of the receipt of the denial, MDR appeals involving RD, FRD, or TFNI are also required to be submitted within 60 days of the receipt of the denial. This section was also revised to clarify the different timeframes and process for FOIA and MDR requests and to identify appropriate appellate authorities.

6. Subpart F

Subpart F, ''DOE-specific procedures for MDR Requests,'' is a new addition containing content currently contained in Subpart C and new content. This section describes how a person submits an MDR request to DOE for matter that is marked as or potentially contains NSI, RD, FRD, or TFNI. This section also describes how MDR requests are processed within DOE. As recognized in section 6.2 of E.O. 13526, RD, FRD, and TFNI, which are classified under the Atomic Energy Act. Therefore, MDR procedures in E.O. 13526, which only applies to NSI, do not apply to RD, FRD, or TFNI. This subpart implements DOE procedures for processing MDR requests for NSI, under E.O. 13526, and also ensures the public may request declassification reviews of documents containing RD, FRD, or TFNI. Subpart F contains § 1045.185 to § 1045.225. Sections from Subpart D that deal with MDR requests and appeals by the public were moved to this Subpart. Subpart F contains new sections that describe exemptions to MDR requests, the cost associated with an MDR, the DOE process for MDR reviews and appeals, and DOE's OpenNet online resource.

The sections of Subpart F are as follows:

—§ 1045.185—This section was added to clarify that this subpart concerns DOE-specific processes for MDRs under E.O. 13526, which includes NSI, and review of declassification requests for matter marked as or potentially containing RD, FRD, or TFNI, which are not governed by E.O. 13526, to ensure these are considered and appropriately reviewed.

§ 1045.190: This content was previously in § 1045.52. The mailing address for the Director, Office of Classification was updated.

§ 1045.195: This content was previously in § 1045.52. An exemption from MDR requests was added for RD matter (technical engineering, blueprints and design documents regarding nuclear weapons). Portion by portion review of these documents is complex and time consuming and results in release of minimal non-exempt information. Processing and review of these documents requires significant resources. Due to the significant sensitivity of the vast majority of information contained in these documents, DOE determined that they should not be subject to an MDR. The exemption from mandatory declassification review under the Central Intelligence Agency Information Act was removed because it does not apply to DOE records.

—§ 1045.200: This new section contains content addressing costs for MDR reviews. When 10 CFR part 1045 was initially issued, DOE received very few MDR requests. Due to a significant increase in MDR requests, DOE determined it was necessary to recover some of the cost. The fees established mirror DOE fees for FOIA requests.

§ 1045.205: Content addressing MDR requests and appeals for matter containing RD, FRD, or TFNI was added. The changes codify existing practices.

§ 1045.210: This content was previously in § 1045.53. It addresses the denial of naval nuclear propulsion information in the requirement since this information is not initially denied by the Director, Office of Classification.

§ 1045.215: This content was previously in § 1045.53.

§ 1045.220: This new section was added to address final MDR appeals for matter containing RD, FRD, or TFNI and ensure RD, FRD, and TFNI portions are removed from any matter containing NSI submitted to ISCAP for review. The requirement to coordinate Naval Nuclear Propulsion with the NNSA Deputy Administrator for Naval Nuclear Propulsion was added because that is the appeal authority for this information.

§ 1045.225: This new section advises the public that matter previously requested under the FOIA/MDR is available on the DOE OpenNet database and provided link to OpenNet.

II. DOE's Response to Comments

In response to the Notice of Proposed Rulemaking, DOE received one comment relevant to the proposed rule. The comment advised that the timeframe for appeals under the Freedom of Information Act (FOIA) was extended from 60 to 90 days under the FOIA Improvement Act of 2016. Sections of subpart E were rewritten to clarify the differences between FOIA and MDR timeframes and processes. The section was also revised to clarify appellate denying officials for RD, FRD, and TFNI, for both the FOIA and MDR requests.

III. Regulatory Review and Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

OMB has determined that this action does not constitute a ''significant regulatory action'' as defined in section 3(f) of E.O. 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993).

B. Review Under Executive Orders 13771 and 13777

On January 30, 2017, the President issued Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' That Order stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. The Order stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. This rule is an E.O. 13771 deregulatory action.

Additionally, on February 24, 2017, the President issued Executive Order 13777, ''Enforcing the Regulatory Reform Agenda.'' The Order required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

This rule reflects changes in the Atomic Energy Act, E.O. 13526, 32 CFR part 2001, DOE policies and DOE reorganizations that rendered portions of the previous regulation outdated, as well clarifies requirements and allows agencies more flexibility in implementing RD/FRD programs, meets the goals and objectives of the task force.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (67 FR 53461, August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. DOE has made its procedures and policies available on the Office of the General Counsel's website: (*http://energy.gov/gc/office-general-counsel*).

DOE reviewed this rule under the Regulatory Flexibility Act and certifies that the rule would not have a significant impact on a substantial number of small entities. This rule applies to Federal agencies and private entities who have access to RD. The number of private entities with access to RD is very small. These include access permittees (covered by 10 CFR part 1016) and private entities whose operations involve isotope separation technologies. The rule does not require significant new requirements for Federal agencies or private entities with access to RD. The changes are administrative changes (*e.g.,* renumbering, and updating office names to reflect reorganizations), and updates to incorporate responsibilities and procedures due to changes in laws, regulations and E.O.s and clarify requirements.

The rule initiates fees for MDRs. When 10 CFR part 1045 was initially issued, DOE received very few MDR requests. Due to a significant increase in MDR requests, DOE determined it was necessary to recover some of the cost. Because matter requested under an MDR could be requested, alternatively, under the FOIA, DOE determined that it was appropriate to treat MDR requests similarly to FOIA requests. DOE therefore proposed that the fees established for MDRs should mirror DOE fees for FOIA requests rather than creating a different fee structure.

For the above reasons, DOE certifies that the rule does not have a significant economic impact on a substantial number of small entities.

D. Review Under the Paperwork Reduction Act

This rule does not contain a collection of information subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

E. Review Under the National Environmental Policy Act

DOE has determined that this action meets the requirements for a Categorical Exclusion A–5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that addresses or amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

This rule is necessary because changes in DOE and national policies have rendered portions of the existing rule outdated. In addition, changes were needed to clarify requirements and allow agencies more flexibility in implementing programs for RD and FRD.

The changes are administrative in nature reflecting changes to responsibilities and procedures, and the rule does not change the environmental effect of the rule. Accordingly, neither an environmental assessment nor an environmental impact analysis is required.

F. Review Under E.O. 13132, ''Federalism''

E.O. 13132 (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt

State law or that have federalism implications. Agencies are required to develop a process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the E.O. to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' On March 7, 2011, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735, March 14, 2000).

DOE has examined this rule and has determined that it does 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. No further action is required by E.O. 13132.

G. Review Under E.O. 12988, ''Civil Justice Reform''

Section 3 of E.O. 12988 (61 FR 4729, February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. These requirements, set forth in section 3(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected legal conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation describes any administrative proceeding to be available prior to judicial review and any provisions for the exhaustion of administrative remedies. DOE has determined that this regulatory action meets the requirements of section 3(a) and (b) of E.O. 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), requires each Federal agency to assess the effects of Federal regulatory action on state, local and tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. UMRA also requires Federal agencies to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' In addition, UMRA requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the UMRA (62 FR 12820, March 18, 1997). This policy is available at DOE General Counsel's website (*http://energy.gov/gc/office-general-counsel).* This part contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

I. Review Under E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

E.O. 13211 (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternates to the action and their expected benefits on energy supply, distribution, and use. This rule is not a significant energy action, nor has it been designated as such by the Administrator of OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Approval by the Office of the Secretary

The Office of the Secretary of Energy has approved the publication of this final rule.

List of Subjects in 10 CFR Part 1045

Classified information, Declassification, Formerly restricted data, Restricted data, Transclassified foreign nuclear information.

Issued in Washington, DC, on November 28, 2018.

Matthew B. Moury,

Associate Under Secretary for Environment, Health, Safety and Security.

■ For the reasons stated in the preamble, DOE revises part 1045 of Title 10 of the Code of Federal Regulations to read as follows:

PART 1045—NUCLEAR CLASSIFICATION AND DECLASSIFICATION

Subpart A—Introduction

Sec.

Authority: 42 U.S.C. 2011; E.O. 13526, 75 FR 705, 3 CFR 2010 Comp., pp. 298–327.

Subpart A—Introduction

§ 1045.5 What is the purpose of this part?

(a) This part implements sections 141, 142, and 146 of the Atomic Energy Act, as amended (42 U.S.C. 2011 *et seq.*) (AEA) and describes the procedures to be used by the public in questioning or appealing DOE decisions regarding the classification of NSI under E.O. 13526, and 32 CFR part 2001, *Classified National Security Information.* This part is divided into six subparts:

(1) Subpart A—''Introduction'' specifies to whom these rules apply, describes how to submit comments or suggestions concerning the policies and procedures in this part, describes how to request an exemption from or an equivalency to a provision in this part; outlines sanctions imposed for violating the policies and procedures in this part; defines key terms; and lists acronyms used in this part.

(2) Subpart B—''Program Management of Restricted Data (RD), Formerly Restricted Data (RD), and Transclassified Foreign Nuclear Information (TFNI) Classification Programs'' specifies responsibilities of officials in DOE and other agencies in the role of identifying RD, transclassifying RD to FRD or to TFNI, and returning FRD or TFNI to RD; discusses the systematic declassification review of information/matter containing RD, FRD, or TFNI; and describes the ''no comment'' policy.

(3) Subpart C—''Determining if Information is RD, FRD, or TFNI'' describes how information is initially classified as RD, transclassified as FRD or TFNI, or declassified; lists criteria for evaluating whether RD, FRD, or TFNI should be classified or declassified; describes the prohibitions against classifying information as RD, FRD, or TFNI; lists areas of information that are presumed to be RD or unclassified; specifies how privately generated information may be classified as RD; defines the classification levels; describes how to submit proposals for RD, FRD, and TFNI; describes how to challenge the classification or declassification of RD, FRD, or TFNI; and describes the issuance of classification guides to promulgate classification and declassification determinations.

(4) Subpart D—''Classifying and Declassifying Matter Containing RD, FRD, or TFNI'' describes who has the authority to classify and declassify matter containing RD, FRD, or TFNI; the appointment and training of these individuals; discusses the use of classified addendums; describes classification by association or compilation; specifies who must review matter that potentially contains RD, FRD, or TFNI intended for public release; describes what to do if an RD Derivative Classifier or a person trained to classify matter containing TFNI cannot locate classification guidance to make a determination; describes the

classification and declassification marking requirements; and states the prohibition against the automatic declassification of matter containing RD, FRD, or TFNI.

(5) Subpart E—''Government-wide Procedures for Handling Freedom of Information Act (FOIA) and Mandatory Declassification Review (MDR) Requests for Matter Marked as or Potentially Containing RD, FRD, or TFNI'' describes how agencies process FOIA or MDR requests and appeals for matter marked as or potentially containing RD, FRD, or TFNI.

(6) Subpart F—''DOE Procedures for MDR Requests'' describes how DOE FOIA and MDR requests and appeals for matter marked as or potentially containing NSI, RD, FRD, or TFNI are submitted and processed.

(b) [Reserved].

§ 1045.10 To whom does this part apply?

(a) Subparts A, B, C, and D apply to—

(1) Any person or agency with access to RD, FRD, or TFNI;

(2) Any person or agency who generates information that has the potential to be RD, FRD, or TFNI; and

(3) Any person or agency who generates matter that potentially contains RD, FRD, or TFNI.

(b) Subpart E applies to government agencies who receive Freedom of Information Act (FOIA) or Mandatory Declassification Review (MDR) requests for matter that is marked as or potentially contains RD, FRD, or TFNI.

(c) Subpart F applies to DOE and to any person submitting a Mandatory Declassification Review request for DOE matter.

§ 1045.15 What is the process for submitting a question or a comment on any of the policies and procedures contained in this part?

Any person who has a question or a comment on DOE's classification and declassification policies and procedures under this part may submit the question or comment in writing to the Director, Office of Classification, AU–60/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. The correspondence should contain the question or comment, include applicable background information and/or citations, as appropriate, and must provide an address for the response. The Director will make every effort to respond within 60 days. Under no circumstance will anyone be subject to retribution for asking a question or making a comment regarding DOE's classification and declassification policies and procedures.

§ 1045.20 How does an agency request an exemption or equivalency to meet a provision in this part?

The agency must submit a request for an exemption or an equivalency to the procedural provisions under this part in writing to the Director, Office of Classification, AU–60/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. The request must provide all relevant facts, to include any applicable citations, describing the procedure and why the exemption or equivalency is required. If the request is for an equivalency, it must include a proposed alternate procedure to meet the intent of the procedure for which the equivalency is being requested.

§ 1045.25 What actions can be taken against a person who violates the requirements in this part?

Any knowing, willful, or negligent action contrary to the requirements of this part that results in the misclassification of information is subject to appropriate sanctions. Such sanctions may range from administrative sanctions (*e.g.,* reprimand, suspension, termination) to civil or criminal penalties, depending on the nature and severity of the action as determined by the appropriate authority in accordance with applicable laws. Other violations of the policies and procedures in this part may be grounds for administrative sanctions as determined by an appropriate authority.

§ 1045.30 What definitions apply to this part?

The following definitions apply to this part:

Agency means any ''executive agency'' as defined in 5 U.S.C. 105; any ''Military Department'' as defined in 5 U.S.C. 102; and any other entity within the executive branch that has access to RD, FRD, or TFNI information or matter.

Associate RD Management Official (ARDMO) means a person appointed in accordance with agency policy to assist the RD Management Official (RDMO) with managing the implementation of this part within that agency.

Associate Under Secretary for Environment, Health, Safety and Security means DOE's Associate Under Secretary for Environment, Health, Safety and Security or any person to whom the Associate Under Secretary's duties are delegated.

Atomic Energy Act (AEA) means the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq*.).

Automatic Declassification means the declassification of NSI based on a specific date, event, or timeframe, in accordance with E.O. 13526, or prior or successor orders.

Classification means the act or process by which information or matter is determined to require protection as RD, FRD, or TFNI, under the AEA or as NSI under E.O. 13526 or prior or successor orders.

Classification category identifies whether information is classified by statute or E.O. The classification categories are: RD, FRD, TFNI (classified by the AEA), and NSI (classified by E.O.).

Classification guidance means any instruction or source approved by an appropriate authority that prescribes the classification of specific information (*e.g.,* classification guide, classification bulletins, portion-marked source documents).

Classification guide means a written record of detailed instructions, approved by an appropriate authority, that explicitly identifies whether specific information is classified, usually concerning a system, plan, project, or program. If classified, the level and category of classification assigned to such information is specified. For NSI, the classification duration is also specified.

Classified information means:

(1) Information determined to be RD, FRD, or TFNI under the AEA and this part, or

(2) Information that has been determined pursuant to E.O. 13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classification status when in documentary form.

Classification level means one of the three following designators for RD, FRD, and TFNI:

(1) *Top Secret (TS)* is applied to RD, FRD, or TFNI that is vital to the national security and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security that the appropriate official is able to identify or describe.

(2) *Secret (S)* is applied to RD, FRD, or TFNI, the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the appropriate official is able to identify or describe.

(3) *Confidential (C)* is applied to RD, FRD, or TFNI the unauthorized disclosure of which could reasonably be expected to cause undue risk to the common defense and security that the appropriate official is able to identify or describe.

Classified matter means anything in physical or electronic form that contains or reveals classified information.

Contractor means any industrial, educational, commercial, or other entity, grantee, or licensee at all tiers, including a person that has executed an agreement with the Federal Government for the purpose of performing under a contract, license, or other agreement.

Declassification means a determination by an appropriate authority that:

(1) Information no longer warrants protection against unauthorized disclosure in the interest of the national security; or

(2) Matter no longer contains or reveals classified information.

DOE means the Department of Energy.

Director, Office of Classification, means DOE's Director, Office of Classification.

Downgrading means:

(1) A decision by DOE that information classified as RD or TFNI is classified at a lower level than currently identified in a DOE or joint classification guide;

(2) A joint decision by DOE and the Department of Defense (DoD) that FRD is classified at a lower level than currently identified in a DOE or joint classification guide; or

(3) A decision by an RD Derivative Classifier (or in the case of TFNI, a person trained to derivatively classify TFNI) based on classification guides and bulletins that matter containing RD, FRD, or TFNI is classified at a lower level than currently marked.

(4) A decision, based on a DOE or joint classification guide, by an authorized person that matter containing RD, FRD, or TFNI is classified at a less sensitive category (*e.g.,* RD to FRD, RD to NSI) than currently marked.

Formerly Restricted Data (FRD) means classified information removed from the RD category under the AEA (section 142(d)), after DOE and DoD jointly determine it is related primarily to the military utilization of nuclear weapons and that the information can be adequately protected in a manner similar to NSI.

Government means the executive branch of the Federal Government of the United States.

Government information means information that is owned by, produced by or for, or is under the control of the U.S. Government.

Information means facts, data, or knowledge, as opposed to the medium in which it is contained.

Initial determination means the process used by the Director, Office of Classification, to determine if new information is RD. New information that falls under the definition of RD is presumed classified as RD until the Director, Office of Classification makes the initial determination as to its classification status.

Interagency Security Classification Appeals Panel (ISCAP) means a Panel established and administered pursuant to E.O. 13526 and prior or successor E.O.s to perform functions specified in the order with respect to NSI.

Matter means any combination of physical documents, electronic instances of information or data (including email) at rest or in transit, or information or data presentation or representation regardless of physical form or characteristics.

National security means the national defense or foreign relations of the United States.

National Security Information (NSI) means information that has been determined pursuant to E.O. 13526 or prior or successor E.O.s to require protection against unauthorized disclosure and is marked to indicate its classification status.

Nuclear weapon means atomic weapon.

Originating activity, for the purpose of RD, FRD, or TFNI, means any development of specific matter (*e.g.,* report, guide) within an organization, working group, or between persons, including coordination of a product for classification review.

Person means:

(1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission, any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) Any legal successor, representative, agent, or agency of the foregoing.

Portion marking means the application of certain classification markings to reasonably segregable sections of matter (*e.g.,* paragraphs, phrases, sentences). This also includes any markings required by national policy to control portions of unclassified information.

Restricted Data (RD) means all data concerning the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, except for data declassified or removed from the RD category pursuant to section 142 of the AEA.

RD Derivative Classifier means a person specifically trained and, when required, designated to derivatively classify matter containing RD or FRD in areas in which they have programmatic expertise.

RD Management Official (RDMO) means a person appointed by an agency to be responsible for managing the implementation of this part within the agency.

Secretary means the Secretary of Energy.

Source document means existing classified, portion-marked matter that contains classified information that is incorporated, paraphrased, restated, or generated in new form into new matter.

Special nuclear materials means special nuclear material as defined in the AEA.

Transclassified Foreign Nuclear Information (TFNI) means:

(1) Information concerning the nuclear energy programs of other nations (including subnational groups) that is removed from the RD category under the AEA (section 142(e)) after DOE and the Director of National Intelligence (DNI) jointly determine that the information is necessary to carry out intelligence-related activities under the National Security Act of 1947, as amended, and that the information can be adequately protected in a manner similar to NSI. TFNI includes information removed from the RD category by past agreements between DOE and the Director of Central Intelligence or past and future agreements with the DNI.

(2) TFNI does not include:

(i) RD or FRD concerning United Kingdom (U.K.) or Canadian programs;

(ii) Any U.S. RD or FRD, including that which the U.S. has transmitted to other nations;

(iii) Any evaluation of foreign information based on the use of U.S. RD or FRD unless also specifically transclassified to TFNI or any evaluation that could reveal such data concerning the U.S., U.K., or Canadian programs;

(iv) Classified atomic energy information received from a foreign government pursuant to an agreement imposing security measures equivalent for those in effect for RD; or

(v) Classified information on the Tripartite Gas Centrifuge and its successor programs, including data on the gas centrifuge work of each of the participants.

TFNI guideline means a policy document that describes information

which meets the TFNI criteria for various collection assets.

Upgrading means:

(1) A decision by DOE that information classified as RD or TFNI is classified at a higher level than currently identified in a DOE or joint classification guide;

(2) A joint decision by DOE and DoD that FRD is classified at a higher level than currently identified in a DOE or joint classification guide; or

(3) A decision by an RD Derivative Classifier, (or in the case of TFNI, a person trained to classify TFNI) based on classification guidance, that matter containing RD, FRD, or TFNI is classified at a higher level or category than currently marked. This includes correcting the classification level or category of matter that was never marked as well as matter erroneously marked as unclassified.

§ 1045.35 What acronyms are commonly used in this part?

The following acronyms are commonly used throughout this part:

AEA—The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)
ARDMO—Associate RD Management Official
C—Confidential
CD—Compact Disk
CFR—Code of Federal Regulations
CUI—Controlled Unclassified Information
DCI—Director of Central Intelligence
DNI—Director of National Intelligence
DoD—Department of Defense
DOE—Department of Energy
E.O.—Executive order
FOIA—Freedom of Information Act
FRD—Formerly Restricted Data
IC—Intelligence Community
ICD—Intelligence Community Directive
ICPG—Intelligence Community Policy Guidance
ISCAP—Interagency Security Classification Appeals Panel
MDR—Mandatory Declassification Review
NNSA—National Nuclear Security Administration
NRC—Nuclear Regulatory Commission
NSI—National Security Information
Pub. L.—Public Law
RD—Restricted Data
RDMO—RD Management Official
S—Secret
TFNI—Transclassified Foreign Nuclear Information
U.K.—United Kingdom

Subpart B—Management of Restricted Data (RD), Formerly Restricted Data (FRD), and Transclassified Foreign Nuclear Information (TFNI) Classification Programs

§ 1045.40 Is there an official in each agency with access to RD, FRD, or TFNI who manages the agency's RD, FRD, or TFNI program to ensure the requirements in this part are met?

Yes. The head of each agency with access to RD, FRD, or TFNI:

(a) Must appoint at least one Federal official to serve as an RDMO who ensures the proper implementation of this part within his or her agency and serves as the primary point of contact for coordination with the Director, Office of Classification, for classification and declassification issues involving RD, FRD, and TFNI. Within DoD, a minimum of at least one RDMO must be appointed in each military department.

(b) May appoint or authorize the RDMO to appoint one or more Associate RDMOs if there is more than one organization that has access to RD, FRD, or TFNI. In such cases, the RDMO is the lead official and the primary point of contact with the Director, Office of Classification.

(c) Must ensure contact information for each RDMO and ARDMO is sent to the Director, Office of Classification, within 30 days of the appointment.

§ 1045.45 What are the responsibilities of DOE officials and personnel, and the officials and personnel of other agencies, under this part?

(a) The Secretary or Deputy Secretary of Energy must determine in writing whether information privately generated by persons in the United States but not under a Government contract is classified as RD. This responsibility cannot be delegated.

(b) The Associate Under Secretary for Environment, Health, Safety and Security:

(1) Determines if RD and TFNI may be published without undue risk to the common defense and security and declassified;

(2) Jointly with DoD, determines which information in the RD category relating primarily to the military utilization of nuclear weapons may be transclassified to the FRD category;

(3) Jointly with DoD, determines which information in the FRD category may be removed from that category and returned to the RD category and notifies all appropriate agencies as necessary of the change;

(4) Jointly with DoD, declassifies FRD and RD relating primarily to the military utilization of nuclear weapons that may be published without undue risk to the common defense and security;

(5) Jointly with the DNI, determines which information in the RD category concerning nuclear energy programs of foreign governments may be transclassified to the TFNI category to carry out the provisions of the National Security Act of 1947, as amended;

(6) Jointly with the DNI, determines which information in the TFNI category may be removed from that category and returned to the RD category and notifies all appropriate agencies as necessary of the change;

(7) Considers declassification proposals received from the public or other agencies or their contractors concerning RD, FRD, and TFNI, and coordinates responses with the appropriate agencies;

(8) Makes the final appeal determination concerning the denial of any RD, FRD, or TFNI contained in matter requested under statute or Executive Order; and

(9) Makes the final appeal determination for any formal classification challenges for RD, DOE FRD, and TFNI.

(c) The Director, Office of Classification:

(1) Issues the Government-wide requirements for the classification and declassification of RD, FRD, and TFNI in accordance with the AEA and this part;

(2) Grants exemptions and equivalencies to provisions of this part;

(3) Develops and interprets policies to implement RD, FRD, and TFNI classification programs in coordination with DoD for FRD, as appropriate;

(4) Determines whether nuclear-related information is RD;

(5) Determines if new information in a previously declassified subject area warrants classification as RD based on the criteria in § 1045.70, except where the information has been widely disseminated in the open literature;

(6) Assigns a classification level to RD and TFNI, and, jointly with DoD, to FRD, that reflects the sensitivity of the information to the national security;

(7) Serves as the Denying Official for RD, DOE FRD, and TFNI portions of records requested under statute or Executive Order;

(8) Establishes a system for processing, tracking, and recording formal classification challenges and declassification proposals made by persons with access to RD, FRD, and TFNI;

(9) Considers challenges to RD, FRD, and TFNI, coordinates challenges with other agencies, as appropriate, and makes the initial determination

pertaining to the challenge of a classification determination concerning RD, DOE FRD, or TFNI;

(10) Delegates the authority to declassify matter containing RD, FRD, or TFNI to qualified individuals in other Government agencies;

(11) Develops and distributes classification guides to promulgate classification and declassification determinations for RD, FRD, and TFNI, and jointly develops classification guides and TFNI guidelines with DoD, the Nuclear Regulatory Commission (NRC), the National Aeronautics and Space Administration, and other agencies in the RD, FRD, or TFNI categories or subject areas for which DOE and the agencies share responsibility;

(12) Reviews classification guides that contain RD and jointly reviews classification guides that contain FRD topics with the appropriate DoD authority (as specified in DoD Instruction 5210.02 or successor instructions) that are developed by other agencies;

(13) Reviews TFNI guidelines and classification guides containing TFNI topics developed by other agencies;

(14) Assists agencies with the implementation of RD, FRD, and TFNI classification programs to comply with this part;

(15) In consultation with the agency RDMO, determines when to conduct on-site reviews of agency programs established under this part to evaluate the agency's implementation of the requirements;

(16) Coordinates on-site reviews of the Intelligence Community (IC) with the DNI;

(17) Reviews agency implementing policies;

(18) Develops training materials related to implementing this part and provides these materials to RDMOs and other appropriate persons;

(19) Reviews any RD-, FRD-, or TFNI-related training material submitted by other agencies to ensure consistency with current policies;

(20) Periodically hosts a meeting of RDMOs to disseminate information or address issues; and

(21) Responds to questions and considers comments received from any person, including the public, concerning RD, FRD, and TFNI classification and declassification policies and procedures.

(d) DoD jointly with DOE:

(1) Determines which information in the RD category relating primarily to the military utilization of nuclear weapons may be transclassified to the FRD category;

(2) Determines which information in the FRD category may be removed from that category and returned to the RD category;

(3) Assigns a classification level to FRD that reflects the sensitivity of the information to the national security;

(4) Prepares classification guides for FRD; and

(5) Declassifies FRD and RD relating primarily to the military utilization of nuclear weapons that may be published without undue risk to the common defense and security.

(6) Considers challenges to FRD, and coordinates challenges with other agencies, as appropriate.

(e) The DNI jointly with DOE:

(1) Determines which information in the RD category concerning nuclear energy programs of foreign governments may be transclassified to the TFNI category to carry out the provisions of the National Security Act of 1947, as amended;

(2) Determines which information in the TFNI category may be removed from that category and returned to the RD category; and

(3) Coordinates IC Directives (ICD) and IC Policy Guidance (ICPG) concerning RD, FRD, and TFNI to ensure policies are consistent;

(f) NRC:

(1) Jointly with DOE, develops classification guides for programs over which both agencies have cognizance; and

(2) Ensures the review and proper classification of matter containing RD by RD Derivative Classifiers that is generated by NRC or by its licensed or regulated facilities and activities.

(g) Heads of Agencies with access to RD, FRD, or TFNI:

(1) Ensure that matter containing RD, FRD, and TFNI is reviewed by a person with appropriate authority and properly classified.

(2) Must appoint at least one RDMO to manage the implementation of this part within the agency;

(3) Ensure implementing directives for this part are developed, submitted to DOE for review prior to issuance, to ensure consistency with this part, and promulgated;

(4) Should periodically review holdings containing RD, FRD, or TFNI that are likely to have a high degree of public interest and a likelihood of declassification. If any matter containing RD, FRD, or TFNI is identified for declassification, ensure coordination for the declassification of matter marked as RD, FRD, or TFNI with DOE or DoD, as appropriate;

(5) Develop and promulgate procedures for persons with access to RD or FRD to submit classification challenges and declassification proposals for guide topics that are RD or FRD or for matter containing RD or FRD. If the agency possesses TFNI, develops and promulgates procedures for persons with access to TFNI to submit classification challenges and declassification proposals for guide topics that are TFNI or matter containing TFNI;

(6) Ensure joint classification guides for programs over which DOE and the agency have cognizance are developed;

(7) Ensure that any classification guides the agency develops or revises that contain RD or FRD, topics are coordinated with the Director, Office of Classification prior to issuance, to ensure consistency with DOE and DoD guidance;

(8) Ensure that any TFNI guidelines or classification guides containing TFNI topics the agency develops or revises are reviewed by the Director, Office of Classification, prior to issuance for consistency with policies developed by DOE and current transclassification agreements;

(9) Ensure that agency classification guides containing RD, FRD, or TFNI topics are reviewed for consistency with current DOE classification guides at least once every 5 years and that appropriate revisions are made, if necessary;

(10) Ensure that NSI records of permanent historical value are reviewed as required under the ''Special Historical Records Review Plan (Supplement)'' established under Public Law 105–261 and 106–65 or subsequent statutes;

(11) Ensure that each RDMO and Federal RD Derivative Classifier whose duties involve the classification of a significant amount of matter containing RD or FRD have his or her personnel performance evaluated with respect to such classification activities; and

(12) Ensure that contracting officers are notified of any contracts that have access to or generate matter containing RD, FRD, or TFNI, and that the requirements of this part are incorporated into those contracts.

(13) Ensure DOE classification guides, classification bulletins and matter containing DOE classification guide topics that is not itself classified is safeguarded and its dissemination is limited to persons with a need to know.

(h) Agency RDMOs:

(1) Ensure that procedures for training and designating ARDMOs and RD Derivative Classifiers within the agency are established;

(2) Ensure that persons with access to RD, FRD, and TFNI are trained in accordance with § 1045.120;

(3) Ensure that RD Derivative Classifiers are designated and trained in accordance with §§ 1045.115 and 1045.120, respectively;

(4) Ensure that persons who derivatively classify matter containing TFNI are trained in accordance with § 1045.120;

(5) Ensure that RD Derivative Classifiers and persons who derivatively classify TFNI have access to any classification guides needed;

(6) Ensure that a periodic review of a sample of the agency's RD, FRD, and TFNI derivative classification determinations is conducted that evaluates that each determination was made by appropriately trained and (when required) designated employees acting within his or her authority, that the determination is accurate, and that the markings are applied correctly;

(7) In consultation with the Director, Office of Classification determine when to conduct on-site reviews of their agency program established under this part to evaluate the agency's implementation of the requirements; and

(8) Cooperate with and provide information as necessary to the Director, Office of Classification, to fulfill their responsibilities under this part.

(i) RD Derivative Classifiers:

(1) Must receive training prescribed by § 1045.120;

(2) Must use approved DOE or joint classification guides, in the subject areas in which they have programmatic expertise, or an applicable portion-marked source document as the basis for derivative decisions to classify or upgrade matter containing RD or FRD; and

(3) Must use DOE classification guides and bulletins, joint DOE-agency classification guides, or agency classification guides containing RD or FRD topics that have been coordinated with DOE as the basis to downgrade the level of matter containing RD or FRD. Source documents must not be used as a basis to downgrade matter containing RD or FRD;

(4) Must not downgrade the category of matter containing RD, FRD, or TFNI (*e.g.,* RD to NSI, FRD to NSI), unless granted this authority by DOE for RD or TFNI or by DOE or DoD for FRD;

(5) Must not declassify matter containing RD, FRD, or TFNI unless delegated this authority by DOE for RD or TFNI, or by DOE or DoD for FRD; and

(6) Can remove the RD, FRD, and TFNI portions from a portion-marked source document in accordance with § 1045.150.

(j) Persons who derivatively classify matter containing TFNI:

(1) Must receive training prescribed by § 1045.120;

(2) Must use approved TFNI guidelines, DOE or joint classification guides in the subject areas in which they have programmatic expertise, or an applicable portion-marked source document as the basis for derivative decisions to classify or upgrade matter containing TFNI; and

(3) Must not declassify or downgrade the category of matter containing TFNI unless delegated this authority by DOE.

(k) Persons with access to RD, FRD, or TFNI:

(1) Must be trained in accordance with § 1045.120;

(2) Must submit matter that potentially contains RD, FRD, or TFNI to a person with the appropriate authority for review in accordance with § 1045.125;

(3) Must submit matter that potentially contains RD, FRD, or TFNI to a person with the appropriate authority for declassification or public release.

§ 1045.50 [Reserved].

§ 1045.55 When are RD, FRD, and TFNI considered for declassification?

RD, FRD, and TFNI information and matter are considered for declassification during several processes.

(a) DOE reviews all classification guides containing RD, FRD, or TFNI topics at least once every 5 years to determine if information identified as RD, FRD, or TFNI still meets the criteria for classification under § 1045.70. If RD, FRD, and TFNI information contained in a classification guide does not meet the standards for classification, the information is declassified.

(b) TFNI is no longer TFNI when comparable U.S. RD is declassified.

(c) Agencies with holdings containing RD, FRD, or TFNI should periodically review holdings that are likely to have a high degree of public interest and a likelihood of declassification. If any matter containing RD, FRD, or TFNI is identified for declassification, agencies must coordinate the declassification of matter marked as RD, FRD, or TFNI with DOE or DoD, as appropriate.

(d) RD, FRD, or TFNI information or matter containing RD, FRD, or TFNI in particular areas of public interest may be considered for declassification if sufficient interest is demonstrated. Proposals for the systematic review of given collections or subject areas must be addressed to the Director, Office of Classification, AU–60/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

(e) During the FOIA and MDR request process, agencies must refer any responsive matter that is marked as or potentially contains RD, FRD, or TFNI to DOE or DoD, as provided under Subpart F. During this process, the information may be reviewed to determine it still meets the standards for classification.

(f) The public and persons with access to RD, FRD, or TFNI may submit a declassification proposal for RD, FRD, or TFNI under § 1045.105.

§ 1045.60 Does an unauthorized public release of RD, FRD, or TFNI result in its declassification?

The unauthorized disclosure of RD, FRD, or TFNI does not automatically result in its declassification. However, if a disclosure is sufficiently authoritative or credible, the Associate Under Secretary for Environment, Health, Safety and Security will examine the possibility of declassifying the information.

§ 1045.65 What are the responsibilities of a person with access to RD, FRD, or TFNI, if they see information in the open literature that they think is RD, FRD, or TFNI?

(a) A person with access to RD, FRD, or TFNI, must not confirm or expand upon the classification status or technical accuracy of information in the open literature that is RD, FRD, or TFNI or suspected to be RD, FRD, or TFNI. Commenting on such information can cause greater damage to national security by confirming its location, classified nature, or technical accuracy.

(b) Because the open literature may contain information that is still classified as RD, FRD, or TFNI, a person who has access to RD, FRD, or TFNI who incorporates information from the open literature that is potentially classified as RD, FRD, or TFNI into matter must ensure the matter is reviewed as required under § 1045.125 to ensure the information incorporated is not classified.

Subpart C—Determining if Information is RD, FRD, or TFNI

§ 1045.70 How is information initially determined to be RD?

(a) For new information to be classified as RD it must fall under the definition of RD that states such information concerns: The design, manufacture, or utilization of nuclear weapons; the production of special nuclear material; or the use of special

nuclear material in the production of energy, and the unauthorized release of the information must reasonably be expected to cause undue risk to the common defense and security.

(b) This initial determination is made by the Director, Office of Classification after:

(1) Ensuring the information is not prohibited from being classified under § 1045.75;

(2) Considering whether the information falls within the classification or declassification presumptions in § 1045.80; and

(3) Evaluating the criteria in this paragraph.

(i) Whether the information is so widely known or readily apparent to knowledgeable observers that its classification would cast doubt on the credibility of classification programs;

(ii) Whether publication of the information would assist in the development of countermeasures or otherwise jeopardize any U.S. weapon or weapon system;

(iii) Whether the information would hinder U.S. nonproliferation efforts by significantly assisting potential adversaries to develop or improve a nuclear weapon capability, produce nuclear weapons materials, or make other military use of nuclear energy;

(iv) Whether information would assist terrorists to develop a nuclear weapon, produce nuclear materials, or use special nuclear material in a terrorist attack;

(v) Whether publication of the information would have a detrimental effect on U.S. foreign relations;

(vi) Whether publication of the information would benefit the public welfare, taking into account the importance of the information to public discussion and education and potential contribution to economic growth; and

(vii) Whether publication of the information would benefit the operation of any Government program by reducing operating costs or improving public acceptance.

(c) In consideration of the analysis of the criteria of this section, if there is significant doubt about the need to classify the information, then the Director cannot make an initial determination to classify the information.

§ 1045.75 Are there prohibitions against information being classified, remaining classified, or prevented from being declassified as RD, FRD, or TFNI?

(a) Yes. Information must not be classified or remain classified as RD, FRD, or TFNI to accomplish the purposes described in paragraphs (b) through (g) of this section. Persons must also not prevent information from being declassified as RD, FRD, or TFNI for the purposes described in paragraphs (b) through (g) of this section.

(b) Conceal violations of law, inefficiency, or administrative error;

(c) Prevent embarrassment to a person, organization, or agency;

(d) Restrain competition;

(e) Prevent or delay the release of information that does not require protection for the national security or nonproliferation reasons;

(f) Unduly restrict dissemination by assigning an improper classification level; or

(g) Prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety.

§ 1045.80 What are the classification and declassification presumptions?

(a) The Director, Office of Classification and the Associate Under Secretary of Environment, Health, Safety and Security consider the presumptions in paragraph (b)(1) of this section before applying the criteria in § 1045.70. These presumptions concern information in certain but not all nuclear-related areas that may generally be presumed to be RD or are generally unclassified. The term ''generally'' here means that as a rule, but not necessarily in every case, the information in the identified area is presumed classified or not classified as indicated. Inclusion of specific existing information in one of the presumption categories does not mean that new information in a category is or is not classified, but only that arguments to differ from the presumed classification status of the information should use the appropriate presumption as a starting point.

(b) Information in the following areas is presumed to be RD:

(1) Detailed designs, specifications, and functional descriptions of nuclear explosives, whether in the active stockpile or retired;

(2) Material properties under conditions achieved in nuclear explosions that are principally useful only for design and analysis of nuclear weapons;

(3) Vulnerabilities of U.S. nuclear weapons to sabotage, countermeasures, or unauthorized use;

(4) Nuclear weapons logistics and operational performance information (*e.g.,* specific weapon deployments, yields, capabilities) related to military utilization of those weapons required by DoD;

(5) Details of the critical steps or components in nuclear material production processes; and

(6) Features of military nuclear reactors, especially naval nuclear propulsion reactors, that are not common to or required for civilian power reactors.

(c) Information in the following areas is presumed to be unclassified:

(1) Basic science: Mathematics, chemistry, theoretical and experimental physics, engineering, materials science, biology, and medicine;

(2) Magnetic confinement fusion technology;

(3) Civilian power reactors, including nuclear fuel cycle information but excluding technologies for uranium enrichment;

(4) Source materials (defined as uranium and thorium and ores containing them);

(5) Fact of use of safety features (*e.g.,* insensitive high explosives, fire resistant pits) to lower the risks and reduce the consequences of nuclear weapon accidents;

(6) Generic nuclear weapons effects;

(7) Physical and chemical properties of uranium and plutonium, most of their alloys and compounds, under standard temperature and pressure conditions;

(8) Nuclear fuel reprocessing technology and reactor products not revealing classified production rates or inventories;

(9) The fact, time, location, and yield range (*e.g.,* ''less than 20 kilotons'' or ''20–150 kilotons'') of U.S. nuclear tests;

(10) General descriptions of nuclear material production processes and theory of operation;

(11) DOE special nuclear material aggregate inventories and production rates not revealing the size of or details concerning the nuclear weapons stockpile;

(12) Types of waste products resulting from all DOE weapon and material production operations;

(13) Any information solely relating to the public and worker health and safety or to environmental quality; and

(14) The simple association or simple presence of any material (*i.e.,* element, compound, isotope, alloy, etc.) at a specified DOE site.

§ 1045.85 How is information determined to be FRD or TFNI and can FRD or TFNI be returned to the RD category?

(a) To be eligible to become FRD or TFNI, information must first be classified as RD in accordance with the AEA and this part. FRD and TFNI are removed from and may be returned to the RD category under section 142 of the AEA. The process by which information is removed from the RD category and placed into the FRD or TFNI category or returned to the RD category is called

transclassification and involves the following decisions:

(1) For information to be transclassified from RD to the FRD category, the Associate Under Secretary for Environment, Health, Safety and Security and the appropriate official within DoD (as specified in DoD Instruction 5210.02 or subsequent instructions) must jointly determine that the information relates primarily to the military utilization of nuclear weapons and can be adequately protected in a manner similar to NSI.

(2) For information to be transclassified from RD to the TFNI category, the Associate Under Secretary for Environment, Health, Safety and Security and the DNI must jointly determine that information concerning a foreign nuclear energy program that falls under the RD definition must be removed from the RD category in order to carry out the provisions of the National Security Act of 1947, as amended, and can be adequately protected in a manner similar to NSI.

(b) The process to return FRD and TFNI to the RD category is as follows:

(1) FRD may be returned to the RD category if the DOE and DoD jointly determine that the programmatic requirements that caused the information to be removed from the RD category no longer apply, the information would be more appropriately protected as RD and returning the information to the RD category is in the interest of national security. DOE jointly with DoD must notify all appropriate agencies of the change.

(2) TFNI may be returned to the RD category if the DOE and the DNI jointly determine that the programmatic requirements that caused the information to be removed from the RD category no longer apply, the information would be more appropriately protected as RD and returning the information to the RD category is in the interest of national security. DOE jointly with the DNI must notify all appropriate agencies of the change.

§ 1045.90 Can information generated by private entities that is not owned by, produced by, or controlled by the U.S. Government be classified as RD?

Yes. Under the AEA, DOE may classify information that is privately generated (*e.g.,* not under a Government contract) as RD. This may only be done in writing by the Secretary or Deputy Secretary. This responsibility cannot be delegated. Once such a determination is made, DOE must notify the public through the **Federal Register**. This notice is not required to reveal any details about the determination and must protect the national security as well as the interests of the private party.

§ 1045.95 What are the criteria used to assign levels to RD, FRD, or TFNI?

(a) When the Director, Office of Classification, makes the initial determination that information is RD, he or she determines the appropriate level of the information based on the damage that would occur if there was an unauthorized disclosure of the information. The Director, Office of Classification, also determines the level for TFNI, and, jointly with the appropriate DoD official (as specified in DoD Instruction 5210.02 or successor instructions) determines the level for FRD information.

(b) The three classification levels of RD, FRD, and TFNI are:

(1) *Top Secret.* Top Secret is applied to information that is vital to the national security the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security that the appropriate official is able to identify or describe.

(2) *Secret.* Secret is applied to information, the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security that the appropriate official is able to identify or describe.

(3) *Confidential.* Confidential is applied to information, the unauthorized disclosure of which could reasonably be expected to cause undue risk to the common defense and security that the appropriate official is able to identify or describe.

§ 1045.100 How are RD, FRD, and TFNI declassified?

(a) This section addresses the declassification of information, not derivatively classified matter. See Subpart D for requirements for the declassification of matter containing RD, FRD, or TFNI.

(b) RD and TFNI are declassified by the Associate Under Secretary for Environment, Health, Safety and Security by evaluating the criteria in § 1045.70. FRD requires the evaluation of the same criteria and a joint decision by the Associate Under Secretary for Environment, Health, Safety and Security and the appropriate DoD official (as specified in DoD Instruction 5210.02 or subsequent instructions).

§ 1045.105 What is the method to request the declassification of RD, FRD or TFNI?

(a) If a person believes RD, FRD, or TFNI should not be classified, he or she may submit a declassification proposal. Proposals must be submitted in writing and must include a description of the information concerned and may include a reason for the request. If submitted by a person with access to RD, FRD, or TFNI, the request must be submitted through secure means. The proposal is processed as follows:

(b) The Associate Under Secretary for Environment, Health, Safety and Security considers declassification proposals from the public and Government agencies and their contractors for the declassification of RD, FRD, and TFNI on an ongoing basis. For FRD, the Director, Office of Classification, will coordinate the declassification proposal with the appropriate DoD official (as specified in DoD Instruction 5210.02 or subsequent instructions).

(c) Declassification proposals may be sent to the Associate Under Secretary for Environment, Health, Safety and Security, AU–1/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. For FRD, the proposal may be sent to the Director, Office of Classification, or the appropriate DoD official (as specified in DoD Instruction 5210.02 or subsequent instructions). DOE and DoD must coordinate with one another concerning declassification proposals for FRD.

§ 1045.110 How are challenges to the classification and declassification of RD, FRD, or TFNI submitted and processed?

(a) Any person with access to RD, FRD, or TFNI who believes that RD, FRD, or TFNI is improperly classified is encouraged and expected to challenge the classification. The challenge may be to information RD, FRD, or TFNI (*e.g.,* a guide topic) or the classification status of matter containing RD, FRD, or TFNI.

(b) Challenges are submitted in accordance with agency procedures.

(c) Each agency must establish procedures for a person to challenge the classification status of RD, FRD, or TFNI if they believe that the classification status is improper. These procedures must:

(1) Advise the person of their right to submit a challenge directly to the Director, Office of Classification, AU–60/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, at any time.

(2) Ensure that under no circumstances is an employee subject to retribution for challenging the classification status of RD, FRD, or TFNI;

(3) Require the agency that initially receives the challenge to provide an

initial response within 60 days to the person submitting the challenge.

(4) Require the agency to advise the person of their appeal rights. If the employee is not satisfied with the agency response or the agency has not responded to the challenge within 180 days, the challenge involving RD, FRD, or TFNI may be appealed to the Director, Office of Classification.

(i) In the case of FRD and RD related primarily to the military utilization of nuclear weapons, the Director, Office of Classification, coordinates with the appropriate DoD official (as specified in DoD Instruction 5210.02 or subsequent instructions).

(ii) In the case of TFNI, the Director, Office of Classification, coordinates with DNI.

(5) If the response to the initial appeal and its justification for classification does not satisfy the person making the challenge, a further appeal may be made to the Associate Under Secretary for Environment, Health, Safety and Security, AU–1/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

(d) Agency responses to RD or TFNI challenges are limited to interpreting the application of guidance to derivatively classify matter. Except for DoD, agency responses to FRD are limited to interpreting the application of guidance to derivatively classify matter. An agency may coordinate challenges regarding interpreting guidance for RD or TFNI with DOE, and may coordinate challenges regarding interpreting guidance for FRD with DOE or DoD.

(e) Agencies must forward challenges that require decisions other than interpreting the application of guidance (*e.g.,* challenges to guide topics) to the Director, Office of Classification.

Subpart D—Classifying and Declassifying Matter Containing RD, FRD, or TFNI

§ 1045.115 Who is authorized to derivatively classify matter that contains RD, FRD, or TFNI?

(a) Specific authority and/or training is required to derivatively classify matter containing RD, FRD, or TFNI. These derivative classification decisions must be based on a classification guide, a classification bulletin, or a portion-marked source document and must only be made in the RD Derivative Classifier's subject areas of expertise. In cases where guidance does not exist, for RD the Director, Office of Classification must make an initial determination that information is RD or that the matter contains RD, and for FRD DOE and DoD must jointly determine that the information is FRD or the matter contains FRD. No other agency or agency personnel has the authority to make an initial determination regarding RD or FRD. See § 1045.135 for the process for requesting a determination in cases where guidance does not exist.

(b) Each person who derivatively classifies matter containing RD or FRD must be an RD Derivative Classifier.

(c) Except for DoD military and DoD Federal civilian employees, each RD Derivative Classifier must be designated by name or position in writing in accordance with agency procedures.

(d) An agency contractor employee may be an RD Derivative Classifier. All contractor employees, including DoD contractors, must be designated by name or position as such in writing in accordance with agency procedures.

(e) Once a person is an RD Derivative Classifier for an agency, he or she may classify matter containing RD or FRD in those subject areas in which they have programmatic expertise for any agency, provided the other agency or agencies accept the existing authority.

(f) No specific designation as an RD Derivative Classifier is required to classify matter containing TFNI. Any person who has received training required by § 1045.120 may classify matter containing TFNI.

§ 1045.120 What training is required for persons who have access to or who derivatively classify matter containing RD, FRD, or TFNI?

(a) Prior to being authorized access to RD and FRD, a person must receive training that explains:

(1) What information is potentially RD and FRD;

(2) Matter that potentially contains RD or FRD must be reviewed by an RD Derivative Classifier to determine whether it contains RD or FRD;

(3) DOE must review matter that potentially contains RD or TFNI for public release and DOE or DoD must review matter that potentially contains FRD for public release;

(4) RD Derivative Classification authority is required to classify or upgrade matter containing RD or FRD, or to downgrade the level of matter containing RD or FRD;

(5) Only a person trained in accordance with this section, may classify matter containing TFNI;

(6) Matter containing RD, FRD, and TFNI is not automatically declassified and only DOE authorized persons may downgrade the category or declassify matter marked as containing RD; only DOE or DoD authorized persons may downgrade the category or declassify matter marked as containing FRD;

(7) How to submit a challenge if they believe RD, FRD, or TFNI information (*e.g.,* a guide topic) or matter containing RD, FRD, or TFNI is not properly classified; and

(8) Access requirements for matter marked as containing RD or FRD.

(b) Each person with access to RD and FRD must also receive periodic refresher briefings covering these same topics.

(c) In addition to the training in paragraph (a) of this section, prior to derivatively classifying matter containing RD, or FRD and every 2 years thereafter, each RD Derivative Classifier must also receive training that explains:

(1) The use of classification guides, classification bulletins, and portion-marked source documents to classify matter containing RD and FRD;

(2) What to do if applicable classification guidance is not available;

(3) Limitations on an RD Derivative Classifier's authority to remove RD or FRD portions from matter; and

(4) Marking requirements for matter containing RD and FRD.

(d) Prior to having access to TFNI, and periodically thereafter, each person must receive the following training (which may be combined with the training required for access to RD or FRD):

(1) What information is potentially TFNI;

(2) Only a person with appropriate training may determine if matter contains TFNI;

(3) Marking requirements for matter containing TFNI;

(4) Matter containing TFNI is not automatically declassified and only DOE authorized persons may downgrade the category or declassify matter marked as containing TFNI; and

(5) How to submit a challenge if they believe TFNI information (*e.g.,* a guide topic) or matter containing TFNI is not properly classified.

(e) In addition to the training in § 1045.120(d), prior to derivatively classifying matter containing TFNI and every 2 years thereafter, each person who derivatively classifies matter containing TFNI must also receive training that explains:

(1) The markings applied to matter containing TFNI;

(2) Limitations on their authority to remove TFNI portions from matter;

(3) Only DOE authorized persons may determine that classified matter no longer contains TFNI;

(4) Only DOE authorized persons may declassify matter marked as containing TFNI; and

(5) DOE must review matter that potentially contains TFNI for public release.

§ 1045.125 What is the process for reviewing and derivatively classifying matter that potentially contains RD, FRD, or TFNI?

(a) *Protecting and marking matter that potentially contains RD, FRD, or TFNI prior to review.* Prior to the review of matter to determine if it contains RD, FRD, or TFNI, the matter must be protected at the overall potential highest level and category and marked as a working paper in accordance with § 1045.140.

(b) *Matter that potentially contains RD, FRD, or TFNI that is intended for public release.* Any person who generates or possesses matter that potentially contains RD, FRD, or TFNI that is intended for public release must ensure that it is reviewed by the Director, Office of Classification, or a DOE official granted the authority by delegation, regulation, or DOE directive, prior to release. FRD may also be reviewed by the appropriate DoD official as specified in DoD Instruction 5210.02 or subsequent instructions.

(c) *Matter that potentially contains RD or FRD information that is not intended for public release.* Matter that potentially contains RD or FRD that is not intended for public release must be reviewed by an RD Derivative Classifier.

(d) *Matter that potentially contains TFNI that is not intended for public release.* Matter that potentially contains TFNI that is not intended for public release must be reviewed by a person who has been trained in accordance with § 1045.120(e).

(e) *Matter that incorporates information from the open literature that potentially contains RD, FRD, or TFNI.* Because the open literature may contain information that is still classified as RD, FRD, or TFNI, matter that incorporates information from the open literature that is potentially RD, FRD, or TFNI must be reviewed as required under this section.

(f) *Matter being reviewed under E.O. 13526 or successor orders.* If, when reviewing matter under the automatic or systematic review provisions of E.O. 13526 or successor orders, the person finds matter potentially contains RD, FRD, or TFNI that it is not correctly marked:

(1) An RD Classifier may review the matter to determine if it contains RD or FRD. If the matter is determined to contain RD or FRD, the matter must be appropriately marked and is exempt from automatic declassification.

(2) A person trained to classify TFNI may review the matter to determine if it contains TFNI. If the matter is determined to contain TFNI, the matter must be appropriately marked and is exempt from automatic declassification.

(3) If an authorized person is unable to make a determination for RD, FRD, or TFNI, the matter must be referred to DOE. Matter containing FRD may also be referred to DoD. The matter may not be automatically declassified until DOE or DoD makes a determination as to its classification status.

§ 1045.130 How does an authorized person derivatively classify matter containing RD, FRD, or TFNI?

(a) *Derivative classification of RD or FRD.* For RD or FRD, an RD Derivative Classifier makes the derivative classification determination using:

(1) A DOE classification guide or bulletin, a joint DOE-agency classification guide, an agency guide with RD/FRD topics that is within his or her programmatic area of expertise; or

(2) An applicable portion-marked source document.

(b) *Derivative classification of TFNI.* For TFNI, a person who is trained to derivatively classify matter containing TFNI makes the determination using:

(1) Approved TFNI guidelines;

(2) A DOE classification guide or bulletin, a joint DOE-agency classification guide, an agency guide with RD, FRD, or TFNI topics within his or her programmatic area of expertise; or

(3) An applicable portion-marked source document.

(c) *Association and compilation.* (1) *RD, FRD, or TFNI classification based on association.* If two or more different, unclassified facts when combined in a specific way result in a classified statement, or if two or more different classified facts or unclassified and classified facts when combined in a specific way result in a higher classification level or more restrictive category, then an RD Derivative Classifier may classify or upgrade the matter based on the association. If the matter is to be portion marked, then each portion of the associated information must be marked at the level and category of the association.

(2) *RD, FRD, or TFNI classification based on compilation.* A large number of often similar unclassified pieces of information or a large number of often similar RD, FRD, or TFNI pieces of information by selection, arrangement, or completeness in matter may add sufficient value to merit classification or to merit classification at a higher level. If there is a classification guide topic that applies to the compilation, an RD Derivative Classifier may classify the information by compilation. In the absence of a classification guide topic that applies, for RD or TFNI, the Director, Office of Classification, may make the determination to classify or upgrade the matter based on compilation. For FRD, the Director, Office of Classification, or any appropriate DoD official (as specified in DoD Instruction 5210.02 or subsequent instructions) may classify or upgrade the matter based on compilation. Matter that is classified as RD, FRD, or TFNI based on compilation is never portion marked.

(d) *Use of a classified addendum.* When it is important to maximize the amount of information available to the public or to simplify matter handling procedures, the RD, FRD, or TFNI should be segregated into a classified addendum.

§ 1045.135 Can a person make an RD, FRD, or TFNI classification determination if applicable classification guidance is not available?

(a) No. If an RD Derivative Classifier or a person trained to classify matter containing TFNI is unable to locate a classification guide or classification bulletin that applies to the nuclear-related information within his or her programmatic expertise and does not have an applicable portion-marked source document to use for derivative classification, then he or she must contact the RDMO or an ARDMO for assistance. The RDMO/ARDMO may be aware of other classification guidance that could apply to the information.

(b) If no guidance is identified, the RDMO must forward the matter to the Director, Office of Classification, for a determination. Within 30 days, the Director, Office of Classification must:

(1) Determine whether the information is already classified as RD, FRD, or TFNI under current classification guidance and, if so, provide such guidance to the RDMO who forwarded the matter.

(2) If the information is not already classified as RD, FRD, or TFNI, the procedures for initially classifying information as RD, FRD, or TFNI under § 1045.70 must be followed. The Director, Office of Classification, must notify the RDMO of the results of the initial classification determination within 90 days of receiving the matter. Initial determinations must be incorporated into classified guides, as appropriate.

(c) Pending a determination, the matter under review must be protected at a minimum as Secret RD, Secret FRD, or Secret TFNI, as appropriate.

§ 1045.140 How is matter containing RD, FRD, or TFNI marked?

(a) *Matter determined to contain RD, FRD, or TFNI.* Matter determined to

contain RD, FRD, or TFNI must be clearly marked to convey to the holder of that matter that it contains such information.

(b) *Marking matter containing RD, FRD, or TFNI in the IC.* Matter generated by/for the IC containing RD, FRD, or TFNI must be marked in accordance with the requirements in this part as described in ICD 710 or successor directives, and the corresponding implementation directives and policy guidance issued or approved by the DNI concerning marking matter containing RD, FRD, and TFNI.

(c) *Working papers containing RD, FRD, or TFNI.* Prior to the determination that matter contains RD, FRD, or TFNI, it must be marked and protected as a working paper. Matter that has not been reviewed that potentially contains RD, FRD, or TFNI, or is expected to be revised prior to the preparation of a finished product that contains RD, FRD, or TFNI, must be dated when created or last changed, marked with the highest potential level and category of information (and caveats, when applicable) on the bottom and top of each page, and must be protected at the highest potential level and category of the information contained in the matter. The matter must also be marked ''Draft'' or ''Working Paper'' on the front cover. The RD/FRD admonishment is not required. RD Derivative Classifier authority is not required to mark working papers containing RD or FRD. However, working papers containing RD or FRD must be reviewed by an RD Derivative Classifier, and working papers containing TFNI must be reviewed by a person trained to mark matter containing TFNI, and the matter must be marked as a final document when it is:

(1) Released outside the originating activity;

(2) Retained more than 180 days from the date of origin or the date of the last change; or

(3) Filed permanently.

(d) *RD and FRD markings.* An RD Derivative Classifier applies or authorizes the application of the following markings on matter determined to contain RD or FRD:

(1) *Front page.* The front page of matter containing RD or FRD must have the page/banner markings at the top and bottom, the RD or FRD admonishment, subject/title marking, and the classification authority block.

(i) *Front page/banner markings.* The top and bottom of the front page must clearly indicate the overall classification level of the matter. The classification category may also be included. No other markings are required in the page/banner marking.

(ii) *Admonishments.* (A) If the matter contains RD or RD and FRD, use the following admonishment:

RESTRICTED DATA

This document contains RESTRICTED DATA as defined in the Atomic Energy Act of 1954, as amended. Unauthorized disclosure subject to administrative and criminal sanctions.

(B) If the document contains FRD and no RD, use the following admonishment:

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to administrative and criminal sanctions. Handle as RESTRICTED DATA in foreign dissemination. Section 144b, Atomic Energy Act of 1954, as amended.

(iii) *Subject/title marking.* The classification level and category of the text of the subject or title (*e.g.,* U, SRD, CFRD, S//RD, C//FRD) must be marked immediately preceding the text of the subject or title.

(iv) *Classification authority block.* The classification authority block for matter containing RD or FRD must identify the RD Derivative Classifier who classified the matter and the classification guidance used to classify the matter.

(A) *Identity of the RD Derivative Classifier.* The RD Derivative Classifier must be identified by name and position or title, and, if not otherwise evident, the agency and office of origin must be identified. An RD Derivative Classifier may also be identified by a unique identifier. For example:

Classified By: *Jane Doe, Nuclear Analyst, DOE, CTI–61*

(B) *Identity of classification guidance.* (*1*) If a classification guide is used to classify the matter, the ''Derived From'' line must include the short title of the guide, the issue date of the guide, the issuing agency and, when available, office of origin. For example:

Derived From: *CG–ABC–1, 10/16/2014, DOE OC*

(*2*) If a source document is used to classify the matter, it must be identified, including the office of origin and the date of the source document. If more than one classification guide or source document is used, the words ''Multiple Sources'' may be included. In the case of multiple sources, a source list identifying each guide or source document must be included with all copies of the matter.

(C) *Declassification instructions.* Matter containing RD or FRD are never automatically declassified and must either omit the ''Declassify On'' line, or indicate that the matter is exempt from automatic declassification (Not Applicable or N/A for RD/FRD, as appropriate).

(2) *Interior page/banner marking.* Each interior page of matter containing RD or FRD must be clearly marked at the top and bottom with the overall classification level and category of the matter or the overall classification level and category of the page, whichever is preferred. The abbreviations ''RD'' and ''FRD'' may be used in conjunction with the matter classification (*e.g.,* SECRET//RD, CONFIDENTIAL//FRD).

(3) *Back cover or back page marking.* The outside of the back cover or back page must be marked with the overall level of information in the matter.

(4) *Portion marking.* Other than the required subject/title marking, portion marking is permitted, but not required, for matter containing RD or FRD. Each agency that generates matter containing RD or FRD determines the policy for portion marking matter generated within the agency. If matter containing RD or FRD is portion marked, each portion containing RD or FRD must be marked with the level and category of the information in the portion (*e.g.,* SRD, CFRD, S//RD, C//FRD).

(e) *TFNI markings.* If matter contains RD or FRD commingled with TFNI, the RD or FRD markings take precedence. If matter contains TFNI and no RD or FRD, a person who is trained to classify matter containing TFNI applies or authorizes the application markings on matter determined to contain TFNI in accordance with 32 CFR part 2001.22, or successor regulations, and with this part.

(1) *Front page.* If the matter contains TFNI and no RD or FRD, no admonishment is required on the front page, but the top and bottom of the front page must be clearly marked with the overall classification level and the TFNI label (*e.g.,* SECRET//TFNI).

(2) *Subject/title marking.* The classification level and category of the subject or title must be marked immediately preceding the text of the subject or title.

(3) *Portion marking.* Matter containing TFNI and no RD or FRD must be portion marked. Each portion containing TFNI must be marked immediately preceding the portion to which it applies with the level and category of the information in the portion (*e.g.,* S//TFNI).

(4) *Classification authority block.* The classifier and guidance used to classify matter containing TFNI must be identified as described in § 1045.40(d)(1)(iv)(A) and (B). In addition, the ''Declassify On'' line must be annotated with the statement: ''Not Applicable [or N/A] to TFNI portions.''

(5) *Interior pages.* If the matter contains TFNI and no RD or FRD, the top and bottom of each interior page must be clearly marked with the overall classification level and the TFNI label (*e.g.,* SECRET//TFNI) or the overall classification level for each page with the TFNI label included on only those pages that contain TFNI, whichever is preferred.

(6) *Back cover or back page marking.* If the matter contains TFNI and no RD or FRD, the top and bottom of the outside of the back cover or back page must be clearly marked with the overall classification level of information in the matter.

(f) *Commingled matter—NSI.* Matter that contains a mixture of RD, FRD, or TFNI and NSI, and is portion marked, must also comply with the following:

(1) *Declassification instructions.* If the matter is not portion marked, then no declassification instructions are included. If the matter is portion marked, declassification instructions for each portion must be included in a source list. See this paragraph (f)(2) and E.O. 13526 or successor orders for instructions on annotating the source list.

(2) *Source list.* The source list must include declassification instructions for all NSI sources used to classify the NSI portions. The declassification instructions for sources that are used to classify the RD, FRD, or TFNI portions must state ''Not applicable [or N/A] to RD/FRD/TFNI (as appropriate).'' The source list must not appear on the front page of the matter, unless the matter is a single page. If the matter is a single page, the source list may appear at the bottom of the page, and must be clearly separate from the classification authority block.

(g) *Commingled matter—CUI.* (1) If matter containing RD and/or FRD and CUI is not portion marked, CUI markings are not required.

(2) *Applicable CUI Decontrol instructions.* (i) If the matter contains RD or FRD and is not portion marked, then CUI decontrol instructions must not be included.

(ii) If the matter is portion marked and decontrol instructions are applied, the decontrol instructions for the CUI portions must not be on the front page. Where they appear, they must be clearly labeled as decontrol instructions for CUI.

(iii) If the matter contains TFNI, and decontrol instructions are applied, the decontrol instructions for the CUI portions must not be on the front page. Where they appear they must be clearly labeled as decontrol instructions for CUI.

(h) *Marking special format matter.* Standard RD, FRD, or TFNI markings must be applied to matter in special formats (*e.g.,* photographs, flash memory drives, compact discs, audio or video tapes) to the extent practicable. Regardless of the precise markings in such cases, any special format matter that contains RD, FRD, or TFNI must be marked so that both a person in physical possession of the matter and a person with access to the information in or on the matter are aware that it contains RD, FRD, or TFNI.

§ 1045.145 Who must review output from a classified IT system that is marked as RD, FRD, or TFNI?

If the output is a final product that has been reviewed by a person with appropriate authority, and is properly marked, or is a working paper that is properly marked, no additional review is required. Otherwise, the output must be reviewed in accordance with § 1045.30.

§ 1045.150 Can anyone remove the RD, FRD, or TFNI portions and markings to produce an NSI or unclassified version of the matter?

(a) *Removal of RD, FRD, or TFNI portions from matter containing RD, FRD, or TFNI.* Specific authority is required to remove RD, FRD, or TFNI portions from matter. The authority required depends on whether the matter is intended for public release, the category of information in the matter, and whether the matter is portion marked.

(b) *If the resulting or new matter is intended for public release.* An RD Derivative Classifier or a person trained to classify matter containing TFNI does not have the authority to remove the RD, FRD, or TFNI portions or markings for matter intended for public release. The matter must be submitted in accordance with § 1045.125 to the appropriate agency who will review the matter and remove the RD, FRD, or TFNI portions and markings.

(c) *If the resulting matter is not intended for public release.* (1) An RD Derivative Classifier may remove the portions marked as containing RD or FRD and remove the RD or FRD markings.

(2) A person trained in accordance with § 1045.120(e) may remove the portions containing TFNI and the TFNI markings.

(3) In all cases under § 1045.150(b) this may be done only if the matter is originated by the authorized person's agency and the matter is portion marked, and the resulting matter is reviewed to ensure it does not contain RD, FRD, or TFNI by a person authorized to review the matter.

§ 1045.155 How is matter marked as containing RD, FRD, or TFNI declassified?

(a) *Declassification of matter containing RD, FRD, or TFNI.* RD, FRD, and TFNI are never automatically declassified. No date or event for automatic declassification ever applies to RD, FRD, or TFNI, even when commingled with NSI. It takes positive action by an authorized person to declassify matter potentially containing or marked as containing RD, FRD, or TFNI.

(b) *Authority to declassify matter containing RD, FRD, or TFNI.* Only authorized persons within DOE may declassify matter marked as RD or TFNI and only authorized persons within DOE or DoD may declassify matter marked as FRD. Only these same persons may identify the portions of classified matter that contain RD, FRD, or TFNI that must be redacted prior to public release.

(c) *Declassification of matter containing RD or TFNI.* Except as allowed under paragraph (b) of this section, only designated persons in DOE may declassify matter marked as containing RD or TFNI or identify the RD or TFNI portions of matter that must be removed from the matter prior to public release. Such determinations must be based on classification guides.

(d) *Declassification of matter containing FRD.* Except as allowed under paragraph (b) of this section, only designated persons in DOE or appropriate persons in DoD (as specified in DoD Instruction 5210.02 or subsequent instructions) may declassify matter marked as containing FRD or determine the FRD portions of matter that must be removed prior to public release. Such determinations must be based on classification guides.

(e) *Delegation of declassification authority.* The Director, Office of Classification, may delegate declassification authority for matter containing RD and TFNI to other agencies Federal and contractor personnel. The Director, Office of Classification, or an appropriate person in DoD (as specified in DoD Instruction 5210.02 or subsequent instructions) may delegate declassification authority for matter containing FRD to qualified Federal or contractor personnel in other agencies.

§ 1045.160 When the RD, FRD, or TFNI is removed from matter, what action must be taken if the matter still contains NSI?

When an appropriate authority removes the RD, FRD, or TFNI from

matter and it still contains NSI, the matter must be marked following E.O. 13526 and 32 CFR part 2001 or successor orders and regulations, including portion marking if the matter was not previously portion marked, and the classification authority block of the matter must be changed to contain declassification instructions for the NSI. This does not apply to matter produced as part of the coordination process for declassification or public release reviews.

§ 1045.165 Once matter marked as RD, FRD, or TFNI is declassified, how is it marked?

(a) Matter that is determined to no longer contain RD, FRD, or TFNI and also does not or no longer contains NSI must be clearly marked to convey to the holder of that matter that the matter is declassified;

(b) The front page must identify the person authorizing the declassification by name and position or title, if not otherwise evident, agency, and office of origin; or with a unique identifier; the classification guide that served as the basis for the declassification by short title, date, agency and, when available, the office of origin; and the declassification date. For example:

(1) Declassified by: *Jane Doe, Nuclear Analyst, DOE, CTI–61*

(2) Derived from: *CG–ABC–1, 10/16/2014, DOE OC*

(3) Declassified on: *20201009*

(c) The person authorizing the declassification must line through but not obliterate the classification markings and apply or authorize the application of the appropriate markings.

Subpart E—Government-Wide Procedures for Handling Freedom of Information Act (FOIA) and Mandatory Declassification Review (MDR) Requests for Matter Marked as or Potentially Containing RD, FRD, or TFNI

§ 1045.170 What is the purpose of this subpart?

This subpart contains requirements that apply when Federal agencies other than DOE receive FOIA or MDR requests for matter that is marked as or potentially contains RD, FRD, or TFNI. RD, FRD, and TFNI are classified under the Atomic Energy Act and are not subject to the provisions governing MDR requests under E.O. 13526 or successor orders. To ensure RD, FRD, and TFNI are considered and appropriately reviewed when requested under a FOIA or MDR request, this section describes the process Federal agencies must follow for FOIA and MDR requests for matter that is marked as or potentially contains RD, FRD, or TFNI.

§ 1045.175 How must agencies process FOIA and MDR requests for matter that is marked as or potentially contains RD, FRD, or TFNI?

(a) When an agency receives a FOIA or MDR request for which any responsive matter is marked as or potentially contains RD, FRD, or TFNI, the agency must forward the matter to the appropriate agency as follows:

(1) Forward any matter marked as or potentially containing RD or TFNI to the Director, Office of Classification or a DOE official granted authority by delegation, regulation, or DOE directive.

(2) Forward any matter originated by DOE and marked as or potentially containing FRD to either the Director, Office of Classification or a DOE official granted authority by delegation, regulation, or DOE directive. Forward any matter originated by DoD and marked as or potentially containing FRD to the appropriate DoD program (as specified in DoD Manual 5400.07, DoD Freedom of Information Act (FOIA) Program, subsequent manuals, or other applicable manuals). Matter not originated by DOE or DoD may be submitted to either agency as provided in this paragraph.

(b) DOE and DoD must coordinate the review of matter marked as or potentially containing RD and FRD, when appropriate. DOE and the DNI must coordinate the review of matter marked as or potentially containing TFNI, when appropriate.

(c) DOE, DoD, or the DNI may refuse to confirm or deny the existence or nonexistence of the requested matter whenever the fact of its existence or nonexistence is itself classified as RD, FRD, or TFNI.

(d) If the information contained in the requested matter has been reviewed for declassification within the past 2 years, another review need not be conducted, but instead the agency may inform the requester of this fact and of the results of the prior review decision.

(e) When paragraph (c) or (d) of this section do not apply, and the information requested under an MDR is not exempt under § 1045.195, the appropriate DOE or DoD authority must conduct a line-by-line review of matter forwarded under paragraph (a) of this section; identify the information that is classified under current classification guidance as RD, FRD, or TFNI; and respond to the agency that forwarded the matter. The response to the agency who forwarded the request must identify the RD, FRD, or TFNI that is exempt from public release; provide the FOIA exemption or appropriate MDR notation for the RD, FRD, or TFNI withheld; identify the Denying Official for the RD, FRD, or TFNI withheld; and explain the applicable appeal procedures for a FOIA request identified in 10 CFR 1004.8 or for an MDR request identified in § 1045.180.

(1) The Denying Officials are as follows:

(i) The Denying Official for matter containing RD or TFNI is the Director, Office of Classification.

(ii) The Denying Official for matter containing FRD is the Director, Office of Classification, or the appropriate DoD Component's Initial Denying Authority (as specified in applicable DoD manuals).

(iii) The Denying Official for Naval Nuclear Propulsion Information is the National Nuclear Security Administration (NNSA) Deputy Director, Deputy Administrator for Naval Reactors.

(f) Upon receipt of the response from DOE or DOD, the agency processing the initial request must inform the requester of the results of the review; provide the name of the Denying Official identified for any RD, FRD, or TFNI withheld; and advise the requester of his or her appeal rights concerning the RD, FRD, or TFNI.

§ 1045.180 What is the procedure if an agency receives an appeal to a FOIA or MDR concerning the denial of RD, FRD, or TFNI?

(a) If an agency receives a FOIA appeal for RD, FRD, or TFNI denied by DOE within 90 days of receipt of the denial and as required under 10 CFR 1004.8, the appeal must be submitted to the DOE Director, Office of Hearings and Appeals. If an agency receives a FOIA appeal for FRD denied by DoD, it must be submitted to DoD in accordance with applicable DoD FOIA regulations or instructions.

(b) Appeals of an MDR response when DOE denied RD, FRD, or TFNI may be submitted to the agency that replied to the initial MDR request or directly to DOE.

(1) When an MDR appeal concerning DOE-withheld RD, FRD, or TFNI is sent to the agency that replied to the initial MDR request, the appeal must be received by the agency who replied to the initial request within 60 days of receipt of the denial and contain the information required under § 1045.210(b). The agency must forward the appeal to the Associate Under Secretary of Environment, Health, Safety and Security at the following address: Associate Under Secretary for Environment, Health, Safety and Security, AU–1/Forrestal Building, U.S.

Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

(2) When sent directly to DOE, an MDR appeal must be received by the Associate Under Secretary for Environment, Health, Safety and Security within 60 days of the denial and contain the information required under § 1045.210(b).

(3) MDR appeals received by DOE are processed consistent with § 1045.220.

(c) If an agency receives an MDR appeal for FRD withheld by DoD, the agency must submit the appeal to the appropriate DoD Component as identified in applicable DoD manuals.

(d) MDR Final Appeal: The classification and declassification of RD, FRD, and TFNI is governed by the AEA and this part and is not subject to E.O. 13526 or successor orders. Therefore, MDR appeal decisions by the Associate Under Secretary for Environment, Health, Safety and Security, for RD, FRD, and TFNI and MDR appeal decisions by the appropriate DoD Component appellate authority for FRD are final agency decisions and are not subject to review by ISCAP. However, if matter containing RD, FRD, or TFNI also contains NSI, the NSI portions may be appealed to the ISCAP. Prior to submission to ISCAP, the RD, FRD, or TFNI portions must be deleted.

(e) The FOIA and MDR appeal authorities for RD, FRD, or TFNI are as follows:

(1) The appeal authority for RD and TFNI is the Associate Under Secretary for Environment, Health, Safety and Security.

(2) The appeal authority for FRD is the Associate Under Secretary for Environment, Health, Safety and Security or the appropriate DoD Component appellate authority.

(3) The appeal authority for Naval Nuclear Propulsion Information is the NNSA Deputy Administrator for Naval Reactors.

(f) Declassification proposals resulting from appeal reviews: The appeal review of RD, FRD, and TFNI withheld from a requester is based on current classification guidance. However, as part of the appeal review, the withheld information must be reviewed to determine if it may be a candidate for possible declassification. If declassification of the information appears to be appropriate, then a declassification proposal must be initiated, and the requester must be advised that additional information will be available if the declassification proposal is approved.

Subpart F—DOE-Specific Procedures for MDR Requests

§ 1045.185 What is the purpose of this subpart?

This subpart describes the process for MDR requests submitted for DOE matter classified under E.O. 13526 or successor orders, and the Atomic Energy Act.

§ 1045.190 How does the public submit an MDR for DOE classified matter?

(a) DOE matter marked as containing NSI, RD, FRD, or TFNI is subject to review for declassification by DOE if the request for a declassification review describes the matter containing the information with sufficient specificity to enable DOE to locate it with a reasonable amount of effort.

(b) The request must be sent to the Director, Office of Classification, AU–60/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

§ 1045.195 Is any matter exempt from MDR requests?

(a) MDR requests are not accepted for:

(1) Matter containing RD technical engineering, blueprints, and design regarding nuclear weapons, if they contain no NSI.

(2) Matter required to be submitted for prepublication review or other administrative process pursuant to an approved nondisclosure agreement;

(3) Matter that is the subject of pending litigation; or

(4) Any matter contained within an operational file exempted from search and review, publication, and disclosure under the FOIA in accordance with law.

(b) Current Presidential records as described in section 3.5(b) of E.O. 13526 or successor orders that are in the custody of DOE are exempt from release in response to an MDR request.

§ 1045.200 Is there a cost for an MDR review?

Yes. The fees, including waivers, reductions, and categorizations, are the same for an MDR as for providing records under the FOIA as defined in 10 CFR 1004.9.

§ 1045.205 How does DOE conduct an MDR review?

(a) If DOE has reviewed the information contained in the requested matter for declassification within the past 2 years, DOE need not conduct another review. DOE may instead inform the requester of this fact and of the prior review decision, as well as advise the requester of his or her appeal rights as provided in § 1045.210.

(b) DOE performs an MDR as follows:

(1) Conducts a line-by-line review of the matter;

(2) Coordinates the review with appropriate programs and agencies, as necessary;

(3) Identifies and withholds any information that meets the standards for classification;

(4) Declassifies any NSI that no longer meets the standards for classification under E.O. 13526 or successor orders and any RD, FRD, or TFNI that no longer meets the standards for classification under this part;

(5) If the matter also contains unclassified information that is potentially exempt from release under the FOIA, the matter is further processed to ensure unclassified information that is exempt from public release is identified and that the appropriate officials responsible for denying any unclassified portion of the matter are provided and listed with the notice of denial.

(6) Upon completion of the review, releases the matter to the requester unless withholding is authorized by law. If NSI, RD, FRD, or TFNI, is withheld, the response must advise the requester of his or her appeal rights under § 1045.210.

§ 1045.210 How does a person submit an appeal if DOE withholds classified information in an MDR response?

(a) When the Director, Office of Classification, denies NSI, RD, FRD, or TFNI, or the NNSA Deputy Director, Deputy Administrator for Naval Reactors, denies Naval Nuclear Propulsion information, in matter requested under an MDR, the requester may appeal the determination to the Associate Under Secretary for Environment, Health, Safety and Security. The appeal must be received within 60 days of the receipt of the denial.

(b) The appeal must be in writing and submitted to the Associate Under Secretary for Environment, Health, Safety and Security, AU–1/Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. The appeal:

(1) Must contain a concise statement of grounds upon which it is brought, and a description of the relief sought.

(2) Must include a copy of the letter containing the determination being appealed.

(3) Should include a discussion of all relevant authorities that include but are not limited to DOE (and predecessor agencies) rulings, regulations, interpretations, and decisions on appeals, as well as any judicial

determinations being relied upon to support the appeal.

§ 1045.215 How does DOE process an MDR appeal for DOE matter containing NSI?

An appeal for NSI requested under the provisions of E.O. 13526 or successor orders is processed as follows:

(a) The Associate Under Secretary for Environment, Health, Safety and Security must act upon the appeal within 60 working days of its receipt. If no determination on the appeal has been issued at the end of this 60-day period, the requester may consider his or her administrative remedies to be exhausted and may seek a review by the ISCAP. When no determination can be issued within the applicable time limit, the appeal must nevertheless continue to be processed. On expiration of the time limit, DOE must inform the requester of the reason for the delay, of the date on which a determination may be expected to be issued, and of the requester's right to seek further review by the ISCAP. Nothing in this subpart precludes the appeal authority and the requester from agreeing to an extension of time for the decision on an appeal. The Associate Under Secretary for Environment, Health, Safety and Security must confirm any such agreement in writing and clearly specify the total time agreed upon for the appeal decision.

(b) The Associate Under Secretary for Environment, Health, Safety and Security's action on an appeal must be in writing and set forth the reason for the decision. DOE may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified under E.O. 13526 or successor orders.

(c) The requester has the right to appeal a final DOE decision, or a failure to provide a determination on an appeal within the allotted time, to the ISCAP for those appeals dealing with NSI. In cases where NSI documents also contain RD, FRD, or TFNI, the portions of the document containing RD, FRD, or TFNI must be deleted prior to forwarding the NSI and unclassified portions to the ISCAP for review.

§ 1045.220 How does DOE process an MDR appeal for matter containing RD, FRD, or TFNI?

(a) Final appeals for DOE matter containing RD, FRD, or TFNI are submitted to the Associate Under Secretary for Environment, Health, Safety and Security. The Associate Under Secretary for Environment, Health, Safety and Security will coordinate appeals concerning Naval Nuclear Propulsion Information with the NNSA Deputy Administrator for Naval Reactors.

(b) The classification and declassification of RD, FRD, and TFNI is governed by the AEA and this part and is not subject to E.O. 13526 or successor orders. Therefore, appeal decisions concerning RD, FRD, or TFNI by the Associate Under Secretary for Environment, Health, Safety and Security, or the NNSA Deputy Administrator for Naval Reactors are not subject to review by ISCAP.

§ 1045.225 Are DOE responses to MDR requests available to the public?

Yes. Once the classified and unclassified information exempt from public release is redacted, DOE responses to MDR requests, as well as FOIA requests for matter containing classified information, are posted on DOE's OpenNet System at: *https://www.osti.gov/opennet/.*

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Part VII

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 3, 50, 217, et al.
Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3 and 50

[Docket ID OCC–2018–0037]

RIN 1557–AE56

FEDERAL RESERVE SYSTEM

12 CFR Parts 217 and 249

[Docket No. R–1628]

RIN 7100–AF21

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324 and 329

RIN 3064–AE96

Proposed Changes to Applicability Thresholds for Regulatory Capital and Liquidity Requirements

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 with request for public comment.

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 inviting comment on a proposal that would establish risk-based categories for determining applicability of requirements under the regulatory capital rule, the liquidity coverage ratio rule, and the proposed net stable funding ratio rule for large U.S. banking organizations. The proposal would establish four categories of standards and apply tailored capital and liquidity requirements for banking organizations subject to each category. The proposal is consistent with a separate proposal issued by the Board that would apply certain prudential standards for large U.S. banking organizations based on the same categories. The proposal would not amend the capital and liquidity requirements currently applicable to an intermediate holding company of a foreign banking organization or its subsidiary depository institutions. This proposal also would not amend the requirements applicable to Federal branches or agencies of foreign banking organizations.

DATES: Comments must be received by January 22, 2019.

ADDRESSES: Comments should be directed to: OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Proposed Changes to Thresholds Applicable to Regulatory Capital and Liquidity Requirements'' 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–2018–0037'' 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–2018–0037'' 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–2018–0037'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen and then ''Comments.'' Comments and supporting materials can be filtered by clicking on ''View all documents and comments in this docket'' 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*. 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–1628, 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 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–AE96, 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–AE96 on the subject line of the message.

• *Public Inspection:* All comments received must include the agency name and RIN 3064–AE96 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, or Venus Fan, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; James Weinberger, Technical Expert, Treasury & Market Risk Policy, (202) 649–6360; or Carl Kaminski, Special Counsel, Henry Barkhausen, Counsel, or Daniel Perez, Attorney, Chief Counsel's Office, (202) 649–5490, or 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; Brian Chernoff, Senior Supervisory Financial Analyst, (202) 452–2952; Sean Healey, Supervisory Financial Analyst, (202) 912–4611; Matthew McQueeney, Supervisory Financial Analyst (202) 452–2942; Christopher Powell, Supervisory Financial Analyst, (202) 452–3442, Division of Supervision and Regulation; or Benjamin McDonough, Assistant General Counsel (202) 452–2036; Asad Kudiya, Counsel, (202) 475–6358; Mary Watkins, Senior Attorney (202) 452–3722; Alyssa O'Connor, Attorney, (202) 452–3886, 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;* Stephanie Lorek, Senior Policy Analyst, *slorek@fdic.gov*; Michael Maloney, Senior Policy Analyst, *mmaloney@fdic.gov*; *regulatorycapital@fdic.gov*; Michael E. Spencer, Chief, Capital Markets Strategies Section, *michspencer@fdic.gov*; Eric W. Schatten, Senior Policy Analyst, *eschatten@fdic.gov*; Andrew D. Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov*; Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; Michael Phillips, Acting Supervisory Counsel, *mphillips@fdic.gov*; Catherine Wood, Counsel, *cawood@fdic.gov*; Suzanne Dawley, Counsel, *sudawley@fdic.gov*; Andrew B. Williams II, Counsel, *andwilliams@fdic.gov*; Catherine Topping, Counsel, *ctopping@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:

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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 2007–2009 financial crisis.[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 the risk-sensitivity of capital requirements. In addition, to improve the banking sector's resiliency to liquidity stress and to improve the ability of large and internationally active banking organizations to monitor and manage liquidity risk, the agencies adopted the liquidity coverage ratio (LCR) rule in 2014,[3] and the Board implemented enhanced liquidity standards[4] for the largest depository institution holding companies. Companies subject to the LCR rule must maintain an amount of high-quality liquid assets (HQLA) equal to or greater than their projected total net cash outflows over a prospective 30 calendar-day period.[5] Finally, on June 1, 2016, the agencies invited comment on a proposed rule to implement a net stable funding ratio (NSFR) requirement.[6] The proposed NSFR rule would establish a quantitative metric to measure and help ensure the stability of the funding profile of a banking organization over a one-year time horizon.

Many of the agencies' current rules, including the capital rule, the LCR rule, and the proposed NSFR rule, differentiate among banking organizations based on one or more risk indicators, such as total asset size and foreign exposure. Specifically, the capital rule categorizes banking organizations into two groups: (i)

[1] Covered intermediate holding companies shall remain subject to this part as in effect on October 31, 2018, until the Board amends the liquidity risk measurement standards applicable to the subsidiaries of foreign banking organizations in effect on October 31, 2018.

[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, and 12 CFR 238.9), 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* 79 FR 61440 (October 10, 2014), codified at 12 CFR part 50 (OCC), 12 CFR part 249 (Board), and 12 CFR part 329 (FDIC).

[4] These enhanced liquidity standards require a bank holding company to establish and maintain robust liquidity risk management practices, perform internal stress tests for determining the adequacy of their liquidity resources, and maintain a buffer of highly liquid assets to cover cash flow needs under stress. *See* 12 CFR part 252.

[5] For depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in on-balance sheet foreign exposure, the Board separately adopted a modified LCR requirement, described further below. 12 CFR 249 subpart G.

[6] ''Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements; Proposed Rule,'' 81 FR 35124 (June 1, 2016). For depository institution holding companies with $50 billion or more, but less than $250 billion, in total consolidated assets and less than $10 billion in total on-balance sheet foreign exposure, the Board separately proposed a modified NSFR requirement.

Banking organizations subject solely to the generally applicable risk-based capital rules, which have total consolidated assets of less than $250 billion and total on-balance sheet foreign exposure of less than $10 billion (standardized approach banking organizations),[7] and (ii) banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure, together with depository institution subsidiaries of banking organizations meeting those thresholds (advanced approaches banking organizations).[8] Standardized approach banking organizations must calculate risk-weighted assets using the standardized approach [9] and calculate a leverage ratio that measures regulatory capital relative to on-balance sheet assets. Advanced approaches banking organizations must use both the internal models-based advanced approaches and the standardized approach to determine their risk-based capital ratios. They also must calculate a supplementary leverage ratio, which measures regulatory capital relative to on-balance sheet and certain off-balance sheet exposures, in addition to the leverage ratio described above. In addition, when calculating their regulatory capital levels, advanced approaches banking organizations are required to include most elements of accumulated other comprehensive income (AOCI) in regulatory capital, which better reflects the loss-absorbing capacity of a banking organization at a specific point in time, but can also result in regulatory capital volatility and require more sophisticated capital planning and asset-liability management.

Additional capital requirements apply to U.S. GSIBs beyond those applicable to advanced approaches banking organizations, which are intended to increase their resiliency as the largest, most interconnected and systemically risky banking organizations. First, a risk-based capital surcharge applies to U.S. GSIBs at the top-tier bank holding company level, calibrated to reflect their systemic footprint. Second, an enhanced supplementary leverage ratio standard applies to U.S. GSIBs and their insured depository institution subsidiaries.[10]

With respect to the liquidity rules, the LCR rule also distinguishes between banking organizations based on total asset size and foreign exposure. The full LCR requirement generally applies to banking organizations that meet the advanced approaches thresholds and to their subsidiary depository institutions with total consolidated assets of $10 billion or more.[11] The Board's regulations also apply a less stringent, modified LCR requirement to depository institution holding companies that do not meet the advanced approaches thresholds but have more than $50 billion in total consolidated assets. The proposed NSFR requirement would apply to the same banking organizations as the current LCR requirement. Similarly, under the NSFR proposal, the Board proposed to apply a less stringent, modified NSFR requirement to the same depository institution holding companies that are subject to the modified LCR requirement.

The scoping criteria of the regulations described above rely on a definition of advanced approaches banking organization that the agencies introduced in 2007 in connection with the adoption of the advanced approaches risk-based capital rule. The thresholds established by the definition were designed to include the largest and most internationally active banking organizations. In implementing the liquidity rules, the agencies relied on these same thresholds, recognizing the applicable banking organizations have balance sheet compositions, off-balance sheet activities, and funding profiles that lead to larger and more complex liquidity profiles.

The agencies are proposing modifications to their capital and liquidity rules that would revise the criteria for determining the prudential standards that apply to large banking organizations operating in the United States (the proposal).[12] Specifically, the agencies are proposing to (i) amend the scope of certain aspects of the regulatory capital rule and the LCR rule; and (ii) re-propose the scope of the NSFR rule. The proposal would update the current regulatory distinction between advanced approaches and standardized approach banking organizations and further tailor the capital and liquidity requirements applicable to large banking organizations according to risk-based indicators. Specifically, for banking organizations with total consolidated assets of $100 billion or more, the proposal would establish four categories of standards based on size, cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank assets. Section II.B of this Supplementary Information section below discusses the proposed scoping criteria for each of these categories, and section II.C describes the capital and liquidity requirements proposed for each category of standards.[13]

The agencies note that there are currently additional outstanding notices of proposed rulemaking that make reference to the advanced approaches thresholds to set the scope of application, relating to simplifications to the agencies' capital rule (issued October 2017) [14] and a standardized approach to calculating derivative

[7] *See* 12 CFR part 217, subparts D & E (Board); 12 CFR part 3 (OCC), Subparts D & E; 12 CFR part 324, subparts D & E (FDIC).

[8] *See* 12 CFR 217.1(c), 12 CFR 217.100(b) (Board); 12 CFR 3.1(c), 12 CFR 3.100(b) (OCC); 12 CFR 324.1(c), 12 CFR 324.100(b) (FDIC). U.S. global systemically important bank holding companies (GSIBs) form a sub-category of advanced approaches banking organizations.

[9] Also referred to as the ''generally applicable'' risk-based capital requirements.

[10] The FDIC and OCC apply an enhanced supplementary leverage ratio standard to insured depository institution subsidiaries of U.S. top-tier bank holding companies with more than $700 billion in total consolidated assets or more than $10 trillion in total assets under custody, while the Board's regulation applies these requirements to insured depository institution subsidiaries of U.S. GSIBs. There is currently no difference between the holding companies identified by these regulations, and the OCC has proposed to amend its regulation to reference the Board's U.S. GSIB definition. *See* Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Insured Depository Institutions; Total Loss-Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies, 83 FR 17317 (proposed April 19, 2018).

[11] *See* 12 CFR 249.1.

[12] This proposal is part of the agencies' ongoing effort to review their respective capital and liquidity requirements to determine how best to tailor their application based on the size, complexity, and overall risk profile of banking organizations. Consistent with these efforts, the agencies also intend to issue a proposal to implement section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which requires the agencies to revise the capital requirements applicable to certain banking organizations with less than $10 billion in total consolidated assets. *See* Public Law 115–174, 132 Stat. 1296 (2018).

[13] Separately, the Board is requesting comment on a proposed rule (the Board-only proposal) that would tailor certain prudential standards for large domestic banking organizations based on the same categories. In particular, and consistent with section 401 of EGRRCPA, the Board-only proposal would further tailor the application of existing prudential standards relating to liquidity, risk management, stress testing, and single-counterparty credit limits. In order to appropriately tailor the prudential requirements, the Board-only proposal incorporates the four categories of prudential standards for banking organizations described in this proposal. In addition, the Board-only proposal would apply prudential standards to certain large savings and loan holding companies (other than those substantially engaged in insurance underwriting or commercial activities), using the same categories, to further their safety and soundness. The agencies encourage commenters to review this proposal together with the Board-only proposal.

[14] *See* ''Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.'' 82 FR 49984 (October 27, 2017).

exposures (issued October 2018).[15] For purposes of considering and commenting on those pending notices, the requirements that would apply to ''advanced approaches banking organizations'' under those notices of proposed rulemaking would be included as Category I and II standards under this proposal. For purposes of considering and commenting on those pending notices, the requirements that would apply to ''advanced approaches banking organizations'' under those outstanding notices of proposed rulemaking would be included as Category I and II standards under this proposal. Furthermore, the agencies note that they are still considering amendments to their capital rule that would take into account final Basel III reforms adopted by the Basel Committee on Banking Supervision (BCBS) in December of 2017.[16]

II. Proposal

Post-crisis regulatory reforms, which include the agencies' capital and liquidity standards, have resulted in significant enhancements to financial stability and the safety and soundness of banking organizations. The agencies continue to evaluate the requirements of these measures to ensure that they meet their objectives in a manner that minimizes unintended consequences and aligns with banking organizations' risk profiles. These efforts include assessing the costs and benefits of regulations as well as exploring alternative approaches that achieve regulatory objectives but improve upon the simplicity, transparency, and efficiency of the regime. The proposal builds on the agencies' existing practice of tailoring capital and liquidity requirements based on the size, complexity, and overall risk profile of banking organizations.

The proposal would make changes that would further distinguish applicable capital and liquidity standards on the basis of risk. Under the proposal, the most stringent standards would continue to apply to banking organizations that present the greatest systemic risks. For other banking organizations, the proposal would refine the application of capital and liquidity standards based on these banking organizations' risk profiles, consistent with safety and soundness and financial stability.

Under the proposal, the most stringent set of standards (Category I) would apply to U.S. GSIBs and their subsidiary depository institutions. These banking organizations have the potential to pose the greatest risks to U.S. financial stability due to their systemic risk profiles. The existing post-financial crisis framework for U.S. GSIBs has resulted in significant gains in resiliency and risk management. The proposal accordingly would maintain the most stringent standards for these banking organizations, which are generally consistent with the standards developed by the BCBS, subject to notice and comment rulemaking in the United States.

The second set of standards (Category II) would apply to banking organizations that are very large or have significant international activity. Like Category I, the agencies intend for Category II standards to be consistent with standards developed by the BCBS, subject to notice and comment rulemaking in the United States. The application of consistent prudential standards across jurisdictions to banking organizations with significant size or cross-jurisdictional activity helps to promote competitive equity among U.S. banking organizations and their foreign peers and competitors, and to reduce opportunities for regulatory arbitrage, while applying standards that appropriately reflect the risk profiles of banking organizations in this category. In addition, consistency of standards can facilitate U.S. banking organizations' regulatory compliance in foreign markets. Category II standards would also reflect the risks associated with these banking organizations' very large size or cross-border operations.

The third set of standards (Category III) would apply to banking organizations with total consolidated assets of $250 billion or more that do not meet the criteria for Category I or II, and to other banking organizations with total consolidated assets of $100 billion or more, but less than $250 billion, that meet or exceed specified indicators of risk. Category III standards would reflect these banking organizations' heightened risk profiles relative to smaller and less complex banking organizations.

The fourth set of standards (Category IV) would apply to banking organizations with total consolidated assets of $100 billion or more that do not meet the thresholds for one of the other categories. These banking organizations generally have greater scale and operational and managerial complexity relative to smaller banking organizations, but less than banking organizations that would be subject to Category I, II, or III standards. In addition, the failure or distress of one or more banking organizations that would be subject to Category IV standards, while not likely to have as significant of an impact on financial stability as the failure or distress of a firm subject to Category I, II or III standards, could nonetheless have a more significant negative effect on economic growth and employment relative to the failure or distress of smaller banking organizations. Category IV standards are therefore less stringent than Category III standards, reflecting the lower risk profile of these banking organizations relative to other banking organizations with $100 billion or more in total consolidated assets. For example, based on the size and risk profile of these banking organizations, the proposal would remove applicability of the LCR rule and proposed NSFR rule for banking organizations subject to Category IV standards. As a result, firms subject to Category IV standards would generally face the same capital and liquidity regulatory requirements as banking organizations under $100 billion in total consolidated assets.[17] Unlike firms with less than $100 billion in total consolidated assets, however, firms subject to Category IV standards would be required to monitor and report certain risk-based indicators, as described further below.

A. Scope of Application

The next section II.B describes the proposed criteria for determining which of the four proposed categories of standards applies to a banking organization with total consolidated assets of $100 billion or more and its subsidiary depository institutions. The proposed categories and criteria are consistent with the considerations and factors set forth in section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[18] as amended by EGRRCPA, and with the categories of prudential standards in the Board-only proposal. The proposal would not amend the capital and liquidity requirements

[15] *See* ''Regulatory Capital Rule: Standardized Approach for Calculating the Exposure Amount of Derivative Contracts,'' available at *https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-ia-2018-114.html.*

[16] *See* ''Basel III: Finalising post-crisis reforms,'' available at *https://www.bis.org/bcbs/publ/d424.htm.* The BCBS is a committee of banking supervisory authorities, which was established by the central bank governors of the G–10 countries in 1975. More information regarding the BCBS and its membership is available at *http://www.bis.org/bcbs/about.htm.* Documents issued by the BCBS are available through the Bank for International Settlements website at *http://www.bis.org.*

[17] Bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets and that meet certain additional criteria are not subject to the capital rule pursuant to the Board's small bank holding company policy statement. *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

[18] Public Law 111–203, 124 Stat. 1376 (2010).

applicable to an intermediate holding company or its subsidiary depository institutions or the bank holding company subsidiary of a foreign banking organization.[19] This proposal also would not amend the requirements applicable to Federal branches or agencies of foreign banking organizations.

The proposal would apply the same category of standards to both the top-tier holding company and its subsidiary depository institutions. With respect to capital, the proposal would apply the same requirements to a subsidiary depository institution of a holding company as would apply at the holding company level. This treatment aligns with the agencies' longstanding policy of applying similar standards to holding companies and their subsidiary depository institutions. For example, since 2007 the agencies have generally required depository institutions to apply the advanced approaches capital requirements if their parent holding company is identified as an advanced approaches banking organization. This approach serves as an important safeguard against arbitrage among affiliated banks that would otherwise be subject to substantially different regulatory requirements. With respect to liquidity, subsidiary depository institutions of a holding company subject to the full LCR and the proposed full NSFR with $10 billion or more in total consolidated assets at the depository institution level are also subject to the LCR requirement and would be subject to the proposed NSFR requirement. Large subsidiary depository institutions play a significant role in a covered company's funding structure, and in the operation of the payments system. These large subsidiaries generally also have access to deposit insurance coverage. Accordingly, the proposal would maintain the application of the LCR and proposed NSFR requirements to these large subsidiary depository institutions.

Question 1: The agencies invite comment on the advantages and disadvantages of assigning a category of standards to a subsidiary depository institution based on the category assigned to its top-tier parent holding company. What would be the advantages and disadvantages of relying on the top-tier holding company's categorization and, under this approach, how should these standards be applied at the subsidiary depository institution? If commenters prefer an alternative approach to relying on the top-tier holding company's categorization, please describe any alternative scoping criteria that the agencies should consider for categorizing subsidiary depository institutions. If an alternative approach were applied, what increases in compliance costs or operational challenges could arise if a subsidiary depository institution were subject to a different category of standards than its top-tier parent holding company?

B. Scoping Criteria for Proposed Categories

Where possible, the proposal would rely on indicators and thresholds already used in the agencies' existing regulatory frameworks or reported by large U.S. bank holding companies or savings and loan holding companies. As described further below, these categories would be defined based on the following criteria:

- Category I standards would apply to U.S. GSIBs and their subsidiary depository institutions.
- Category II standards would apply to banking organizations with $700 billion or more in total consolidated assets or $75 billion or more in cross-jurisdictional activity that are not subject to Category I standards and to their subsidiary depository institutions.
- Category III standards would apply to banking organizations that are not subject to Category I or II standards and that have $250 billion or more in total consolidated assets or $75 billion or more in any of the following indicators: Nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposures. Category III standards would also apply to the subsidiary depository institutions of any holding companies subject to Category III standards.
- Category IV standards would apply to banking organizations with at least $100 billion in total consolidated assets that do not meet any of the thresholds specified for Categories I through III and to their subsidiary depository institutions.

To determine which banking organizations are subject to the most stringent standards under Category I, the agencies would use the existing methodology under the Board's GSIB surcharge rule.[20] The proposal would not modify the requirements that currently apply to U.S. GSIBs and their subsidiary depository institutions.

To determine the applicability of the remaining categories of capital and liquidity standards, the agencies are proposing to differentiate requirements based on a banking organization's level of specific risk-based indicators.[21] This approach is intended to allow banking organizations and the public to easily identify and predict what requirements will apply to a banking organization, and what requirements would apply if the characteristics of a banking organization change. Under the proposed approach, Categories II through IV would be defined by five indicators linked to a banking organization's risk profile: Size, cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure. By taking into consideration the relative presence or absence of each risk factor, the proposal would provide a basis for assessing a banking organization's financial stability and safety and soundness risks.[22] These indicators generally track measures already used in the agencies' existing regulatory framework and that banking organizations that would be covered by the proposal already publicly report at the holding company level. This approach would promote transparency and, for banking organizations that already report this information, would not require additional compliance costs to track and report. The proposed thresholds would apply based on the level of each indicator over the preceding four calendar quarters, as described further below, in order to account for significant changes in a banking organization's risk profile that reflect longer term shifts in business activities.

Under the proposal, a depository institution without a holding company

[19] The Board continues to consider the appropriate way to assign the U.S. operations of foreign banking organizations to the categories of standards described in this proposal, in light of the special structures through which these banking organizations conduct business in the United States. The Board plans to develop a separate proposal relating to foreign banking organizations and their U.S. operations.

[20] *See* 12 CFR part 217, subpart H; *see also* ''Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Final Rule,'' 80 FR 49082 (August 14, 2015).

[21] As an alternative, the agencies are also requesting comment on a score-based approach, which would differentiate requirements for banking organizations using an aggregated ''score'' across multiple measures of risk. Section II.B.3 of this Supplementary Information section describes this proposed alternative.

[22] When reviewing agency interpretations of statutes that require an agency to ''take into account'' or ''take into consideration'' a number of factors, courts generally defer to the expertise of the agency in determining how to apply the factors and the relative weight given to each factor. *See, e.g.,* National Wildlife Federation v. EPA, 286 F.3d 554, 570 (D.C. Cir. 2002); Lignite Energy v. EPA, 198 F.3d 930, 933 (D.C. Cir. 1999); Trans World Airlines, Inc. v. Civil Aeronautics Board, 637 F.2d 62, 67–68 (2d Cir. 1980); Weyerhaeuser v. EPA, 590 F.2d 1011, 1046 (D.C. Cir. 1978); Sec'y of Agric. v. Cent. Roig Ref. Co., 338 U.S. 604, 611–12 (1950).

would be required to calculate these risk-based indicators, apart from size, based upon the instructions of certain reports that are required to be filed by holding companies, including the Banking Organization Systemic Risk Report (FR Y–15) and the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP). Specifically, such a depository institution would need to report cross-jurisdictional activity, weighted short-term wholesale funding, off-balance sheet exposure, and nonbank asset indicator data to its agency supervisory staff for the purpose of determining which capital and liquidity regulations would apply.

Question 2: The agencies invite comment on the advantages and disadvantages of requiring a depository institution without a holding company to calculate indicators according to this approach. What operational complexities and challenges would arise if the agencies adopted this approach? What additional information could the agencies incorporate into the Consolidated Reports of Condition and Income (Call Reports), or other reports currently required of depository institutions, to replicate the calculation methodology for these indicators such as the measure of foreign assets and liabilities captured in the FR Y–15? What existing information is currently reported by depository institutions that could be used to replicate the calculation methodologies described under the proposal? What alternative indicators and related reporting requirements should the agencies consider to apply the proposal to large depository institutions without holding companies?

1. Size

The proposal would measure size based on a banking organization's total consolidated assets. The agencies have previously used size as a simple measure of a banking organization's potential systemic impact as well as safety and soundness risks.[23]

The effect of a large banking organization's failure on the economy is likely to be greater than that which occurs when a smaller banking organization fails, even though the two banking organizations might be engaged in similar business lines.[24] Board staff estimates that stress at a single large banking organization with an assumed $100 billion in deposits would result in approximately a 107 percent decline in quarterly real GDP growth, whereas stress among five smaller banking organizations—each with an assumed $20 billion in deposits—would result in roughly a 22 percent decline in quarterly real GDP growth.[25] Both scenarios assume $100 billion in total deposits, but the negative impact is greatest when larger banking organizations fail.

In general, a banking organization's size also provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services if a banking organization were to experience distress, and the extent to which asset fire sales by a banking organization could transmit distress to other market participants, given that a larger banking organization has more assets to sell. In addition, the large size of a banking organization may give rise to challenges that may complicate resolution of the firm if it were to fail.

The size of a banking organization can also be an indication of operational and managerial complexity, which can present safety and soundness risks even when a banking organization is not engaged in complex business lines. A larger banking organization operates on a larger scale, has a broader geographic scope, and generally will have more complex internal operations than a smaller banking organization, resulting in greater risks to safety and soundness.

The proposal would establish thresholds of $700 billion, $250 billion, and $100 billion in total consolidated assets for Category II, III, and IV requirements, respectively, for banking organizations that are not U.S. GSIBs. A holding company with $700 billion or more in total consolidated assets, and its subsidiary depository institutions, would be subject to Category II requirements in order to address the substantial risks that can arise from the activities and potential distress of very large banking organizations that are not U.S. GSIBs. Historical examples suggest that a banking organization of this size should be subject to stringent prudential standards. For example, during the financial crisis, significant losses at Wachovia Corporation, which had $780 billion in assets at the time of being acquired in distress, had a destabilizing effect on the financial system. A threshold of $700 billion or more in total consolidated assets would ensure that a banking organization with a size of similar magnitude would be subject to Category II standards.

A holding company with $250 billion or more in total consolidated assets that does not meet the requirements for Category II, and its subsidiary depository institutions, would be subject to Category III requirements. As discussed above, the Board estimates that the failure or distress of a banking organization of this size would likely have a greater economic and financial stability impact than that of a smaller banking organization,[26] and Category III standards would also further the safety and soundness of a banking organization of this size. The application of strong prudential standards would also be consistent with weaknesses and risks highlighted during the financial crisis with banking organizations of this size, such as Washington Mutual.[27] A threshold of this level would also align with the $250 billion statutory asset threshold under EGRRCPA, above which the Board must apply enhanced prudential standards to a bank holding company.[28]

In the Board-only proposal, the Board is proposing to apply certain requirements as Category IV standards to bank holding companies and certain savings and loan holding companies with $100 billion or more in total consolidated assets that do not meet the criteria for Category I, II, or III. As discussed in section II.C.4 of this Supplementary Information section, based on the risk profiles of banking organizations that would be subject to Category IV standards, the agencies are proposing not to apply to banking organizations that meet the Category IV criteria additional requirements under

[23] For example, advanced approaches capital requirements, the supplementary leverage ratio, and the LCR requirement generally apply to banking organizations with total consolidated assets of $250 billion or more or total consolidated on-balance sheet foreign exposure of $10 billion or more.

[24] *See* Amy G. Lorenc, and Jeffery Y. Zhang (2018). ''The Differential Impact of Bank Size on Systemic Risk,'' *Finance and Economics Discussion Series* 2018–066. Washington: Board of Governors of the Federal Reserve System, available at: *https://doi.org/10.17016/FEDS.2018.066.*

[25] *Id.*

[26] *Id.*

[27] Washington Mutual, a savings and loan holding company, had approximately $300 billion in assets at the time of failure. After the collapse of Lehman Brothers, Washington Mutual experienced significant deposit outflows and was unable to raise funds to improve its liquidity position. In September 2008, the Office of Thrift Supervision, Washington Mutual's primary regulator, determined that the firm had insufficient liquidity to meet its obligations, closed the firm, and appointed the FDIC as the receiver. Washington Mutual was thereafter acquired by another firm. The FDIC estimated that it would have cost $42 billion to liquidate Washington Mutual, a sum that would have depleted the entire balance of the Deposit Insurance Fund at the time. *See* Offices of Inspector General, U.S. Department of Treasury and FDIC, Evaluation of Federal Regulatory Oversight of Washington Mutual Bank (April 2010), available at: *https://www.fdicig.gov/sites/default/files/publications/10-002EV.pdf.*

[28] *See* EGRRCPA § 401.

the capital rule relative to generally applicable requirements or the LCR rule or proposed NSFR rule.

Question 3: The agencies invite comment on the advantages and disadvantages of using size thresholds to tailor capital and liquidity requirements. The agencies invite comment on whether the inclusion of asset size thresholds in capital and liquidity standards drives changes in bank business models and risk profiles in ways that differ from the effects of thresholds based on other risk-based indicators. As an alternative to size thresholds, the agencies invite comment on whether other factors alone can adequately differentiate between the risk profiles of banking organizations and serve as the primary tool to tailor capital and liquidity requirements.

2. Other Risk-Based Indicators

In addition to size, the proposal would consider a banking organization's level of cross-jurisdictional activity, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure to determine the applicable category of standards. The agencies are proposing to apply a uniform threshold of $75 billion for each of these risk-based indicators, based on the degree of concentration this amount would represent for each banking organization. In each case, a threshold of $75 billion would represent at least 30 percent and as much as 75 percent of total consolidated assets for banking organizations with between $100 billion and $250 billion in total consolidated assets.[29] In addition, setting the indicators at $75 billion would ensure that banking organizations that account for the vast majority—over 85 percent—of the total amount of each risk factor among all U.S. depository institution holding companies with $100 billion or more in total consolidated assets would be subject to prudential standards that account for the associated risks of these indicators, which facilitates consistent treatment of these risks across banking organizations. To the extent levels and the distribution of an indicator substantially change in the future, the agencies may consider modifications if appropriate.

Category II standards would apply to a banking organization with $100 billion or more in total consolidated assets and $75 billion or more in cross-jurisdictional activity to promote parallel treatment among banking organizations with large global operations. Category III standards would apply to a banking organization with $100 billion or more in total consolidated assets and at least $75 billion in weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure.

a. Cross-Jurisdictional Activity

Cross-jurisdictional activity would be defined as the sum of cross-jurisdictional assets and liabilities, as each is reported on the FR Y–15 by holding companies. Cross-jurisdictional activity can affect the complexity of a banking organization and give rise to challenges that may complicate the resolution of such a banking organization if it were to fail. In particular, foreign operations and cross-border positions add operational complexity in normal times and complicate the ability of a banking organization to undergo a successful recovery in times of stress, generating both safety and soundness and financial stability risks. For example, a banking organization with significant cross-border operations may require more sophisticated capital and liquidity management relating to risks of ring-fencing by one or more jurisdictions during stress, which could impede the banking organization's ability to move resources in one jurisdiction to meet needs in another.

The agencies' capital and liquidity regulations currently use foreign exposure as a metric to determine the application of certain requirements, such as advanced approaches capital requirements[30] and the LCR requirement.[31] The proposal would amend these regulations to replace the current $10 billion foreign exposure threshold with a $75 billion cross-jurisdictional activity threshold. Compared to the current foreign exposure measure, the proposed cross-jurisdictional activity indicator includes foreign liabilities in addition to foreign assets. In addition, compared to the foreign exposure measure, the proposed cross-jurisdictional activity indicator does not include the assets and liabilities from positions in derivative contracts. Measuring cross-jurisdictional activity using both assets and liabilities—instead of just assets—would provide a broader gauge of the scale of a banking organization's foreign operations, as it includes both borrowing and lending activities outside of the United States.

Question 4: How should depository institutions report a measure of foreign assets and liabilities for purposes of calculating cross-jurisdictional activity? What problems would depository institutions face if they used the measure of foreign assets and liabilities as reported on the Country Exposure Report (FFIEC 009)?

b. Weighted Short-Term Wholesale Funding

The proposed weighted short-term wholesale funding indicator would track the measure currently reported on the FR Y–15 by holding companies and be consistent with the calculation used for purposes of the GSIB surcharge rule.[32] This indicator provides a measure of a banking organization's liquidity risk, as reliance on short-term, generally uninsured funding from more sophisticated counterparties can make a banking organization vulnerable to the consequences of large-scale funding runs. In particular, banking organizations that fund long-term assets with short-term liabilities from financial intermediaries such as investment funds may face large liquidity outflows resulting in the need to rapidly sell relatively illiquid assets to fund withdrawals and maintain their operations in a time of stress, which they may be able to do only at fire sale prices. Such asset fire sales can cause rapid deterioration in a banking organization's financial condition and negatively affect broader financial stability by driving down asset prices across the market. As a result, the short-term wholesale funding indicator reflects both safety and soundness and financial stability risks. This indicator also provides a measure of interconnectedness among market participants, including other financial sector entities, which can provide a mechanism for transmission of distress.

[29] Because a size threshold of $250 billion in total consolidated assets also would apply for Category III, the weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure indicators would only have effect for a banking organization with total consolidated assets of $100 billion or more, but less than $250 billion. Similarly, the proposed cross-jurisdictional activity threshold would only have effect for a banking organization with total consolidated assets of $100 billion or more, but less than $700 billion.

[30] *See* 12 CFR 217.100(b)(1) (Board), 12 CFR 324.100(b)(1) (FDIC), 12 CFR 3.100(b)(1) (OCC).

[31] *See* 12 CFR 249.1(b)(ii) (Board), 12 CFR 329.1(b)(ii)(FDIC), 12 CFR 50.1(b)(ii) (OCC).

[32] Specifically, short-term wholesale funding is the amount of a banking organization's funding obtained from wholesale counterparties or retail brokered deposits and sweeps with a remaining maturity of one year or less. Categories of short-term wholesale funding are then weighted based on four residual maturity buckets; the asset class of collateral, if any, backing the funding; and characteristics of the counterparty. Weightings reflect risk of runs and attendant fire sales. *See* 12 CFR 217.406 and Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (August 14, 2015).

c. Nonbank Assets

Under the proposal, nonbank assets would be measured as the average amount of equity investments in nonbank subsidiaries.[33] The level of a banking organization's investment in nonbank subsidiaries provides a measure of the organization's business and operational complexity. Specifically, banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures, inter-affiliate transactions, and funding relationships. As discussed in the Board's final GSIB surcharge rulemaking, a banking organization's complexity is positively correlated with the impact of its failure or distress.[34] Because nonbank subsidiaries may not be resolved through the FDIC's receivership process, significant investments in nonbank subsidiaries present heightened resolvability risk.

Nonbank activities may involve a broader range of risks than those associated with purely banking activities, and can increase interconnectedness with other financial firms, requiring sophisticated risk management and governance, including capital planning, stress testing, and liquidity risk management. If not adequately managed, the risks associated with nonbanking activities could present significant safety and soundness concerns and increase financial stability risks. The failure of a nonbank subsidiary could be destabilizing to a banking organization and cause counterparties and creditors to lose confidence in the banking organization. Nonbank assets also reflect the degree to which a banking organization may be engaged in activities through legal entities that are not subject to separate capital requirements or to the direct regulation and supervision applicable to a regulated banking entity.

d. Off-Balance Sheet Exposure

Off-balance sheet exposure complements the measure of size by taking into consideration financial and banking activities not reflected on a banking organization's balance sheet. Like a banking organization's size, off-balance sheet exposure provides a measure of the extent to which customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. In addition, off-balance sheet exposure can lead to significant future draws on capital and liquidity, particularly in times of stress. In the financial crisis, for example, vulnerabilities at individual banking organizations were exacerbated by margin calls on derivative exposures, calls on commitments, and support provided to sponsored funds. These exposures can be a source of safety and soundness risk, as banking organizations with significant off-balance sheet exposure may have to fund these positions in the market in a time of stress, which can put a strain on both capital and liquidity. The nature of these risks for banking organizations of this size and complexity can also lead to financial stability risk, as they can manifest rapidly and with less transparency to other market participants. In addition, because draws on off-balance sheet exposures such as committed credit and liquidity facilities tend to increase in times of stress, they can exacerbate the effects of stress on a banking organization.[35]

Off-balance sheet exposures may also serve as a measure of a banking organization's interconnectedness. Some off-balance sheet exposures, such as derivatives, are concentrated among the largest financial firms.[36] The distress or failure of one party to a financial contract, such as a derivative or securities financing transaction, can trigger disruptive terminations of these contracts that destabilize the defaulting party's otherwise solvent affiliates.[37] Such a default also can lead to disruptions in markets for financial contracts, including by resulting in rapid market-wide unwinding of trading positions.[38] In this way, the effects of one party's failure or distress can be amplified by its off-balance sheet connections with other financial market participants.

The proposal would define off-balance sheet exposure based on measures currently reported by holding companies with more than $100 billion in assets, specifically, as total exposure, as defined on FR Y–15, minus total consolidated assets, as reported on the Consolidated Financial Statements for Holding Companies (FR Y–9C). Total exposure includes a banking organization's on-balance sheet assets plus certain off-balance sheet exposures, including derivative exposures, repo-style transactions, and other off-balance sheet exposures (such as commitments).

Question 5: What are the advantages and disadvantages of the proposed risk-based indicators? What different indicators should the agencies use, and why?

Question 6: At what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

Question 7: The agencies are considering whether Category II standards should apply based on a banking organization's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the $75 billion that would apply for Category III standards, in addition to the thresholds discussed above based on asset size and cross-jurisdictional activity. For example, a banking organization could be subject to Category II standards if one or more of these indicators equaled or exceeded a level such as $100 billion or $200 billion. A threshold of $200 billion would represent at least 30 percent and as much as 80 percent of total consolidated assets for banking organizations with between $250 billion and $700 billion in total consolidated assets. If the agencies were to adopt additional indicators for purposes of identifying banking organizations that should be subject to Category II standards, at what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

[33] The proposed measure of nonbank assets also would include the average of the assets in each Edge or Agreement Corporation, but would exclude nonbank assets held in a savings association.

[34] *See* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (August 14, 2015). *See* paragraph 25 of the ''Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement,'' which provides certain revisions and clarifications to the initial GSIB framework. The document is available at *http://www.bis.org/publ/bcbs255.htm.*

[35] *See* William F. Bassett, Simon Gilchrist, Gretchen C. Weinbach, Egon Zakrajšek, ''Improving Our Ability to Monitor Bank Lending,'' chapter in *Risk Topography: Systemic Risk and Macro Modeling* (2014), Markus Brunnermeier and Arvind Krishnamurthy, ed., pp. 149–161, available at: *http://www.nber.org/chapters/c12554.*

[36] *See, e.g.,* Sheri M. Markose, Systemic Risk from Global Financial Derivatives: A Network Analysis of Contagion and its Mitigation with Super-Spreader Tax, IMF Working Papers (Nov. 30, 2012), available at: *https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Systemic-Risk-from-Global-Financial-Derivatives-A-Network-Analysis-of-Contagion-and-Its-40130.*

[37] To address these risks, the agencies have established restrictions relating to the qualified financial contracts of U.S. GSIBs, the insured depository institution subsidiaries of U.S. GSIBs, and the U.S. operations of systemically important foreign banking organizations. *See* 12 CFR part 252, subpart I (Board); 12 CFR part 47 (OCC); and 12 CFR part 382 (FDIC). That rule does not apply to savings and loan holding companies, or to other large bank holding companies and insured depository institutions.

[38] *See, e.g.,* The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act, 5 FDIC Quarterly No. 2, 31 (2011), *https://www.fdic.gov/bank/analytical/quarterly/2011-vol5-2/article2.pdf.*

3. Alternative Scoping Criteria

An alternative approach for assessing the risk profile and systemic footprint of a banking organization for purposes of tailoring prudential standards would be to use a single, comprehensive score. The Board uses a GSIB identification methodology (scoring methodology) to identify global systemically important bank holding companies and apply risk-based capital surcharges to these banking organizations. The agencies could use this same scoring methodology to tailor prudential standards for large, but not globally systemic, banking organizations.

The scoring methodology calculates a GSIB's capital surcharge under two methods.[39] The first method is based on the sum of a firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method is based on the sum of these same measures of risk, except that the substitutability measures are replaced with a measure of the firm's reliance on short-term wholesale funding (method 2).[40]

The Board designed the scoring methodology to provide a single, comprehensive, integrated assessment of a large bank holding company's systemic footprint. Accordingly, the indicators in the scoring methodology measure the extent to which the failure or distress of a bank holding company could pose a threat to financial stability or inflict material damage on the broader economy. The indicators used in the scoring methodology also could be used to help identify banking organizations that have heightened risk profiles and would closely align with the risk-based factors specified in section 165 of the Dodd-Frank Act for applying enhanced prudential standards and differentiating among banking organizations to which the enhanced prudential standards apply.[41] Importantly, large bank holding companies already submit to the Board periodic public reports on their indicator scores in the scoring methodology. Accordingly, use of the scoring methodology more broadly for tailoring of prudential standards would promote transparency and would economize on compliance costs for large bank holding companies.

Under the alternative scoring approach, a banking organization's size and either its method 1 or method 2 score from the scoring methodology would be used to determine which category of standards would apply to the firm. In light of the changes made by EGRRCPA, the Board conducted an analysis of the distribution of method 1 and method 2 scores of bank holding companies and covered savings and loan holding companies with at least $100 billion in total assets.[42]

Category I: As under the proposal and under the Board's existing enhanced prudential standards framework, Category I standards would continue to apply to U.S. GSIBs, which would continue to be defined as U.S. banking organizations with a method 1 score of 130 or more.

Category II: Category II banking organizations are defined in the proposal as those whose failure or distress could impose costs on the U.S. financial system and economy that are higher than the costs imposed by the failure or distress of an average banking organization with total consolidated assets of $250 billion or more.

In selecting the ranges of method 1 or method 2 scores that could define the application of Category II standards, the Board considered the potential of a firm's material distress or failure to disrupt the U.S. financial system or economy. As noted in section II.B.1 of this Supplementary Information section, during the financial crisis, significant losses at Wachovia Corporation, which had $780 billion in total consolidated assets at the time of being acquired in distress, had a destabilizing effect on the financial system. The Board estimated method 1 and method 2 scores for Wachovia Corporation, based on available data, and also calculated the scores of banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs assuming that each had $700 billion in total consolidated assets (the asset size threshold used to define Category II in the agencies' main proposal). The Board also considered the outlier method 1 and method 2 scores for banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs.[43]

Based on this analysis, the agencies would apply Category II standards to any non-GSIB banking organization with at least $100 billion in total consolidated assets and with a method 1 score between 60 and 80 or a method 2 score between 100 to 150. If the agencies adopt a final rule that uses the scoring methodology to establish tailoring thresholds, the agencies would set a single score within the listed ranges for application of Category II standards. The agencies invite comment on what score within these ranges would be appropriate.

Category III: As noted, section 165 of the Dodd-Frank Act requires the Board to apply enhanced prudential standards to any bank holding company with total consolidated assets of $250 billion or more and authorizes the Board to apply these standards to bank holding companies with between $100 billion and $250 billion in total consolidated assets if the Board makes certain statutory findings. To determine a scoring methodology threshold for application of Category III standards to banking organizations with between $100 billion and $250 billion in total consolidated assets, the Board considered the scores of these banking organizations as compared to the scores of banking organizations with greater than $250 billion in total consolidated assets that are not U.S. GSIBs. Based on this analysis, the Board determined that, under a scoring methodology approach to tailoring, Category III standards would be applied to banking organizations with total consolidated assets between $100 billion and $250 billion that have a method 1 score between 25 to 45. Banking organizations with a score in this range would have a score similar to that of the average firm with greater than $250 billion in total consolidated assets. Using method 2 scores, the agencies would apply Category III standards to any banking organization with total consolidated assets between $100 billion and $250 billion that have a method 2 score between 50 to 85. Again, if the agencies were to adopt the scoring methodology for tailoring in a final rule, the agencies would pick a single score within the listed ranges. The agencies invite comment on what score within these ranges would be appropriate.

[39] *See* 12 CFR part 217, subpart H.

[40] For more discussion relating to the scoring methodology, please see the Board's final rule establishing the scoring methodology. *See* Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies, 80 FR 49082 (Aug. 14, 2015).

[41] *See* 12 U.S.C. 5365(a)(2)(A).

[42] In conducting its analysis, the Board considered method 1 and method 2 scores as of December 31, 2017. Consistent with the thresholds in EGRRCPA, the Board considered the scores of bank holding companies and covered savings and loan holding companies with total consolidated assets of $100 billion or more but less than $250 billion, $250 billion or more that are not GSIBs, and GSIBs.

[43] Outliers can be determined by a number of statistical methods. For these purposes, the Board computed an outlier as the third quartile plus three times the interquartile range of method 1 and method 2 scores of these U.S. bank holding companies and covered savings and loan holding companies.

Category IV: Under a score-based approach, category IV standards would apply to banking organizations with at least $100 billion in total assets that do not meet any of the thresholds specified for Categories I through III (that is, a method 1 score of less than 25 to 45 or a method 2 score of less than 50 to 85).

Question 8: What are the advantages and disadvantages to using the scoring methodology and category thresholds described above relative to the proposed thresholds?

Question 9: If the agencies were to use the scoring methodology to differentiate non-GSIB banking organizations for purposes of tailoring prudential standards, should the agencies use method 1 scores, method 2 scores, or both?

Question 10: If the agencies adopt the scoring methodology, what would be the advantages or disadvantages of the agencies requiring banking organizations to calculate their scores at a frequency greater than annually, including, for example, requiring a banking organization to calculate its score on a quarterly basis?

Question 11: With respect to each category of banking organization described above, at what level should the method 1 or method 2 score thresholds be set and why, and discuss how those levels could be impacted by considering additional data, or by considering possible changes in the banking system. Commenters are encouraged to provide data supporting their recommendations.

Question 12: What are the advantages and disadvantages in using the scoring methodology to categorize banking organizations with systemic footprints smaller than the GSIBs for purposes of tailoring prudential standards?

Question 13: What other approaches should the agencies consider in setting thresholds for tailored prudential standards?

4. Determination of Applicable Category of Standards

Under the proposal, a holding company with total consolidated assets of $100 billion or more and its subsidiary depository institutions would be required to determine the category of standards to which it is subject. The proposal would add certain defined terms to the agencies' capital rule and LCR rule to implement the proposed categories. U.S. GSIBs would continue to be identified using the Board's GSIB surcharge methodology, and the proposal would refer to these banking organizations as global systemically important bank holding companies, consistent with the term used elsewhere in the agencies' regulations.[44] The proposal would also add defined terms for banking organizations subject to Category II, III, or IV standards as Category II banking organizations, Category III banking organizations, or Category IV banking organizations, respectively.

Banking organizations that would be subject to the proposal would be required to report size and other risk-based indicators on a quarterly basis. In order to capture significant changes in a banking organization's risk profile, rather than temporary fluctuations, a category of standards would apply to a banking organization based on the average levels of each indicator over the preceding four calendar quarters.[45] A banking organization would remain subject to a category of standards until the banking organization no longer meets the indicators for its current category in each of the four most recent calendar quarters, or until the banking organization meets the criteria for another category of standards based on an increase in the average value of one or more indicators over the preceding four calendar quarters. This approach would be consistent with the existing applicability and cessation requirements of the Board's enhanced prudential standards rule.[46] Changes in requirements that result from a change in category generally would take effect on the first day of the second quarter following the change in the banking organization's category.[47] For example, a banking organization that changes from Category IV to Category III based on an increase in the average value of its indicators over the first, second, third, and fourth quarters of a calendar year would be subject to Category III standards beginning on April 1 (the first day of the second quarter) of the following year.

Under the LCR rule and NSFR proposed rule, a banking organization that meets the thresholds for applicability measured as of the year-end must comply with the requirement(s) beginning on April 1 of the following year, or as specified by the appropriate agency.[48] Under the proposal, a banking organization that becomes subject to the LCR rule or proposed NSFR rule would be required to comply with these requirements on the first day of the second quarter after the banking organization became subject to these requirements, consistent with the amount of time currently provided under the LCR rule and proposed NSFR rule after the year-end measurement date.

In addition, the LCR rule provides newly covered banking organizations with a transition period for the daily calculation requirement, recognizing that a daily calculation requirement could impose significant operational and technology demands. Specifically, a newly covered banking organization must calculate its LCR monthly from April 1 to December 1 of its first year of compliance. Beginning on January 1 of the following year, the banking organization must calculate its LCR daily.[49] The proposal would maintain this transition period of three calendar quarters following initial applicability of the LCR requirement.

The agencies are not proposing changes to the cessation provisions of the LCR rule, NSFR proposed rule, and advanced approaches capital requirements. Once a banking organization is subject to advanced approaches capital requirements, the LCR rule, or the NSFR proposed rule, it would remain subject to the rule until its primary federal supervisor determines that application of the rule would not be appropriate in light of the banking organization's asset size, level of complexity, risk profile, or scope of operations.

Question 14: What are the advantages and disadvantages to a banking organization calculating its category on a quarterly basis? Discuss whether calculation on an annual basis would be more appropriate and why.

Question 15: What are the advantages and disadvantages of the proposed transition period for each of the standards in each of the categories? What would be the advantages or disadvantages of providing additional time to conform to new requirements? If a banking organization changes category because of an increase in one or more risk-based indicators, discuss the advantages and disadvantages of providing an additional quarter before applying the new category's standards.

Question 16: As noted above, the LCR rule currently provides that a banking organization becomes subject to the LCR

[44] *See, e.g.,* 12 CFR part 217.

[45] With respect to a firm that has reported an indicator for less than four quarters, the proposal would refer to the average of the most recent quarter or quarters.

[46] *See, e.g.,* 12 CFR 252.43.

[47] The Board would maintain existing transition provisions for Category I and II capital standards, such as changes to a bank holding company's GSIB surcharge.

[48] 12 CFR 50.1(b)(2) (OCC); 12 CFR 249.1(b)(2) (Board); 12 CFR 329(1)(b)(2) (FDIC); and NSFR proposed rule. *See also* Liquidity Coverage Ratio: Liquidity Risk Measurement Standards, 79 FR 61440, 61447 (October 10, 2014).

[49] *See id.*

rule ''beginning on April 1 of the year in which the [banking organization] becomes subject to the minimum liquidity standard.'' If the applicability of the LCR rule is amended to be based on a four-quarter average of indicators, what would be the advantages and disadvantages of removing this transition mechanism? What would be the advantages and disadvantages of requiring a banking organization to comply with the LCR and proposed NSFR requirements in the quarter following the quarter when it exceeds the applicability thresholds?

Question 17: What would be the advantages and disadvantages of maintaining the cessation provisions in the advanced approaches rule, LCR rule, and NSFR proposed rule? What would be the advantages and disadvantages of aligning the cessation provisions in the advanced approaches capital requirements, LCR rule, and NSFR proposed rule with the transition provisions between categories of standards? For example, the current version of the LCR rule provides that, once a banking organization becomes subject to the LCR rule, it remains subject to the LCR rule until its regulator determines in writing that application of the LCR rule is no longer appropriate. What are the advantages and disadvantages of requiring a written determination before a banking organization can move to a lower category? What would be the advantages and disadvantages of automatically moving the category of a banking organization based on its size and indicators?

C. Proposed Regulatory Framework

This section describes the capital and liquidity requirements that currently apply and those that would apply under the four categories in the proposal. Similar to certain aspects of the current capital requirements, the proposal would allow banking organizations to choose to apply the more stringent requirements of another category (*e.g.,* a banking organization subject to Category III standards could choose to comply with the more stringent Category II standards to minimize compliance costs across multiple jurisdictions).

1. Category I Standards

Currently, U.S. GSIBs are subject to the most stringent prudential standards relative to other banking organizations, which reflect the heightened risks these banking organizations pose to U.S. financial stability. The proposal would make no changes to the capital and liquidity requirements applicable to U.S. GSIBs.

Accordingly, U.S. GSIBs would remain subject to the most stringent capital and liquidity requirements, including requirements based on standards developed by the BCBS, subject to notice and comment rulemaking in the United States. Their subsidiary depository institutions would also be subject to the most stringent requirements, as applicable. Category I capital standards would include a requirement to calculate risk-based capital ratios using both the advanced approaches and the standardized approach; the U.S. leverage ratio; the enhanced supplementary leverage ratio; the GSIB surcharge (at the holding company level only); the requirement to recognize most elements of AOCI in regulatory capital; and the requirement to expand their capital conservation buffer by the amount of the countercyclical capital buffer, if applicable. Category I liquidity standards would include the full LCR requirement [50] and proposed NSFR requirement. These standards would continue to strengthen the capital and liquidity positions of U.S. GSIBs based on their significant risk profiles, to improve their resiliency and ability to provide consistent financial intermediation across market and economic conditions, and to reduce risks to U.S. financial stability.

Consistent with current requirements, a subsidiary depository institution of a banking organization subject to the full LCR and proposed NSFR requirements with $10 billion or more in total consolidated assets would be required to meet the LCR and NSFR requirements. Currently, the $10 billion consolidated asset threshold is measured based on the most recent year-end Consolidated Report of Condition and Income. Consistent with the other proposed scoping criteria described in section II.B of this Supplementary Information section, the proposal would amend the LCR and proposed NSFR rules to measure this threshold based on the value of total consolidated assets over the four most recent calendar quarters.

2. Category II Standards

The failure or distress of banking organizations that would be subject to Category II standards could impose significant costs on the U.S. financial system and economy, although they generally do not present the same degree of risk as U.S. GSIBs. Their size and cross-jurisdictional activity present risks that require enhanced regulatory capital standards and greater supervisory oversight relative to other banking organizations. Further, size and cross-jurisdictional activity can present particularly heightened challenges in the case of a liquidity stress, which can create both financial stability and safety and soundness risks. For example, a very large banking organization that engages in asset fire sales to meet short-term liquidity needs is more likely to transmit distress on a broader scale because of the greater volume of assets it could sell in a short period of time. Similarly, a banking organization with significant international activity may be more exposed to the risk of ring-fencing of liquidity resources by one or more jurisdictions that could impede its ability to move liquidity to meet outflows.

In this proposal, capital and liquidity requirements that are generally consistent with standards developed by the BCBS, subject to notice and comment rulemaking in the United States, would continue to apply to holding companies subject to Category II standards. These standards would include the full LCR and proposed NSFR requirements, advanced approaches capital requirements, and the supplementary leverage ratio. Similar to Category I standards, holding companies subject to Category II standards would also be required to recognize most elements of AOCI in regulatory capital. Reflecting AOCI in regulatory capital results in a more accurate measure of capital, which is important for maintaining the resilience of these banking organizations. Additionally, holding companies subject to Category II standards would be required to expand their capital conservation buffer by the amount of the countercyclical capital buffer, if applicable.

As under existing requirements, the proposed Category II capital standards would apply to the subsidiary depository institutions of holding companies subject to Category II standards, and the LCR and proposed NSFR requirements would apply to subsidiary depository institutions with total consolidated assets of $10 billion or more.

3. Category III Standards

The agencies' current regulatory framework generally applies the same capital and liquidity standards to all non-GSIB banking organizations with $250 billion or more in total consolidated assets. For example, advanced approaches capital

[50] The full requirements of the LCR rule include the calculation of the LCR on each business day and the inclusion of a maturity mismatch add-on in the total net cash outflow amount.

requirements, the supplementary leverage ratio, and the LCR requirement generally apply to banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in foreign exposure. The proposed framework would differentiate among banking organizations with $250 billion or more in total consolidated assets. In particular, Categories I and II would include requirements generally consistent with standards developed by the BCBS, subject to notice and comment rulemaking in the United States, whereas Category III would include fewer such standards, based on the relatively lower risk profiles and lesser degree of cross-border activity of subject banking organizations. In particular, the agencies are proposing not to apply advanced approaches capital requirements and the requirement to recognize most elements of AOCI in regulatory capital to banking organizations subject to Category III (and Category IV) standards. However, Category III standards would also reflect the elevated risk profile of these banking organizations relative to smaller and less complex banking organizations.

Category III standards would apply to all banking organizations with at least $250 billion in total consolidated assets that do not meet the criteria for Category I or Category II, as well as to certain banking organizations with less than $250 billion in total consolidated assets based on their risk profile. As discussed in section II.B.2 of this Supplementary Information section, weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure indicators contribute to the systemic risk profile and safety and soundness risk profile of banking organizations.

Under the proposal, Category III capital standards would include generally applicable risk-based capital requirements, the U.S. leverage ratio, and the supplementary leverage ratio. Category III standards would also include the countercyclical capital buffer, given these banking organizations' significant role in financial intermediation in the United States individually and as a group. These banking organizations have a substantial enough footprint that they should expand their capital conservation buffer as necessary to support the prudential goals of the buffer framework. The supplementary leverage ratio would apply to banking organizations subject to Category III standards given these banking organizations' size and risk profile. For example, firms subject to Category III standards include banking organizations with material off-balance sheet exposures that are not accounted for in the traditional U.S. tier 1 leverage ratio. The supplementary leverage ratio is important for these banking organizations to constrain the build-up of off-balance sheet exposures, which can contribute to instability and undermine safety and soundness of individual banking organizations.

The agencies are separately proposing to adopt the standardized approach for counterparty credit risk for derivatives exposures (SA–CCR) and to require advanced approaches banking organizations (banking organizations subject to Category I or II standards, under this proposal) to use SA–CCR for calculating their risk-based capital ratios and a modified version of SA–CCR for calculating total leverage exposure under the supplementary leverage ratio. If that proposal were to be adopted, the agencies would allow a Category III banking organization to elect to use SA–CCR for calculating derivatives exposure in connection with its risk-based capital ratios, consistent with the SA–CCR proposal. Furthermore, if that proposal were to be adopted, the agencies intend to allow a banking organization subject to Category III standards to elect to use SA–CCR for calculating its total leverage exposure calculations used to determine the supplementary leverage ratio, or to continue to use the current exposure method.

Banking organizations subject to Category III standards would not be required to apply advanced approaches capital requirements. The models for applying these requirements are costly to build and maintain, and the agencies do not expect that the removal of these requirements would materially change the amount of capital that these banking organizations would be required to maintain. The standardized approach currently represents the binding risk-based capital constraint for all banking organizations in the current population of banking organizations that would be subject to Category III standards.

Question 18: Under the current capital rule, the agencies apply certain provisions, such as the supplementary leverage ratio and countercyclical capital buffer, based on the same applicability thresholds as advanced approaches capital requirements. The proposal would establish different applicability thresholds for the supplementary leverage ratio and countercyclical capital buffer by including them as Category III standards, while advanced approaches capital requirements would apply only as Category I and II standards. This approach would increase the risk-sensitivity of the framework and allow for the retention of key elements of the capital rule for banking organizations subject to Category III standards without requiring them to comply with advanced approaches capital requirements more broadly. However, it also increases the complexity of the capital rule. To what extent, if any, would this additional complexity increase compliance costs for large banking organizations (for example, by requiring banking organizations to monitor and manage the proposed risk-based indicator thresholds)? To what extent, if any, would the proposed approach add complexity for market participants when comparing the capital adequacy of banking organizations in different categories? The agencies request comment on the advantages and disadvantages of establishing separate regulatory capital standards for banking organizations that would be subject to Category III that are different from either Category II or IV standards, including any wider implications for financial stability.

Question 19: What are the advantages and disadvantages of applying the supplementary leverage ratio requirement to banking organizations subject to Category III standards? How do these advantages and disadvantages compare to any costs associated with any additional complexity to the regulatory framework that would result from applying this to banking organizations subject to Category III standards? To what extent would application of the supplementary leverage ratio requirement to these banking organizations strengthen their safety and soundness and improve U.S. financial stability?

Question 20: What are the advantages and disadvantages of not requiring banking organizations subject to Category III standards to recognize most elements of AOCI in regulatory capital? To what extent does not requiring banking organizations subject to Category III standards to recognize most elements of AOCI in regulatory capital impact safety and soundness of individual banking organizations or raise broader financial stability concerns? For example, to what extent would this approach reduce the accuracy of these banking organizations' reported regulatory capital? To what extent does the recognition of most elements of AOCI in regulatory capital improve market discipline and provide for a clearer picture of the financial health of banking organizations? To what extent does it make comparing the financial condition of Category III banking organizations to that of Category I and

Category II banking organizations, on the one hand, and that of Category IV banking organizations, on the other hand, more difficult?

Question 21: With respect to banking organizations that currently recognize most elements of AOCI in regulatory capital, to what extent do intra-quarter variations in regulatory capital due to the inclusion of AOCI since the capital rule took effect differ from variations in reported quarter-end data over the same period? What have been the causes of variations in each?

Question 22: As discussed above, the agencies are not requiring banking organizations subject to Category III standards to recognize most elements of AOCI in regulatory capital. Alternatively, the agencies could require only the top-tier parent holding company to recognize most elements of AOCI in regulatory capital while exempting their subsidiary depository institutions from this requirement. What are the advantages and disadvantages of this alternative approach? What would be the costs and operational challenges associated with this additional complexity, where the holding company and subsidiary depository institutions implement different standards related to AOCI? To what degree would this alternative approach to AOCI impose less cost or burden to banking organizations subject to Category III standards relative to their current AOCI requirement under the agencies' capital rule (i.e., both the top-tier holding company and subsidiary depository institutions are currently required to recognize most elements of AOCI in regulatory capital)? To what degree would this alternative approach provide market participants with a transparent picture of the financial condition of the subsidiary depository institutions and the parent holding company?

Question 23: For purposes of comparability, in a final rulemaking should the agencies require all banking organizations subject to Category III standards to use SA–CCR for either risk-based or supplementary leverage ratio calculations and, if so, why?

Question 24: What would be the advantages and disadvantages of no longer applying the countercyclical capital buffer to banking organizations that would be subject to Category III standards? In particular, how would narrowing the scope of application of the countercyclical buffer affect the financial stability and countercyclical objectives of the buffer? What other regulatory tools, if any, could be used to meet these objectives?

Question 25: The proposal would apply Category III standards to a banking organization that exceeds certain risk-based indicators, including having more than $75 billion in off-balance sheet exposures. In light of the inclusion of off-balance sheet exposures as a threshold for Category III standards, discuss the advantages and disadvantages of including the supplementary leverage ratio as a Category III standard.

With respect to liquidity requirements, the LCR rule and proposed NSFR rule provide standardized minimum liquidity requirements and measures of liquidity risk that enhance banking organizations' resiliency, improve risk management, and facilitate comparisons of liquidity risk across banking organizations. These standards are designed to achieve two separate but complementary objectives. The LCR rule promotes the resilience of a banking organization to liquidity risk by ensuring that it has sufficient liquid assets to survive a short-term period of stress. The proposed NSFR rule would address funding risks over a longer, one-year time horizon and mitigate the risk of disruptions to a banking organization's regular sources of funding by requiring banking organizations to maintain a stable funding profile.

Category III standards would include full or reduced LCR and NSFR requirements, depending on a banking organization's level of weighted short-term wholesale funding. Specifically, a banking organization that meets the criteria for Category III standards would be subject to the full LCR and NSFR requirements if it has weighted short-term wholesale funding of $75 billion or more, or would be subject to less stringent, reduced LCR and NSFR requirements if it has less than $75 billion in weighted short-term wholesale funding.

For banking organizations subject to Category III standards with weighted short-term wholesale funding of less than $75 billion, the agencies are proposing to reduce the stringency of the LCR and NSFR requirements and request comment regarding the appropriate level. These banking organizations would be subject to reduced LCR and NSFR requirements, as they have less reliance on short-term wholesale funding that is a source of liquidity risk. While the failure or distress of such a firm could pose risks to U.S. financial stability, their risk profile is lower than that of U.S. GSIBs and they are smaller or face a lesser degree of cross-border challenges than firms that would be subject to Category II standards. In addition, although the proposal would reduce the standardized LCR and NSFR requirements for these banking organizations, under the Board-only proposal, depository institution holding companies subject to Category III standards would be required to comply with liquidity risk management, stress testing, and buffer requirements, which reflect the firm's individual risk profile.

The denominator of the proposed reduced LCR would equal the net cash outflows calculated under the full LCR requirement, multiplied by a factor that reduces its stringency. Similarly, the denominator of the NSFR would equal the required stable funding requirement calculated under the full NSFR requirement, multiplied by a factor that reduces its stringency. The agencies are requesting comment on applying reduced standards that would be equivalent to between 70 and 85 percent of the full LCR and NSFR requirements. The proposal would not alter other aspects of the LCR and NSFR calculations for these banking organizations, relative to the full LCR and proposed NSFR requirements. For example, these banking organizations would continue to calculate their LCR on each business day and include the maturity mismatch add-on in the calculation.[51]

Like the current LCR and NSFR requirements, the proposal would apply Category III LCR and NSFR requirements to a depository institution that has total consolidated assets of $10 billion or more and is a consolidated subsidiary of a company subject to Category III standards.[52] The level of the LCR and NSFR requirements applicable to the subsidiary depository institution would be the same as the level that would apply to the parent banking organization. For example, a subsidiary depository institution with $10 billion in total consolidated assets of a banking organization subject to the reduced LCR and NSFR requirements under Category III standards would also be subject to the reduced LCR and NSFR requirement.[53]

[51] Section 30 of the LCR rule requires a banking organization, as applicable, to include in its total net cash outflow amount a maturity mismatch add-on, which is calculated as the difference (if greater than zero) between the covered company's largest net cumulative maturity outflow amount for any of the 30 calendar days following the calculation date and the net day 30 cumulative maturity outflow amount.

[52] As discussed in section II.B.4 of this Supplementary Information section, the proposal would measure the total consolidated assets of a subsidiary depository institution based on the level over the previous four calendar quarters.

[53] In the case of a depository institution that is not a consolidated subsidiary of a banking organization that would be subject to Category I, II, III, or IV standards or a consolidated subsidiary of a foreign

Question 26: In general, the proposed framework would apply consistent requirements to all banking organizations within each category of standards. For the LCR and proposed NSFR requirements, however, the agencies are proposing two levels of standards within Category III. Specifically, the proposal would apply reduced LCR and NSFR requirements to a banking organization subject to Category III standards that has less than $75 billion in weighted short-term wholesale funding and that is not a subsidiary of a banking organization subject to the full LCR or proposed NSFR requirements. This additional degree of tailoring is intended to reflect considerations specific to liquidity risk, and would allow further differentiation within Category III to accommodate reduced requirements for banking organizations with lesser liquidity risk profiles. However, this additional risk-sensitivity would also increase the complexity of the proposed framework. The agencies request comment regarding this proposed trade-off. In particular, what do commenters believe would be the advantages and disadvantages of this additional degree of differentiation for purposes of determining the level of LCR and NSFR requirements? What costs, if any, would this additional degree of complexity create for large banking organizations? What alternatives should the agencies consider to the proposed approach that would maintain strong standardized liquidity requirements for large banking organizations with significant liquidity risk exposures that do not meet the proposed criteria for application of Category I or Category II standards? What other risk-based indicators, besides short-term wholesale funding, should the agencies consider in prescribing the liquidity requirements under the proposal, and why? What would be the advantages or disadvantages of requiring all Category III banking organizations to meet the full LCR and NSFR requirements? Similarly, what would be the advantages or disadvantages of requiring all Category III banking organizations to meet the reduced LCR and NSFR requirements?

Question 27: Between a range of 70 and 85 percent of the full requirements, what level should the agencies adopt for the reduced LCR and NSFR requirements for banking organizations subject to Category III standards that have less than $75 billion in weighted short-term wholesale funding, and why?

Consistent with section 22(b) of the LCR rule, a banking organization subject to the proposed reduced LCR requirement would not be permitted to include in its HQLA amount eligible HQLA of a consolidated subsidiary except up to the amount of the net cash outflows of the subsidiary (as adjusted for the factor reducing the stringency of the requirement), plus any additional amount of assets, including proceeds from the monetization of assets, that would be available for transfer to the top-tier covered company during times of stress without statutory, regulatory, contractual, or supervisory restrictions.[54] A similar restriction would apply under section 108 of the NSFR proposed rule.[55]

Question 28: The agencies request comment regarding this proposed approach, as well as potential alternative approaches to recognizing restrictions on the transferability of liquidity from a consolidated subsidiary to the top-tier covered company. What alternative approaches should the agencies consider?

For example, should the agencies consider the approach the Board currently permits for holding companies subject to a modified LCR requirement? Under this approach, a company may include in its HQLA amount eligible HQLA held at a subsidiary up to 100 percent of the net cash outflows of the subsidiary, plus amounts that may be transferred without restriction to the top-tier covered company. In the case of the NSFR proposed rule, a company could include available stable funding amounts of the subsidiary up to 100 percent of the required stable funding amount of the subsidiary, plus amounts that may be transferred without restriction to the top-tier covered company. What would be the advantages and disadvantages of the proposed approach and potential alternatives? What incentives would each have with respect to the positioning of HQLA within a banking organization? What effects would the proposed approach or alternative approaches have on the safety and soundness of a holding company and its subsidiary depository institutions?

4. Category IV Standards

Under the proposal, Category IV standards would apply to banking organizations with $100 billion or more in total consolidated assets that do not meet the criteria for Categories I, II, or III, and their subsidiary depository institutions. Relative to current requirements, the proposed Category IV standards would reduce liquidity and, in certain circumstances, capital requirements to reflect these banking organizations' lower risk profile and lesser degree of complexity relative to other large banking organizations.

Category IV capital standards would include the generally applicable risk-based capital requirements and the U.S. leverage ratio. The proposal would not apply the countercyclical capital buffer and the supplementary leverage ratio applicable under Category III to Category IV banking organizations. In this manner, the standards applicable to banking organizations subject to Category IV would maintain the risk-sensitivity of the current capital regime and resiliency of these banking organizations' capital positions, and would recognize that these banking organizations, while large, have lower indicators of risk relative to their larger peers, as set forth in the proposal. As a result, and as noted above, banking organizations subject to Category IV standards would generally have the same capital and liquidity regulatory requirements as banking organizations under $100 billion in total consolidated assets.

Under the proposal, Category IV standards would not include an LCR or NSFR requirement. As a result, the Board is proposing to remove the current modified LCR requirement and the proposed modified NSFR requirement for domestic banking organizations.[56] The LCR rule and NSFR proposed rule are important standards for Category I, Category II, and Category III given such banking organizations' size, complexity, and the resulting challenges that may complicate the resolution of such banking organizations. However these standardized liquidity requirements are less important for banking organizations subject to Category IV standards given

banking organization, the applicable category of standards would depend on the risk-based indicators of the depository institution. For example, if the depository institution meets the criteria for Category III standards but has weighted short-term wholesale funding of less than $75 billion, the depository institution would be subject to the proposed reduced LCR and NSFR requirements.

[54] *See* § ____.22(b)(3) and (4) of the LCR rule (12 CFR 50.22(b)(3) and (4) (OCC); 12 CFR 249.22(b)(3) and (4) (Board); 12 CFR 329.22(b)(3) and (4) (FDIC).

[55] *See* NSFR proposed rule § ____.108.

[56] The proposal would also remove the modified LCR and proposed modified NSFR requirements for banking organizations with total consolidated assets less than $100 billion. As previously noted, the Board plans to develop a separate proposal relating to foreign banking organizations. Accordingly, the proposal would maintain the current full and modified LCR requirements, as applicable, for banking organizations that are consolidated subsidiaries of a foreign banking organization until such time as the Board adopts a final rule to amend the requirements for these banking organizations.

their smaller systemic footprint, more limited size, and other applicable requirements. As a class, the domestic banking organizations currently in this category have more traditional balance sheet structures, are largely funded by stable deposits, and have little reliance on less stable wholesale funding. All banking organizations that would be subject to Category IV have less than $75 billion in weighted short-term wholesale funding. Board estimates of stable funding for these banking organizations indicate they would exceed by roughly 40 percent the modified 70 percent NSFR requirement that would apply under the agencies' NSFR proposed rule. These banking organizations would also continue to be subject to the internal liquidity stress testing requirements at the consolidated holding company level under the Board's regulations, which include 30-day and 1-year planning horizons, and Complex Institution Liquidity Monitoring Report (FR 2052a) requirements.[57] Based on this combination of factors, and given the compliance and disclosure obligations under the LCR rule and proposed NSFR rule, the agencies are proposing to no longer apply the LCR rule and proposed NSFR rule to banking organizations subject to Category IV standards.

Question 29: Based on the risk profiles of banking organizations subject to Category IV standards, what alternative capital and liquidity requirements should the agencies consider and why?

Question 30: The proposal would not apply the LCR or the proposed NSFR rules to banking organizations subject to Category IV standards. What are the advantages and disadvantages of this approach? To what extent would scoping out banking organizations subject to Category IV standards from the LCR and proposed NSFR rules affect the safety and soundness of individual banking organizations or raise broader financial stability concerns? To what extent does maintaining liquidity risk management and internal liquidity stress testing and buffer requirements at the holding company level for these firms under the Board-only proposal mitigate these concerns? What are the advantages and disadvantages of maintaining standardized liquidity requirements, such as the current LCR requirement and proposed NSFR requirement, for firms subject to Category IV standards? If the Board were to apply some or all of the LCR and proposed NSFR requirements to these firms, what, if any, other regulatory requirements should the Board consider reducing or removing?

III. Impact Analysis

The Board assessed the potential impact of the proposed rule, taking into account potential benefits in the form of increased net interest margins from holding higher yielding assets, reduced compliance costs, and increased regulatory flexibility, and potential costs related to increased risk to holding companies during a period of elevated economic stress or market volatility.[58]

The Board expects the proposal to have no material impact on the capital levels of banking organizations that would be subject to Category I or II standards. For banking organizations that would be subject to Category III or IV standards, the Board expects the proposal to slightly lower capital requirements under current conditions (by approximately $8 billion, or 60 basis points of total risk-weighted assets among these banking organizations) and reduce compliance costs for certain banking organizations related to the advanced approaches capital requirements. The impact on capital levels for banking organizations subject to Category III and IV standards could vary under different economic and market conditions. For example, from 2001 to 2018, the aggregate AOCI for banking organizations subject to Category III or Category IV standards that included AOCI in capital has ranged from a decrease of approximately 140 basis points of total risk-weighted assets to an increase of approximately 50 basis points of total risk-weighted assets.

For purposes of assessing the potential impact of the proposed changes to the liquidity standards, the Board's assessment focused on the impact of the proposed change in the applicability and the stringency of the Board's existing liquidity standards under the LCR rule.[59] The Board quantified the impact of the proposed LCR tailoring on the HQLA of affected holding companies.[60] In the analysis, the Board assumed that holding companies subject to Category III standards and holding companies subject to Category IV standards would respond differently to the new regulatory requirements. For holding companies subject to Category III requirements, the proposal would generally result in a decrease in LCR minimum requirements that could range from 70 to 85 percent of the full LCR requirements if the firm has less than $75 billion in weighted short-term wholesale funding. The Board assumes that holding companies subject to Category III standards would adjust their HQLA so that they choose the higher of the following two options: (i) Preserve the same LCR, in percentage point terms, they had in the first quarter of 2018, measured using the new requirement, or (ii) meet their internal liquidity stress test (ILST) requirement.[61] As holding companies subject to Category IV standards would no longer be subject to an LCR requirement under the proposal, the Board assumed that these firms would adjust their liquid asset holdings such that they choose the higher of the following: (i) Match the HQLA levels of holding companies that are currently not subject to the LCR rule or (ii) meet their internal liquidity stress test requirement. The Board assumed that the net cash outflows of holding companies, the denominator of the LCR, remains unchanged.

The Board estimates that under a 70 percent LCR requirement, holding companies subject to Category III standards that have less than $75 billion in weighted short-term wholesale funding would reduce HQLA by approximately $43 billion.[62] With regard to the holding companies subject to Category IV standards, the Board estimates a reduction in HQLA of approximately $34 billion. The combined reduction represents a 2.5

[57] The Board-only proposal provides further discussion of liquidity standards that would apply under the Board's regulations to firms that would be subject to Category IV standards.

[58] As noted in section IV.D of this Supplementary Information, the OCC also considered the potential costs of the proposed rule for the purpose of the Unfunded Mandates Reform Act of 1996 (2 U.S.C. 1532).

[59] Because the NSFR and modified NSFR requirements have not yet been finalized, banking organizations are not currently subject to those minimum requirements. As a result, the Board did not assess any changes in impact as a result of amending its scope of application.

[60] The Board's analysis estimates the impact of reducing the LCR requirement for holding companies that would be subject to Category III or Category IV standards using data submitted on the FR 2052a and FR Y9–C by these holding companies for the 2018Q1 reporting period.

[61] For example, in the case of a holding company that would be subject to Category III standards and the reduced LCR and NSFR requirements under the proposal, if the firm's current LCR requirement is greater than its ILST-based liquidity buffer requirement, and the firm currently maintains an LCR of 120 percent relative to the currently applicable full LCR requirement, the approach would assume the firm will reduce its HQLA by 30 percent under a 70 percent LCR requirement.

[62] The estimated drop in HQLA, assuming an 85 percent LCR for holding companies subject to Category III standards that have less than $75 billion in weighted short-term wholesale funding, would be approximately $20 billion (or 0.6 percent reduction of aggregate HQLA among holding companies with $100 billion or more in total consolidated assets).

percent reduction of aggregate HQLA among holding companies with $100 billion or more in total consolidated assets. As a result, the Board projects that the reduction in LCR requirements would modestly reduce the liquidity buffers held at affected holding companies.

In the second part of the analysis, the Board estimated how the proposal would affect the net interest margin, loan growth, and the probability that these holding companies could experience liquidity pressure during a period of elevated stress or volatility (outcome variables). The Board implemented this analysis by using regression models for the above variables. As an input to these regression models, the Board used the estimates for the proposal's direct effects on HQLA to infer its indirect effects on the outcome variables.

The Board estimates that the reduction in the LCR requirements would modestly increase the net interest margin at affected holding companies. Reducing the LCR calibration to 70 percent for banking organizations subject to Category III standards that have less than $75 billion in weighted short-term wholesale funding and removing the LCR for holding companies subject to Category IV standards would moderately increase the likelihood that these holding companies could experience liquidity pressure during times of stress.[63] The Board-only proposal would continue to require these holding companies to conduct internal liquidity stress tests and hold highly liquid assets sufficient to meet projected 30-day net stressed cash-flow needs under internal stress scenarios. In addition, the Board will continue to assess the safety and soundness of these holding companies through the normal course of supervision.

IV. Administrative Law Matters

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 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 OMB control number for the OCC is 1557–0318, Board is 7100–0313, and FDIC is 3064–0153. The OCC and FDIC may need to request new control numbers if submissions are pending under their respective control numbers at the time of this submission. 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 document that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in 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 Board 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, 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 establish a revised framework for determining applicability of requirements under the regulatory capital rule, the liquidity coverage ratio rule, and the proposed net stable funding ratio rule for large U.S. banking organizations based on their risk profile. The proposal would establish four categories of standards and apply tailored capital and liquidity requirements for banking organizations subject to each category. The proposal is consistent with a separate proposal issued by the Board that would apply enhanced prudential standards for large banking organizations based on those four categories of standards. The proposal would not amend the capital and liquidity requirements currently applicable to an intermediate holding company of a foreign banking organization or its subsidiary depository institutions. These changes will not result in changes to the PRA-related burden. Nevertheless, in order to be consistent across the agencies, the agencies would apply a conforming methodology for calculating the PRA-related burden estimates. The agencies would also update the number of respondents based on the current number of supervised entities even though this proposal only affects a limited number of 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.

[63] If the agencies calibrate the LCR requirement at 85 percent for banking organizations subject to Category III standards with less than $75 billion in weighted short-term wholesale funding, the Board estimates the likelihood of experiencing material financial distress during a period of elevated economic stress or market volatility would increase only modestly.

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 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, 64,929 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: 3,575 (of which 2 are advanced approaches institutions).
Estimated average hours per response:

Minimum Capital Ratios (3,575 Institutions Affected)

Recordkeeping (Ongoing)—16.

Standardized Approach (3,575 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, 130,758 hours for ongoing.

The proposed rule would also require changes to the Consolidated Reports of Condition and Income (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)), which will be addressed in a separate **Federal Register** notice.

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 consolidated assets of $550 million or less and trust companies with total consolidated 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.[64]

As part of our analysis, we consider whether the proposal will have a significant economic impact on a substantial number of small entities, pursuant to the RFA. This proposal only applies to large banking organizations, therefore, it will not impact any OCC-supervised small entities. For this reason, the OCC certifies that the proposed rule would not have a significant economic impact on a 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).[65] 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 **SUPPLEMENTARY INFORMATION**, the Board is proposing to adopt amendments to the Board's capital rule[66] and LCR rule.[67] The capital rule applies to all state member banks, bank holding companies, and covered savings and loan holding companies, except for institutions that are subject to the Board's Small Bank Holding Company and Small Savings and Loan Holding Company Policy Statement, which apply to bank holding companies and savings and loan holding companies with less than $3 billion in total consolidated assets that also meet certain additional criteria.[68] The proposed changes to the capital rule

[64] 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.

[65] *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).

[66] *See* 12 CFR part 217.

[67] *See* 12 CFR part 249.

[68] *See* 12 CFR 217.1(c)(1)(ii) and (iii); 12 CFR part 225, appendix C; 12 CFR 238.9.

generally affect state member banks, bank holding companies, and covered savings and loan holding companies with $50 billion or more in total consolidated assets. Thus, most state member banks, bank holding companies, and covered 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 Board is also proposing changes to regulatory requirements under the LCR rule. The LCR rule applies to state member banks, bank holding companies and covered savings and loan holding companies with (i) $250 billion or more in total consolidated assets; or (ii) total consolidated on-balance sheet foreign exposure equal to $10 billion or more. The LCR rule also applies to state member banks with total consolidated assets equal to $10 billion or more that are consolidated subsidiaries of a covered bank holding company. The modified LCR, which is part of the LCR rule, applies to certain bank holding companies and covered savings and loan holding companies with $50 billion or more in total consolidated assets. Most institutions that are affected by the proposal therefore substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.

The agencies anticipate proposing updates to the relevant reporting forms at a later date to the extent necessary to align with the proposed changes to the capital rule and LCR rule. Given that the proposed rule does not impact the recordkeeping and reporting requirements to which that affected small banking organizations are currently subject, 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 Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[69] 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 Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million who are independently owned and operated or owned by a holding company with less than $550 million in total assets.[70] For the reasons described below and under section 605(b) of the RFA, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The FDIC supervises 3,575 institutions, of which 2,763 are considered small entities for the purposes of RFA.[71]

This proposed rule will affect all institutions subject to the current advanced approaches regulations and their subsidiaries. The FDIC does not supervise any advanced approaches banking organizations or subsidiaries thereof that have $550 million or less in total consolidated assets.[72] Since this proposal does not affect any institutions that are defined as small entities for the purposes of the RFA, the FDIC certifies that the proposed rule will not 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, 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 [73] 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),[74] 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

[69] 5 U.S.C. 601 *et seq.*

[70] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[71] Call Report data, June 30th, 2018.

[72] Call Report data, June 30th 2018.

[73] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[74] 12 U.S.C. 4802(a).

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.[75]

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.

12 CFR Part 3

Administrative practice and procedure, Asset risk-weighting methodologies, Banking, Banks, Capital adequacy, Capital requirements, Federal savings associations, National banks, Reporting and recordkeeping requirements, Risk.

12 CFR Part 50

Administrative practice and procedure, Banking, Banks, Liquidity, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 217

Administrative practice and procedure, Banking, Banks, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 249

Administrative practice and procedure, Banking, Banks, Federal Reserve System, Holding companies, Liquidity, Reporting and recordkeeping requirements.

12 CFR Part 324

Administrative practice and procedure, Banking, Banks, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 329

Administrative practice and procedure, Banking, Banks, Federal Deposit Insurance Corporation, Liquidity, Reporting and recordkeeping requirements, Savings associations.

[75] *Id.*

Authority and Issuance

For the reasons stated in the Supplementary Information, chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as follows:

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR CHAPTER I

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. In § 3.2 add the definitions of *Category II national bank or Federal savings association,* and *Category III national bank or Federal savings association, FR Y–9LP,* and *FR Y–15* in alphabetical order to read as follows:

§ 3.2 Definitions.

* * * * *

Category II national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a Category II banking organization, as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A national bank or Federal savings association that:

(i) (A) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $700 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(ii) After meeting the criteria in paragraph (2)(i) of this section, a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has:

(A) (*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a subsidiary of a global systemically important BHC. *Category III national bank or Federal savings association* means:

(1) A national bank or Federal savings association that is a subsidiary of a Category III banking organization as defined pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) A national bank or Federal savings association that:

(i)(A) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than

$250 billion. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) At least one of the following, each calculated as the average of the four most recent consecutive quarters, or if the national bank or Federal savings association has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a national bank's or Federal savings association's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(ii) After meeting the criteria in paragraphs (2)(i) of this definition, a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association has:

(A)(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a national bank's or Federal savings association's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II national bank or Federal savings association; or

(D) Is a subsidiary of a global systemically important BHC.

FR Y–15 means the Banking Organization Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

■ 3. In § 3.10, revise paragraphs (a)(6), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 3.10 Minimum capital requirements.

(a) * * *

(6) For advanced approaches national banks and Federal savings associations, and for Category III national banks and Federal savings associations, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches national bank or Federal savings association that has completed the parallel run process and received notification from the OCC pursuant to § 3.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association institution meets any of the criteria in § 3.100(b)(1). A Category III national bank or Federal savings association must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the national bank or Federal savings association is identified as a Category III national bank or Federal savings association.

* * * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches national bank's or Federal savings association's or a Category III national bank's or Federal savings association's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

* * * * *

■ 4. Amend § 3.11 as follows:

■ a. Revise the section heading;

■ b. Revise paragraph (b)(1) introductory text; and

■ c. Revise paragraph (b)(1)(ii).

The revisions read as follows:

§ 3.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

* * * * *

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches national bank or Federal savings association, and a Category III national bank or Federal savings association, must calculate a countercyclical capital buffer amount in accordance with the following paragraphs for purposes of determining its maximum payout ratio under Table 1 to § 3.11.

* * * * *

(ii) *Amount.* An advanced approaches national bank or Federal savings association, and a Category III national bank or Federal savings association, has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the national bank's or Federal savings association's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 5. In § 3.100, revise paragraphs (b)(1) introductory text and (b)(1)(i) through (v) to read as follows:

§ 3.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to a national bank or Federal savings association that:

(i) Is a subsidiary of a global systemically important BHC, as identified pursuant to 12 CFR 217.402;

(ii) Is a Category II national bank or Federal savings association;

(iii) Is a subsidiary of a depository institution that uses the advanced approaches pursuant to subpart E of 12 CFR part 3 (OCC), 12 CFR part 217 (Board), or 12 CFR part 324 (FDIC) to calculate its risk-based capital requirements; or

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses the advanced approaches pursuant to subpart E of 12 CFR part 217 to calculate its risk-based capital requirements; or

(v) Elects to use this subpart to calculate its total risk-weighted assets; or

* * * * *

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 6. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 481, 1818, and 1462 *et seq.*

■ 7. In § 50.1, revise paragraphs (b)(1) and (2) to read as follows:

§ 50.1 Purpose and applicability.

* * * * *

(b) *Applicability of Minimum Liquidity Standards.* (1) A national bank or Federal savings association is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a GSIB depository institution, a Category II national bank or Federal savings association, or a Category III national bank or Federal savings association;

(ii) It is an national bank or Federal savings association that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Call Report, and it is a consolidated subsidiary of a covered intermediate holding company that:

(A) Has total consolidated assets of $250 billion or more, as reported on the most recent year-end (as applicable):

(*1*) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered intermediate holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(*2*) Call Report; or

(B) Has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(iii) It is a national bank or Federal savings association for which the OCC has determined that application of this part is appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) A national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part under paragraphs (b)(1)(i) of this section must comply with the requirements of this part beginning on the first day of the second calendar quarter after which the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) A national bank or Federal savings association must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, for the first three calendar quarters after the national bank or Federal savings association begins complying with the minimum liquidity standard and other requirements of this part;

(B) Beginning one year after the first year in which the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(i) of this section, and thereafter, the national bank or Federal savings association must calculate and maintain a liquidity coverage ratio on each calculation date;

(ii) A national bank or Federal savings association that becomes subject to this part under paragraph (b)(1)(ii) of this section must comply with the requirements of this part beginning on April 1 of the year in which the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) From April 1 to December 31 of the year in which the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part, the national bank or Federal savings association must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning January 1 of the year after the first year in which the national bank or Federal savings association becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section, and thereafter, the national bank or Federal savings association must calculate and maintain a liquidity coverage ratio on each calculation date.

(iii) A national bank or Federal savings association that becomes subject to the minimum liquidity standard and other requirements of this part under (b)(1)(iii) of this section must comply with the requirements of this part subject to a transition period specified by the OCC.

* * * * *

■ 8. In § 50.3, add the definitions of *Average weighted short-term wholesale funding, Call Report, Category II national bank or Federal savings association, Category III national bank or Federal savings association, Covered intermediate holding company, FR Y–9LP, FR Y–15, Global systemically important BHC,* and *GSIB depository institution,* in alphabetical order to read as follows:

§ 50.3 Definitions.

* * * * *

Average weighted short-term wholesale funding has the same meaning as in 12 CFR 252.2.

* * * * *

Call Report means the Consolidated Reports of Condition and Income.

Category II national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a depository institution holding company that is defined as a Category II Board-regulated institution pursuant to 12 CFR 249.3 and has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the national bank or Federal savings association is no longer a consolidated subsidiary of a category II Board-regulated institution; or

(2) A national bank or Federal savings association that:

(i)(A) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated

Report of Condition and Income (Call Report), equal to $700 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent consecutive quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(ii) After meeting the criteria in paragraph (2)(i) of this section, a national bank or Federal savings association continues to be a Category II national bank or Federal savings association until the national bank or Federal savings association has:

(A)(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III national bank or Federal savings association means:

(1) A national bank or Federal savings association that is a subsidiary of a depository institution holding company that is defined as a Category III Board-regulated institution pursuant to 12 CFR 249.3 and has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the national bank or Federal savings association is no longer a consolidated subsidiary of a Category III Board-regulated institution; or

(2) A national bank or Federal savings association that:

(i)(A) Has total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $250 billion or more. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the national bank's or Federal savings association's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of at least $100 billion but less than $700 billion. If the national bank or Federal savings association has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) One or more of the following, each measured as the average of the four most recent quarters, or if the national bank or Federal savings bank has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(ii) After meeting the criteria in paragraph (2)(i) of this section, a national bank or Federal savings association continues to be a Category III national bank or Federal savings association until the national bank or Federal savings association has:

(A)(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a national bank's or Federal savings association's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the national bank or Federal savings association, as reported on the Call Report; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a Category II national bank or Federal savings bank; or

(D) Is a GSIB depository institution.

* * * * *

Covered intermediate holding company means a U.S. intermediate holding company that:

(1) Was established or designated by a foreign banking organization pursuant to 12 CFR 252.153; and

(2) Is a covered depository institution holding company.

* * * * *

FR Y–15 means the Banking Organization Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

■ 9. In § 50.30:

■ a. Revise paragraph (a); and

■ b. Add paragraph (c) and Table 1.

The revision and additions read as set forth below.

§ 50.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a national bank's or Federal savings association's total net cash outflow amount equals the national bank's or Federal savings association's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 50.32(a) through (l); minus

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 50.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; plus

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* A national bank's or Federal savings association's outflow adjustment percentage is determined pursuant to Table 1 to § 50.30.

TABLE 1 TO § 50.30—OUTFLOW ADJUSTMENT PERCENTAGES

	Outflow adjustment percentage
A GSIB depository institution	100
Category II national bank or Federal savings association	100
Category III national bank or Federal savings association that:	100
(1) Is a consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 with $75 billion or more in average weighted short-term wholesale funding; or	
(2) Has $75 billion or more in average weighted short-term wholesale funding and is not consolidated under a holding company	
Category III national bank or Federal savings association that:	[70 to 85]
(1) Is a consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 with less than $75 billion in average weighted short-term wholesale funding; or	
(2) Has less than $75 billion in average weighted short-term wholesale funding and is not consolidated under a holding company	
A national bank or Federal savings association that is described in section .50(b)(1)(ii)	100

[Re-proposal of Net Stable Funding Ratio's Applicability]

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 10. In § 50.1, add paragraph (c) to read as follows:

§ 50.1 Purpose and applicability.

* * * * *

(c) *Applicability of the minimum stable funding standard.* (1) A national bank or Federal savings association is subject to the minimum stable funding and other requirements of subparts K through M if:

(i) It is a GSIB depository institution, a Category II national bank or Federal savings association, a Category III national bank or Federal savings association that is the consolidated subsidiary of a Category III Board-regulated institution pursuant to 12 CFR 249.3 with $75 billion or more in average weighted short-term wholesale funding, or a Category III national bank or Federal savings association with $75 billion or more in average weighted short-term wholesale funding that is not consolidated under a holding company;

(ii) It is a national bank or Federal savings association that has total consolidated assets equal to $10 billion or more, or reported on the most recent year-end Call Report, and is a consolidated subsidiary of a covered intermediate holding company that:

(A) Has total consolidated assets of $250 billion or more, as reported on the most recent year-end (as applicable):

(*1*) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered intermediate holding company is not required to report on the FR Y–9C, its estimated consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C;

(*2*) Call Report; or

(B) Has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a Category III national bank or Federal savings association that meets the criteria in § 50.120(a) but does not meet the criteria in paragraph

(d)(1)(i) of this section, and is subject to the requirements of this part in accordance with subpart M of this part;

(iv) The OCC has determined that application of this part is appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part under paragraph (d)(1)(i) of this section on the effective date, must comply with the requirements of these subparts beginning on the first day of the second calendar quarter after which the national bank or Federal savings association becomes subject to the minimum stable funding standard and other requirements of this part.

(ii) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part under paragraphs (d)(1)(ii) of this section after the effective date must comply with the requirements of subparts K through M of this part beginning on April 1 of the year in which the national bank or Federal savings association becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part: and

(iii) A national bank or Federal savings association that becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part under paragraph (d)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through M of this part on the date specified by the OCC.

(3) Subparts K through M do not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) A national bank or Federal savings association subject to a minimum liquidity standard under this part shall remain subject until the OCC determines in writing that application of this part to the national bank or Federal savings association is not appropriate in light of the national bank's or Federal savings association's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraphs (d)(1)(iv) or (d)(4) of this section, the OCC will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 3.404.

■ 11. Add subpart M to part 50 to read as follows:

Subpart M—Net stable funding ratio for certain national banks and Federal savings associations

Sec.
50.120 Applicability.
50.121 Net stable funding ratio requirement.

Subpart M—Net stable funding ratio for certain national banks and Federal savings associations

§ 50.120 Applicability.

(a) *Scope.* This subpart applies to a national bank or Federal savings association that:

(1) Is a Category III national bank or Federal savings association that is a consolidated subsidiary of a depository institution holding company with less than $75 billion in average weighted short-term wholesale funding that is a Category III Board-regulated institution, pursuant to 12 CFR 249.3; or

(2) Is a Category III national bank or Federal savings association with less than $75 billion in average weighted short-term wholesale funding that is not consolidated under a holding company.

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A, K, and L of this part apply to national banks and Federal savings associations that are subject to this subpart.

(c) *Applicability.* A national bank or Federal savings association that meets the threshold for applicability of this subpart under paragraph (a) of this section after the effective date must comply with the requirements of this subpart beginning on the first day of the second calendar quarter after which it meets the threshold set forth in paragraph (a) of this section.

§ 50.121 Net stable funding ratio requirement.

(a) *Calculation of the net stable funding ratio.* A national bank or Federal savings association subject to this subpart must calculate and maintain a net stable funding ratio in accordance with § 50.100 and this subpart.

(b) *Available stable funding amount.* A national bank or Federal savings association subject to this subpart must calculate its ASF amount in accordance with subpart K of this part.

(c) *Required stable funding amount.* A national bank or Federal savings association subject to this subpart must calculate its RSF amount in accordance with subpart K of this part, provided, however, that the RSF amount of a national bank or Federal savings association subject to this subpart equals [70 to 85] percent of the RSF amount calculated in accordance with subpart K of this part.

Board of Governors of the Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the Supplementary Information, chapter II of title 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)

■ 12. 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–1, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 13. In § 217.2, revise the definition of *Advanced approaches Board-regulated institution* and add the definitions of *Category II Board-regulated institution, Category III Board-regulated institution, FR Y–9LP,* and *FR Y–15* in alphabetical order to read as follows:

§ 217.2 Definitions.

* * * * *

Advanced-approaches Board-regulated institution means:

(1) A Board-regulated institution that is described § 217.100(b)(1); or

(2) A U.S. intermediate holding company that was established or designated by a foreign banking organization pursuant to 12 CFR 252.153

(i) That:

(A) Has total consolidated assets (excluding assets held by an insurance underwriting subsidiary), as defined on schedule HC–K of the FR Y–9C, equal to $250 billion or more;

(B) Has consolidated total on-balance sheet foreign exposure on its most recent year-end Federal Financial Institutions Examination Council (FFIEC) 009 Report equal to $10 billion or more (where total on-balance sheet

foreign exposure equals total foreign countries cross-border claims on an ultimate-risk basis, plus total foreign countries claims on local residents on an ultimate-risk basis, plus total foreign countries fair value of foreign exchange and derivative products), calculated in accordance with the FFIEC 009 Country Exposure Report; or

(C) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 324, subpart E (FDIC) to calculate its risk-based capital requirements.

(ii) Reserved.

* * * * *

Category II Board-regulated institution means:

(1) A depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition; or

(3) A state member bank that:

(i)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the state member bank has not filed the Call Report for each of the four most recent quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(ii) After meeting the criteria in paragraph (3)(i) of this section, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A) Has:

(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a subsidiary of a global systemically important BHC.

Category III Board-regulated institution means:

(1) A depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A state member bank that is a subsidiary of a company identified in paragraph (1) of this definition; or

(3) A state member bank that:

(i) (A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) At least one of the following, each calculated as the average of the four most recent calendar quarters, or if the state member bank has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(ii) After meeting the criteria in paragraph (3)(i) of this section, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II Board-regulated institution; or

(D) Is a subsidiary of a global systemically important BHC.

FR Y–15 means the Banking Organization Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

■ 14. In § 217.10, revise paragraphs (a)(5), (c) introductory text, and (c)(4)(i) introductory text to read as follows:

§ 217.10 Minimum capital requirements.

(a) * * *

(5) For advanced approaches Board-regulated institutions or, for Category III Board-regulated institutions, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches Board-regulated institution that has completed the parallel run process and received notification from the Board pursuant to § 217.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution meets any of the criteria in § 217.100(b)(1). A Category III Board-regulated institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the Board-regulated institution is identified as a Category III Board-regulated institution.

* * * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches Board-regulated institution's or a Category III Board-regulated institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

* * * * *

■ 15. In § 217.11, revise paragraphs (b)(1) introductory text and (b)(1)(ii) as follows:

§ 217.11 Capital conservation buffer, countercyclical capital buffer amount, and GSIB surcharge.

* * * * *

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution must calculate a countercyclical capital buffer amount in accordance with the following paragraphs for purposes of determining its maximum payout ratio under Table 1 to § 217.11.

(i) * * *

(ii) *Amount.* An advanced approaches Board-regulated institution or a Category III Board-regulated institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the Board-regulated institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 16. In § 217.100, paragraph (b)(1) is revised to read as follows:

§ 217.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to:

(i) A top-tier bank holding company or savings and loan holding company domiciled in the United States that:

(A) Is not a consolidated subsidiary of another bank holding company or savings and loan holding company that uses 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; and

(B) That:

(*1*) Is identified as a global systemically important BHC pursuant to 12 CFR 217.402;

(*2*) Is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10; or

(*3*) Has a subsidiary depository institution that is required, or has elected, to use 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 324, subpart E (FDIC) to calculate its risk-based capital requirements;

(ii) A state member bank that:

(A) Is a subsidiary of a global systemically important BHC;

(B) Is a Category II Board-regulated institution;

(C) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 324, subpart E (FDIC) to calculate its risk-based capital requirements; or

(D) Is a subsidiary of a bank holding company or savings and loan holding company that uses 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; or

(iii) Any Board-regulated institution that elects to use this subpart to calculate its risk-based capital requirements.

* * * * *

■ 17. In § 217.406, paragraph (b)(2) introductory text is revised to read as follows:

§ 217.406 Short-term wholesale funding score.

* * * * *

(b) * * *

(2) Short-term wholesale funding includes the following components:

* * * * *

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 18. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 19. In § 249.1, revise paragraphs (b)(1) and (2), and add paragraph (d) to read as follows:

§ 249.1 Purpose and applicability.

* * * * *

(b) *Applicability of Minimum Liquidity Standards.* (1) A Board-regulated institution is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a global systemically important BHC, a GSIB depository institution, a Category II Board-regulated institution, or a Category III Board-regulated institution;

(ii) It is a covered intermediate holding company that:

(A) Has total consolidated assets of $250 billion or more, as reported on the most recent year-end (as applicable):

(*1*) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered intermediate holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year-end, calculated in accordance with the instructions to the FR Y–9C; or

(*2*) Call Report; or

(B) Has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is a consolidated subsidiary of a covered intermediate holding company described in paragraph (b)(1)(ii) of this section and has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Call Report;

(iv) It is a covered nonbank company;

(v) It is a covered intermediate holding company that meets the criteria in § 249.60(a) but does not meet the criteria in paragraph (b)(1)(ii) of this

section, and is subject to complying with the requirements of this part in accordance with subpart G of this part; or

(vi) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(i) of this section must comply with the requirements of this part beginning on the first day of the second calendar quarter after which the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) A Board-regulated institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, for the first three calendar quarters after the Board-regulated institution begins complying with the minimum liquidity standard and other requirements of this part;

(B) Beginning one year after the first year in which the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(i) of this section, and thereafter, the Board-regulated institution must calculate and maintain a liquidity coverage ratio on each calculation date;

(ii) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraphs (b)(1)(ii) or (b)(1)(iii) of this section after September 30, 2014, must comply with the requirements of this part beginning on April 1 of the year in which the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) From April 1 to December 31 of the year in which the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part, the Board-regulated institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning January 1 of the year after the first year in which the Board-regulated institution becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section, and thereafter, the Board-regulated institution must calculate and maintain a liquidity coverage ratio on each calculation date; and

(iii) A Board-regulated institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(vi) of this section after September 30, 2014, must comply with the requirements of this part subject to a transition period specified by the Board.

* * * * *

(d) *Applicability of the minimum stable funding standard.* (1) A Board-regulated institution is subject to the minimum stable funding standard and other requirements of subparts K through N if:

(i) It is a global systemically important BHC, a GSIB depository institution, a Category II Board-regulated institution, or a Category III Board-regulated institution with $75 billion or more in average weighted short-term wholesale funding,

(ii) It is a covered intermediate holding company that:

(A) Has total consolidated assets of $250 billion or more, as reported on the most recent year-end (as applicable):

(*1*) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered intermediate holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(*2*) Call Report;

(B) Has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a depository institution that is:

(A) A Category III Board-regulated institution; and

(B) A consolidated subsidiary of a Category III Board-regulated institution with $75 billion or more in average weighted short-term wholesale funding;

(iv) It is a depository institution that is a consolidated subsidiary of a covered intermediate holding company described in paragraph (d)(1)(ii) of this section and has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Call Report;

(v) It is a covered nonbank company;

(vi) It is a Category III Board-regulated institution or a covered intermediate holding company that meets the criteria in § 249.120(a) but does not meet the criteria in paragraphs (d)(1)(i) or (ii) of this section, and is subject to complying with the requirements of this part in accordance with subpart M of this part; or

(vii) The Board has determined that application of this part is appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (d)(1)(i) or (d)(1)(iii) of this section after the effective date, must comply with the requirements of these subparts beginning on the first day of the second calendar quarter after which the Board-regulated institution becomes subject to the minimum stable funding standard and other requirements of this part.

(ii) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraphs (d)(1)(ii) or (d)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through N of this part beginning on April 1 of the year in which the Board-regulated institution becomes subject to the minimum stable funding standard and requirements of subparts K through N of this part; and,

(iii) A Board-regulated institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through N of this part under paragraph (d)(1)(vii) of this section after the effective date must comply with the requirements of subparts K through N of this part on the date specified by the Board.

(3) Subparts K through N do not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) A Board-regulated institution subject to a minimum stable funding standard under this part shall remain subject until the Board determines in writing that application of this part to the Board-regulated institution is not appropriate in light of the Board-regulated institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraphs (d)(1)(vii) or (d)(4) of this section, the Board will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 263.202.

■ 20. In § 249.3, add the definitions of *Average weighted short-term wholesale funding, Call Report, Category II Board-regulated institution, Category III Board-regulated institution, Covered intermediate holding company, FR Y–9LP, FR Y–15, Global systemically important BHC, and GSIB depository institution* in alphabetical order to read as follows:

§ 249.3 Definitions.

* * * * *

Average weighted short-term wholesale funding has the same meaning as in 12 CFR 252.2.

* * * * *

Call Report means the Consolidated Reports of Condition and Income.

Category II Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10;

(2) A state member bank that is a consolidated subsidiary of a company described in paragraphs (1) or (3) and that has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (2), a state member bank continues to be a Category II Board-regulated institution until the state member bank has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraphs (1) or (3); or

(3) A state member bank that:

(i)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $700 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form.

(ii) After meeting the criteria in paragraph (3)(i) of this section, a state member bank continues to be a Category II Board-regulated institution until the state member bank:

(A)(*1*) Has less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Has less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB depository institution.

Category III Board-regulated institution means:

(1) A covered depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable;

(2) A state member bank that is a consolidated subsidiary of a company described in paragraphs (1) or (3) and that has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (2), a state member bank continues to be a Category III Board-regulated institution until the state member bank has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the state member bank is no longer a consolidated subsidiary of a company described in paragraphs (1) or (3); or

(3) A state member bank that:

(i)(A) Has total consolidated assets, calculated based on the average of the state member bank's total consolidated assets in the four most recent quarters as reported quarterly on the most recent Call Report, equal to $250 billion or more. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the state member bank's total consolidated assets in the four most recent calendar quarters as reported quarterly on the most recent Call Report, of $100 billion or more but less than $250 billion. If the state member bank has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) One or more of the following, each measured as the average of the four most recent calendar quarters, or if the state member bank has not filed the FR Y–9LP or equivalent reporting form, Call Report, or FR Y–15 or equivalent reporting form, as applicable, for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(ii) After meeting the criteria in paragraph (3)(i) of this section, a state member bank continues to be a Category III Board-regulated institution until the state member bank:

(A)(*1*) Has less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Has less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Has less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Has less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a state member bank's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the state member bank, as reported on the Call Report; or

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II Board-regulated institution; or

(D) Is a GSIB depository institution.

* * * * *

Covered intermediate holding company means a U.S. intermediate holding company that: (1) Was established or designated by a foreign banking organization pursuant to 12 CFR 252.153; and

(2) Is a covered depository institution holding company.

* * * * *

FR Y–15 means the Banking Organization Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB depository institution means a depository institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the depository institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or quarters, as applicable. After meeting the criteria under this definition, a depository institution continues to be a GSIB depository institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the depository institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

■ 21. In § 249.30, revise paragraph (a), and add paragraph (c) to read as follows:

§ 249.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, a Board-regulated institution's total net cash outflow amount equals the Board-regulated institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 249.32(a) through (l); minus

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 249.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; plus

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

(c) *Outflow adjustment percentage.* A Board-regulated institution's outflow adjustment percentage is determined pursuant to Table 1 to § 249.30.

TABLE 1 TO § 249.30—OUTFLOW ADJUSTMENT PERCENTAGES

	Outflow adjustment percentage
Global systemically important BHC or GSIB depository institution	100
Category II Board-regulated institution	100
Category III Board-regulated institution with $75 billion or more in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution	100
Category III Board-regulated institution with less than $75 billion in average weighted short-term wholesale funding and any Category III Board-regulated institution that is a consolidated subsidiary of such a Category III Board-regulated institution	[70 to 85]
Covered intermediate holding company that meets the criteria under § 249.1(b)(1)(ii) and any Board-regulated institution subject to this part that is a consolidated subsidiary of such a covered intermediate holding company [1]	100

[1] Covered intermediate holding companies shall remain subject to this part as in effect on October 3, 2018, until the Board amends the liquidity risk measurement standards applicable to the subsidiaries of foreign banking organizations in effect on October 31, 2018.

■ 22. Section 249.60, is revised to read as follows:

§ 249.60 Applicability.

(a) *Scope.* This subpart applies to a covered intermediate holding company that has total consolidated assets equal to $50 billion or more, based on the average of the Board-regulated institution's four most recent FR Y–9Cs

and does not meet the applicability criteria set forth in § 249.1(b)(1)(ii).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A through E of this part apply to covered intermediate holding companies that are subject to this subpart.

(c) *Applicability.* Subject to the transition periods set forth in § 249.61, a Board-regulated institution that first meets the threshold for applicability of this subpart under paragraph (a) of this section after September 30, 2014, must comply with the requirements of this subpart one year after the date it meets the threshold set forth in paragraph (a) of this section; except that a Board-regulated institution that met the applicability criteria in § 249.1(b) immediately prior to meeting this threshold must comply with the requirements of this subpart beginning on the first day of the first quarter after which it meets the threshold set forth in paragraph (a) of this section.

■ 23. In § 249.90, paragraph (b)(3) is revised to read as follows:

§ 249.90 Timing, method and retention of disclosures.

* * * * *

(b) * * *

(3) A covered depository institution holding company or covered nonbank company that is subject to the minimum liquidity standard and other requirements of this part pursuant to § 249.1(b)(2)(i) or (ii) must provide the disclosures required by this subpart for the first calendar quarter beginning no later than the date it is first required to comply with the requirements of this part pursuant to § 249.1(b)(2)(i) or (ii).

* * * * *

■ 24. Add subpart M to part 249 to read as follows:

Subpart M—Net stable funding ratio for certain Board-regulated institutions

Sec.

249.120 Applicability.

249.121 Net stable funding ratio requirement.

Subpart M—Net stable funding ratio for certain Board-regulated institutions

§ 249.120 Applicability.

(a) *Scope.* This subpart applies to:

(1) A Category III Board-regulated institution with less than $75 billion in average weighted short-term wholesale funding;

(2) A depository institution that is:

(i) A consolidated subsidiary of a Category III Board-regulated institution described in (a)(1) of this section; and

(ii) A Category III Board-regulated institution.

(3) A covered intermediate holding company that has total consolidated assets equal to $50 billion or more, based on the average of the covered intermediate holding company's total consolidated assets in the four most recent quarters as reported on the FR Y–9C and does not meet the applicability criteria set forth in § 249.1(d).

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A, K, L, and N of this part apply to Board-regulated institutions that are subject to this subpart.

(c) *Applicability.*

(1) A Board-regulated institution that meets the threshold for applicability of this subpart under paragraphs (a)(1) or (2) of this section after the effective date must comply with the requirements of this subpart beginning on the first day of the second calendar quarter after which it meets the thresholds set forth in paragraph (a) of this section.

(2) A Board-regulated institution that meets the threshold for applicability of this subpart under paragraph (a)(3) of this section after the effective date must comply with the requirements of this subpart beginning one year after the date it meets the threshold set forth in paragraph (a) of this section.

§ 249.121 Net stable funding ratio requirement.

(a) *Calculation of the net stable funding ratio.* A Board-regulated institution subject to this subpart must calculate and maintain a net stable funding ratio in accordance with § 249.100 and this subpart.

(b) *Available stable funding amount.* A Board-regulated institution subject to this subpart must calculate its ASF amount in accordance with subpart K of this part.

(c) *Required stable funding amount.* A Board-regulated institution subject to this subpart must calculate its RSF amount in accordance with subpart K of this part, provided, however, that the RSF amount of a Board-regulated institution subject to this subpart equals [70 to 85] percent of the RSF amount calculated in accordance with subpart K of this part.[1]

[1] Under the proposed rule to implement the net stable funding ratio (NSFR), the RSF amount of a Board-regulated institution that is a covered intermediate holding company subject to this part would have equaled 70 percent of the RSF amount calculated in accordance with subpart K of this part. Upon adoption of the final NSFR rule, covered intermediate holding companies would remain subject to this part as proposed in June 1, 2016, until the Board adopts regulations that directly relate to the application of liquidity risk measurement and net stable funding standards to foreign banking organizations.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

For the reasons set out in the joint preamble, the FDIC proposes to amend 12 CFR chapter III as follows.

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 25. 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).

■ 26. In § 324.2, add the definitions of *Category II FDIC-supervised institution* and *Category III FDIC-supervised institution, FR Y–9LP,* and *FR Y–15* in alphabetical order to read as follows:

§ 324.2 Definitions.

* * * * *

Category II FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a subsidiary of a depository institution holding company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) An FDIC-supervised institution that:

(i)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $700 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent quarters, total consolidated assets means the average of its total

consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(ii) After meeting the criteria in paragraph (2)(i) of this section, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution:

(A) Has:

(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Has less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a subsidiary of a global systemically important BHC pursuant to 12 CFR 217.402.

Category III FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a subsidiary of a depository institution holding company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable; or

(2) An FDIC-supervised institution that:

(i)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $250 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $250 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) At least one of the following, each calculated as the average of the four most recent calendar quarters, or if the FDIC-supervised institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure equal to $75 billion or more. Off-balance sheet exposure is an FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more.

(ii) After meeting the criteria in paragraph (2)(i) of this section, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution:

(A) Has:

(*1*) Less than $250 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is a FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

(B) Has Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II FDIC-supervised institution; or

(D) Is a subsidiary of a global systemically important BHC pursuant to 12 CFR 217.402.

* * * * *

FR Y–15 means the Banking Organization Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

■ 27. In § 324.10, revise paragraphs (a)(5), (c), and (c)(4)(i) introductory text to read as follows:

§ 324.10 Minimum capital requirements.

(a) * * *

(5) For advanced approaches FDIC-supervised institutions or, for Category III FDIC-supervised institutions, a supplementary leverage ratio of 3 percent.

* * * * *

(c) *Advanced approaches capital ratio calculations.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and received notification from the FDIC pursuant to § 324.121(d) must determine its regulatory capital ratios as described in paragraphs (c)(1) through (3) of this section. An advanced approaches FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution meets any of the criteria in § 324.100(b)(1). A Category III FDIC-supervised institution must determine its supplementary leverage ratio in accordance with paragraph (c)(4) of this section, beginning with the calendar quarter immediately following the quarter in which the FDIC-supervised institution is identified as a Category III FDIC-supervised institution.

* * * * *

(4) *Supplementary leverage ratio.* (i) An advanced approaches FDIC-supervised institution's or a Category III FDIC-supervised institution's supplementary leverage ratio is the ratio of its tier 1 capital to total leverage exposure, the latter which is calculated as the sum of:

* * * * *

■ 28. In § 324.11, revise paragraphs (b)(1) and (b)(1)(ii) as follows:

§ 324.11 Capital conservation buffer and countercyclical capital buffer amount.

* * * * *

(b) *Countercyclical capital buffer amount*—(1) *General.* An advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution must calculate a countercyclical capital buffer amount in accordance with the following paragraphs for purposes of determining its maximum payout ratio under Table 1 to § 324.11.

* * * * *

(ii) *Amount.* An advanced approaches FDIC-supervised institution or a Category III FDIC-supervised institution has a countercyclical capital buffer amount determined by calculating the weighted average of the countercyclical capital buffer amounts established for the national jurisdictions where the FDIC-supervised institution's private sector credit exposures are located, as specified in paragraphs (b)(2) and (3) of this section.

* * * * *

■ 29. In § 324.100, paragraph (b)(1) is revised to read as follows:

§ 324.100 Purpose, applicability, and principle of conservatism.

* * * * *

(b) *Applicability.* (1) This subpart applies to an FDIC-supervised institution that:

(i) Is a subsidiary of a global systemically important BHC pursuant to 12 CFR 217.402;

(ii) Is a Category II FDIC-supervised institution;

(iii) Is a subsidiary of a depository institution that uses 12 CFR part 3, subpart E (OCC), 12 CFR part 217, subpart E (Board), or 12 CFR part 324, subpart E (FDIC) to calculate its risk-based capital requirements;

(iv) Is a subsidiary of a bank holding company or savings and loan holding company that uses 12 CFR part 217, subpart E, to calculate its risk-based capital requirements; or

(v) Elects to use this subpart to calculate its total risk-weighted assets.

* * * * *

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 30. The authority citation for part 329 continues to read as follows:

Authority: 12 U.S.C. 1815, 1816, 1818, 1819, 1828, 1831p–1, 5412.

■ 31. In § 329.1, paragraphs (b)(1) and (2) are revised to read as follows:

§ 329.1 Purpose and applicability.

* * * * *

(b) *Applicability of Minimum Liquidity Standards.* (1) An FDIC-supervised institution is subject to the minimum liquidity standard and other requirements of this part if:

(i) It is a GSIB FDIC-supervised institution, Category II FDIC-supervised institution or a Category III FDIC-supervised institution;

(ii) It is an FDIC-supervised institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Call Report, and it is a consolidated subsidiary of a covered intermediate holding company that:

(A) Has total consolidated assets of $250 billion or more, as reported on the most recent year-end (as applicable):

(*1*) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered intermediate holding company is not required to report on the FR Y–9C, its estimated total consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C; or

(*2*) Call Report; or

(B) Has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report); or

(iii) It is an FDIC-supervised institution for which the FDIC has determined that application of this part is appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) An FDIC-supervised institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(i) of this section must comply with the requirements of this part beginning on the first day of the second calendar quarter after which the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) An FDIC-supervised institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month, for the first three calendar quarters after the FDIC-supervised institution begins complying with the minimum liquidity standard and other requirements of this part;

(B) Beginning one year after the first year in which the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(i) of this section, and thereafter, the FDIC-supervised institution must calculate and maintain a liquidity coverage ratio on each calculation date;

(ii) An FDIC-supervised institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(ii) of this section after September 30, 2014, must comply with the requirements of this part beginning on April 1 of the year in which the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part, except:

(A) From April 1 to December 31 of the year in which the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part, the FDIC-supervised institution must calculate and maintain a liquidity coverage ratio monthly, on each calculation date that is the last business day of the applicable calendar month; and

(B) Beginning January 1 of the year after the first year in which the FDIC-supervised institution becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1) of this section, and thereafter, the FDIC-supervised institution must calculate and maintain a liquidity coverage ratio on each calculation date; and

(iii) An FDIC-supervised institution that becomes subject to the minimum liquidity standard and other requirements of this part under paragraph (b)(1)(iii) of this section after September 30, 2014, must comply with the requirements of this part subject to a transition period specified by the FDIC.

* * * * *

■ 32. In § 329.3, add the definitions of *Average weighted short-term wholesale funding, Call Report, Category II Board-regulated institution, Category III Board-regulated institution, Covered intermediate holding company, FR Y–9LP, FR Y–15, Global systemically important BHC,* and *GSIB FDIC-supervised institution* in alphabetical order to read as follows:

§ 329.3 Definitions.

* * * * *

Average weighted short-term wholesale funding has the same meaning as in 12 CFR 252.2.

* * * * *

Call Report means the Consolidated Reports of Condition and Income.

Category II FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a consolidated subsidiary of a company that is identified as a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 and has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of a Category II banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10; or

(2) An FDIC-supervised institution that:

(i)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Consolidated Report of Condition and Income (Call Report), equal to $700 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, of $100 billion or more but less than $700 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) Cross-jurisdictional activity, calculated based on the average of its cross-jurisdictional activity for the four most recent calendar quarters, of $75 billion or more. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(ii) After meeting the criteria in paragraph (2)(i) of this section, an FDIC-supervised institution continues to be a Category II FDIC-supervised institution until the FDIC-supervised institution has:

(A)(*1*) Less than $700 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; and

(*2*) Less than $75 billion in cross-jurisdictional activity for each of the four most recent calendar quarters. Cross-jurisdictional activity is the sum of cross-jurisdictional claims and cross-jurisdictional liabilities, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form;

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters; or

(C) Is a GSIB FDIC-supervised institution.

Category III FDIC-supervised institution means:

(1) An FDIC-supervised institution that is a consolidated subsidiary of a company that is identified as a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10, as applicable and has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report, equal to $10 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable. After meeting the criteria under this paragraph (1), an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10; or

(2) An FDIC-supervised institution that:

(i)(A) Has total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets in the four most recent quarters as reported quarterly on the most recent Call Report, equal to $250 billion or more. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; or

(B) Has:

(*1*) Total consolidated assets, calculated based on the average of the FDIC-supervised institution's total consolidated assets in the four most recent calendar quarters as reported quarterly on the most recent Call Report, of at least $100 billion but less than $250 billion. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent quarter or quarters, as applicable; and

(*2*) One or more of the following, each measured as the average of the four most recent quarters, or if the FDIC-supervised institution has not filed each applicable reporting form for each of the four most recent calendar quarters, for the most recent quarter or quarters, as applicable:

(*i*) Total nonbank assets, calculated in accordance with instructions to the FR Y–9LP or equivalent reporting form, equal to $75 billion or more;

(*ii*) Off-balance sheet exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report, equal to $75 billion or more; or

(*iii*) Weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, equal to $75 billion or more;

(ii) After meeting the criteria in paragraph (2)(i) of this section, an FDIC-supervised institution continues to be a Category III FDIC-supervised institution until the FDIC-supervised institution has:

(A)(*1*) Less than $250 billion in total consolidated assets, as reported on the

Call Report, for each of the four most recent calendar quarters;

(*2*) Less than $75 billion in total nonbank assets, calculated in accordance with the instructions to the FR Y–9LP or equivalent reporting form, for each of the four most recent calendar quarters;

(*3*) Less than $75 billion in weighted short-term wholesale funding, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, for each of the four most recent calendar quarters; and

(*4*) Less than $75 billion in off-balance sheet exposure for each of the four most recent calendar quarters. Off-balance sheet exposure is an FDIC-supervised institution's total exposure, calculated in accordance with the instructions to the FR Y–15 or equivalent reporting form, minus the total consolidated assets of the FDIC-supervised institution, as reported on the Call Report; or

(B) Less than $100 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters;

(C) Is a Category II FDIC-supervised institution; or

(D) Is a GSIB FDIC-supervised institution.

* * * * *

Covered intermediate holding company means a U.S. intermediate holding company that: (1) Was established or designated by a foreign banking organization pursuant to 12 CFR 252.153; and

(2) Is a bank holding company or savings and loan holding company.

* * * * *

FR Y–15 means the Banking Organization Systemic Risk Report.

FR Y–9LP means the Parent Company Only Financial Statements for Large Holding Companies.

* * * * *

Global systemically important BHC means a bank holding company identified as a global systemically important BHC pursuant to 12 CFR 217.402.

GSIB FDIC-supervised institution means an FDIC-supervised institution that is a consolidated subsidiary of a global systemically important BHC and has total consolidated assets equal to $10 billion or more, calculated based on the average of the depository institution's total consolidated assets for the four most recent calendar quarters as reported on the Call Report. If the FDIC-supervised institution has not filed the Call Report for each of the four most recent calendar quarters, total consolidated assets means the average of its total consolidated assets, as reported on the Call Report, for the most recent calendar quarter or quarters, as applicable. After meeting the criteria under this definition, an FDIC-supervised institution continues to be a GSIB FDIC-supervised institution until the depository institution has less than $10 billion in total consolidated assets, as reported on the Call Report, for each of the four most recent calendar quarters, or the FDIC-supervised institution is no longer a consolidated subsidiary of a global systemically important BHC.

* * * * *

■ 33. In § 329.30, paragraph (a) is revised to read as follows:

§ 329.30 Total net cash outflow amount.

(a) *Calculation of total net cash outflow amount.* As of the calculation date, an FDIC-supervised institution's total net cash outflow amount equals the FDIC-supervised institution's outflow adjustment percentage as determined under paragraph (c) of this section multiplied by:

(1) The sum of the outflow amounts calculated under § 329.32(a) through (l); minus

(2) The lesser of:

(i) The sum of the inflow amounts calculated under § 329.33(b) through (g); and

(ii) 75 percent of the amount calculated under paragraph (a)(1) of this section; plus

(3) The maturity mismatch add-on as calculated under paragraph (b) of this section.

* * * * *

■ 34. In § 329.30, paragraph (c) is added to read as follows:

(c) *Outflow adjustment percentage.* A FDIC-supervised institution's outflow adjustment percentage is determined pursuant to Table 1 to § 329.30.

TABLE 1 TO § 329.30—OUTFLOW ADJUSTMENT PERCENTAGES

	Outflow adjustment percentage
GSIB FDIC-supervised institution	100
Category II FDIC-supervised institution	100
Category III FDIC-supervised institution that:	100
(1) Is a consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 with $75 billion or more in average weighted short-term wholesale funding; or	
(2) Has $75 billion or more in average weighted short-term wholesale funding and is not consolidated under a holding company	
Category III FDIC-supervised institution that:	[70 to 85]
(1) Is a consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 with less than $75 billion in average weighted short-term wholesale funding; or	
(2) Has less than $75 billion in average weighted short-term wholesale funding and is not consolidated under a holding company	
FDIC-supervised institution that is described in § 329.1(b)(1)(ii)	100

* * * * *

[Re-Proposal of Net Stable Funding Ratio's Applicability]

PART 329—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 35. In § 329.1, add paragraph (c) to read as follows:

§ 329.1 Purpose and applicability.

* * * * *

(c) *Applicability of the minimum stable funding standard.* (1) An FDIC-supervised institution is subject to the minimum stable funding standard and other requirements of subparts K through M if:

(i) It is a GSIB FDIC-supervised institution, Category II FDIC-supervised institution, Category III FDIC-supervised institution that is the consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 with $75 billion or more in average weighted short-term wholesale funding, or a Category III

FDIC-supervised institution with $75 billion or more in average weighted short-term wholesale funding that is not consolidated under a holding company; or

(ii) It is an FDIC-supervised institution that has total consolidated assets equal to $10 billion or more, as reported on the most recent year-end Call Report, and is a consolidated subsidiary of a covered intermediate holding company that:

(A) Has total consolidated assets of $250 billion or more, as reported on the most recent year-end (as applicable):

(*1*) Consolidated Financial Statements for Holding Companies reporting form (FR Y–9C), or, if the covered intermediate holding company is not required to report on the FR Y–9C, its estimated consolidated assets as of the most recent year end, calculated in accordance with the instructions to the FR Y–9C;

(*2*) Call Report; or

(B) Has total consolidated on-balance sheet foreign exposure at the most recent year-end equal to $10 billion or more (where total on-balance sheet foreign exposure equals total cross-border claims less claims with a head office or guarantor located in another country plus redistributed guaranteed amounts to the country of the head office or guarantor plus local country claims on local residents plus revaluation gains on foreign exchange and derivative transaction products, calculated in accordance with the Federal Financial Institutions Examination Council (FFIEC) 009 Country Exposure Report);

(iii) It is a Category III FDIC-supervised institution that meets the criteria in § 329.120(a) but does not meet the criteria in paragraph (c)(1)(i) of this section, and is subject to the requirements of this part in accordance with subpart M of this part;

(iv) The FDIC has determined that application of this part is appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(2)(i) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part under paragraph (c)(1)(i) of this section on the effective date, must comply with the requirements of these subparts beginning on the first day of the second calendar quarter after which the FDIC-supervised institution becomes subject to the minimum stable funding standard and other requirements of this part.

(ii) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part under paragraph (c)(1)(ii) of this section after the effective date must comply with the requirements of subparts K through M of this part beginning on April 1 of the year in which the FDIC-supervised institution becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part: and

(iii) An FDIC-supervised institution that becomes subject to the minimum stable funding standard and other requirements of subparts K through M of this part under paragraph (c)(1)(iv) of this section after the effective date must comply with the requirements of subparts K through M of this part on the date specified by the FDIC.

(3) Subparts K through M of this part do not apply to:

(i) A bridge financial company as defined in 12 U.S.C. 5381(a)(3), or a subsidiary of a bridge financial company; or

(ii) A new depository institution or a bridge depository institution, as defined in 12 U.S.C. 1813(i).

(4) An FDIC-supervised institution subject to a minimum stable funding standard under this part shall remain subject until the FDIC determines in writing that application of this part to the FDIC-supervised institution is not appropriate in light of the FDIC-supervised institution's asset size, level of complexity, risk profile, scope of operations, affiliation with foreign or domestic covered entities, or risk to the financial system.

(5) In making a determination under paragraphs (c)(1)(iv) or (c)(4) of this section, the FDIC will apply, as appropriate, notice and response procedures in the same manner and to the same extent as the notice and response procedures set forth in 12 CFR 324.5.

* * * * *

■ 36. Add subpart M to part 329 to read as follows:

Subpart M—Net Stable Funding Ratio for FDIC-Supervised Institutions

Sec.

Subpart M—Net Stable Funding Ratio for FDIC-Supervised Institutions

§ 329.120 Applicability.

(a) *Scope.* This subpart applies to an FDIC-supervised institution that:

(1) Is a Category III FDIC-supervised institution that is a consolidated subsidiary of a Category III banking organization pursuant to 12 CFR 252.5 or 12 CFR 238.10 with less than $75 billion in average weighted short-term wholesale funding; or

(2) Is a Category III FDIC-supervised institution with less than $75 billion in average weighted short-term wholesale funding that is not consolidated under a holding company.

(b) *Applicable provisions.* Except as otherwise provided in this subpart, the provisions of subparts A, K, and L of this part apply to FDIC-supervised institutions that are subject to this subpart.

(c) *Applicability.* An FDIC-supervised institution that meets the threshold for applicability of this subpart under paragraph (a) of this section after the effective date must comply with the requirements of this subpart beginning on the first day of the second calendar quarter after which it meets the thresholds set forth in paragraph (a) of this section.

§ 329.121 Net stable funding ratio requirement.

(a) *Calculation of the net stable funding ratio.* An FDIC-supervised institution subject to this subpart must calculate and maintain a net stable funding ratio in accordance with § 329.100 and this subpart.

(b) *Available stable funding amount.* An FDIC-supervised institution subject to this subpart must calculate its ASF amount in accordance with subpart K of this part.

(c) *Required stable funding amount.* An FDIC-supervised institution subject to this subpart must calculate its RSF amount in accordance with subpart K of this part, provided, however, that the RSF amount of an FDIC-supervised institution subject to this subpart equals [70 to 85] percent of the RSF amount calculated in accordance with subpart K of this part.

Dated: October 30, 2018.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, November 30, 2018.

Yao Chin-Chao,

Assistant Secretary of the Board.

Dated at Washington, DC, on November 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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Part VIII

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, et al.
Federal Acquisition Regulations; Final and Interim Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 232, 246, 252, and Appendix F to Chapter 2

[Docket DARS–2018–0037]

RIN 0750–AJ44

Defense Federal Acquisition Regulation Supplement: Electronic Submission and Processing of Payment Requests and Receiving Reports (DFARS Case 2016–D032)

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 clarify policies and procedures for submission of payment requests and receiving reports in electronic form.

DATES: Effective December 21, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 30661 on June 29, 2018, to amend the DFARS to clarify and, where necessary, update policies and procedures for providing electronic payment-related documents and for processing payment requests and receiving reports in Wide Area WorkFlow (WAWF). Title 10 of the United States Code (U.S.C.), section 2227, Electronic Submission and Processing of Claims for Contract Payments, requires that any claim for payment under a DoD contract be in electronic format. If electronic submission is unduly burdensome, 10 U.S.C. 2227 allows an exemption.

DoD published a final rule in the **Federal Register** at 77 FR 38731 on June 29, 2012 (DFARS Case 2011–D027), to update DFARS policies and procedures for electronic submission of payment requests and receiving reports and established WAWF as the accepted DoD system for processing invoices and receiving reports. However, some contractors have been prevented from using WAWF for some contracts, because of a misinterpretation of the exemptions in DFARS subpart 232.70, Electronic Submission and Processing of Payment Requests and Receiving Reports. This final rule clarifies those exemptions and allows contractors to request permission from the contracting officer, in writing, to submit payment requests and receiving reports using temporary alternative methods, other than in electronic form.

One respondent submitted two public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule.

A. Summary of Significant Changes From the Proposed Rule

There are no changes made to the final rule as a result of the public comments.

B. Analysis of Public Comments

Comment: The respondent stated, ''The Unit Price entry should be required if a shipment is partial or incomplete.''

Response: This comment is outside of the scope of this case.

Comment: The respondent expressed concern the rule might impact the requirement to submit Inspection and Acceptance documents with a contractor's request for payment.

Response: The DFARS text revisions do not remove the requirement for contractors to submit Inspection and Receiving Reports with Payment Requests. Instead, the updates provide an alternative means of submittal if WAWF is not feasible, subject to contracting officer approval.

C. Other Changes

The following additional changes from the proposed rule are made in the final rule:

- A minor edit is made to the DFARS text at 212.301(f)(xviii)(A) to update the reference to the renumbered section at DFARS 246.370.
- In DFARS clause 252.232–7003, the full text of the definitions of ''contract financing payment'' and ''invoice payment'' are provided in lieu of a reference to the definitions at FAR 32.001.
- In DFARS clause 252.232–7006, the definitions section is revised to add a reference to DFARS clause 252.232–7003 for the definitions of ''payment request'' and ''receiving report.''

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the clauses at DFARS 252.232–7003, Electronic Submission and Processing of Payment Requests and Receiving Reports, and 252.232–7006, Wide Area WorkFlow Payment Instructions. The objective of the rule is to clarify and, where necessary, update the policies and procedures for electronic submission of payment requests and receiving reports and amends the two clauses listed above.

DoD will continue to apply both clauses to contracts at or below the simplified acquisition threshold (SAT) and to the acquisition of commercial items, including commercially available off-the-shelf (COTS) items, as defined at FAR 2.101. This rule clarifies and updates policies and procedures for electronic submission of payment requests and receiving reports. Not applying this guidance to contracts at or below the SAT and for the acquisition of commercial items, including COTS items, would exclude contracts intended to be covered by this rule and undermine the overarching purpose of the rule. Consequently, DoD plans to apply the rule to contracts at or below the SAT and for the acquisition of commercial items, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. The FRFA is summarized as follows:

This final rule clarifies and, where necessary, updates policies and procedures for submission of payment requests and receiving reports in

electronic form, which is accomplished through Wide Area WorkFlow (WAWF). DoD contractors, regardless of size, are required to submit payment requests in electronic form under a previously implemented statutory requirement at 10 U.S.C. 2227. This final rule clarifies the exemptions to this requirement at DFARS subpart 232.70, which allows contractors to request permission from the contracting officer, in writing, to submit payment requests and receiving reports using temporary alternative methods, other than in electronic form.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The rule applies to DoD contractors, regardless of size. In fiscal year 2016, approximately 71,910 small businesses were registered to use WAWF. DoD estimates that approximately 70 small businesses may submit, on an annual basis, one request each for use of a temporary alternative method of submission of payment requests and receiving reports.

The rule does not impose any reporting or recordkeeping requirements on any small entities.

There are no known alternative approaches to the rule that would meet the requirements.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these proposed changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget Control Number 0704–0248, Defense Federal Acquisition Regulation Supplement, Appendix F, Inspection and Receiving Report.

List of Subjects in 48 CFR Parts 212, 232, 246, 252, and Appendix F to Chapter 2

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 232, 246, 252, and appendix F to chapter 2 are amended as follows:

■ 1. The authority citation for parts 212, 232, 246, 252, and appendix F to chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 2. Amend section 212.301 in paragraph (f)(xviii)(A) by removing ''246.371(a)'' and adding ''246.370(a)'' in its place.

PART 232—CONTRACT FINANCING

■ 3. Revise section 232.7001 to read as follows:

232.7001 Definitions.

As used in this subpart—

Electronic form means any automated system that transmits information electronically from the initiating system to affected systems.

Payment request means any request for contract financing payment or invoice payment submitted by the contractor under a contract or task or delivery order.

Receiving report means the data prepared in the manner and to the extent required by appendix F of this chapter, Material Inspection and Receiving Report.

■ 4. Revise section 232.7002 to read as follows:

232.7002 Policy.

(a) Payment requests and receiving reports are required to be submitted in electronic form, except for—

(1) Classified contracts or purchases when electronic submission and processing of payment requests and receiving reports could compromise the safeguarding of classified information or national security;

(2) Cases in which contractor submission of electronic payment requests and receiving reports is not feasible (*e.g.,* when contract performance is in an environment where internet connectivity is not available);

(3) Cases in which DoD is unable to receive payment requests or provide acceptance in electronic form;

(4) Cases in which the contractor has requested permission in writing to submit payment requests and receiving reports by nonelectronic means, and the contracting officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of the contract or task or delivery order (*e.g.,* section G, an addendum to FAR 52.212–4, or applicable clause); and

(5) When the Governmentwide commercial purchase card is used as the method of payment, in which case only submission of the receiving report in electronic form is required.

(b)(1) The only acceptable electronic form for submission of payment requests and receiving reports is Wide Area WorkFlow (WAWF) (*https://wawf.eb.mil/*), except as follows:

(i) For payment of commercial transportation services provided under a Government rate tender, contract, or task or delivery order for transportation services, the use of a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (*e.g.,* PowerTrack, Transportation Financial Management System, and Cargo and Billing System) is permitted.

(ii) For submitting and processing payment requests and receiving reports for contracts or task or delivery orders for rendered health care services, the use of TRICARE Encounter Data System as the electronic form is permitted.

(2) Facsimile, email, and scanned documents are not acceptable electronic forms of payment requests or receiving reports.

■ 5. Revise section 246.7003 to read as follows:

232.7003 Procedures.

(a) DoD officials receiving payment requests in electronic form shall process the payment requests in electronic form. The WAWF system provides the method to electronically process payment requests and receiving reports.

(1) Documents necessary for payment, such as receiving reports, invoice approvals, contracts, contract modifications, and required certifications, shall also be processed in electronic form.

(2) Scanned documents and other commonly used file formats are only acceptable for processing supporting documentation.

(b) If one of the exceptions to submission in electronic form at 232.7002(a) applies, the contracting officer shall—

(1) Consult the payment office and the contract administration office regarding the alternative method to be used for submission of payment requests or receiving reports (*e.g.,* facsimile or conventional mail); and

(2) Provide procedures for invoicing in the contract administration data section of the contract or task or delivery order (*e.g.,* section G, an addendum to FAR 52.212–4, or applicable clause) for submission of invoices by nonelectronic means. If submission of invoices by nonelectronic means is temporary, the procedures should specify the time period for which they apply.

■ 6. Revise section 232.7004 to read as follows:

232.7004 Contract clauses.

(a) Unless an exception to submission in electronic form at 232.7002(a) applies and instructions for invoices are contained in the contract administration data section of the contract or task or delivery order, use the clause at 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

(b) Use the clause at 252.232–7006, Wide Area WorkFlow Payment Instructions, in solicitations and contracts or task or delivery orders, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when 252.232–7003 is used and none of the exceptions at 232.7002(b)(1) apply. See PGI 232.7004 for instructions on completing the clause.

PART 246—QUALITY ASSURANCE

246.370 [Removed]

■ 7. Remove section 246.370.

246.371 [Redesignated as 246.370 and Amended]

■ 8. Redesignate section 246.371 as section 246.370 and, in paragraph (b), remove ''PGI 246.371'' and add ''PGI 246.370'' in its place.

■ 9. Amend section 246.471 by:

■ a. Redesignating paragraphs (b)(1), (2), and (3) as paragraphs (b)(2), (3), and (4), respectively;

■ b. In the newly redesignated paragraph (b)(3), removing ''paragraph (b)(1)'' and adding ''paragraph (b)(2)'' in its place; and

■ c. Adding a new paragraph (b)(1).

The addition reads as follows:

246.471 Authorizing shipment of supplies.

* * * * *

(b) * * *

(1) For foreign military sales contracts, do not use alternative procedures.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Revise section 252.232–7003 to read as follows:

252.232–7003 Electronic Submission of Payment Requests and Receiving Reports.

As prescribed in 232.7004(a), use the following clause:

Electronic Submission of Payment Requests and Receiving Reports (DEC 2018)

(a) *Definitions.* As used in this clause—

Contract financing payment means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

(1) Contract financing payments include—

(i) Advance payments;

(ii) Performance-based payments;

(iii) Commercial advance and interim payments;

(iv) Progress payments based on cost under the clause at Federal Acquisition Regulation (FAR) 52.232–16, Progress Payments;

(v) Progress payments based on a percentage or stage of completion (see FAR 32.102(e)), except those made under the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, or the clause at FAR 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at FAR 52.232–25, Prompt Payment, is used.

(2) Contract financing payments do not include—

(i) Invoice payments;

(ii) Payments for partial deliveries; or

(iii) Lease and rental payments.

Electronic form means any automated system that transmits information electronically from the initiating system to affected systems.

Invoice payment means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

(1) Invoice payments include—

(i) Payments for partial deliveries that have been accepted by the Government;

(ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;

(iii) For purposes of subpart 32.9 only, all payments made under the clause at 52.232–5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232–10, Payments Under Fixed-Price Architect-Engineer Contracts; and

(iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at 52.232–25, Prompt Payment, is used.

(2) Invoice payments do not include contract financing payments.

Payment request means any request for contract financing payment or invoice payment submitted by the Contractor under this contract or task or delivery order.

Receiving report means the data prepared in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense Federal Acquisition Regulation Supplement.

(b) Except as provided in paragraph (d) of this clause, the Contractor shall submit payment requests and receiving reports in electronic form using Wide Area WorkFlow (WAWF). The Contractor shall prepare and furnish to the Government a receiving report at the time of each delivery of supplies or services under this contract or task or delivery order.

(c) Submit payment requests and receiving reports to WAWF in one of the following electronic formats:

(1) Electronic Data Interchange.

(2) Secure File Transfer Protocol.

(3) Direct input through the WAWF website.

(d) The Contractor may submit a payment request and receiving report using methods other than WAWF only when—

(1) The Contractor has requested permission in writing to do so, and the Contracting Officer has provided instructions for a temporary alternative method of submission of payment requests and receiving reports in the contract administration data section of this contract or task or delivery order;

(2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (*e.g.,* PowerTrack, Transportation Financial Management System, and Cargo and Billing System);

(3) DoD makes payment on a contract or task or delivery order for rendered health care services using the TRICARE Encounter Data System; or

(4) The Governmentwide commercial purchase card is used as the method of payment, in which case submission of only the receiving report in WAWF is required.

(e) Information regarding WAWF is available at *https://wawf.eb.mil/.*

(f) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(End of clause)

■ 11. Amend section 252.232–7006 by:

■ a. Removing the clause date of ''(MAY 2013)'' and adding ''DEC 2018)'' in its place;

■ b. In paragraph (a), adding in alphabetical order a definition for '' 'payment request' and 'receiving report' '';

■ c. In paragraph (b), removing ''system is'' and ''DFARS 252.232–7003'' and adding ''system provides'' and ''Defense Federal Acquisition Regulation System (DFARS) 252.232–7003'' in their places, respectively;

■ d. In paragraph (c)(1), removing ''*https://www.acquisition.gov*'' and adding ''*https://www.sam.gov*'' in its place; and

■ e. Revising paragraphs (f) and (g)(2).

The additions and revisions read as follows:

252.232–7006 Wide Area WorkFlow Payment Instructions.

(a) * * *

Payment request and *receiving report* are defined in the clause at 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports.

* * * * *

(f) *WAWF payment instructions.* The Contractor shall use the following

information when submitting payment requests and receiving reports in WAWF for this contract or task or delivery order:

(1) *Document type.* The Contractor shall submit payment requests using the following document type(s):

(i) For cost-type line items, including labor-hour or time-and-materials, submit a cost voucher.

(ii) For fixed price line items—

(A) That require shipment of a deliverable, submit the invoice and receiving report specified by the Contracting Officer.

(Contracting Officer: Insert applicable invoice and receiving report document type(s) for fixed price line items that require shipment of a deliverable.)

(B) For services that do not require shipment of a deliverable, submit either the Invoice 2in1, which meets the requirements for the invoice and receiving report, or the applicable invoice and receiving report, as specified by the Contracting Officer.

(Contracting Officer: Insert either ''Invoice 2in1'' or the applicable invoice and receiving report document type(s) for fixed price line items for services.)

(iii) For customary progress payments based on costs incurred, submit a progress payment request.

(iv) For performance based payments, submit a performance based payment request.

(v) For commercial item financing, submit a commercial item financing request.

(2) Fast Pay requests are only permitted when Federal Acquisition Regulation (FAR) 52.213–1 is included in the contract.

[Note: The Contractor may use a WAWF ''combo'' document type to create some combinations of invoice and receiving report in one step.]

(3) *Document routing.* The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system.

ROUTING DATA TABLE *

Field name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC.	
Issue By DoDAAC.	
Admin DoDAAC **.	
Inspect By DoDAAC.	
Ship To Code.	
Ship From Code.	
Mark For Code.	
Service Approver (DoDAAC).	
Service Acceptor (DoDAAC).	
Accept at Other DoDAAC.	
LPO DoDAAC.	
DCAA Auditor DoDAAC.	
Other DoDAAC(s).	

(* Contracting Officer: Insert applicable DoDAAC information. If multiple ship to/acceptance locations apply, insert ''See Schedule'' or ''Not applicable.'')

(** Contracting Officer: If the contract provides for progress payments or performance-based payments, insert the DoDAAC for the contract administration office assigned the functions under FAR 42.302(a)(13).)

(4) *Payment request.* The Contractor shall ensure a payment request includes documentation appropriate to the type of payment request in accordance with the payment clause, contract financing clause, or Federal Acquisition Regulation 52.216–7, Allowable Cost and Payment, as applicable.

(5) *Receiving report.* The Contractor shall ensure a receiving report meets the requirements of DFARS Appendix F.

(g) * * *

(2) Contact the WAWF helpdesk at 866–618–5988, if assistance is needed.

252.246–7000 [Removed and Reserved]

■ 12. Remove and reserve section 252.246–7000.

252.246–7003 [Amended]

■ 13. Amend section 252.246–7003 by removing ''246.371(a)'' from the introductory text and adding ''246.370(a)'' in its place.

■ 14. Amend appendix F to chapter 2 as follows:

■ a. In section F–102 by——

■ i. Removing paragraph (b); and

■ ii. Redesignating paragraph (c) as paragraph (b);

■ b. In section F–301, revising paragraph (b)(18);

■ c. Revising section F–305;

■ d. Revising section F–306; and

■ e. In section F–502, revising the Table 1 heading, tables, and instructions.

The revisions read as follows:

Appendix F to Chapter 2—Material Inspection and Receiving Report

* * * * *

F–301 Preparation Instructions

* * * * *

(b) * * *

(18) Unit price. When using the WAWF RRR, the unit price is the price of the repair, overhaul, or maintenance service from the contract.

(i) The contractor may, at its option, enter unit prices on the WAWF RR, except when the contract has IUID requirements and the receiving report is being processed in WAWF, the unit price must represent the acquisition cost that will be recorded in the IUID registry. Therefore, in such cases, the unit price is required. See DFARS 252.211–7003, Item Unique Identification and Valuation).

(ii) The contractor shall enter unit prices for each item of property fabricated or acquired for the Government and delivered to a contractor as Government furnished property (GFP). Get the unit price from Section B of the contract. If the unit price is not available, use an estimate. The estimated price should be the contractor's estimate of what the items cost the Government. When the price is estimated, enter ''Estimated Unit Price'' in the description field. When delivering GFP via WAWF to another contractor, WAWF will initiate a property transfer if the vendor who is initiating the WAWF RR is also registered as a vendor property shipper in WAWF and the vendor receiving the property is also a vendor property receiver in WAWF.

(iii) For clothing and textile contracts containing a bailment clause, enter the cited Government furnished property unit value as ''GFP UNIT VALUE'' in the description field.

(iv) For all copies of DD Forms 250 for FMS shipments, enter actual prices, if available. If actual prices are not available, use estimated prices. When the price is estimated, enter an ''E'' after the price.

* * * * *

F–305 Invoice Instructions

Contractors shall submit payment requests and receiving reports in accordance with paragraph (b) of the clause at DFARS 252.232–7003 unless one of the exceptions in paragraph (d) of that clause applies.

F–306 Packing List Instructions

(a) Contractors may use a WAWF processed RR or the WAWF RRR, as a packing list. WAWF provides an option to print the RR or RRR. Contractors can print a RR or RRR from a system other than WAWF if a signed copy is required. In such cases, the contractor shall print the WAWF RR or RRR only after a signature is applied by the Government inspector or authorized acceptor in WAWF. Copies printed from the contractor's system shall be annotated with ''\\original signed in WAWF\\'' in lieu of the inspector or acceptor's signature. Ensure a copy is visible on the outside and one is placed inside the package.

(b) If the contract requires Government source inspection and acceptance at origin, the contractor shall ensure that its packaging documentation includes a RR or RRR that documents inspection, acceptance, or both by the Government inspector or authorized acceptor. A paper DD Form 250 may be used in lieu of WAWF generated RRs or RRRs when one of the exceptions in paragraph (d) of the clause at DFARS 252.232–7003 applies.

* * * * *

F–502 Distribution of DD Form 250 and DD Form 250C

* * * * *

MATERIAL INSPECTION AND RECEIVING REPORT TABLE 1—STANDARD DISTRIBUTION

Standard distribution	Number of copies
With Shipment *	2
Consignee (via mail)	1
(For Navy procurement, include unit price.)	
(For foreign military sales, consignee copies are not required.)	
Contract Administration Office (CAO)	1
(Forward direct to address in Block 10 except when addressee is a Defense Contract Management Agency (DCMA) office and a certificate of conformance or the alternative release procedures (see F–301, Block 21) is involved, and acceptance is at origin; then, forward through the authorized Government representative.)	
Purchasing Office	1
Payment Office **	2
(Forward direct to address in Block 12 except—	
(i) When address in Block 10 is a DCMA office and payment office in Block 12 is the Defense Finance and Accounting Service, Columbus Center, do not make distribution to the Block 12 addressee;	
(ii) When address in Block 12 is the Defense Finance and Accounting Service, Columbus Center/Albuquerque Office (DFAS–CO/ALQ), Kirtland AFB, NM, attach only one copy to the required number of copies of the contractor's invoice;	
(iii) When acceptance is at destination and a Navy finance office will make payment, forward to destination; and	
(iv) When a certificate of conformance or the alternative release procedures (see F–301, Block 21) are involved and acceptance is at origin, forward the copies through the authorized Government representative.)	
ADP Point for CAO (applicable to Air Force only)	1
(When DFAS–CO/ALQ is the payment office in Block 12, send one copy to DFAS–CO/ALQ immediately after signature. If submission of delivery data is made electronically, distribution of this hard copy need not be made to DFAS–CO/ALQ.)	
CAO of Contractor Receiving GFP	1
(For items fabricated or acquired for the Government and shipped to a contractor as Government furnished property, send one copy directly to the CAO cognizant of the receiving contractor, ATTN: Property Administrator (see DoD 4105.59–H).)	

* Attach as follows:

Type of shipment	Location
Carload or truckload	Affix to the shipment where it will be readily visible and available upon receipt.
Less than carload or truckload	Affix to container number one or container truckload bearing lowest number.
Mail, including parcel post	Attach to outside or include in the package. Include a copy in each additional package of multi-package shipments.
Pipeline, tank car, or railroad cars for coal movements	Forward with consignee copies.

** Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office.

* * * * *

[FR Doc. 2018–27555 Filed 12–20–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 225, and 252

[Docket DARS–2018–0060]

RIN 0750–AJ82

Defense Federal Acquisition Regulation Supplement: Foreign Commercial Satellite Services and Certain Items on the Commerce Control List (DFARS Case 2018–D020)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Years 2017 and 2018. One section imposes additional prohibitions with regard to acquisition of certain foreign commercial satellite services, such as cybersecurity risk and source of satellites and launch vehicles used to provide the foreign commercial satellite services, and expands the definition of ''covered foreign country'' to include Russia. Another section prohibits purchase of items from a Communist Chinese military company that meet the definition of goods and services controlled as munitions items when moved to the Commerce Control List of the Export Administration Regulations of the Department of Commerce.

DATES: *Effective Date:* December 21, 2018.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before February 19, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D020, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D020.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D020'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D020 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD (A&S) DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://*

www.regulations.gov, including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (A&S) DPC/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6106; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement sections of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) and the NDAA for FY 2017 (Pub. L. 114–328) as follows:

A. Section 1603 of the NDAA for FY 2018

Section 1603 amends 10 U.S.C. 2279 to impose additional prohibitions with regard to acquisition of certain foreign commercial satellite services. It addresses cybersecurity risks and the source of satellites and launch vehicles used to provide the foreign satellite services. The definition of ''covered foreign country'' is expanded to include Russia, in addition to any country described in section 1261(c)(2) of the NDAA for FY 2013 (Pub. L. 112–239), which specifies the People's Republic of China, North Korea, and any country that is a state sponsor of terrorism (currently Iran, North Korea, Sudan, and Syria). 10 U.S.C. 2327, entitled ''Contracts: consideration of national security objectives,'' is the underlying statute that prohibits DoD from entering into contracts with a firm or subsidiary of a firm, that is owned or controlled by the government of a foreign country that has been identified by the Secretary of State as a state sponsor of terrorism under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)). 50 U.S.C. App. 2405 was subsequently reclassified and renumbered as 50 U.S.C. 4605, which has now been repealed by section 1766(a) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the NDAA for FY 2019, Pub. L. 115–232). 50 U.S.C. 4605(j) has been replaced by section 1754(c) of the Export Control Reform Act of 2018 (to be eventually codified at 50 U.S.C. 4813(c)).

B. Section 1296 of the NDAA for FY 2017

Section 1211 of the NDAA for FY 2006 (Pub. L. 109–163) established the prohibition against purchase of items on the United States Munitions List (USML) from a Communist Chinese military company. Section 1296 of the NDAA for FY 2017 amends section 1211 to prohibit purchase from any Communist Chinese military company, through a contract or subcontract (at any tier), of goods and services controlled as munitions items on the 600 series of the Commerce Control List (CCL) of the Export Administration Regulations of the Department of Commerce. Under the Export Control Reform Initiative, the International Traffic in Arms Regulations (ITAR) and the USML have been amended so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls. In parallel, the Export Administration Regulations (EAR) were amended to transition some items from the USML to a series of new export control classification numbers (the 600 series) on the CCL, providing control for military items that do not warrant USML controls, because they provide less than a critical military or intelligence capability, but are not in normal commercial use. The 600 series is so identified when the third character in the 5-character export control classification number is the number ''6''.

However, an unintended consequence of this transition of some munitions from the USML to the 600 series of the CCL was that the items were no longer covered by the prohibition of section 1211 of the NDAA for FY 2006, prohibiting purchase from Communist Chinese military companies. Therefore, section 1296 of the NDAA for FY 2017 has extended the prohibition to cover items listed in the 600 series of the CCL.

II. Discussion and Analysis

This rule amends the DFARS as follows:

A. Section 1603 of the NDAA for FY 2018

1. Definitions. This rule expands the definition of ''covered foreign country'' to include Russia, as specified in the statute, and adds the statutory definitions of ''cybersecurity risk'' and ''launch vehicle'' at DFARS 225.772–1 and in the associated provision at DFARS 252.224–7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, and the clause at DFARS 252.225–7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, as appropriate.

In addition, the statutory references to the Export Administration Act of 1979 in the definitions of ''state sponsor of terrorism'' at DFARS 225.772–1 and in the clauses at 252.225–7051 and 252.225–7050, Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism, have been revised to refer to ''section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115–232)''.

2. Cybersecurity Risk. The prohibitions at DFARS 225.772–2 and the provision at DFARS 252.225–7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representation, are expanded to include prohibition on award of a contract for commercial satellite services to a foreign entity if entering into such contract would create an unacceptable cybersecurity risk for DoD. The procedures at DFARS 225.772–3 further specify that unacceptable cybersecurity risk is to be determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy, the two officials to whom the statute permits delegation of the authority to enter into a contract, subject to the prohibitions in paragraphs (a) and (b) of the statute.

3. Satellites and Launch Vehicles. Restrictions are added at DFARS 225.772–2 and the provision at DFARS 252.225–7049 for contracts for commercial services awarded to any entity (whether or not foreign) with regard to the design or manufacture of the satellite to be used to provide the services, or the launch vehicle that will be used to launch the satellite outside the United States. These restrictions do not apply to a launch that occurs prior to December 31, 2022, or to a satellite service provider that has a contract or other agreement relating to launch service that, prior to June 10, 2018, was either fully paid for by the satellite service provider, or covered by a legally binding commitment of the satellite service provider to pay for such services.

4. Representations and Disclosures. The representations are expanded to cover the new restrictions on satellites and launch vehicles, but these new restrictions will only be applicable with regard to commercial satellite services that will use satellites launched or after December 31, 2022. The restriction on launch vehicles does not apply to

launches within the United States. For added clarity, the disclosures that relate to the representations are integrated into the representations.

5. Clause. This rule creates a new clause to require compliance during contract performance with the representations in their offer with regard to the origin of the satellite services, satellites, and launch vehicles.

B. Section 1296 of the NDAA for FY 2017

1. Definitions. This rule provides a definition of ''600 series of the Commerce Control List'' and adds the definition of ''item'' with cross-references to the EAR at 15 CFR 772.1 and ITAR at 22 CFR 120.6 and 22 CFR 120.9. The definitions already contain cross-references to the USML at 22 CFR part 121. For increased ease of reading, the definitions of Communist Chinese military company and ''United States Munitions List'' are now repeated at DFARS 225.003, rather than just providing a cross-reference at 225.770–1 to the definitions in the clause at DFARS 252.225–7007.

2. 600 series. This rule amends DFARS 225.770 and the clause at DFARS 252.225–7007 to extend the prohibition on acquisition of USML items from Communist Chinese military companies to apply to items in the 600 series of the CCL.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the applicability of existing DFARS solicitation provisions and contract clauses and adds a new clause as follows:

- To implement section 1603 of the NDAA for FY 2018, this rule amends the provision at DFARS 252.225–7049, Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities—Representation, and adds a clause to enforce compliance with the representations in the associated provisions. This provision and clause will apply to acquisitions not greater than the Simplified Acquisition Threshold (SAT) and acquisitions of commercial items.
- To implement section 1296 of the NDAA for FY 2017, this rule modifies the clause at DFARS 252.225–7007, Prohibition on Acquisition of United States Munitions List Items from Communist Chinese Military Companies, to prohibit contractors or subcontractors from acquiring items listed on the 600 series of the CCL that are to be delivered under the contract from any Communist Chinese military company. As a result of the Export Control Reform Initiative, certain items were transferred from the USML to a series of new export control classification numbers (the 600 series) in the CCL. In order to ensure continued prohibition against purchase of items listed in the 600 series of the CCL from a Communist Chinese military company, this rule requires use of the clause in solicitations and contracts involving the delivery of items listed in the 600 series of the CCL, but does not otherwise change the clause prescription. The rule continues to prescribe the use of this clause for use in solicitations and contracts for items valued at or below the SAT. The clause will also apply to the acquisition of commercial items, including Commercially Available Off-the-Shelf (COTS) items, if the items are 600 series items on the CCL, or USML items. Although most 600 series items are not commercial items, and USML items are even less likely to be commercial items, it is possible that some of these covered items will be commercial items and must not be purchased from a Communist Chinese military company.

A. Applicability to Contracts at or Below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulation (FAR) Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. 1907 governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Principal Director, DPC, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

C. Determinations

- Section 1603 of the NDAA for FY 2018. A determination and finding was signed by the Director, Defense Procurement and Acquisition Policy, on June 23, 2014, that due to potential risk to national security it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT and acquisitions of commercial items from the applicability of 10 U.S.C. 2279. Therefore, a separate determination under 41 U.S.C. 1905–1907 is not required.
- Section 1296 of the NDAA for FY 2017. A determination under 41 U.S.C. 1905 is not required to prescribe DFARS 252.225–7012 for use in solicitations and contracts valued at or below the SAT, because this is consistent with the current applicability of the clause DFARS 252.225–7007, which prohibits acquisitions of items on the USML from Communist Chinese Military companies. Modifying the clause to also cover items listed in the 600 series of the CCL is reinstating the prohibition that applied to those items before the items were moved off the USML and into the 600 series of the CCL. However, in accordance with 41 U.S.C. 1906 and 1907, the Principal Director, DPC, has determined that it is in the best interest of the Government to apply the requirements of section 1296 of the NDAA for FY 2017 to contracts for the acquisition of commercial items, including COTS. This rule prescribes the use of the clause at DFARS 252.225–7007 in contracts for the acquisition of commercial items, if they involve the acquisition of 600 series or USML items. These items are export-controlled, irrespective of the contracting vehicle, including commercial contracts. The broad prohibition would be consistent with the intent of the law, DoD policy, and our National Defense Strategy with respect to China. The concern is with the integrity of the DoD supply chain and to prevent insertion of malicious

items from China into U.S. weapons platforms, information technology systems and other areas, presenting a threat to our warfighters and their ability to defend U.S. national security. Further, because the meaning of the term ''commercial'' is not aligned between contracting and export control regulations, the disconnect could be used as a loophole for suppliers to violate the prohibition. Therefore, exempting contracts for the acquisition of commercial items (including COTS items) from the statutory prohibition on the acquisition of 600 series and USML items would severely decrease the intended effect of the statutes and could jeopardize the integrity of the DoD supply chain.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The reason for this rule is to implement section 1603 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and section 1296 of the NDAA for FY 2017. Section 1603 of the NDAA for FY 2018 amends 10 U.S.C. 2279, which prohibits acquisition of certain foreign commercial satellite services. Section 1296 of the NDAA for FY 2017 amends section 1211 of the NDAA for FY 2006 to prohibit purchase from any Communist Chinese military company, through a contract or subcontract (at any tier), of goods and services controlled as munitions items on the 600 series of the Commerce Control List (CCL) of the Export Administration Regulations of the Department of Commerce.

The objectives of the rule are as follows:

- *Section 1603.* To prohibit award of contracts for commercial satellite services to a foreign entity if entering into such contract would create an unacceptable cybersecurity risk. In addition, the definition of covered foreign country is expanded to include Russia (other covered foreign countries are China, North Korea, Iran, Sudan, and Syria). New restrictions are also added with regard to the satellites and launch vehicles to be used to provide the satellite services, but these restrictions do not apply to launches that occur prior to December 31, 2022.
- *Section 1296.* To prohibit purchase from a Communist Chinese military company of items that meet the definition of goods and services controlled as munitions items when moved to the 600 series of the CCL of the Export Administration Regulations of the Department of Commerce.

DoD estimates that this rule will apply small entities as follows:

- *Section 1603.* This part of the rule will apply to less than 86 small entities. According to Federal Procurement Data System (FPDS) data for FY 2016, 86 small entities were awarded contracts or orders for services under Product Service Code D304 (ADP Telecommunications and Transmission Services), of which commercial satellite services are a subset. Although the focus of the Regulatory Flexibility Act is protection of domestic small business entities that are eligible for assistance from the Small Business Administration, there may be domestic small business entities in the United States that offer the satellite services of a foreign entity that would be restricted by this rule.
- *Section 1296.* This part of the rule will apply to any small entities that intend to provide items on the 600 series of the Commerce Control List under a DoD contract or subcontract. The 600 series consists of items on the Commerce Control List that have an export control classification number of which the third character is a ''6''. These items were transitioned from the United States Munitions List (USML) to the 600 series, because they have less than a critical military or intelligence capability than the items that remain on the USML, but they are not currently in normal commercial use. Data on the number of entities that can provide such items, and whether they are small or other than small entities, is not available in FPDS, because these items are not readily identifiable in FPDS and are often acquired through subcontracts.

Projected reporting or recordkeeping requirements of this rule are as follows:

- *Section 1603.*

In addition to the current annual representations as to whether the offeror is, or is not, a foreign entity subject to the prohibitions of the statute; or is, or is not, offering commercial satellite services provided by such a foreign entity, this rule adds five more annual representations as to whether the offeror—

- Is, or is not offering commercial satellite services using satellites, launched on or after December 31, 2022, that will be designed or manufactured in a covered foreign country;
- Is, or is not offering commercial satellite services using satellites, launched on or after December 31, 2022, that will be designed or manufactured by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country;
- Is, or is not offering commercial satellite services using satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is designed or manufactured in a covered foreign country;
- Is, or is not offering commercial satellite services using satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by the government of a covered foreign country; and
- Is, or is not offering commercial satellite services using satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

Further information is required if the offeror provides an affirmative response to any of the representations, but such affirmative response and further submission is expected to be extremely rare because of the statutory prohibition and the expected rarity of a waiver by the Under Secretary of Defense for Acquisition and Sustainment or for Policy. Furthermore, this prohibition is only applicable to launches on or after December 31, 2022.

If the satellite service provider responded affirmatively to any of the new representations regarding launch vehicles, if such launches are covered in

whole or in part by a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services, a de minimis amount of information is required with regard to such contract or agreement in order to establish an exception to the associated prohibitions.

• *Section 1296.* There are no projected reporting or recordkeeping requirements relating to implementation of section 1296. The only compliance requirements are to not purchase 600 series items from a Communist Chinese military company.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

This rule will not have a significant economic impact on any small entities, unless they are offering commercial satellite services subject to the restrictions of this rule or providing 600 series items from a Communist Chinese military company. DoD was not able to identify any alternatives that would reduce the burden on small entities and meet the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D020), in correspondence.

VII. Paperwork Reduction Act

This rule will affect the information collection requirements in the provision at DFARS 252.225–7049, currently approved through March 31, 2021, under OMB Control Number 0704–0525, entitled Prohibition on Acquisition of Commercial Satellite Services from Certain Foreign Entities, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible at this time, because the prohibition on use of certain foreign satellites and launch vehicles only applies to launches outside the United States on or after December 31, 2022. The information collection will be updated to reflect these changes when renewed in two years.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the DFARS is immediately revised to include the requirements of the law.

A. Foreign Commercial Satellite Services

DoD uses commercial satellite services to increase the availability and flexibility of military communications. Commercial satellite services may provide access to bandwidth and services that are unavailable through other means to support a variety of missions. Although these are commercial services, they are still being used to carry out military missions. Use of certain foreign commercial satellite services and foreign launches can pose an unacceptable risk to national security.

Section 1603 of the NDAA for FY 2018 amends 10 U.S.C. 2279 to impose additional prohibitions with regard to acquisition of certain foreign commercial satellite services, especially from certain ''covered foreign countries.'' Section 1603 expands the definition of ''covered foreign country'' from China, North Korea, and any country that is a state sponsor of terrorism (10 U.S.C. 2279) to include the Russian Federation. Section 1603 also defines ''cybersecurity risk'' and provides that DoD shall not enter into a contract for satellite services with a foreign entity if the Secretary of Defense reasonably believes that entering into such a contract would create an unacceptable cybersecurity risk for DoD.

Congress enacted section 1603 in order to provide DoD, when contracting for commercial satellite services, with tools to reduce the perceived risk related to dealing with the Russian Federation. Indicating increasing distrust of Russia, there have been several other sections of the NDAAs in FY 2018 and FY 2019 placing prohibitions on buying critical items from Russia, such as rare earth magnets, tungsten, or telecommunications equipment or services to be used in the DoD nuclear deterrence mission or homeland defense mission. This rule also requires DoD not to enter into a contract for commercial satellite services with any foreign entity if the Secretary of Defense reasonably believes that such contract will present an unacceptable cybersecurity risk.

Currently, there is no regulatory prohibition against contracting with a foreign entity in which the Government of Russia has an ownership interest that enables the government of Russia to affect satellite operations, or a foreign entity that plans to provide satellite services from Russia. There is also no mechanism in place that allows the Secretary of Defense to decide not to enter into a contract with a foreign entity based on the level or cybersecurity risk it would create; in such instances, DoD must either accept the risk and award the contract or cancel the solicitation.

According to data available in the Federal Procurement Data System for fiscal year 2017, DoD awarded 3,715 contracts and orders for commercial supplies or services under the product service code D304, IT and Telecom—Telecommunications and Transmission, to 256 unique entities. It is expected that a subset of these awards were for commercial satellite services. While the universe of contracts and entities affected by this rule is relatively small, a single contract award to one of the foreign entities excluded by this rule could damage our national security.

Without this rule to implement the prohibitions and limitations provided by section 1603, there is no way for DoD contracting officers to exclude the Russian-controlled entities, or the other foreign entities that present and unacceptable cybersecurity risk, from competing for or being awarded contracts for covered commercial satellite services. This creates an opportunity for Russian interference with DoD satellite communications and increases the risk of cyberattacks by other foreign entities, which could jeopardize our military communications, the lives of our warfighters, and our national security.

B. Certain Items on the Commerce Control List

Section 1211 of the NDAA for FY 2006, prohibited purchase of items on the United States Munitions List (USML) from a Communist Chinese military company, in order to protect the integrity of the supply chain for military items. Section 1296 of the NDAA for FY 2017 extends that prohibition to cover items moved from the USML to the Commerce Control List (CCL) of the Export Administration Regulations of the Department of Commerce. As a result of the Export Control Reform Initiative, beginning in 2013, certain items specially designed for military applications have been transferred from the USML to a new category on the CCL (the 600 series). The 600 series includes such items as F–16 wings, fins, panels, fuselages, cockpit structures, and landing gear, and analogous items from other categories on the USML.

While helpful in facilitating cooperation with our allies and

partners, an unintended consequence of this export reform was that the prohibition imposed by section 1211 of the NDAA for FY 2006 no longer covered these items, since they were no longer on the USML. The Under Secretary of Defense for Policy, including the Defense Technology Security Administration, as well as the offices in the purview of the previous Under Secretary of Defense for Acquisition, Technology, and Logistics, the National Security staff, and others were very concerned about potential acquisition of military components from a Communist Chinese military company, due to potential adverse impact on the integrity of the supply chain for major U.S. weapons systems. These organizations, along with export control stakeholders in the Departments of Commerce and State, were also in favor of continuing the prohibition against purchase of military items, now controlled as 600 series items, from Communist Chinese military companies. After consultation with the DoD Office of General Counsel, DoD determined that the only solution was to seek legislative correction to this problem, resulting in enactment of section 1296 of the NDAA for FY 2017.

600 series items are frequently used in DoD's weapon systems and it is imperative that DoD ensure that the integrity of those weapon systems is maintained by immediately restricting the purchase of these items from Communist Chinese military companies. Until this rule is in effect, there is no basis on which to refuse to buy items with military applications listed in the 600 series of the CCL from a Communist Chinese military company. Purchase of such items from a Communist Chinese military company poses a serious risk to U.S. national security, the safety of military personnel, and the integrity of the U.S. defense supply chain, because according to DoD information, China is the top source of counterfeit U.S. military electronics.

List of Subjects in 48 CFR Parts 204, 212, 225, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by revising paragraph (2)(ix) to read as follows:

204.1202 Solicitation provision.

* * * * *

(2) * * *

(ix) 252.225–7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301 by—

■ a. Redesignating paragraphs (f)(ix)(BB) and (CC) as paragraphs (f)(ix)(CC) and (DD), respectively;

■ b. In the newly redesignated paragraph (f)(ix)(CC), removing ''Commercial Satellite Services from Certain Foreign Entities'' and ''at 225.772–5'' and adding ''Certain Foreign Commercial Satellite Services'' and ''in 225.772–5(a)'', in their place, respectively;

■ c. Redesignating paragraphs (f)(ix)(D) through (AA) as (f)(ix)(E) through (BB); and

■ d. Adding new paragraph (f)(ix)(D) and paragraph (f)(ix)(EE).

The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ix) * * *

(D) Use the clause at 252.225–7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, as prescribed in 225.1103(4), to comply with section 1211 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006 (Pub. L. 109–163) as amended by the NDAAs for FY 2012 and FY 2017.

* * * * *

(EE) Use the clause at 252.225–7051, Prohibition on Acquisition for Certain Foreign Commercial Satellite Services, as prescribed in 225.772–5(b), to comply with 10 U.S.C. 2279.

* * * * *

PART 225—FOREIGN ACQUISITION

■ 4. Amend section 225.003 by—

■ a. Removing paragraph designations (1) through (16);

■ b. Adding, in alphabetical order, definitions for ''600 series of the Commerce Control List'' and ''Communist Chinese military company'';

■ c. In the definition for ''Domestic concerns,'' redesignating paragraphs (i) and (ii) as paragraphs (1) and (2);

■ d. In the definition for ''Eligible product,'' redesignating paragraphs (i) introductory text and (i)(A) and (B) as paragraphs (1) and (1)(i) and (ii), respectively, and paragraphs (ii) and (iii) as paragraphs (2) through (3), respectively;

■ e. In the definitions of ''South Caucasus/Central and South Asian (SC/CASA) state construction material'' and ''South Caucasus/Central and South Asian (SC/CASA) state end product,'' redesignating paragraphs (i) and (ii) as paragraphs (1) and (2);

■ f. Adding, in alphabetical order, a definition for ''United States Munitions List''.

The additions read as follows:

225.003 Definitions.

* * * * *

600 series of the Commerce Control List means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement no. 1, that have a ''6'' as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of ''600 series'' in 15 CFR 772.)

* * * * *

Communist Chinese military company means any entity, regardless of geographic location, that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China (including a subsidiary or affiliate of such entity); or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

* * * * *

United States Munitions List means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

■ 5. Revise section 225.770 to read as follows:

225.770 Prohibition on acquisition of certain items from Communist Chinese military companies.

This section implements section 1211 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163), section 1243 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), and section 1296 of the National Defense

Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). See PGI 225.770 for additional information relating to this statute, the terms used in this section, the United States Munitions List (USML), and the 600 series of the Commerce Control List (CCL).

■ 6. Revise section 225.770–1 to read as follows:

225.770–1 Definitions.

As used in this section—

Component means an item that is useful only when used in conjunction with an end item (15 CFR 772.1 and 22 CFR 120.45(b)).

Item means—

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

Part means any single unassembled element of a major or minor component, accessory, or attachment, that is not normally subject to disassembly without the destruction or impairment of designed use (15 CFR 772.1 and 22 CFR 120.45(d)).

■ 7. Revise section 225.770–2 to read as follows:

225.770–2 Prohibition.

Do not acquire items covered by the USML or the 600 series of the CCL, through a contract or subcontract at any tier, from any Communist Chinese military company. This prohibition does not apply to components and parts of covered items unless the components and parts are themselves covered by the USML or the 600 series of the CCL.

225.770–3 [Amended]

■ 8. Amend section 225.770–3, in the introductory text, by removing ''supplies or services'' and adding ''items'' in its place.

■ 9. Revise section 225.770–4 to read as follows:

225.770–4 Identifying items covered by the USML or the 600 series of the CCL.

(a) Before issuance of a solicitation, the requiring activity will notify the contracting officer in writing whether the items to be acquired are covered by the USML or the 600 series of the CCL. The notification will identify any covered item(s) and will provide the pertinent USML reference(s) from 22 CFR part 121 or the 600 series of the CCL references from 15 CFR part 774, supplement no. 1.

(b) The USML includes defense articles and defense services that fall into 21 categories. The CCL includes ten categories and five product groups in each category, many of which contain 600 series items. Since not all items covered by the USML or 600 series of the CCL are themselves munitions (*e.g.,* protective personnel equipment, military training equipment), the requiring activity should consult the USML and the 600 series of the CCL before concluding that an item is or is not covered. See PGI 225.770–4.

225.770–5 [Amended]

■ 10. Amend section 225.770–5, in paragraph (b)(1), by removing ''Acquisition, Technology, and Logistics'' and adding ''Acquisition and Sustainment'' in its place.

■ 11. Revise section 225.772 heading to read as follows:

225.772 Prohibition on acquisition of certain foreign commercial satellite services.

■ 12. Revise section 225.772–1 to read as follows:

225.772–1 Definitions.

As used in this section—

Covered foreign country means—

(1) The People's Republic of China;

(2) North Korea;

(3) The Russian Federation; or

(4) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

Cybersecurity risk means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)

Foreign entity means—

(1) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(2) Notwithstanding paragraph (1) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

Government of a covered foreign country includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

Launch vehicle means a fully integrated space launch vehicle. (10 U.S.C. 2279)

Satellite services means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

State sponsor of terrorism means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115–232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of December 21, 2018, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria. (10 U.S.C. 2327)

■ 13. Revise section 225.772–2 to read as follows:

225.772–2 Prohibitions.

Except as provided in 225.772–4, the contracting officer shall not award a contract for commercial satellite services to—

(a)(1) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(i) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(ii) The foreign entity plans to or is expected to provide satellite services under the contract from a covered foreign country; or

(iii) Entering into such contract would create an unacceptable cybersecurity risk for DoD, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy; or

(2) An offeror that is offering commercial satellite services provided by a foreign entity as described in paragraph (a) of this section; or

(b)(1) Any entity, except as provided in paragraph (b)(2) of this section, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite services will be provided using satellites that will be—

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is—

(A) Designed or manufactured in a covered foreign country; or

(B) Provided by—

(*1*) The government of a covered foreign country; or

(*2*) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(2) The prohibition in paragraph (b)(1) of this section does not apply with respect to launch services for which a satellite service provider has a contract or other agreement that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

■ 14. Amend section 225.772–3 by—

■ a. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

■ b. In the newly redesignated paragraph (b) introductory text, removing ''paragraph (d)'' and ''Commercial Satellite Services from Certain Foreign Entities'' and adding ''paragraph (c)'' and ''Certain Foreign Commercial Satellite Services'' in their place, respectively; and

■ c. Adding a new paragraph (a).

The addition reads as follows:

225.772–3 Procedures.

(a)(1) The contracting officer shall not award to any source that is a foreign satellite service provider or is offering satellite services provided by a foreign entity if such award presents an unacceptable cybersecurity risk, as determined by the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy.

(2) When procuring commercial satellite services from a foreign entity, the contracting officer shall review the exclusion records in the System for Award Management (SAM) database as required at FAR 9.405, to ensure that an entity identified in, or otherwise known to be involved in, the otherwise successful offer is not listed as ineligible in the SAM database (see FAR 9.405).

* * * * *

■ 15. Amend section 225.772–4 by—

■ a. Revising paragraph (a) introductory text; and

■ b. In paragraph (a)(1), by removing ''Acquisition, Technology, and Logistics'' and adding ''Acquisition and Sustainment'' in its place.

225.772–4 Exception.

(a) The prohibitions in 225.772–2(a) and (b) do not apply if—

* * * * *

■ 16. Revise section 225.772–5 to read as follows:

225.772–5 Solicitation provision and contract clauses.

(a) Use the provision at 252.225–7049, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations, in solicitations that include the clause at 252.225–7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services. If the solicitation includes the provision at FAR 52.204–7, do not separately list the provision 252.225–7049 in the solicitation.

(b) Use the clause at 252.225–7051, Prohibition on Acquisition of Certain Foreign Commercial Satellite Services, in solicitations and contracts for the acquisition of commercial satellite services, including solicitation and contracts using FAR part 12 procedures for the acquisition of commercial items.

(c) Use the clause at 252.239–7018, Supply Chain Risk, as prescribed at 239.7306(b), when applicable.

■ 17. Amend section 225.1103 by revising paragraph (4) to read as follows:

225.1103 Other provisions and clauses.

* * * * *

(4) Unless an exception in 225.770–3 applies, use the clause at 252.225–7007, Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies, in solicitations and contracts involving the delivery of items covered by the United States Munitions List or the 600 series of the Commerce Control List.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7007 [Amended]

■ 18. Amend section 252.204–7007 by—

■ a. Removing clause date ''(JAN 2015)'' and add ''(DEC 2018)''; and

■ b. In paragraph (d)(1)(v), by removing ''Commercial Satellite Services from Certain Foreign Entities'' and adding ''Certain Foreign Commercial Satellite Services'' in its place.

■ 19. Revise section 252.225–7007 to read as follows:

252.225–7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies.

As prescribed in 225.1103(4), use the following clause:

Prohibition on Acquisition of Certain Items From Communist Chinese Military Companies (Dec 2018)

(a) *Definitions.* As used in this clause—

600 series of the Commerce Control List means the series of 5-character export control classification numbers (ECCNs) of the Commerce Control List of the Export Administration Regulations in 15 CFR part 774, supplement no. 1, that have a ''6'' as the third character. The 600 series constitutes the munitions and munitions-related ECCNs within the larger Commerce Control List. (See definition of ''600 series'' in 15 CFR 772.)

Communist Chinese military company means any entity, regardless of geographic location, that is—

(1) A part of the commercial or defense industrial base of the People's Republic of China (including a subsidiary or affiliate of such entity); or

(2) Owned or controlled by, or affiliated with, an element of the Government or armed forces of the People's Republic of China.

Item means—

(1) A USML defense article, as defined at 22 CFR 120.6;

(2) A USML defense service, as defined at 22 CFR 120.9; or

(3) A 600 series item, as defined at 15 CFR 772.1.

United States Munitions List means the munitions list of the International Traffic in Arms Regulation in 22 CFR part 121.

(b) Any items covered by the United States Munitions List or the 600 series of the Commerce Control List that are delivered under this contract may not be acquired, directly or indirectly, from a Communist Chinese military company.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts for items covered by the United States Munitions List or the 600 series of the Commerce Control List.

(End of clause)

■ 20. Revise section 252.225–7049 to read as follows:

252.225–7049 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations.

As prescribed in 225.772–5(a), use the following provision:

Prohibition on Acquisition of Certain Foreign Commercial Satellite Services—Representations (Dec 2018)

(a) *Definitions.* As used in this provision—

Covered foreign country, foreign entity, government of a covered foreign country, launch vehicle, satellite services, and *state sponsor of terrorism* are defined in the clause at Defense Federal Acquisition Regulation Supplement (DFARS) 252.225–7051, Prohibition on Acquisition of Certain Commercial Satellite Services.

Cybersecurity risk means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation,

disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. (10 U.S.C. 2279)]

(b) *Prohibition on award.* In accordance with 10 U.S.C. 2279, unless an exception is determined to apply in accordance with DFARS 225.772–4, no contract for commercial satellite services may be awarded to—

(1)(i) A foreign entity if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that—

(A) The foreign entity is an entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations;

(B) The foreign entity plans to, or is expected to, provide satellite services under the contract from a covered foreign country; or

(C) Entering into such contract would create an unacceptable cybersecurity risk for DoD; or

(ii) An offeror that is offering to provide the commercial satellite services of a foreign entity as described in paragraph (b)(1) of this provision; or

(2)(i) Any entity, except as provided in paragraph (b)(2)(ii) of this provision, for a launch that occurs on or after December 31, 2022, if the Under Secretary of Defense for Acquisition and Sustainment or the Under Secretary of Defense for Policy reasonably believes that such satellite service will be provided using satellites that will be—

(A) Designed or manufactured—

(*1*) In a covered foreign country; or

(*2*) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(B) Launched outside the United States using a launch vehicle that is—

(*1*) Designed or manufactured in a covered foreign country; or

(*2*) Provided by—

(*i*) The government of a covered foreign country; or

(*ii*) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(ii) The prohibition in paragraph (b)(2)(i)(B) of this provision does not apply with respect to launch vehicles for which the satellite service provider has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(c) *Representations.* The Offeror represents that—

(1) It [ ] is, [ ] is not a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the covered foreign country: _____;

(2) It [ ] is, [ ] is not a foreign entity that plans to provide satellite services under the contract from a covered foreign country. If affirmative, identify the covered foreign country: _____;

(3) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity in which the government of a covered foreign country has an ownership interest that enables the government to affect satellite operations. If affirmative, identify the foreign entity and the covered foreign country: _____;

(4) It [ ] is, [ ] is not offering commercial satellite services provided by a foreign entity that plans to or is expected to provide satellite services under the contract from a covered foreign country. If affirmative, identify the foreign entity and the covered foreign country: _____;

(5) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country: _____;

(6) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched on or after December 31, 2022, that will be designed or manufactured by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country: _____;

(7) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is designed or manufactured in a covered foreign country. If affirmative, identify the covered foreign country: _____;

(8) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by the government of a covered foreign country. If affirmative, identify the covered foreign country: _____; and

(9) It [ ] is, [ ] is not offering commercial satellite services that will use satellites, launched outside the United States on or after December 31, 2022, using a launch vehicle that is provided by an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country. If affirmative, identify the entity, the covered foreign country, and the relationship of the entity to the government of the covered foreign country: _____;

(d) If the Offeror has responded affirmatively to any representation in paragraphs (c)(7) through (9) of this provision, and if such launches are covered in whole or in part by a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services, provide the following information:

(1) The entity awarded the contract or other agreement: _____.

(2) The date the contract or other agreement was awarded: _____.

(3) The period of performance for the contract or other agreement: _____.

(e) The representations in paragraph (c) of this provision are a material representation of fact upon which reliance will be placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

■ 21. Amend section 252.225–7050 by—

■ a. Removing clause date ''(JAN 2018)'' and adding ''(DEC 2018)'' in its place; and

■ b. In paragraph (a), revising the definition of ''State sponsor of terrorism''.

The revision reads as follows:

252.225–7050 Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism.

* * * * *

(a) * * *

State sponsor of terrorism means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115–232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria.

* * * * *

■ 22. Add section 252.225–7051 to read as follows:

252.225–7051 Prohibition on Acquisition of Certain Foreign Commercial Satellite Services.

As prescribed in 225.772–5, use the following clause:

Prohibition on Acquisition of Certain Foreign Commercial Satellite Services (DEC 2018)

(a) *Definitions.* As used in this clause—

Covered foreign country means—

(i) The People's Republic of China;

(ii) North Korea;

(iii) The Russian Federation; or

(iv) Any country that is a state sponsor of terrorism. (10 U.S.C. 2279)

Foreign entity means—

(i) Any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization organized under the laws of a foreign state if either its principal place of business is outside the United States or its equity securities are primarily traded on one or more foreign exchanges.

(ii) Notwithstanding paragraph (i) of this definition, any branch, partnership, group or sub-group, association, estate, trust, corporation or division of a corporation, or organization that demonstrates that a majority of the equity interest in such entity

is ultimately owned by U.S. nationals is not a foreign entity. (31 CFR 800.212)

Government of a covered foreign country includes the state and the government of a covered foreign country, as well as any political subdivision, agency, or instrumentality thereof.

Launch vehicle means a fully integrated space launch vehicle. (10 U.S.C. 2279)

Satellite services means communications capabilities that utilize an on-orbit satellite for transmitting the signal from one location to another.

State sponsor of terrorism means a country determined by the Secretary of State, under section 1754(c)(1)(A)(i) of the Export Control Reform Act of 2018 (Title XVII, Subtitle B, of the National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115–232), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, state sponsors of terrorism include: Iran, North Korea, Sudan, and Syria. (10 U.S.C. 2327)

(b) *Limitation.* Unless specified in its offer, the Contractor shall not provide satellite services under this contract that—

(1) Are from a covered foreign country; or

(2) Except as provided in paragraph (c) of this provision, use satellites that will be—

(i) Designed or manufactured—

(A) In a covered foreign country; or

(B) By an entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country; or

(ii) Launched outside the United States using a launch vehicle that is designed or manufactured—

(A) In a covered foreign country; or

(B) Provided by—

(*1*) The government of a covered foreign country;

(*2*) An entity controlled in whole or in part by, or acting on behalf of, the government of a covered foreign country.

(c) *Exception.* The limitation in paragraph (b)(2) of this provision shall not apply with respect to—

(1) A launch that occurs prior to December 31, 2022; or

(2) A satellite service provider that has a contract or other agreement relating to launch services that, prior to June 10, 2018, was either fully paid for by the satellite service provider or covered by a legally binding commitment of the satellite service provider to pay for such services.

(End of clause)

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