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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0705; Product Identifier 2018–NM–077–AD; Amendment 39–19546; AD 2019–01–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This AD was prompted by a report that during removal of left-hand (LH) gear rib 5, four failed fasteners were discovered. This AD requires a one-time ultrasonic inspection of the LH and right-hand (RH) wing rib 5-to-rear spar attachments for cracked or failed fasteners, and if necessary, a detailed inspection of the gear rib 5 and spar web for cracks and damage; a rotating probe test of the gear rib and spar web bolt holes for cracks and damage; reaming the gear rib and the spar web bolt holes; and replacement of cracked or failed fasteners. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; phone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com*; internet: *http://www.airbus.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0705.

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–2018–0705; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on August 9, 2018 (83 FR 39377). The NPRM was prompted by a report that during removal of LH gear rib 5, four failed fasteners were discovered. The NPRM proposed to require a one-time ultrasonic inspection of the LH and RH wing rib 5-to-rear spar attachments for cracked or failed fasteners, and if necessary, a detailed inspection of the gear rib 5 and spar web for cracks and damage; a rotating probe test of the gear rib and spar web bolt holes for cracks and damage; reaming the gear rib and the spar web bolt holes; and replacement of cracked or failed fasteners.

We are issuing this AD to address cracked or failed (broken) fasteners (bolts) of the rib 5-to-rear spar attachment, which could lead to reduced structural integrity of the wing.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0102, dated April 27, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> During removal of the left hand (LH) rib 5, two of the fasteners (bolts) attaching the rib to the wing inner rear spar were found to have failed and two more failed during their removal. Two of the bolts were found separated from the bolt shanks when the overcoat sealant was being removed, and the other two bolt heads broke away during removal.
>
> This condition, if not detected and corrected, could reduce the structural integrity of the wing.
>
> To address this possible unsafe condition, Airbus issued [Service Bulletin] SB A320–57–1167 to provide inspection instructions. After that SB was issued, a potential manufacturing issue was identified on early production A321 [airplanes] concerning reports of fasteners ''jamming'' during installation on spar assemblies. A process change was introduced in production line, and SB A320–57–1167 was revised, changing the affected population to include all A321 aeroplanes delivered before the introduction of that process change.
>
> For the reasons described above, this [EASA] AD requires a one-time special detailed [ultrasonic] inspection (SDI) of the wing rib 5-to-rear spar attachments, both LH and right hand (RH) wings, [and if necessary, a detailed inspection of the gear rib 5 and spar web for cracks and damage (cracks along the length of the bolt or broken bolt), a rotating probe test of the gear rib and spar web bolt holes for cracks and damage (cracks in the bolt holes), reaming the gear rib and the spar web bolt holes] and, depending on findings, accomplishment of a repair [replacement of cracked or failed (broken) fasteners (bolts)]. This [EASA] AD also requires the reporting of findings.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0705.

Comments

We gave the public the opportunity to participate in developing this final rule.

The following presents the comment received on the NPRM and the FAA's response to each comment.

Request To Include Revised Service Information

American Airlines (AAL) requested that we include Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018, as the required source of service information for the proposed AD. AAL pointed out that the revised service information was issued to add defueling/access procedures in case of findings during the inspection. AAL also mentioned that including the later revised service information would reduce the number of future alternative method of compliance (AMOC) approval requests.

We agree with the commenter's request. We have included Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018, in this AD. We have determined that no additional work is required for compliance (RC) for airplanes that have accomplished the actions specified in Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018. We have added paragraph (j) to this AD to provide credit for actions done before the effective date of this AD in accordance with Revision 01 of the referenced service information. We have also redesignated subsequent paragraphs accordingly.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018. This service information describes procedures for a one-time special detailed (ultrasonic) inspection of the LH and RH wing rib 5-to-rear spar attachments for cracked or failed (broken) fasteners (bolts), and if necessary, a detailed inspection of the gear-rib-5 and spar web for cracks and damage (cracks along the length of the bolt or broken bolt); a rotating probe test of the gear rib and spar web bolt holes for cracks and damage (cracks in the bolt holes); reaming the gear rib and the spar web bolt holes; and replacement of the cracked or damaged (broken) fasteners (bolts).

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

Costs of Compliance

We estimate that this AD affects 29 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
16 work-hours × $85 per hour = $1,360	$0	$1,360	$39,440

* Table does not include estimated costs for reporting/revising the maintenance or inspection program.

We estimate that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $2,465, or $85 per product.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
20 work-hours × $85 per hour = $1,700	$0	$1,700

* Table does not include estimated costs for reporting.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–01–07 Airbus SAS: Amendment 39–19546; Docket No. FAA–2018–0705; Product Identifier 2018–NM–077–AD.

(a) Effective Date

This AD is effective March 19, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes, certificated in any category, as identified in Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report that during removal of left-hand (LH) gear rib 5, four failed fasteners (bolts attaching the gear rib to the wing inner rear spar) were discovered. We are issuing this AD to address cracked or failed (broken) fasteners (bolts) of the rib 5-to-rear spar attachment, which could lead to reduced structural integrity of the wing.

(f) Compliance

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

(g) Inspection of the Rib 5-to-Rear Spar Attachment Fasteners (Bolts)

Within 30 months after the effective date of this AD, do a special detailed (ultrasonic) inspection of the LH and right-hand (RH) wing rib 5-to-rear spar attachment fasteners (bolts) for cracked or failed (broken) fasteners (bolts), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018.

(h) Replacement of Cracked or Failed Fasteners (Bolts)

If any cracked or failed (broken) fastener (bolt) is found during any inspection required by paragraph (g) of this AD, before further flight, do the actions specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, as applicable.

(1) Do a detailed inspection of the gear rib 5 and spar web for cracks and damage (cracks along the length of the bolt or broken bolt), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018. If any crack or damage is found during any inspection required by this paragraph, before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA); and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA-authorized signature.

(2) If no cracks or damage are found during any inspection required by paragraph (h)(1) of this AD: Do a rotating probe test of the gear rib and spar web bolt holes for cracks and damage (cracks in the bolt holes), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018. If any crack or damage is found during any inspection required by this paragraph, before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA; and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA authorized signature.

(3) If no cracks or damage are found during any inspection required by paragraph (h)(2) of this AD: Ream the gear rib and the spar web bolt holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018. If an oversize larger than 0.794 millimeter (0.0313 inch) is required, before further flight, obtain corrective actions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA; and accomplish the corrective actions within the compliance time specified therein. If approved by the DOA, the approval must include the DOA authorized signature.

(4) Replace any cracked or failed fasteners (bolts) in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018.

(i) Reporting

Within 90 days after the special detailed inspection required by paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, report the inspection results (both positive and negative) to Airbus SAS in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018. If operators have reported findings as part of obtaining any corrective actions approved by the EASA DOA, operators are not required to report those findings as specified in this paragraph.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–57–1167, Revision 01, dated January 16, 2018.

(k) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information

displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0102, dated April 27, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0705.

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

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

(n) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–57–1167, Revision 02, dated August 14, 2018.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–01522 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0793; Product Identifier 2018–NM–057–AD; Amendment 39–19545; AD 2019–01–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by a report of cracks in a certain body station (STA) frame web and doubler at fastener holes common to the stop fitting at a certain stringer. This AD requires repetitive surface high frequency eddy current (HFEC) inspections for cracking of the frame web and doubler at the stop fitting at a certain stringer, and applicable on-condition actions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0793.

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–2018–0793; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Galib Abumeri, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. The NPRM published in the **Federal Register** on

September 17, 2018 (83 FR 46902). The NPRM was prompted by a report of cracks in the STA 303.9 frame web and doubler at fastener holes common to the stop fitting at stringer 16 left (S–16L). The NPRM proposed to require repetitive surface HFEC inspections for cracking of the STA 303.9 frame web and doubler at the stop fitting at S–16L, and applicable on-condition actions.

We are issuing this AD to address cracks in the STA 303.9 frame web and doubler at the stop fitting at S–16L, which, if not addressed, could result in the inability of a principal structural element to sustain limit loads and possible rapid decompression of the airplane.

Comments

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

Support for the NPRM

Boeing concurred with the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing Supplemental Type Certificate (STC) ST01219SE does not affect the actions specified in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018. The service information describes procedures for repetitive surface HFEC inspections for cracking of the STA 303.9 frame web and doubler at the stop fitting at S–16L, and applicable on-condition actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 67 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
HFEC Inspections	13 work-hours × $85 per hour = $1,105 per inspection cycle.	$0	$1,105 per inspection cycle	$74,035 per inspection cycle.

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–01–06 The Boeing Company: Amendment 39–19545; Docket No. FAA–2018–0793; Product Identifier 2018–NM–057–AD.

(a) Effective Date

This AD is effective March 19, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of cracks in the body station (STA) 303.9 frame web and doubler at fastener holes common to the stop fitting at stringer 16 left (S–16L). We are issuing this AD to address cracks in the STA 303.9 frame web and doubler at the stop fitting at S–16L, which, if not addressed, could result in the inability of a principal structural element to sustain limit loads and possible rapid decompression of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1

For airplanes identified as Group 1 in Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Groups 2 Through 5

Except as specified in paragraph (i) of this AD: For airplanes identified as Groups 2 through 5 in Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018, at the applicable times specified in the ''Compliance'' paragraph of Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018.

Note 1 to paragraph (h) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1375, dated March 12, 2018, which is referred to in Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018.

(i) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1375 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018, specifies contacting Boeing for repair instructions, this AD requires repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

For more information about this AD, contact Galib Abumeri, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5324; fax: 562–627–5210; email: *galib.abumeri@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Boeing Requirements Bulletin 737–53A1375 RB, dated March 12, 2018.

(ii) [Reserved].

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

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

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

Issued in Des Moines, Washington, on January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–01520 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0162; Product Identifier 2017–NM–116–AD; Amendment 39–19542; AD 2019–01–03]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–18–01, which applied to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. AD 2016–18–01 required repetitive lubrication of the forward and aft trunnion pin assemblies of the right and left main landing gears (MLGs); repetitive inspection of these assemblies for corrosion and chrome damage, and related investigative and corrective actions if necessary; and installation of

new or modified trunnion pin assembly components, which terminated the repetitive lubrication and repetitive inspections. Since we issued AD 2016–18–01, we have determined that rotable parts were not addressed in that AD, and it is therefore necessary to include all airplanes of the affected models in the applicability. This AD retains the requirements of AD 2016–18–01, adds airplanes to the applicability, and prohibits the installation of a MLG or MLG trunnion pin assembly under certain conditions. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 19, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 19, 2019.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0162.

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–2018–0162; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3527; email: *alan.pohl@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2016–18–01, Amendment 39–18631 (81 FR 59830, August 31, 2016) (''AD 2016–18–01''). AD 2016–18–01 applied to certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The NPRM published in the **Federal Register** on March 5, 2018 (83 FR 9238). The NPRM was prompted by a determination that rotable parts were not addressed in AD 2016–18–01, and that it was therefore necessary to include all airplanes of the affected models in the applicability. The NPRM proposed to retain all requirements of AD 2016–18–01 and add airplanes to the applicability. The NPRM also proposed to prohibit the installation of a MLG or MLG trunnion pin assembly on any airplane identified in paragraph (c) of the proposed AD unless certain actions are accomplished. We are issuing this AD to address heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left MLGs, which could result in cracking of these assemblies and collapse of the MLGs.

Comments

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

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing the installation of winglets using Supplemental Type Certificate (STC) ST00830SE does not affect compliance with the actions proposed in the NPRM.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1) of this AD and added paragraph (c)(2) to this AD to state that installation of STC ST00830SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Request To Include Alternative Action to Inspection To Determine Part Number

All Nippon Airways (ANA) requested that the inspection to determine the part numbers of the existing parts, as specified in paragraph (g) of the proposed AD, not be required if the repetitive lubrication and inspection, as specified in paragraphs (h) and (i) of the proposed AD, have already been performed.

We agree with the commenter's request. The alternative action recommended by ANA will maintain an acceptable level of safety by continuing the lubrication and inspection requirements in this AD. We have revised paragraph (g) of this AD to state that operators may accomplish continued lubrication and inspection as required by paragraphs (h) and (i) of this AD, at the specified times, in lieu of the inspection to determine the existing part numbers.

Request To Clarify Purpose of Inspection To Determine Part Number

Alaska Airlines (Alaska), Boeing, and Southwest Airlines (SWA) requested that paragraph (g) of the proposed AD be revised to clarify that the inspection is to determine if any of the ''existing'' part numbers identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of Boeing Special Attention Service Bulletin 737–32–1448, Revision 2, dated August 2, 2017 (''BSASB 737–32–1448, R2''), are installed. Alaska noted that paragraph 2.C.3. of BSASB 737–32–1448, R2, has two columns of part numbers, one for existing part numbers and one for new part numbers.

The commenters noted that paragraph (g) of the proposed AD states that the purpose of the inspection is to determine if any of the MLG trunnion pin assembly part numbers identified in paragraph 2.C.3. of BSASB 737–32–1448, R2, are installed. The commenters pointed out that this requested change would align the wording in the proposed AD with the wording in paragraph 2.C.3. of BSASB 737–32–1448, R2.

In addition, Boeing observed that the existing parts identified in paragraph 2.C.3. of BSASB 737–32–1448, R2, include outer cylinder assemblies and race and ball assemblies, as well as MLG trunnion pin assemblies. Boeing recommended that the header to paragraph (g) of the proposed AD be revised to clarify that this inspection is to determine part numbers for all assembly types, rather than specify the part number of only the MLG and MLG trunnion pin assembly.

We agree with the commenters' requests for the reasons provided by the commenters. We have revised the header to paragraph (g) of this AD to specify ''Inspection to Determine Part Numbers.'' We have also revised paragraph (g) of this AD to state, '' . . . do an inspection to determine if any of

the existing part numbers identified in . . . . A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of each existing part number can be conclusively determined from that review.''

Request To Remove Inspection Requirement for Certain Airplanes

SWA and Ryanair (RYR) requested that airplanes identified in paragraphs (c)(1) and (c)(4) of the proposed AD (paragraphs (c)(1)(i) and (c)(1)(iv) in this AD) be relieved from doing the inspection to determine part numbers, or the review of airplane maintenance records, specified in paragraph (g) of the proposed AD. RYR also stated that the airplanes identified in these paragraphs have not incorporated the actions in Boeing Special Attention Service Bulletin 737–32–1448, dated May 19, 2011 (''BSASB 737–32–1448'').

SWA indicated that the affected MLGs would have already been identified, as required by AD 2016–18–01, and the inspection and lubrication actions described in Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015 (''BSASB 737–32–1448, R1''), would have already started on those airplanes. RYR stated that all MLGs would need to have all required actions completed to verify AD compliance anyway, and a records check would not yield any further benefit and would not outweigh the amount of work required to complete the records check.

In addition, RYR stated that if an inspection to determine a part number or a records check is completed on an airplane identified in paragraph (c)(1) or (c)(4) of the proposed AD (paragraph (c)(1)(i) or (c)(1)(iv) of this AD), and it is determined that the affected rotable parts are installed on the airplane, the rotable parts may incorrectly be assumed to be in compliance with the requirements specified in the proposed AD. RYR stated that there is no way to determine if the MLG forward trunnion pin seal and retainer are AD compliant because the details would not be included in documentation and could be verified only if the MLG was removed from the airplane and inspected. This would incur a requirement to remove every MLG from every airplane in an operator's fleet within 30 days after the effective date of the AD to determine if the installation is compliant with the requirements of the AD.

RYR also stated that BSASB 737–32–1448, R2, does not clearly indicate for which airplanes operators would need to do the inspection to determine the part number or records check. RYR pointed out that page 7 of BSASB 737–32–1448, R2, indicates that only airplanes in Group 1–3 that have accomplished the actions in BSASB 737–32–1448 or BSASB 737–32–1448, R1, would need to do the inspection or records check, but page 42, Table 1, for Group 1–2 airplanes, configuration 1, states this configuration relates only to airplanes on which the actions in the service bulletin have not been completed. RYR mentioned that it submitted a service request to Boeing to clarify if the intent of this action is only for airplanes on which the actions in BSASB 737–32–1448 or BSASB 737–32–1448, R1, have been completed.

We do not agree with the commenters' requests. We appreciate the operators' concerns that this records check does not appear to be necessary. However, BSASB 737–32–1448, R1, which is the required service information for compliance with AD 2016–18–01, did not address part rotability. An operator might have complied with the requirements of AD 2016–18–01 on a given airplane, and then subsequently rotated a non-compliant MLG and installed it on that same airplane. Shortly after AD 2016–18–01 was issued, one operator with a large number of affected airplanes informed the FAA that three-fourths of those airplanes no longer had the same landing gear that was installed when the airplane was delivered.

Therefore, as explained elsewhere in this AD, it is necessary to supersede AD 2016–18–01 to address the unsafe condition by addressing rotability. In order to do this, the actions required by paragraphs (h), (i), and (j) of this AD are contingent upon knowing what parts are installed. An inspection for parts modified and reidentified was not included in BSASB 737–32–1448, R1, and consequently was not mandated by AD 2016–18–01.

Operators should have adequate maintenance records to determine if the MLG forward trunnion pin seal and retainer are AD compliant. If this is not the case, then it might be necessary, as indicated by RYR, to remove the MLG from the airplane to identify the part numbers.

Our change to paragraph (g) of this AD, allowing repetitive lubrication and inspection instead of the inspection to determine the part numbers or the records check, may provide relief to operators. If operators choose to continue to perform the repetitive lubrication and inspection, then they are not required to do the inspection to determine the part number.

In regard to RYR's observation of discrepancies in BSASB 737–32–1448, R2, we note that the information on page 7 is part of the Revision Transmittal Sheet, which explains the effects of the actions described in BSASB 737–32–1448, R2, for airplanes on which the actions in BSASB 737–32–1448 or BSASB 737–32–1448, R1, were previously done. The information in the Revision Transmittal Sheet is related to but not mandated by this AD. RYR has correctly sent its concerns to Boeing to address inconsistencies in its service information.

We have not changed paragraph (g) to this AD regarding these issues.

Request To Revise Parts Installation Limitation Paragraph

Boeing and SWA requested that paragraph (m) of the proposed AD be revised to include all existing parts identified in paragraph 2.C.3, ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, not just the MLG or MLG forward trunnion pin assembly. Boeing noted that in addition to the MLG and MLG forward trunnion pin assembly, the list of parts includes the outer cylinder assembly, and race and ball assemblies.

We agree with the commenters' requests. We have revised paragraph (m) of this AD to state that ''As of the effective date of this AD, no person may install existing parts identified in paragraph 2.C.3., 'Parts Modified and Reidentified,' of BSASB 737–32–1448, R2, on any airplane identified in paragraphs (c)(1)(i) through (c)(1)(vii) of this AD, unless the actions required by paragraph (j) or (k), as applicable, of this AD have been accomplished on the parts.''

Request To Revise Parts Installation Limitation Paragraph To Include Newly Purchased Parts

Delta Air Lines (DAL) requested that paragraph (m) of the proposed AD be revised to allow operators to install any newly purchased spare parts that are not specified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2. DAL stated that paragraph (m) of the proposed AD does not include a provision for parts that are not affected by the part number inspection required by paragraph (g) of the proposed AD. DAL also mentioned that many airplanes have been delivered with parts for which paragraphs (j) and (k) of the proposed AD are not applicable, and with parts that are identified through the inspection or records review specified in paragraph (g) of the proposed AD.

We do not agree with the commenter's request. Although we appreciate the commenter's concern, paragraph (m) of this AD already addresses this issue with the phrase ''as applicable.'' Paragraph (m) of this AD applies only to parts that are subject to the requirements of paragraphs (j) and (k) of this AD and does not apply to newly purchased spare parts. In addition, as previously mentioned, we have revised the wording in paragraph (m) of this AD in response to another comment, and this revised wording addresses the commenter's concern. We have not revised this AD further in regard to this issue.

Request To Provide Additional Credit for Previous Actions

DAL observed that paragraph (n) of the proposed AD did not provide credit for previously accomplished actions that comply with the inspection to determine the part numbers, specified in paragraph (g) of the proposed AD. DAL contended that once the part numbers have been identified, through inspection or maintenance records review, it is not necessary to repeat the inspection. We infer that DAL is requesting a revision to paragraph (n) of the proposed AD to include credit for inspections for part number identification specified in paragraph (g) of the proposed AD.

We do not agree with the commenter's request. Neither the original issue of BSASB 737–32–1448, nor BSASB 737–32–1448, R1, included either an inspection to determine part numbers or a maintenance records check. Also, AD 2016–18–01 did not include a parts installation limitation provision. Paragraph (f), ''Compliance,'' of this AD already accounts for actions accomplished prior to the effective date of this AD. Specifically, paragraph (f) of this AD states ''Comply with this AD within the compliance times specified, unless already done.'' If DAL has adequate records to demonstrate that the part number determination required by paragraph (g) of this AD has already been accomplished for an airplane, then it is not necessary to repeat this action. We have not changed this AD in regard to this issue.

Request To Allow Use of Serviceable Rotable Parts

DAL requested that operators be permitted to use serviceable rotable parts in lieu of returning modified parts to the same airplane from which they were removed. DAL noted that paragraph (j) of the proposed AD would require modification of the left and right MLG trunnion pin assemblies in accordance with work package 3 of the Accomplishment Instructions of BSASB 737–32–1448, R2. DAL mentioned that many operators use pools of rotable spare parts to reduce the time necessary for maintenance. DAL explained that rotable parts are airplane parts and components that can be rebuilt or overhauled to be reinstalled on the same airplane or put in stock to be used on a different airplane.

We agree with the intent of the commenter's request, but find it unnecessary to change this AD to address the concern. These parts are rotable. We are superseding AD 2016–18–01 because it did not address rotable parts. We appreciate DAL's concern regarding returning modified parts to the same airplane from which they were removed. This AD does not include that requirement, and operators may do as DAL suggested and use rotable parts, provided the parts are per type design and meet any other pertinent requirements prior to installation. In addition, the revision to paragraph (m) of this AD, discussed previously, addresses DAL's concern. We have not revised this AD further in regard to this issue.

Request for Clarification of Difference Between the Proposed AD and Service Information

RYR asked how an operator would show compliance with the requirements specified in the proposed AD for an airplane that received a certificate of airworthiness one or two days before the effective date of the final rule. RYR asked if there would be an additional revision to BSASB 737–32–1448, R2, that expanded the line number applicability and if that revised service bulletin would be included in a subsequent AD. We infer that RYR is requesting clarification regarding the difference between the proposed AD and the service information regarding airplane applicability.

We acknowledge the commenter's concern. For an issue that involves rotable parts, an AD Friendly service bulletin with respect to applicability would include all affected airplanes, in this case, all Model 737 NG airplanes, whether or not the airplanes have been delivered. However, the effectivity of BSASB 737–32–1448, R2 does not include all airplanes of the affected models. Since it is possible to remove a part from one airplane and install it without change on an airplane not identified in the service bulletin effectivity, we have determined it necessary to expand the applicability of this AD beyond that of the service information provided by Boeing so that installation of certain rotable parts, addressed in paragraph (m) of this AD, is restricted on all airplanes of the affected models. Boeing did not reflect this in the effectivity and airplane groups of BSASB 737–32–1448, R2; therefore, the FAA had to re-define the airplane groups as described in paragraph (c), ''Applicability,'' of this AD.

Regarding RYR's concern for demonstrating immediate AD compliance, immediate compliance is not required by this AD. Each of the required actions in paragraphs (g) through (k) of this AD state that the compliance time is '' . . . at the [applicable] time specified in Table . . . of paragraph 1.E., 'Compliance,' of BSASB 737–32–1448, R2.'' These compliance times range from 30 days to 10 years.

Regarding RYR's question whether there will be another revision to BSASB 737–32–1448, R2, to expand the effectivity to match the applicability in this AD, that determination would be made by Boeing. We agree it is beneficial to all concerned for the service information to match the content of the AD. We note that if Boeing would provide a revised service bulletin that addressed rotability, then this could be approved as an AMOC and would be less confusing to the operators.

We have not revised this AD in regard to this issue.

Request To Clarify Certain Requirements

MNGJET requested that the NPRM include a clarification of the differences between BSASB 737–32–1448 and BSASB 737–32–1448, R1, which were the service bulletins referred to in AD 2016–18–01. MNGJET specifically pointed out the difference between these service bulletin revisions regarding the MLG forward trunnion seal and retainer configuration.

We do not agree with the commenter's request. The revisions to the service information are in regard to AD 2016–18–01, which is being superseded by this AD. This AD refers to BSASB 737–32–1448, R2, as the service information.

Furthermore, the reason for the difference between BSASB 737–32–1448 and BSASB 737–32–1448, R1, concerning the MLG forward trunnion seal and retainer configuration, is explained in paragraph 1.C, ''Reason,'' of both BSASB 737–32–1448, R1, and BSASB 737–32–1448, R2. It is not necessary to either reiterate or explain the differences between different revisions of a service bulletin. Suggestions for improvement of the related service information should be

directed to Boeing. Also, FAA ADs have been written using AD Friendly standards since 2005. The requirements of ADs are written at a higher level, and the detailed information is in the related service information.

No change has been made to this AD in regard to these issues.

Request To Extend Compliance Time for Certain Airplanes

AMES, a continued airworthiness management organization (CAMO) for Boeing Business Jets (BBJs), requested that the compliance time for the replacement of the MLG forward trunnion pin housing assembly, seal, and retainer, in paragraph (k) of the proposed AD, be extended for BBJs. Specifically, AMES asked that for only BBJs on a low utilization maintenance program (LUMP) program, with a 12-year landing gear overhaul interval, the compliance time in the proposed AD be extended from 10 years to 12 years after the last landing gear overhaul. AMES highlighted that these are low-utilization airplanes, flying less than 1,200 flight hours per year, and the MLG overhaul interval is every 12 years. AMES observed that the compliance time for the actions in the proposed AD is 10 years after the effective date of AD 2016–18–01 (October 5, 2026), which is before the next scheduled maintenance check. AMES stated that a limited number of BBJs would be affected and there would be limited impact.

AMES also suggested that because the BBJs have low-time landing gears, owners do not want to exchange the low-time gears with high-time gears from airlines. AMES expressed that the 12-year check ground time is the best time to send the gears for overhaul.

We disagree with the commenter's request. The commenter did not provide definitive supporting data that would justify the requested extension of the compliance time. In addition, Boeing's service information, BSASB 737–32–1448, R2, retains the same 10-year compliance time for BBJs.

Regarding the commenter's concern of receiving a high-time MLG in exchange for a low-time MLG, presumably from sending these MLGs to a repair facility and receiving an exchange unit from a pool of MLGs, it is unclear how this would be prevented by having a 12-year compliance time instead of a 10-year compliance time.

We have not made any changes to this AD in regard to these issues.

Concern Regarding Possible Parts Shortage

United Airlines expressed concern that Boeing may not have an adequate stock of MLG forward trunnion pin seals and retainers to meet the requirement for operators to replace these parts. United Airlines noted that a parts shortage did arise from October 2016 to March 2017 when Boeing could not supply operators with required parts. United Airlines observed that a parts shortage would lead to unnecessarily grounding airplanes.

We appreciate the commenter's concern. However, as mentioned by the commenter, this issue has been ongoing since October 2016. Boeing is aware of operator concerns and should ensure that an adequate supply of required parts is available. Because of the identified unsafe condition, further delay of this final rule is not appropriate. In addition, the FAA has issued an AMOC for AD 2016–18–01 to a spare parts supplier for installation of its split ball assembly in lieu of the corresponding part specified in BSASB 737–32–1448, R1. That AMOC is still applicable to the corresponding provisions of this AD, as noted in paragraph (o)(4) of this AD. We have not revised this AD in regard to this issue.

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

We reviewed BSASB 737–32–1448, R2. This service information describes procedures for determining the part numbers of the forward and aft trunnion pin assemblies installed on the right and left MLGs, inspections for corrosion and damage on the forward and aft trunnion pin assemblies and related investigative and corrective actions, repetitive lubrication of these assemblies, and installation of new or modified trunnion pin assembly components. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects up to 1,814 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Lubrication (retained actions from AD 2016–18–01).	2 work-hours × $85 per hour = $170 per lubrication cycle.	$0	$170 per lubrication cycle	$173,910, per lubrication cycle (1,023 airplanes).
Inspection (Groups 1 and 2, Configuration 1 airplanes; retained actions from AD 2016–18–01).	51 work-hours × $85 per hour = $4,335 per inspection cycle.	0	$4,335 per inspection cycle ...	$4,282,980 per inspection cycle (988 airplanes).
Inspection (Group 3 airplanes; retained actions from AD 2016–18–01).	93 work-hours × $85 per hour = $7,905 per inspection cycle.	0	$7,905 per inspection cycle ...	$276,675 per inspection cycle (35 airplanes).
Replacement/overhaul (Groups 1 and 2 airplanes; retained actions from AD 2016–18–01).	84 work-hours × $85 per hour = $7,140.	0	$7,140	$7,054,320 (988 airplanes).
Replacement/overhaul (Group 3 airplanes retained actions from AD 2016–18–01).	86 work-hours × $85 per hour = $7,310.	0	$7,310	$255,850 (35 airplanes).

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Lubrication pin assemblies (new action, Work Packages 1 and 2).	2 work-hours × $85 per hour = $170 per lubrication cycle.	0	$170 per lubrication cycle	Up to $308,380, per lubrication cycle (up to 1,814 airplanes).
Inspection (new action; Groups 1, 2, 4, and 5, Configuration 1 airplanes; Work Package 2).	51 work-hours × $85 per hour = $4,335 per inspection cycle.	0	$4,335 per inspection cycle ...	Up to $7,594,920 per inspection cycle (up to 1,752 airplanes).
Inspection (new action; Groups 3 and 6 airplanes; Work Package 2).	93 work-hours × $85 per hour = $7,905 per inspection cycle.	0	$7,905 per inspection cycle ...	Up to $490,110 per inspection cycle (Up to 62 airplanes).
Replacement/overhaul trunnion pin assembly (Groups 1, 2, 4, and 5 airplanes; new action; Work Package 2).	84 work-hours × $85 per hour = $7,140.	0	$7,140	Up to $12,509,280 (up to 1,752 airplanes).
Replacement/overhaul trunnion pin assembly (Groups 3 and 6 airplanes; new action; Work Package 2).	86 work-hours × $85 per hour = $7,310.	0	$7,310	Up to $453,220 (Up to 62 airplanes).

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–18–01, Amendment 39–18631 (81 FR 59830, August 31, 2016), and adding the following new AD:

2019–01–03 The Boeing Company: Amendment 39–19542; Docket No. FAA–2018–0162; Product Identifier 2017–NM–116–AD.

(a) Effective Date

This AD is effective March 19, 2019.

(b) Affected ADs

This AD replaces AD 2016–18–01, Amendment 39–18631 (81 FR 59830, August 31, 2016) (''AD 2016–18–01'').

(c) Applicability

(1) This AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category. These airplanes are specified in paragraphs (c)(1)(i) through (c)(1)(vii) of this AD.

(i) Airplanes in Groups 1 and 2, Configuration 1, as identified in Boeing Special Attention Service Bulletin 737–32–1448, Revision 2, dated August 2, 2017 (''BSASB 737–32–1448, R2'').

(ii) Airplanes in Groups 1 and 2, Configuration 2, as identified in BSASB 737–32–1448, R2.

(iii) Airplanes in Group 3, as identified in BSASB 737–32–1448, R2.

(iv) Airplanes in Groups 4 and 5, Configuration 1, as identified in BSASB 737–32–1448, R2, except where this service bulletin specifies the groups as line numbers 3527 through 6510 inclusive, this AD specifies those groups as line number 3527 through any line number of an airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of this AD.

(v) Airplanes in Groups 4 and 5, Configuration 2, as identified in BSASB 737–32–1448, R2, except where this service bulletin specifies the groups as line numbers 3527 through 6510 inclusive, this AD specifies those groups as line number 3527

through any line number of an airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of this AD.

(vi) Airplanes in Groups 6 as identified in BSASB 737–32–1448, R2, except where this service bulletin specifies the groups as line numbers 3527 through 6510 inclusive, this AD specifies those groups as line number 3527 through any line number of an airplane with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated on or before the effective date of this AD.

(vii) All Model 737–600, –700, –700C, –800, –900 and –900ER series airplanes with an original Certificate of Airworthiness or an original Export Certificate of Airworthiness dated after the effective date of this AD.

(2) Installation of Supplemental Type Certificate (STC) ST00830SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST00830SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Unsafe Condition

This AD was prompted by reports of heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left main landing gears (MLGs). We are issuing this AD to address heavy corrosion and chrome damage on the forward and aft trunnion pin assemblies of the right and left MLGs, which could result in cracking of these assemblies and collapse of the MLGs.

(f) Compliance

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

(g) Inspection To Determine Part Numbers

For airplanes identified in paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(iv), or (c)(1)(vi) of this AD: Except as required by paragraph (l) of this AD, at the applicable time specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, do an inspection to determine if any of the existing part numbers identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, are installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of each existing part number can be conclusively determined from that review. Repetitive lubrication and inspection as required by and at the times specified in paragraphs (h) and (i) of this AD are also acceptable in lieu of this inspection to determine the MLG trunnion pin assembly part number.

(h) Repetitive Lubrication of MLG Trunnion Pin Assemblies

For airplanes identified in paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(iv), or (c)(1)(vi) of this AD, having any part number identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, installed: Except as required by paragraph (l) of this AD, at the applicable time specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, lubricate the applicable forward and aft trunnion pin assemblies of the right and left MLGs, in accordance with Work Package 1 of the Accomplishment Instructions of BSASB 737–32–1448, R2. Repeat the lubrication thereafter at intervals not to exceed those specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2. Accomplishment of the actions specified in paragraph (j) of this AD terminates the repetitive lubrication required by this paragraph.

(i) Repetitive Inspections, Corrective Actions, and Lubrication

For airplanes identified in paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(iv), or (c)(1)(vi) of this AD, having any part number identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, installed: Except as required by paragraph (l) of this AD, at the applicable time specified in Table 1, Table 2, Table 4, or Table 5, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, do a general visual inspection of the left and right MLGs at the forward and aft trunnion pin locations and the visible surfaces of the forward and aft trunnion pin assemblies for discrepancies including signs of corrosion or chrome plating damage, and lubricate the forward and aft trunnion pin assemblies as applicable, in accordance with Work Package 2 of the Accomplishment Instructions of BSASB 737–32–1448, R2. Repeat the general visual inspection thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2. If any discrepancy is found during any inspection required by this paragraph, before further flight, do all applicable related investigative and corrective actions in accordance with Work Package 2 of the Accomplishment Instructions of BSASB 737–32–1448, R2. Accomplishment of the actions required by paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

(j) Modification of MLG Trunnion Pin Assemblies

For airplanes identified in paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(iv), or (c)(1)(vi) of this AD, having any part number identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, installed: Except as required by paragraph (l) of this AD, at the time specified in Table 1, Table 2, Table 4, or Table 5, as applicable, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, modify the left and right MLG trunnion pin assemblies, including all applicable related investigative and corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of BSASB 737–32–1448, R2. All applicable related investigative and corrective actions must be done at the time specified in paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2. Accomplishment of the actions in Work Package 3 of the Accomplishment Instructions of BSASB 737–32–1448, R2, terminates the repetitive lubrication required by paragraph (h) of this AD and the repetitive inspections required by paragraph (i) of this AD.

(k) Replacement of MLG Forward Trunnion Pin Housing Assembly, Seal, and Retainer

For airplanes identified in paragraphs (c)(1)(ii) and (c)(1)(v) of this AD: Except as required by paragraph (l) of this AD, at the time specified in Table 3 or Table 6, as applicable, of paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, replace the seal, retainer, and support ring assembly with a new seal and retainer configuration; install the forward trunnion pin assembly into the housing assembly; and lubricate the forward and aft trunnion pin assemblies for the left and right MLGs; in accordance with Work Package 4 of the Accomplishment Instructions of BSASB 737–32–1448, R2.

(l) Exception to Service Information Specification

Where paragraph 1.E., ''Compliance,'' of BSASB 737–32–1448, R2, specifies a compliance time ''after the Revision 2 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(m) Parts Installation Limitation

As of the effective date of this AD, no person may install existing parts identified in paragraph 2.C.3., ''Parts Modified and Reidentified,'' of BSASB 737–32–1448, R2, on any airplane identified in paragraphs (c)(1)(i) through (c)(1)(vii) of this AD, unless the actions required by paragraph (j) or (k), as applicable, of this AD have been accomplished on the parts.

(n) Credit for Previous Actions

(1) This paragraph provides credit for the requirements of paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–32–1448, dated May 19, 2011; or Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015.

(2) This paragraph provides credit for the requirements of paragraphs (i), (j), and (k) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–32–1448, Revision 1, dated May 29, 2015.

(o) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for AD 2016–18–01 are approved as AMOCs for the corresponding provisions of this AD.

(p) Related Information

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3527; email: *alan.pohl@faa.gov*.

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

(q) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 737–32–1448, Revision 2, dated August 2, 2017.

(ii) [Reserved].

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

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

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

Issued in Des Moines, Washington, on December 21, 2018.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–01518 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0047; Product Identifier 2018–CE–062–AD; Amendment 39–19549; AD 2019–02–02]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Pacific Aerospace Ltd. Model FBA–2C1, FBA–2C2, FBA–2C3, and FBA–2C4 airplanes. This AD was prompted by a report of corrosion found in the external and internal surfaces of an elevator push-pull rod. This AD requires an inspection for corrosion of the elevator push-pull rod assembly, and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective February 27, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 27, 2019.

We must receive comments on this AD by March 29, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Pacific Aerospace Ltd., Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7843 6144; fax: +64 7843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz*. You may view this referenced service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0047.

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–2019–0047; 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 AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority of New Zealand has issued New Zealand AD DCA/FBA/4, effective December 6, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Pacific Aerospace Ltd. Model FBA–2C1, FBA–2C2, FBA–2C3, and FBA–2C4 airplanes. The MCAI states:

> During a visual inspection corrosion was found in the external surface of a push-pull rod on a FBA–2C1 aircraft in operation overseas. Further investigation revealed severe corrosion in the internal surface of the elevator push-pull rod. To ensure the integrity of the elevator push-pull rod assembly DCA/FBA/4 is issued to mandate the instructions in Pacific Aerospace Service Bulletin (SB) PACSB/2C/001 issue 1, dated 25 September 2018.

The unsafe condition is failure of the elevator push-pull rod due to corrosion in the internal surface, which could result in loss of elevator control. Although the unsafe condition was found on a Model FBA–2C1 airplane, we have determined that the design of the push-pull rod assembly is similar on Model FBA–2C2, FBA–2C3, and FBA–2C4 airplanes; therefore, the unsafe condition may exist on those airplane models as well. You may examine the

MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0047.

Related Service Information Under 1 CFR Part 51

Pacific Aerospace Ltd. has issued Service Bulletin PACSB/2C/001, Issue 1, dated September 25, 2018. This service information describes the following procedures:

- A borescopic inspection for corrosion of the internal surface of the elevator push-pull rod assembly, and replacement of any push-pull rod assembly that has interior corrosion.
- an inspection for corrosion of the exterior of any elevator push-pull rod assembly with no internal corrosion, and corrective actions including removal of light corrosion and replacement of any elevator push-pull rod assembly that has moderate to severe corrosion.
- other applicable specified actions including application of lubricant and corrosion-inhibiting compound.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the elevator push-pull rod assembly in flight could result in loss of elevator control and loss of control of the airplane. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0047; Product Identifier 2018–CE–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on 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 AD.

Costs of Compliance

We estimate that this AD affects 3 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$255

In addition, we estimate that any necessary follow-on replacement will take 2 work-hours and require parts costing $272, for a cost of $442 per product. We have no way of determining the number of aircraft that might need this on-condition action.

Since corrosion may affect the parts subject to inspection differently, and the severity of the corrosion on the part will affect the time necessary to correct the condition, we have no way to determine an overall cost per product for removing the corrosion.

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, associated appliances to the Director of the Policy and Innovation Division.

Director of the Policy and Innovation Division. Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–02–02 Pacific Aerospace Ltd.: Amendment 39–19549; Docket No. FAA–2019–0047; Product Identifier 2018–CE–062–AD.

(a) Effective Date

This AD becomes effective February 27, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pacific Aerospace Ltd. Model FBA–2C1, FBA–2C2, FBA–2C3, and FBA–2C4 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by a report of corrosion found in the external and internal surfaces of a push-pull rod. We are issuing this AD to address failure of the elevator push-pull rod assembly, which could cause loss of elevator control and loss of control of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 50 hours' time-in-service or 60 days after the effective date of this AD, whichever occurs first, do a borescopic inspection for corrosion of the interior of the elevator push-pull rod assembly, and before further flight replace any elevator push-pull rod assembly that has internal corrosion, in accordance with the Accomplishment Instructions of Pacific Aerospace Ltd. Service Bulletin PACSB/2C/001, Issue 1, dated September 25, 2018. If no internal corrosion is found, before further flight inspect for corrosion of the exterior of the elevator push-pull rod assembly and do all applicable corrective actions for reassembly, in accordance with the Accomplishment Instructions of Pacific Aerospace Ltd. Service Bulletin PACSB/2C/001, Issue 1, dated September 25, 2018. Do all other specified actions as applicable before further flight in accordance with the Accomplishment Instructions of Pacific Aerospace Ltd. Service Bulletin PACSB/2C/001, Issue 1, dated September 25, 2018.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or the Civil Aviation Authority of New Zealand.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) New Zealand AD DCA/FBA/4, effective December 6, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019-****.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(j) Material Incorporated by Reference

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

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

(i) Pacific Aerospace Ltd. Service Bulletin PACSB/2C/001, Issue 1, dated September 25, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7843 6144; fax: +64 7843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz*.

(4) You may view this service information at the FAA, Policy and Innovation, 901 Locust, Kansas City, Missouri. For information on the availability of this material at the FAA, call 816–329–4148. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0047.

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

Issued in Kansas City, Missouri, on January 31, 2019.

Melvin J. Johnson,

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

[FR Doc. 2019–01541 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2018–1080; Airspace Docket No. 18–AGL–26]

RIN 2120–AA66

Amendment of Restricted Areas R–5502A and R–5502B; Lacarne, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action updates the using agency information for restricted areas R–5502A and R–5502B; Lacarne, OH, and updates the controlling agency information for R–5502A. Additionally, this action adds exclusion language to the R–5502B boundaries information to overcome potential controlling agency confusion caused when both restricted areas are active in the same volume of airspace. These are administrative changes to reflect the current organizations tasked with using agency and controlling agency responsibilities for the restricted areas. It does not affect the overall R–5502 restricted area complex boundaries, designated

altitudes, time of designation, or activities conducted within the restricted areas.

DATES: *Effective date:* 0901 UTC, April 24, 2019.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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 the 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 updates the using agency and controlling agency for restricted areas R–5502A and R–5502B to reflect the current responsible organizations, and adds exclusion language to the R–5502B boundaries information to overcome potential controlling agency confusion caused when both restricted areas are active at the same time.

The Rule

This rule amends Title 14 Code of Federal Regulations (14 CFR) part 73 by updating the using agency name for restricted areas R–5502A and R–5502B, updating the controlling agency name for restricted area R–5502A, and updating the boundaries information for R–5502B by adding exclusion language. The using agency for R–5502A and R–5502B is changed from ''The Adjutant General, state of Ohio,'' to ''U.S. Army, Camp Perry Joint Training Center, OH.'' The controlling agency for R–5502A is changed from ''FAA, Cleveland ARTCC,'' to ''FAA, Toledo Approach Control.'' The boundaries information for R–5502B is changed to include the language ''excluding R–5502A'' at the end. This action is necessary in order to reflect the current organizations tasked with using agency and controlling agency responsibilities for the restricted areas.

This is an administrative change that does not affect the overall R–5502 restricted area complex boundaries, designated altitudes, time of designation, or activities conducted within the restricted areas; therefore, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Regulatory Notices and Analyses

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 of updating the using agency for restricted areas R–5502A and R–5502B; Lacarne, OH, updating the controlling agency information for R–5502A, and adding exclusion language to R–5502B qualifies for categorical exclusion under the National Environmental Policy Act, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5.d, ''Modification of the technical description of special use airspace (SUA) that does not alter the dimensions, altitudes, or times of designation of the airspace (such as changes in designation of the controlling or using agency, or correction of typographical errors).'' This airspace action is an administrative change to the description of restricted areas R–5502A and R–5502B; Lacarne, OH, to update the using agency and controlling agency names to R–5502A, update the using agency to R–5502B, and add exclusion information to R–5502B. It does not alter the overall R–5502 restricted area complex dimensions, designated altitudes, time of designation, or use of the airspace. Therefore, this airspace action is not expected to result in any significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.55 Ohio [Amended]

■ 2. § 73.55 is amended as follows:

R–5502A Lacarne, OH [Amended]

Boundaries. Beginning at lat. 41°35′19″ N, long. 82°55′30″ W; to lat. 41°32′30″ N, long. 83°01′00″ W; to lat. 41°36′35″ N, long. 83°04′52″ W; thence via a 5 NM arc centered at lat. 41°32′30″ N, long. 83°01′00″ W; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. 0800 to 1700 local time, April 1 to November 30; 0800 to 1700 local time, Tuesday, Wednesday and Thursday, December 1 to March 31; other times by NOTAM 48 hours in advance.

Controlling agency. FAA, Toledo Approach Control.

Using agency. U.S. Army, Camp Perry Joint Training Center, OH.

R–5502B Lacarne, OH [Amended]

Boundaries. Beginning at lat. 41°41′30″ N, long. 83°00′00″ W; to lat. 41°35′40″ N, long. 82°54′50″ W; to lat. 41°32′30″ N, long. 83°01′00″ W; to lat. 41°36′35″ N, long. 83°04′52″ W; to lat. 41°41′30″ N, long. 83°07′30″ W; to the point of beginning, excluding R–5502A.

Designated altitudes. Surface to 23,000 feet MSL.

Time of designation. 0800 to 1700 local time, Tuesday, Wednesday and Thursday; other times by NOTAM 48 hours in advance.

Controlling agency. FAA, Cleveland ARTCC.

Using agency. U.S. Army, Camp Perry Joint Training Center, OH.

Issued in Washington, DC, on February 5, 2019.

Rodger A. Dean Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–02065 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

29 CFR Part 30

RIN 1205–AB59

Apprenticeship Programs; Equal Employment Opportunity; Correction

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Correcting amendment.

SUMMARY: The Department of Labor (Department or DOL) is making technical corrections to the equal employment opportunity regulations that implement the National Apprenticeship Act of 1937.

DATES: Effective February 12, 2019.

FOR FURTHER INFORMATION CONTACT: John Ladd, Administrator, Office of Apprenticeship, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room C–5321, Washington, DC 20210, *oa.administrator@dol.gov,* (202) 693–2796 (this is not a toll-free number). Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department of Labor issued a final rule published in the **Federal Register** on December 19, 2016 (81 FR 92026), to modernize the equal employment opportunity regulations that implement the National Apprenticeship Act of 1937. The existing regulations, set forth at 29 CFR part 30 (part 30), prohibit discrimination in registered apprenticeship on the basis of race, color, religion, national origin, and sex, and require that sponsors of registered apprenticeship programs take affirmative action to provide equal opportunity in such programs.

The technical corrections being made, address minor publication errors, and therefore; should be treated as if they had been in the final rule published in the December 19, 2016 **Federal Register** (81 FR 92026).

List of Subjects in 29 CFR Part 30

Administrative practice and procedure, Apprenticeship, Employment, Equal employment opportunity, Reporting and recordkeeping requirements, Training.

For the reasons set out in the preamble, 29 CFR part 30 is amended by making the following correcting amendments:

PART 30—EQUAL EMPLOYMENT OPPORTUNITY IN APPRENTICESHIP

■ 1. The authority citation for part 30 continues to read as follows:

Authority: Sec. 1, 50 Stat. 664, as amended (29 U.S.C. 50; 40 U.S.C. 276c; 5 U.S.C. 301); Reorganization Plan No. 14 of 1950, 64 Stat. 1267, 3 CFR 1949–53 Comp. p. 1007.

§ 30.3 [Amended]

■ 2. Amend § 30.3 as follows:

■ a. In paragraph (a)(2)(iv), remove ''29 U.S.C. 2000ff *et seq.*'' and add in its place ''42 U.S.C. 2000ff *et seq.*''; and

■ b. In paragraph (b)(2)(i), remove ''29.5(c) of this title'' and add in its place ''29.5(b) of this title''.

Molly E. Conway,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2019–02019 Filed 2–11–19; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0049]

Special Local Regulations; Marine Events Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for two events, the Cambridge Classic Powerboat Race on May 18, 2019, and May 19, 2019, and the Oxford Funathlon swim event on June 1, 2019 (if necessary, rescheduled to June 2, 2019), to provide for the safety of life on navigable waterways during these events. Our regulation for marine events within the Fifth Coast Guard District identifies the regulated area for each event. During the enforcement periods, the Coast Guard patrol commander or designated marine event patrol may forbid and control the movement of all vessels in the regulated area.

DATES: The regulations in 33 CFR 100.501 will be enforced for the Cambridge Classic Powerboat Race regulated area listed in item b.21 in the Table to § 100.501 from 9:30 a.m. to 5:30 p.m. on May 18, 2019, and from 9:30 a.m. to 5:30 p.m. on May 19, 2019.

The regulations in 33 CFR 100.501 will be enforced for the regulated area listed in item b.14 in the Table to § 100.501 from 8:30 a.m. to 11:30 a.m. on June 1, 2019, and if necessary, due to inclement weather, from 8:30 a.m. to 11:30 a.m. on June 2, 2019. The regulated area is being enforced for the Oxford Funathlon.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region (WWM Division); telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard was notified by the Cambridge Power Boat Racing Association, Inc. on January 31, 2019, through submission of a marine event application, that due to a scheduling change, a change of dates is necessary to the dates previously published in the Code of Federal Regulations (CFR) for the annually scheduled Cambridge Classic Powerboat Race, as listed in the Table to 33 CFR 100.501. This year, the Coast Guard will enforce the special local regulations in 33 CFR 100.501 for the Cambridge Classic Powerboat Race regulated area from 9:30 a.m. to 5:30 p.m. on May 18, 2019 and from 9:30 a.m. to 5:30 p.m. on May 19, 2019. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Cambridge Classic Powerboat Race, which encompasses portions of Hambrooks Bay and the Choptank River, at Cambridge, MD.

The Coast Guard was notified by Charcot-Marie-Tooth Association and Therapies For Inherited Neuropathies, Inc. on September 19, 2018, through submission of a marine event application, that it that it will be conducting the swim portion of the Oxford Funathlon from 9:30 a.m. until 10:30 a.m. on June 1, 2019, and if necessary, due to inclement weather, from 9:30 a.m. until 10:30 a.m. on June 2, 2019. The swim event consists of approximately 40 participants competing on a designated 1300-meter course that starts at the ferry dock at Bellevue, MD, and finishes at the Tred Avon Yacht Club at Oxford, MD. The date and location proposed for this event is the same as those for the Oxford-Bellevue Sharkfest Swim event, sponsored by EnviroSports Productions, Inc. The Oxford Funathlon is being held in place of the Oxford-Bellevue Sharkfest Swim. The Coast Guard was notified by EnviroSports Productions, Inc. on December 20, 2018, that it will no longer be holding the Oxford-Bellevue Sharkfest Swim event in 2019 or any future year. Hazards associated with the Oxford Funathlon swim event

include participants swimming within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as swimming within approaches to local public and private marinas and public boat facilities. The Coast Guard will enforce the special local regulations in 33 CFR 100.501 for the Oxford Funathlon swim event regulated area from 8:30 a.m. to 11:30 a.m. on June 1, 2019, and if necessary, due to inclement weather, from 8:30 a.m. to 11:30 a.m. on June 2, 2019. Our regulation for marine events within the Fifth Coast Guard District, § 100.501, specifies the location of the regulated area for the Oxford-Bellevue Sharkfest Swim, which encompasses portions of the Tred Avon River, between Bellevue, MD and Oxford, MD.

This action is being taken to provide for the safety of life on navigable waterways during these events. As specified in § 100.501(c), during the enforcement periods, the Coast Guard patrol commander or designated marine event patrol may forbid and control the movement of all vessels in the regulated area. Vessel operators may request permission to enter and transit through a regulated area by contacting the Coast Guard patrol commander on VHF–FM channel 16.

This notice of enforcement is issued under authority of 33 CFR 100.501(f) and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of these enforcement periods on scene and via the Local Notice to Mariners and marine information broadcasts.

Dated: February 7, 2019.

Joseph B. Loring,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2019–02040 Filed 2–11–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0535; FRL–9988–40–Region 9]

Clean Air Plans; 2008 8-Hour Ozone Nonattainment Area Requirements; San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of three state implementation plan (SIP) revisions submitted by the State of California to meet Clean Air Act (CAA or ''the Act'') requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley, California ozone nonattainment area. First, the EPA is approving the portions of the ''2016 Ozone Plan for the 2008 8-Hour Ozone Standard'' (''2016 Ozone Plan'') that address the requirements to demonstrate attainment by the applicable attainment date and implementation of reasonably available control measures, among other requirements. Second, the EPA is approving the portions of the ''Revised Proposed 2016 State Strategy for the State Implementation Plan'' (''2016 State Strategy'') related to the ozone control strategy for the San Joaquin Valley for the 2008 ozone standards, including a specific aggregate emissions reduction commitment. Lastly, the EPA is approving an air district rule addressing the emission statement requirement for ozone nonattainment areas.

DATES: This rule will be effective on March 14, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0535. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

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

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I. Summary of the Proposed Action
II. Public Comments
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I. Summary of the Proposed Action

On August 31, 2018 (83 FR 44528), the EPA proposed to approve, under CAA section 110(k)(3), portions of submittals from the California Air Resources Board (CARB or ''State'') as revisions to the California SIP for the San Joaquin Valley 2008 ozone nonattainment area.[1] The relevant SIP revisions include an emissions statement rule (Rule 1160), the 2016 Ozone Plan, and the 2016 State Strategy, which were submitted on January 11, 1993, August 24, 2016, and April 27, 2017, respectively. The San Joaquin Valley Air Pollution Control District (SJVUAPCD or ''District'') adopted Rule 1160 (''Emission Statement'') on November 18, 1992, to comply with the CAA's SIP revision requirement for emission statement rules. The 2016 State Strategy submittal consists of documents originating from the District (*e.g.,* the 2016 Ozone Plan with Appendices and the District Governing Board Resolution) and from CARB (*e.g.,* the CARB Staff Report and Appendices). The 2016 State Strategy includes CARB's commitments for rulemaking over the next several years and aggregate emission reduction commitments for the South Coast Air Basin and San Joaquin Valley. Each of these SIP revisions includes documentation of public notice, comment, and opportunity for public hearing prior to adoption by CARB or the District.

In our August 31, 2018 proposed rule, we provided background material on the ozone standards,[2] area designations, and related SIP revision requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone standards, referred to as the SIP Requirements Rule (SRR). In short, the San Joaquin Valley nonattainment area is classified as Extreme for the 2008 ozone standards, and the 2016 Ozone Plan was developed to address the requirements for this area. The 2016 Ozone Plan relies on District Rule 1160 to meet the CAA requirements for emissions statement rules and is supported by the 2016 State Strategy, which includes commitments by CARB for rulemaking and for achievement of aggregate emission reductions of eight tons per day (tpd) of oxides of nitrogen (NO_X) in the San Joaquin Valley by 2031

[1] The San Joaquin Valley nonattainment area for the 2008 ozone standards generally covers the southern half of California's Central Valley and consists of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings counties, and the western portion of Kern County. A precise description of the San Joaquin Valley ozone nonattainment area is contained in 40 CFR 81.305.

[2] Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. The 2008 ozone standard is 0.075 parts per million (ppm) average over an 8-hour period. 73 FR 16436 (March 27, 2008).

to accelerate progress towards meeting the 2008 ozone standards in that area.

In our proposed rule, we also discussed a 2018 Circuit Court decision issued by the D.C. Circuit in *South Coast Air Quality Management Dist.* v. *EPA,* (''*South Coast II*'') [3] that vacated certain portions of our 2008 ozone SRR. We indicated that, in response to *South Coast II,* the EPA would be proposing action on certain elements of the 2016 Ozone Plan (*i.e.,* those elements affected by *South Coast II*) in a subsequent and separate rulemaking. These elements include the base year emissions inventory, the demonstration of reasonable further progress (RFP), the RFP motor vehicle emissions budgets, and the contingency measures. We proposed action on the SIP elements that are affected by *South Coast II* and that were not included in our August 31, 2018 proposed rule at 83 FR 61346 (November 29, 2018).

For our August 31, 2018 proposed rule, we reviewed the various SIP elements contained in the 2016 Ozone Plan (*i.e.,* except for those affected by *South Coast II*), District Rule 1160, and the relevant portions of the 2016 State Strategy, evaluated them for compliance with statutory and regulatory requirements, and concluded that they meet all applicable requirements. More specifically, we determined the following:

- The 2012 base year emission inventory from the 2016 Ozone Plan is comprehensive, accurate, and current, and that future year emissions inventories that are derived therefrom provide an acceptable basis for the attainment demonstration and vehicle miles traveled (VMT) offset demonstration in the 2016 Ozone Plan (see 83 FR 44531–44532 from the proposed rule);
- District Rule 1160 (''Emission Statements''), which requires, with certain allowable exceptions, all owners and operators of any stationary source category that emits or may emit volatile organic compounds (VOC) or NO_X to provide a written statement on an annual basis showing actual emissions of VOC and NO_X from that source, meets the requirements for emission statements under CAA section 182(a)(3)(B) for 2008 ozone nonattainment areas (see 83 FR 44532–44533 from the proposed rule);
- The process followed by the District to identify reasonably available control measures (RACM) is generally consistent with the EPA's recommendations and that the District's rules provide for the implementation of RACM for stationary and area sources of NO_X and VOC; [4] CARB and the metropolitan planning organizations provide for the implementation of RACM for mobile sources of NO_X and VOC; that there are no additional RACM that would advance attainment of the 2008 ozone standards in the San Joaquin Valley by at least one year; and that, therefore, the 2016 Ozone Plan provides for the implementation of all RACM as required by CAA section 172(c)(1) and 40 CFR 51.1112(c) for the 2008 ozone standards (see 83 FR 44533–44535 from the proposed rule);
- The photochemical modeling in the 2016 Ozone Plan shows that existing CARB and District control measures are sufficient to attain the 2008 ozone standards by 2031 at all monitoring sites in the San Joaquin Valley; that, given the extensive discussion in the 2016 Ozone Plan of modeling procedures, test and performance analyses called for in the modeling protocol and the good model performance, the modeling is adequate to support the attainment demonstration; and that, therefore, the 2016 Ozone Plan meets the attainment demonstration requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108 for the 2008 ozone standards (see 83 FR 44535–44539 from the proposed rule);
- As provided in our SRR, the previously-approved 15 percent Rate-of-Progress (ROP) demonstration for the 1-hour ozone NAAQS for the San Joaquin Valley meets the ROP requirements of CAA section 182(b)(1) for the San Joaquin Valley for the 2008 ozone standards because the boundaries of the San Joaquin Valley nonattainment area for the 1-hour ozone standards and the 2008 ozone standards are the same (see 83 FR 44539 from the proposed rule);
- The 2016 Ozone Plan (particularly, section D.3 (''VMT Offsets'') of appendix D (''Mobile Source Control Strategy'') demonstrates that CARB has adopted sufficient transportation control strategies (TCSs) to offset the growth in emissions from growth in VMT and vehicle trips in the San Joaquin Valley for the purposes of the 2008 ozone standards and thereby complies with the VMT emissions offset requirement in CAA section 182(d)(1)(A) and 40 CFR 51.1102 (see 83 FR 44540–44542 from the proposed rule);
- Through EPA-approved District Rules 2201 (''New and Modified Stationary Source Review''), 4306 (''Boilers, Steam Generators, and Process Heaters—Phase 3''), and 4352 (''Solid Fuel-Fired Boilers, Steam Generators, and Process Heaters''), the 2016 Ozone Plan meets the clean fuels or advanced control technology for boilers requirement in CAA section 182(e)(3) and 40 CFR 51.1102 for the 2008 ozone standards (see 83 FR 44543 from the proposed rule);
- The 2031 budgets from the 2016 Ozone Plan are consistent with the attainment demonstration, are clearly identified and precisely quantified, and meet all other applicable statutory and regulatory requirements, including the adequacy criteria in 40 CFR 93.118(e)(4) and (5) (see 83 FR 44543–44545 from the proposed rule); and
- The 2016 Ozone Plan adequately addresses the enhanced vehicle inspection and maintenance (I/M) requirements in CAA 182(c)(3) and 40 CFR 51.1102 and the enhanced ambient air monitoring requirements in CAA section 182(c)(1) and 40 CFR 51.1102 through previous EPA approvals of California's I/M program, Photochemical Assessment Monitoring Station network, and the most recent annual monitoring network plan for the San Joaquin Valley (see 83 FR 44545–44547 from the proposed rule).

Finally, we proposed to approve two committal measures because they strengthen the SIP: (1) CARB's commitments, in the 2016 State Strategy and related resolution, to a rulemaking schedule and an aggregate emission reduction of eight tpd of NO_X in the San Joaquin Valley by 2031, and (2) the District's commitments, in the 2016 Ozone Plan, to revise District Rules 4311 (''Flares'') and 4694 (''Wine Fermentation and Storage'') to include additional controls to the extent such controls are technologically achievable and economically feasible.

Please see our August 31, 2018 proposed rule and the related Technical Support Document for more information concerning the background for this action and for a more detailed discussion of the rationale for approval of the above listed elements of the 2016 Ozone Plan, District Rule 1160, and the ozone-related commitments in the 2016 State Strategy for San Joaquin Valley.

II. Public Comments

The public comment period on the proposed rule opened on August 31,

[3] *South Coast Air Quality Management Dist.* v. *EPA,* 882 F.3d 1138 (D.C. Cir. 2018). The term ''South Coast II'' is used in reference to the 2018 court decision to distinguish it from a decision published in 2006 also referred to as ''South Coast.'' The earlier decision involved a challenge to the EPA's Phase 1 implementation rule for the 1997 ozone standard. *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006).

[4] For our proposed action, we also considered our previous evaluations of the District's rules in connection with our approval of the San Joaquin Valley Reasonably Available Control Technology (RACT) SIP demonstration for the 2008 ozone standards. See 83 FR 41006 (August 17, 2018).

2018, the date of its publication in the **Federal Register**, and closed on October 1, 2018. During this period, the EPA received two anonymous comments. One commenter expressed overall support for the proposed action. The second commenter raised issues that are outside the scope of this rulemaking, including forest management practices and the greenhouse gas emission impacts from wildfires. Such comments do not concern any of the specific issues raised in the proposal, nor do they address the EPA's rationale for the proposed action. Therefore, the EPA is not responding to these comments and is finalizing the action as proposed. All the comments received are included in the docket for this action.

III. Final Action

For the reasons discussed in our proposed action and summarized above, the EPA is taking final action under CAA section 110(k)(3) to approve as a revision to the California SIP the following portions of the San Joaquin Valley 2016 Ozone Plan.[5]

- RACM demonstration as meeting the requirements of CAA section 172(c)(1) and 40 CFR 51.1112(c).
- ROP demonstration as meeting the requirements of CAA section 182(b)(1).
- Attainment demonstration as meeting the requirements of CAA section 182(c)(2)(A) and 40 CFR 51.1108.
- Enhanced monitoring as meeting the requirements of CAA section 182(c)(1) and 40 CFR 51.1102.
- Enhanced vehicle inspection and maintenance programs as meeting the requirements of CAA section 182(c)(3) and 40 CFR 51.1102.
- Provisions for clean fuels or advanced control technology for boilers as meeting the requirements of CAA section 182(e)(3) and 40 CFR 51.1102.
- VMT emissions offset demonstration as meeting the requirements of CAA section 182(d)(1)(A) and 40 CFR 51.1102, and
- Motor vehicle emissions budgets for the attainment year of 2031 because they are consistent with the attainment demonstration proposed for approval herein and meet the other criteria in 40 CFR 93.118(e).[6] The approved motor vehicle emissions budgets (in tpd, average summer weekday) are as follows:

TABLE 1—MOTOR VEHICLE BUDGETS FOR 2031 (TPD)

County	VOC	NO_X
Fresno	4.3	12.5
Kern (SJV)	4.1	10.8
Kings	0.8	2.3
Madera	0.9	2.0
Merced	1.3	4.1
San Joaquin	3.3	5.5
Stanislaus	2.0	4.7
Tulare	1.9	3.7

In addition, we are taking final action to approve District Rule 1160 titled ''Emission Statements'' as a revision to the California SIP because it meets all the applicable requirements for emission statements. We are also approving the Emission Statement section of the 2016 Ozone Plan as meeting the requirements of CAA section 182(a)(3)(B) and 40 CFR 51.1102.

Finally, we are taking final action to approve, as additional measures that strengthen the SIP, CARB's commitments in the 2016 State Strategy to a rulemaking schedule and an aggregate emission reduction of eight tpd of NO_X by 2031 and District's commitments in the 2016 Ozone Plan to amend Rules 4311 (Flares) and 4694 (Wine Fermentation and Storage) to include additional controls to the extent such controls are technologically achievable and economically feasible.

As discussed in the August 31, 2018 proposed rule, we are not taking final action at this time on the base year emissions inventory, the RFP demonstration, the motor vehicle emissions budgets for RFP milestone years, and the contingency measures portions of the 2016 Ozone Plan. We proposed action on these remaining elements of the 2016 Ozone Plan on November 29, 2018 (83 FR 61346).

IV. Incorporation by Reference

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of a San Joaquin Valley Unified Air Pollution Control District rule (*i.e.,* Rule 1160) described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, this document available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

[5] The EPA has already approved the portions of the 2016 Ozone Plan (subchapter 3.4 (''Reasonably Available Control Technology (RACT) Demonstration'') and appendix C (''Stationary and Area Source Control Strategy Evaluations'') that relate to the RACT requirements under CAA section 182(b)(2) and 40 CFR 51.1112.

[6] On November 29, 2018 (83 FR 61346), the EPA proposed, among other things, to approve revised motor vehicle emissions budgets for year 2031 for San Joaquin Valley for the 2008 ozone standards. If we finalize the approval of the revised budgets as proposed, then the revised budgets will replace those that we are approving in today's action.

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, this final 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 12, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, 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.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(191)(i)(E), (c)(496)(ii)(B)(*2*) and (*3*), and (c)(513) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(191) * * *

(i) * * *

(E) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 1160, ''Emission Statements,'' adopted on November 18, 1992.

* * * * *

(496) * * *

(ii) * * *

(B) * * *

(*2*) Resolution 16–6–20, In the Matter of: Adopting the San Joaquin Valley Unified Air Pollution Control District 2016 Ozone Plan for the 2008 8-Hour Ozone Standard, June 16, 2016, commitment to adopt, implement and submit measures committed to in the 2016 Ozone Plan for the 2008 8-Hour Ozone Standard, only.

(*3*) 2016 Ozone Plan for 2008 8-Hour Ozone Standard, adopted June 16, 2016, excluding subchapters 3.4 (''Reasonably Available Control Technology''), 3.11.1 (''Emission Inventory Requirements''), 6.3.2 (''Reasonable Further Progress Requirements''), and 6.4 (''Contingency for Attainment''); appendix C (''Stationary and Area Source Control Strategy Evaluations''); and tables D–1 and D–4 through D–8 in attachment B (''San Joaquin Valley 8-Hr Ozone Motor Vehicle Emissions Budgets'') of appendix D (''Mobile Source Control Strategy'').

* * * * *

(513) The following plan was submitted on April 27, 2017, by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) California Air Resources Board.

(*1*) Resolution 17–7, 2016 State Strategy for the State Implementation Plan, March 23, 2017, commitments to a rulemaking schedule and to achieve aggregate emission reductions of 8 tons per day of NO_X in San Joaquin Valley by 2031, and the rulemaking schedule included in attachment A to Resolution 17–7, only.

(*2*) Revised Proposed 2016 State Strategy for the State Implementation Plan, adopted on March 23, 2017, except for the subchapter titled ''South Coast Commitment'' in chapter 3 (''Proposed SIP Commitment'').

[FR Doc. 2019–01686 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0490; FRL–9988–60–Region 9]

Approval and Promulgation of Implementation Plans; California; South Coast Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a state implementation plan (SIP) revision submitted by California to address Clean Air Act (CAA or ''Act'') requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the Los Angeles-South Coast air basin (South Coast) Serious $PM_{2.5}$ nonattainment area. The EPA is also approving 2017 and 2019 motor vehicle emissions budgets for transportation conformity purposes and inter-pollutant trading ratios for use in transportation conformity analyses.

DATES: This final rule is effective on March 14, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2017–0490. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, 415–972–3964, *Vagenas.Ginger@epa.gov*.

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

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I. Background

Epidemiological studies have shown statistically significant correlations between elevated levels of $PM_{2.5}$ (particulate matter with a diameter of 2.5 microns or less) and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[1] $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides, sulfur oxides, volatile organic compounds, and ammonia (''secondary $PM_{2.5}$'').[2]

The EPA first established NAAQS for $PM_{2.5}$ on July 18, 1997.[3] On October 17, 2006, the EPA revised the 24-hour NAAQS for $PM_{2.5}$ to provide increased protection of public health by lowering the level from 65 micrograms per cubic meter (μg/m³) to 35 μg/m³.[4]

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On November 13, 2009, the EPA designated the South Coast as nonattainment for the 2006 24-hour $PM_{2.5}$ standards.[5] This designation became effective on December 14, 2009.[6] On June 2, 2014, the EPA classified the South Coast area as ''Moderate'' nonattainment for both the 1997 $PM_{2.5}$ standards and the 2006 $PM_{2.5}$ standards under subpart 4 of part D, title I of the Act.[7]

On January 13, 2016, the EPA published a final rule reclassifying the South Coast area as ''Serious'' nonattainment under subpart 4, based on the EPA's determination that the area could not practicably attain the 2006 $PM_{2.5}$ standards by the Moderate area attainment date, which was December 31, 2015.[8] This reclassification became effective on February 12, 2016.

The local air district with primary responsibility for developing a plan to attain the 2006 $PM_{2.5}$ NAAQS in this area is the South Coast Air Quality Management District (''District'' or SCAQMD). The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. State authority for regulating sources in the South Coast is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources and some categories of consumer products.

As a consequence of its reclassification as a Serious $PM_{2.5}$ nonattainment area, the South Coast became subject to a new attainment date under CAA section 188(c)(2) and to the requirement to submit a Serious area plan that satisfies the requirements of part D of title I of the Act, including the requirements of subpart 4, for the 2006 $PM_{2.5}$ NAAQS.[9] As explained in the EPA's final reclassification action, the Serious area plan for the South Coast must include provisions to assure that the best available control measures (BACM) for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors will be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B)), and a demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, which is the latest permissible attainment date under CAA section 188(c)(2).[10]

On October 3, 2018, we proposed to approve portions of a SIP revision submitted by California to address CAA requirements for the 2006 24-hour $PM_{2.5}$ NAAQS in South Coast Serious nonattainment area.[11] The submitted SIP revision is the ''Final 2016 Air Quality Management Plan (March 2017),'' adopted by the SCAQMD Governing Board on March 3, 2017 (''2016 $PM_{2.5}$ Plan'' or ''Plan''). CARB submitted the 2016 $PM_{2.5}$ Plan to the EPA on April 27, 2017.[12]

The EPA proposed to approve the following portions of the 2016 $PM_{2.5}$ Plan under CAA section 110(k)(3): The 2012 base year emissions inventory, provisions assuring that BACM, including best available control technology (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors will be implemented no later than 4 years after the area was reclassified, the demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, provisions that require reasonable further progress (RFP) toward attainment by the applicable attainment date, quantitative milestones that are to be achieved every 3 years until the area is redesignated attainment and that demonstrate RFP, and 2017 and 2019 motor vehicle emissions budgets.[13]

The EPA also proposed to approve the inter-pollutant trading mechanism provided in the 2016 $PM_{2.5}$ Plan and clarified in a March 14, 2018 letter from the District, for use in transportation conformity analyses for the 2006 $PM_{2.5}$ NAAQS, in accordance with 40 CFR 93.124. Finally, the EPA proposed to find that the requirement for contingency measures to be undertaken if the area fails to make reasonable further progress under CAA section 172(c)(9) is moot as applied to the 2017 milestone year because the State and District have demonstrated to the EPA's satisfaction that the 2017 milestones have been met. The rationale for our proposed action is included in the proposal and will not be restated here. We did not propose any action on the attainment contingency measure component of the 2016 $PM_{2.5}$ Plan.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on November 2, 2018. During this comment period, we received three

[1] 78 FR 3086, 3088 (January 15, 2013).

[2] 72 FR 20586, 20589 (April 25, 2007).

[3] 62 FR 38652. The initial NAAQS for $PM_{2.5}$ included annual standards of 15.0 μg/m³ based on a 3-year average of annual mean $PM_{2.5}$ concentrations and 24-hour (daily) standards of 65 μg/m³ based on a 3-year average of 98th percentile 24-hour concentrations (40 CFR 50.7).

[4] 40 CFR 50.13 and 71 FR 61144. In 2012, the EPA revised the annual standards to lower them to 12 μg/m³ (78 FR 3086 (January 15, 2013), codified at 40 CFR 50.18). Unless otherwise noted, all references to the $PM_{2.5}$ standards in this notice are to the 2006 24-hour NAAQS of 35 μg/m³ codified at 40 CFR 50.13.

[5] 74 FR 58688.

[6] 40 CFR 81.305.

[7] 79 FR 31566. The EPA took this action in response to a decision of the Court of Appeals for the D.C. Circuit finding that the EPA had erred in implementing the $PM_{2.5}$ NAAQS pursuant solely to the general implementation provisions of subpart 1 of Part D, Title I of the Act, without also considering the particulate matter-specific provisions of subpart 4 of Part D. *Natural Resources Defense Council (NRDC)* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013).

[8] 81 FR 1514.

[9] 81 FR 1514, 1518 (January 13, 2016).

[10] Id.

[11] 83 FR 49872.

[12] Letter dated April 27, 2017, from Richard Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX, with enclosures. Our proposed rule erroneously stated that we were also proposing to act on CARB's ''2016 State Strategy for the State Implementation Plan (March 2017),'' also submitted on April 27, 2017. That submission, however, is not a necessary component of the 2016 PM2.5 Plan. See email dated November 15, 2018, from Scott King, CARB, to Ginger Vagenas, EPA Region IX, Subject: ''RE: question about SC 2006 PM2.5 Plan.''

[13] 83 FR 49872.

anonymous comments. Two of these commenters expressed criticism of a political nature unrelated to this action specifically or to environmental protection generally. The third commenter raised concerns about the damage and risks associated with hydraulic fracturing (commonly referred to as ''fracking''). Hydraulic fracturing is not addressed in this action. After reviewing these comments, we have concluded that they are outside the scope of our proposed action and fail to identify any material issue necessitating a response. The comments have been added to the docket for this action and are accessible at *https://www.regulations.gov/docket?D=EPA-R09-OAR-2017-0490*.

III. Final Action

The EPA is taking final action to approve portions of the 2016 $PM_{2.5}$ Plan submitted by the State of California to address attainment of the 2006 $PM_{2.5}$ NAAQS in the South Coast $PM_{2.5}$ Serious nonattainment area. We are finalizing approval of the following elements of the 2016 $PM_{2.5}$ Plan under CAA section 110(k)(3):

1. The 2012 base year emission inventories (CAA section 172(c)(3));
2. the demonstration that BACM, including BACT, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors will be implemented no later than 4 years after the area was reclassified (CAA section 189(b)(1)(B));
3. the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable but no later than December 31, 2019 (CAA sections 188(c)(2) and 189(b)(1)(A));
4. Plan provisions that require RFP toward attainment by the applicable date (CAA section 172(c)(2));
5. quantitative milestones that are to be achieved every 3 years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable date (CAA section 189(c));
6. motor vehicle emissions budgets for 2017 and 2019, as shown in Table 1 (CAA section 176(c) and 40 CFR part 93, subpart A); and
7. the inter-pollutant trading mechanism provided in the 2016 $PM_{2.5}$ Plan and clarified in a March 14, 2018 letter from the District, for use in transportation conformity analyses for the 2006 $PM_{2.5}$ NAAQS, in accordance with 40 CFR 93.124.

TABLE 1—BUDGETS FOR THE SOUTH COAST FOR THE 2006 $PM_{2.5}$ STANDARD

[Average annual tons per day]

	2017 (RFP year)			2019 (attainment year)		
	$PM_{2.5}$	NO_X	VOC	$PM_{2.5}$	NO_X	VOC
Budgets	21	200	99	20	169	83

We are also finalizing our proposal to determine that the requirement for contingency measures to be undertaken if the area fails to make reasonable further progress under CAA section 172(c)(9) is moot as applied to the 2017 milestone year because CARB and the District have demonstrated to the EPA's satisfaction that the 2017 milestones have been met.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely 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 the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 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, Ammonia, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 12, 2018.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Part 52, chapter I, 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.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(513)(ii)(B) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(513) * * *

(ii) * * *

(B) *South Coast Air Quality Management District.* (*1*) The following portions of the ''Final 2016 Air Quality Management Plan (March 2017),'' adopted March 3, 2017: Chapter 5 (''$PM_{2.5}$ Modeling Approach''), pages 5–17 through 5–27; Appendix III (''Base and Future Emission Inventory''), Attachment A (''Annual Average Emissions by Source Category in South Coast Air Basin'') for $PM_{2.5}$, NO_X, SO_2, VOC, and NH3 for years 2012, 2017, 2019, and 2020 and Attachment D, tables D–1, D–3, D–7 and D–9; Appendix IV–A (''SCAQMD's Stationary and Mobile Source Control Measures''), Table IV–A–4 and section 2 (''$PM_{2.5}$ Control Measures''); Appendix IV–C (''Regional Transportation Strategy and Control Measures''), section IV (''TCM Best Available Control Measure (BACM) Analysis for 2006 24-Hour and 2012 Annual $PM_{2.5}$ NAAQS''); Appendix V (''Modeling and Attainment Demonstration''), Chapter 7 (''24-hour $PM_{2.5}$ Demonstration'') and Attachment 8 (''24-hour Unmonitored Area Analysis Supplement''); Appendix VI–A (''Reasonably Available Control Measures (RACM)/Best Available Control Measures (BACM) Demonstration''), pages VI–A–13 through VI–A–42, Attachment VI–A–1 (''Evaluation of SCAQMD Rules and Regulations''), Attachment VI–A–2 (''Control Measure Assessment''), and Attachment VI–A–3 (''California Mobile Source Control Program Best Available Control Measures/Reasonably Available Control Measures Assessment''); Appendix VI–C (''Reasonable Further Progress (RFP) and Milestone Years''), pages VI–C–5 through VI–C–8, and Attachment VI–C–1 (''California Existing Mobile Source Control Program''); Appendix VI–D (''General Conformity and Transportation Conformity Budget''), pages VI–D–2 through VI–D–6 and excluding tables VI–D–1 through 3; and Appendix VI–F (''Precursor Requirements'').

(*2*) Letter dated March 14, 2018 from Philip Fine, Deputy Executive Officer, Planning, Rule Development, and Area Sources, South Coast Air Quality Management District, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX.

(*3*) Letter dated June 15, 2018 from Philip Fine, Deputy Executive Officer, Planning, Rule Development, and Area Sources, South Coast Air Quality Management District, to Amy Zimpfer, Associate Director, Air Division, EPA Region IX, regarding ''Condensable and Filterable Portions of $PM_{2.5}$ Emissions in the 2016 AQMD.''

* * * * *

[FR Doc. 2019–01922 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0194; FRL–9988–83–OAR]

RIN 2060–AT70

National Emission Standards for Hazardous Air Pollutants: Leather Finishing Operations Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Leather Finishing Operations source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action addressing startup, shutdown, and malfunction (SSM), electronic reporting, and clarification of rule provisions. These final amendments address emissions during periods of SSM, add electronic reporting, and revise certain rule requirements and provisions. Although these amendments will not reduce emissions of hazardous air pollutants (HAP), they are expected to improve compliance and implementation of the rule.

DATES: This final rule is effective on February 12, 2019.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0194. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time, Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Bill Schrock, Natural Resources Group, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5032; fax number: (919) 541–0516; and email address: *schrock.bill@epa.gov.* For specific information regarding the risk modeling methodology, contact Matthew Woody, Health and Environmental Impacts Division (C539–

02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1535; fax number: (919) 541–0840; and email address: *woody.matthew@epa.gov*. For information about the applicability of the NESHAP to a particular entity, contact John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building (Mail Code 2227A), 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov*.

SUPPLEMENTARY INFORMATION: *Preamble acronyms and abbreviations.* We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CRA Congressional Review Act
ERT Electronic Reporting Tool
HAP hazardous air pollutant(s)
HI hazard index
HQ hazard quotient
ICR Information Collection Request
MACT maximum achievable control technology
NEI National Emissions Inventory
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
REL recommended exposure limit
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
RTO regenerative thermal oxidizer
RTR risk and technology review
SSM startup, shutdown, and malfunction
TOSHI target organ-specific hazard index
UMRA Unfunded Mandates Reform Act
VCS voluntary consensus standards

Background information. On March 14, 2018 (83 FR 11314), the EPA proposed revisions to the Leather Finishing Operations NESHAP based on our RTR. On May 15, 2018 (83 FR 22438), the EPA re-opened the comment period on the proposed rule that closed on April 30, 2018, extending the comment period to June 14, 2018. In this action, we are finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rule and provide our responses in this preamble. A summary of all other public comments on the proposal and the EPA's responses to those comments is available in the document titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Leather Finishing Operations NESHAP,* in Docket ID No. EPA–HQ–OAR–2003–0194. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

Organization of this document. The information in this preamble is organized as follows:

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I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code
Leather finishing operations	3161

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the

internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/leather-finishing-operations-national-emission-standards-hazardous*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

Additional information is available on the RTR website at *https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html*. This information includes an overview of the RTR program, links to project websites for the RTR source categories, and detailed emissions and other data we used as inputs to the risk assessments.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by April 15, 2019. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources, these standards are commonly referred to as maximum achievable control technology (MACT) standards and must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). In developing MACT standards, CAA section 112(d)(2) directs the EPA to consider the application of measures, processes, methods, systems, or techniques, including, but not limited to those that reduce the volume of or eliminate HAP emissions through process changes, substitution of materials, or other modifications; enclose systems or processes to eliminate emissions; collect, capture, or treat HAP when released from a process, stack, storage, or fugitive emissions point; are design, equipment, work practice, or operational standards; or any combination of the above.

For these MACT standards, the statute specifies certain minimum stringency requirements, which are referred to as MACT floor requirements, and which may not be based on cost considerations. See CAA section 112(d)(3). For new sources, the MACT floor cannot be less stringent than the emission control achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than floors for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources). In developing MACT standards, we must also consider control options that are more stringent than the floor under CAA section 112(d)(2). We may establish standards more stringent than the floor, based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f).[1] For more information on the statutory authority for this rule, see 83 FR 11314, March 14, 2018.

B. What is the Leather Finishing Operations source category and how does the NESHAP regulate HAP emissions from the source category?

The EPA promulgated the Leather Finishing Operations NESHAP on February 27, 2002 (67 FR 9156). The standards are codified at 40 CFR part 63, subpart TTTT. The leather finishing industry consists of facilities that adjust and improve the physical and aesthetic characteristics of the leather surface through the multistage application of a coating comprised of dyes, pigments, film-forming materials, and performance modifiers dissolved or suspended in liquid carriers. The Leather Finishing Operations NESHAP does not apply to equipment used solely for leather tanning operations or to portions of leather finishing operations using a solvent degreasing process subject to the Halogenated Solvent Cleaning NESHAP (see 40 CFR 63.5290(c)). The source category covered by this MACT

[1] The Court has affirmed this approach of implementing CAA section 112(f)(2)(A): *NRDC* v. *EPA,* 529 F.3d 1077, 1083 (D.C. Cir. 2008) (''If EPA determines that the existing technology-based standards provide an 'ample margin of safety,' then the Agency is free to readopt those standards during the residual risk rulemaking.'').

standard currently includes four facilities.

Leather finishing is considered a dry operation as opposed to the ''wet-end'' operations associated with leather tanning. As further discussed in section II.B of the proposal preamble (83 FR 11314, March 14, 2018), leather finishing operations can be co-located with wet-end tannery operations or performed in stand-alone facilities; however, equipment used solely for leather tanning (or retanning) operations is not subject to the Leather Finishing Operations NESHAP. In the dry-end leather finishing operations, coatings are typically applied to the leather substrate using spray, roll, and flow coating techniques. The emission source types subject to the emission limits under the Leather Finishing Operations NESHAP include, but are not limited to, coating and spraying equipment, coating storage and mixing, and dryers. Refer to section II.B of the proposal preamble (83 FR 11314, March 14, 2018) for discussion of emissions from these and additional emission source types, including the HAP emitted.

The MACT standards address emissions from four types of leather product process operations: (1) Upholstery leather with greater than or equal to 4 grams of add-on finish per square foot of leather, (2) upholstery leather with less than 4 grams of add-on finish per square foot of leather, (3) water-resistant leather, and (4) non-water-resistant leather. The standards limit emissions from new and existing leather finishing operations and are expressed in terms of total HAP emissions per 1,000 square feet of leather processed over a rolling 12-month compliance period. Sources must record the mass of HAP in coatings applied to the leather either through an inventory mass balance or ''measure-as-applied'' approach. Using the mass balance approach, sources may choose to account for disposal of excess finish instead of assuming any excess finish is also emitted. Emissions are calculated based on the assumption that the entire HAP content of the applied finish is released to the environment. Sources using an add-on control device may account for the emission reduction achieved from the control device as measured by a performance test conducted in accordance with the requirements of the Leather Finishing Operations NESHAP. We are not finalizing any revisions to the numerical emission limits nor to the methods for determining compliance with these limits.

C. What changes did we propose for the Leather Finishing Operations source category in our March 14, 2018, proposal?

On March 14, 2018, the EPA published a proposed rule in the **Federal Register** for the Leather Finishing Operations NESHAP, 40 CFR part 63, subpart TTTT, that took into consideration the RTR analyses. In the proposed rule, we proposed amendments to the SSM provisions of the MACT rule, a new requirement to electronically report performance test data, and clarifications to certain monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules, as well as a correction to the title of Table 2 to 40 CFR part 63, subpart TTTT. We proposed no revisions to the numerical emission limits based on our technology review and risk analyses.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the Leather Finishing Operations source category. This action also finalizes other changes to the NESHAP, including amendments to the SSM provisions, addition of electronic reporting of performance test data, and clarifications to certain monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules, as well as a correction to the title of Table 2 to 40 CFR part 63, subpart TTTT.

A. What are the final rule amendments based on the risk review for the Leather Finishing Operations source category?

We found risk due to emissions of air toxics to be acceptable from this source category and determined that the current NESHAP provides an ample margin of safety to protect public health and prevents an adverse environmental effect. Therefore, we did not propose and are not finalizing any revisions to the Leather Finishing Operations NESHAP based on our analyses conducted under CAA section 112(f).

B. What are the final rule amendments based on the technology review for the Leather Finishing Operations source category?

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6).

C. What are the final rule amendments addressing emissions during periods of startup, shutdown, and malfunction?

We are finalizing the proposed amendments to the Leather Finishing Operations NESHAP to remove and revise provisions related to SSM. In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. As detailed in section IV.C of the proposal preamble (83 FR 11314, March 14, 2018), the Leather Finishing Operations NESHAP requires that the standards apply at all times (see 40 CFR 63.5320(a)), consistent with the Court decision in *Sierra Club* v. *EPA,* 551 F. 3d 1019 (DC Cir. 2008). The EPA took into account startup and shutdown periods in the 2002 rulemaking by applying a standard based on total coating used and HAP content and requiring a mass balance compliance method that was applicable for all operations, even periods of startup and shutdown. As a result, the EPA is not finalizing any changes to the current requirement that all standards apply during those periods. Refer to section IV.C of the March 14, 2018, proposal preamble for further discussion of the EPA's rationale for this decision.

Further, the EPA is not finalizing standards for malfunctions. As discussed in section IV.C of the March 14, 2018, proposal preamble, the EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards, although the EPA has the discretion to set standards for malfunctions where feasible. For the Leather Finishing Operations source category, it is unlikely that a malfunction would result in a violation of the standards, and no comments were submitted that would suggest otherwise. There are no instances where pollution control equipment could malfunction because none of the four facilities subject to the Leather Finishing Operations NESHAP use pollution control equipment. Further, the standards are expressed as a yearly rolling average, and compliance is primarily dependent on the coating's

HAP composition. Therefore, a malfunction of process equipment is not likely to result in a violation of the standards, and we have no information to suggest that it is feasible or necessary to establish standards for any type of malfunction associated with leather finishing operations. Refer to section IV.C of the March 14, 2018, proposal preamble for further discussion of the EPA's rationale for the decision not to set standards for malfunctions, as well as a discussion of the actions a source could take in the unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, given that administrative and judicial procedures for addressing exceedances of the standards fully recognize that violations may occur despite good faith efforts to comply and can accommodate those situations.

As is explained in more detail below, we are finalizing two proposed revisions to the General Provisions table to 40 CRF part 63, subpart TTTT, to eliminate two General Provisions that include rule language providing an exemption for periods of SSM. Additionally, we are finalizing our proposal to eliminate language related to SSM that treats periods of startup and shutdown the same as periods of malfunction, as explained further below. Finally, we are finalizing our proposal to revise the Deviation Notification Report and related records as they relate to malfunctions, as further described below. As discussed in section IV.C of the March 14, 2018, proposal preamble, these revisions are consistent with the requirement in 40 CFR 63.5320(a) that the standards apply at all times. Refer to sections III.C.1 through 5 of this preamble for a detailed discussion of these amendments.

1. 40 CFR 63.5320(b) General Duty

We are finalizing as proposed revision of the General Provisions table to 40 CFR part 63, subpart TTTT (Table 2), entry for 40 CFR 63.6(e) by combining all of paragraph (e) into one row and changing the ''yes'' in column four to ''no.'' We are replacing reference to 40 CFR 63.6(e) with new general duty regulatory text at 40 CFR 63.5320(b) that reflects the general duty to minimize emissions while eliminating the reference in 40 CFR 63.6(e) to periods covered by an SSM exemption. Refer to section IV.D.1.a of the proposal preamble (83 FR 11314, March 14, 2018) for further discussion of this revision.

2. 40 CFR 63.5360(b) Compliance With Standards

We are finalizing as proposed removal of the sentence, ''This includes periods of startup, shutdown, and malfunction.'' in 40 CFR 63.5360(b), which refers to the requirement to report each instance in which a source did not meet the standard. Refer to section IV.D.1.b of the proposal preamble (83 FR 11314, March 14, 2018) for further discussion of this revision.

3. 40 CFR 63.5380 Performance Testing

We are finalizing as proposed revision of the General Provisions table to 40 CFR part 63, subpart TTTT (Table 2), entry for 40 CFR 63.7(e)(1) by adding a separate row for 40 CFR 63.7(e)(1) and specifying ''no'' in column four. We are replacing reference to 40 CFR 63.7(e)(1) with a performance testing requirement at 40 CFR 63.5380(b). Refer to section IV.D.1.c of the proposal preamble (83 FR 11314, March 14, 2018) for further discussion of these revisions.

4. 40 CFR 63.5430 Recordkeeping

We are finalizing as proposed revision of the Deviation Notification Report to include two new reporting elements: (1) An estimate of the quantity of HAP emitted during the 12-month period of the report in excess of the standard, and (2) the cause of the events that resulted in the deviation from the standard (including unknown cause, if applicable). We are finalizing the proposed requirement that any source submitting a Deviation Notification Report also keep a record of this information, as well as a record of the actions taken to minimize emissions, and we are finalizing revision of 40 CFR 63.5420(b)(3) to clarify records already required. Finally, we are finalizing as proposed revision of the General Provisions table to 40 CFR part 63, subpart TTTT (table 2), entry for 40 CFR 63.10(b)(2) to clarify the recordkeeping requirements for facilities that deviate from the standards as a result of a malfunction. Refer to section IV.D.1.d of the proposal preamble (83 FR 11314, March 14, 2018) for further discussion of these revisions.

5. 40 CFR 63.5420 Reporting

We are finalizing as proposed revision of the General Provisions table to subpart TTTT (Table 2) entry for 40 CFR 63.10(d)(5) to clarify the reporting requirements for facilities that deviate from the standards as a result of a malfunction. We are finalizing as proposed revision of 40 CFR 63.5420(b)(3) to clarify that the Deviation Notification Report should include an indication of the 12-month period of the report. We are also finalizing as proposed two new reporting elements to include in the Deviation Notification Report: (1) the cause of the events that resulted in the source failing to meet the standard as determined under 40 CFR 63.5330 (*i.e.,* the compliance ratio exceeds 1.00) during the 12-month period (including unknown cause, if applicable) and (2) an estimate of the quantity of HAP (in pounds) emitted during the 12-month period of the report in excess of the standard, calculated by subtracting the ''Allowable HAP Loss'' from the ''Actual HAP Loss.'' Refer to section IV.D.1.e of the proposal preamble (83 FR 11314, March 14, 2018) for further discussion of these revisions.

6. 40 CFR 63.5460 Definitions

We are finalizing as proposed revision of the definition of ''Deviation'' to read ''Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source, fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limits or work practice standards.'' This revision removes language that differentiated between normal operations, startup, and shutdown, and malfunction events. Refer to section IV.D.1.f of the proposal preamble (83 FR 11314, March 14, 2018) for further discussion of this revision.

D. What other changes have been made to the NESHAP?

We are finalizing as proposed amendments to the Leather Finishing Operations NESHAP to clarify the monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules and to correct the title of Table 2 to 40 CFR part 63, subpart TTTT. Refer to section IV.D.3 of the proposal preamble (83 FR 11314, March 14, 2018) for a detailed description of these amendments.

E. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on February 12, 2019. The compliance date for existing leather finishing operations is February 12, 2019. New sources must comply with all of the standards immediately upon the effective date of the standard, February 12, 2019, or upon startup, whichever is later. The tasks necessary for existing facilities to comply with these proposed amendments related to SSM periods will require no time or resources. No facilities will be subject to

the requirement to submit reports electronically (see below). Therefore, existing facilities will be able to comply with these proposed amendments related to SSM periods and the use of the electronic reporting software discussed in section III.F of this preamble as soon as the final rule is effective, which will be the date of publication of the final rule in the **Federal Register**.

F. What are the requirements for submission of performance test data to the EPA?

As we proposed, the EPA is taking a step to increase the ease and efficiency of data submittal and data accessibility. Specifically, the EPA is finalizing the requirement for owners and operators of leather finishing operations facilities to submit electronic copies of certain required performance test reports.

Data will be collected by direct computer-to-computer electronic transfer using EPA-provided software. This EPA-provided software is an electronic performance test report tool called the Electronic Reporting Tool (ERT). The ERT will generate an electronic report package, which will be submitted to the Compliance and Emissions Data Reporting Interface (CEDRI) and then archived to the EPA's Central Data Exchange (CDX). A description of the ERT and instructions for using ERT can be found at *https://www3.epa.gov/ttn/chief/ert/index.html*. CEDRI can be accessed through the CDX website (*https://www.epa.gov/cdx*).

The EPA estimates that no existing leather finishing operation subject to the Leather Finishing Operations NESHAP uses a control device to comply with the NESHAP. As such, no existing leather finishing operation will conduct performance tests or submit electronic copies of test reports.

The requirement to submit performance test data electronically to the EPA does not create any additional performance testing and will apply only to those performance tests conducted using test methods that are supported by the ERT. A listing of the pollutants and test methods supported by the ERT is available at the ERT website. The EPA believes, through this approach, industry will save time in the performance test submittal process. Additionally, this rulemaking benefits industry by reducing recordkeeping costs as the performance test reports that are submitted to the EPA using CEDRI are no longer required to be kept in hard copy.

State, local, and tribal agencies may benefit from more streamlined and accurate review of performance test data that will become available to the public through WebFIRE. Having such data publicly available enhances transparency and accountability. For a more thorough discussion of electronic reporting of performance tests using direct computer-to-computer electronic transfer and using EPA-provided software, see the discussion in the preamble of the proposal (83 FR 11314, March 14, 2018).

In summary, in addition to supporting regulation development, control strategy development, and other air pollution control activities, having an electronic database populated with performance test data will save industry, state, local, tribal agencies, and the EPA significant time, money, and effort while improving the quality of emission inventories and air quality regulations.

IV. What is the rationale for our final decisions and amendments for the Leather Finishing Operations source category?

For each issue, this section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. For all comments not discussed in this preamble, comment summaries and the EPA's responses can be found in the document titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Leather Finishing Operations NESHAP,* in the docket for this action.

A. Residual Risk Review for the Leather Finishing Operations Source Category

1. What did we propose pursuant to CAA section 112(f) for the Leather Finishing Operations source category?

Pursuant to CAA section 112(f), we conducted a residual risk review and presented the results for the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the March 14, 2018, proposed rule for the Leather Finishing Operations source category (83 FR 11314). The results of the risk assessment are presented briefly in Table 2 of this preamble and in more detail in the residual risk document titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action.

TABLE 2—LEATHER FINISHING OPERATIONS INHALATION RISK ASSESSMENT RESULTS IN THE MARCH 2018 PROPOSAL

[83 FR 11314, March 14, 2018]

Number of facilities [1]	Maximum individual cancer risk (in 1 million) [2]		Estimated population at increased risk of cancer ≥1-in-1 million		Estimated Annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [3]		Maximum screening acute noncancer hazard quotient (HQ) [4]
	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level [2]	Based on allowable emissions level	Based on actual emissions level	Based on allowable emissions level	Based on actual emissions level
4.	0	0	0	0	0	0	0.04	0.3	H_{QREL} = 3 (propyl cellosolve and glycol ethers).

[1] Number of facilities evaluated in the risk analysis.
[2] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[3] Maximum target organ-specific hazard index (TOSHI). The target organ with the highest TOSHI for the Leather Finishing Operations source category is the reproductive target organ.
[4] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of HQ values. HQ values shown use the lowest available acute threshold value; for propyl cellosolve and glycol ethers, this is the recommended exposure limit (REL).

The results of the inhalation risk modeling using actual emissions data, as shown in Table 2 of this preamble, indicate the maximum chronic noncancer TOSHI value could be up to 0.04. While we would have estimated incremental individual lifetime cancer risks as discussed in section III.C.3.b of the preamble to the proposed amendments (83 FR 11314, March 14, 2018), there were no carcinogenic HAP emissions from this source category, so

the maximum lifetime individual cancer risk is 0, and the total estimated national cancer incidence from these facilities based on actual emission levels is no excess cancer cases per year.

Table 2 of this preamble indicates that for the Leather Finishing Operations source category, the maximum HQ is 3, driven by propyl cellosolve and glycol ethers. The only acute dose-response value for propyl cellosolve and glycol ethers is the REL; therefore, only the HQ_{REL} is provided. Refinement of the acute risk results was performed using aerial photos to ensure that the location where the maximum risk was projected to occur was, in fact, a location where the general public could be exposed. The result of this refinement confirmed that the maximum acute risk result occurred where the public could potentially be exposed. This refinement, therefore, had no impact on the maximum HQ. For more detailed acute risk results, refer to the draft residual risk document titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action.

An assessment of risk from facility-wide emissions was performed to provide context for the source category risks. Using the National Emissions Inventory (NEI) data described in sections II.C and III.C of the preamble to the proposed amendments (83 FR 11314, March 14, 2018), the maximum cancer risk in the facility-wide assessment was 0.09-in-1 million, and the maximum chronic noncancer hazard index (HI) was 0.1 (for the reproductive system), both driven by emissions from external combustion boilers.

To examine the potential for any environmental justice issues that might be associated with the source category, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities, and we found that no one is exposed to a cancer risk at or above 1-in-1 million or to a chronic noncancer TOSHI greater than 1. The methodology and the results of the demographic analysis are presented in a technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Leather Finishing Operations,* in the docket for this action.

We weighed all health risk factors in our risk acceptability determination and we proposed that the risk posed by emissions from this source category is acceptable. We then considered whether the NESHAP provides an ample margin of safety to protect public health and whether more stringent standards were necessary to prevent an adverse environmental effect by taking into consideration costs, energy, safety, and other relevant factors. In determining whether the standards provide an ample margin of safety to protect public health, we examined the same risk factors that we investigated for our acceptability determination and also considered the costs, technological feasibility, and other relevant factors related to emissions control options that might reduce risk associated with emissions from the source category. As noted in the discussion of the ample margin of safety analysis in the preamble to the proposed rule on March 14, 2018 (83 FR 11328), we considered options for further reducing gaseous organic HAP emissions from leather finishing operations. We considered the reduction in gaseous organic HAP emissions that could be achieved by the application of a biological treatment unit, the use of a concentrator followed by a regenerative thermal oxidizer (RTO), and the use of a concentrator followed by biological treatment. The total annual cost per facility of a rotary concentrator alone or biological treatment alone ranges from $43,000 to $417,000 per year. Application of a concentrator followed by an RTO would achieve an estimated annual HAP emission reduction of 5.2 tpy, and application of a concentrator plus biological treatment would achieve an estimated annual HAP emission reduction of 4.5 tpy. The corresponding cost effectiveness for application of a rotary concentrator or biological treatment would range from $30,000 and $110,000 per ton of HAP removed, respectively. Due to our determinations that cancer risk is below 1-in-1 million and that the maximum chronic noncancer TOSHI value is below 1, uncertainties associated with the acute screening risk estimate (refer to the risk report titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action), and the substantial costs associated with the control options, we proposed that additional standards for this source category are not required to provide an ample margin of safety to protect public health, and that the current standards provide an ample margin of safety to protect public health. Based on the results of our environmental risk screening assessment, we also proposed that more stringent standards are not necessary to prevent an adverse environmental effect.

2. How did the risk review change for the Leather Finishing Operations source category?

Since proposal (83 FR 11314, March 14, 2018), neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety or adverse environmental effects have changed.

3. What key comments did we receive on the risk review, and what are our responses?

We received various comments related to the risk review and some commenters requested that we make changes to our residual risk review results and approach. However, we evaluated the comments and determined that no changes to our risk assessment methods or conclusions are warranted. An in-depth account of the comments and responses is located in the memorandum titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Leather Finishing Operations NESHAP,* in the docket for this action. The following paragraphs discuss the major comments we received and our responses.

Comment: One commenter stated that there is evidence of hexavalent chromium emissions from leather finishing operations and leather tanning processes and products, questioning why the EPA did not evaluate these emissions and health risks and establish emission standards accordingly. The commenter referenced NEI data showing hexavalent chromium emissions from leather finishing facilities.

Response: We disagree that there is evidence of hexavalent chromium emissions from the Leather Finishing Operations source category. The NEI data cited by the commenter represent hexavalent chromium emissions from boilers at the Tasman and S.B. Foot facilities subject to the Leather Finishing Operations NESHAP, but boilers are not subject to the Leather Finishing Operations NESHAP, and, thus, such data do not create a basis for the EPA to evaluate emissions and health risks of hexavalent chromium for source types at any facility subject to the Leather Finishing Operations NESHAP. The NEI does not include hexavalent chromium emission data for any other emission source types at any facility subject to the Leather Finishing Operations NESHAP. The EPA is not aware of any source of hexavalent chromium emissions data for the leather

finishing operations subject to the Leather Finishing Operations NESHAP, and the commenters have provided no such data. The references cited by the commenters focus primarily on the leather tanning processes, which do not occur at the facilities covered by the Leather Finishing Operations NESHAP. Additionally, the references cited do not directly address air emissions of hexavalent chromium from leather finishing operations and are, therefore, not relevant to this rulemaking. Two references cited by the commenter mention the possibility of spontaneous oxidation of trivalent chromium into its hexavalent form in post-tanning operations, but the references do not provide any hexavalent chromium emissions data, and no such data exist for any of the leather finishing operations subject to the Leather Finishing Operations NESHAP. As a result, there is no basis for the EPA to evaluate the emissions and health risks of hexavalent chromium from these four facilities.

Comment: One commenter provided data for actual monthly HAP use for the S.B. Foot Tanning Co. facility subject to the Leather Finishing Operations NESHAP, stating that the data indicate that hourly emissions could be up to 1.5 times greater than the emissions rate that the EPA used to estimate acute exposures. The data provided by the commenter show monthly HAP emissions for the S.B. Foot Tanning Co. facility based on data of actual monthly HAP use by the facility over a 4-year period (*i.e.,* 51 data points). To compare with the EPA's calculated acute HAP emissions rate (*i.e.,* 0.00467 tons/hour) for the facility, the commenter estimated the average hourly rate of HAP emissions for each month in the 4-year period using the facility's actual monthly HAP usage values and monthly operating hours. To show months in which the facility's estimated hourly HAP emissions rate exceeded the EPA's estimated acute hourly HAP emissions rate for the S.B. Foot Tanning Co. facility, the commenter calculated for each month the ratio of the commenter's hourly HAP emissions rate to the EPA's calculated acute HAP emissions rate. Ratios above 1.0 would show months in which the facility's estimated hourly HAP emissions rate exceeds the EPA's acute hourly HAP emissions rate, calling into question the EPA's calculated acute HAP emissions rate of 0.00467 tons per hour and the EPA's acute factor of 1.8.

Response: The EPA reviewed the commenter's submitted data and determined that the data support the EPA's acute HAP emissions rate of 0.00467 tons/hour and acute factor of 1.8. The ratios calculated by the commenter indicate an average ratio of 0.41 and a median of 0.392. Of the 51 months of data provided by the commenter, only two values exceed 1.0, and five values exceed 0.8. To investigate the two data points that exceed 1.0, we contacted the commenter, and the commenter referred us to S.B. Foot Tanning Co. The S.B. Foot Tanning Co. facility representative indicated that HAP emissions referred to in the commenter's data are primarily associated with a storage tank and that the two data points in question resulted from the inaccurate process of measuring the material's volume (see the memorandum titled *Clarification of Hazardous Air Pollutant (HAP) Usage Data for S.B. Foot Tanning Co., Submitted by the Minnesota Pollution Control Agency,* in the docket for this action). From this information, we conclude that the two data points are erroneous. Based on these results, the data, excluding the two erroneous data points, submitted by the commenter support our acute factor of 1.8 and we are not revising the factor.

Comment: Two commenters objected to the EPA's decision that the acute risk result for the Leather Finishing Operations source category (*i.e.,* HQ of 3) is acceptable. One commenter noted that the HQ of 3 is driven entirely by propyl cellosolve and expressed concern for the toxicity of this pollutant. The commenter expressed concern that short-term outdoor human exposures have a high potential of occurring and the highest HQ was predicted well within residential areas. One commenter asserted that the EPA provides no rational justification for ignoring the acute risk (HQ of 3) and the finding that there are chronic noncancer risks to the reproductive system. The commenter listed various human health effects associated with propyl cellosolve and cited references for these health effects.

Response: We disagree that the risk acceptability determination as it relates to the acute risk HQ of 3 for propyl cellosolve is not sufficiently justified. For this source category, we concluded that the risks are acceptable based on all of the available health information—cancer, chronic noncancer, and acute noncancer risk assessment results—and associated uncertainties. It is important to note that we have not established, under section 112(f)(2) of the CAA, a numerical range for risk acceptability for noncancer effects (chronic or acute), nor have we determined that there is a bright line above which acceptability is denied. However, we have established that, as exposure increases above a reference level (as indicated by a HQ or TOSHI greater than 1), confidence that the public will not experience adverse health effects decreases and the likelihood that an effect will occur increases.

As discussed in the preamble to the proposed amendments (83 FR 11314, March 14, 2018), in conducting risk assessments for a group of compounds that are unspeciated (*e.g.,* glycol ethers), we conservatively use the most protective dose-response value of an individual compound in that group to estimate risk. Similarly, for an individual compound in a group (*e.g.,* ethylene glycol diethyl ether) that does not have a specified dose-response value, we apply the most protective dose-response value from the other compounds in the group to estimate risk. In the case of propyl cellosolve, for acute screening-level assessment, we used the acute REL for ethylene glycol monomethyl ether as a surrogate for propyl cellosolve since there is no specific acute inhalation health benchmark for this glycol ether. Given that ethylene glycol monomethyl ether is more toxic than other glycol ethers, the use of this surrogate is a health-protective choice in the EPA's risk assessment.

The acute screening analysis resulted in a maximum acute noncancer HQ of 3 based on the acute REL for ethylene glycol monomethyl ether. For acute screening-level assessments, to better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, we typically examine a wider range of available acute health metrics than we do for our chronic risk assessments. This is in acknowledgement that there are generally more data gaps and uncertainties in acute reference values than there are in chronic reference values. By definition, the acute REL represents a health-protective level of exposure, with effects not anticipated below those levels, even for repeated exposures; however, the level of exposure that would cause health effects is not specifically known. As the exposure concentration increases above the acute REL, the potential for effects increases. Therefore, when an REL is exceeded and an AEGL–1 or ERPG–1 is available (*i.e.,* levels at which mild, reversible effects are anticipated in the general population for a single exposure), we typically use them as additional comparative measures. However, neither of these is available for propyl cellosolve or for ethylene glycol monomethyl ether. Taking into account the conservatism included in

the acute screening-level assessment, including use of an acute REL for a highly toxic glycol ether, we would not expect acute exposures at levels that would cause adverse effects.

Additional conservatism in the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA includes several factors. The degree of accuracy of an acute inhalation exposure assessment depends on the simultaneous occurrence of independent factors that may vary greatly, such as hourly emissions rates, meteorology, and the presence of humans at the location of the maximum concentration. We also assume that peak emissions from each emission point in the source category and worst-case meteorological conditions co-occur, thus, resulting in maximum ambient concentrations. These two events are unlikely to occur at the same time, making these assumptions conservative. We then include the additional assumption that a person is located at this point during the same time period. For this source category, these assumptions are likely to overestimate the true worst-case actual exposures as it is unlikely that a person would be located at the point of maximum exposure during the time when peak emissions and worst-case meteorological conditions occur simultaneously. Thus, as discussed in the document titled *Residual Risk Assessment for the* Leather *Finishing Operations Source Category in Support of the Risk and Technology Review December 2017 Proposed Rule,* in the docket for this action, by assuming the co-occurrence of independent factors for the acute screening assessment, the results are intentionally biased high and are, thus, health-protective.

For the Leather Finishing Operations source category, we considered all of the health risk information and factors discussed above, including other uncertainties associated with the risk assessment, to ensure that our decisions are health and environmentally protective (a discussion of these uncertainties is available in section III.C of the preamble to the proposed amendments (83 FR 11314, March 14, 2018) and in the document titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the Risk and Technology Review December 2017 Proposed Rule,* in the docket for this action), in proposing that the risks from the Leather Finishing Operations source category are acceptable. The risk analysis for the proposed rule amendments indicated that the cancer risks to the individual most exposed are below 1-in-1 million from both actual and allowable emissions. These risks are considerably less than 100-in-1 million, which is the presumptive upper limit of acceptable risk. The risk analysis also showed no cancer incidence, as well as maximum chronic noncancer TOSHI value of 0.04, which is significantly below 1. In addition, the risk assessment indicated no significant potential for multipathway health effects.

4. What is the rationale for our final approach and final decisions for the risk review?

We evaluated all of the comments on the EPA's risk review and determined that no changes to the review are needed. For the reasons explained in the proposed rule, we determined that the risks from the Leather Finishing Operations source category are acceptable, and the current standards provide an ample margin of safety to protect public health and prevent an adverse environmental effect. Therefore, pursuant to CAA section 112(f)(2), we are finalizing our residual risk review as proposed.

B. Technology Review for the Leather Finishing Operations Source Category

1. What did we propose pursuant to CAA section 112(d)(6) for the Leather Finishing Operations source category?

Pursuant to CAA section 112(d)(6), we conducted a technology review, which focused on identifying and evaluating developments in practices, processes, and control technologies for the emission sources in the source category. After conducting the CAA section 112(d)(6) technology review of the Leather Finishing Operations NESHAP, we proposed that revisions to the standards are not necessary because we identified no cost-effective developments in practices, processes, or control technologies. More information concerning our technology review is in the memorandum titled *CAA section 112(d)(6) Technology Review for the Leather Finishing Source Category,* in the docket for this action and in the preamble to the proposed rule (83 FR 11314–11337, March 14, 2018).

2. How did the technology review change for the Leather Finishing Operations source category?

Since proposal (83 FR 11314, March 14, 2018), the technology review has not changed.

3. What key comments did we receive on the technology review, and what are our responses?

No commenters provided input on the proposed technology review.

4. What is the rationale for our final approach for the technology review?

For the reasons explained in the proposed rule, we determined that no cost-effective developments in practices, processes, or control technologies were identified in our technology review to warrant revisions to the standards. We evaluated all of the comments on the EPA's technology review and determined that no changes to the review are needed. More information concerning our technology review is in the memorandum titled *CAA section 112(d)(6) Technology Review for the Leather Finishing Source Category,* in the docket for this action, and in the preamble to the proposed rule (83 FR 11314–11337, March 14, 2018). Therefore, pursuant to CAA section 112(d)(6), we are finalizing our technology review as proposed.

C. SSM for the Leather Finishing Operations Source Category

1. What did we propose for the Leather Finishing Operations source category?

We proposed amendments to the Leather Finishing Operations NESHAP to remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the elimination of SSM provisions is in the preamble to the proposed rule (83 FR 11314–11337, March 14, 2018).

2. How did the SSM provisions change for the Leather Finishing Operations source category?

We are finalizing the SSM provisions as proposed with no changes (83 FR 11314, March 14, 2018).

3. What key comments did we receive on the SSM provisions, and what are our responses?

We received two comments related to our proposed revisions to the SSM provisions. One commenter generally supported the proposed revisions to the SSM provisions. One commenter requested that we revise our approach to handling force majeure events. We evaluated the comments and determined that no changes to the proposed SSM provisions are warranted. A summary of these comments and our responses are located in the memorandum titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and*

Technology Review and Amendments for the Leather Finishing Operations NESHAP, in the docket for this action.

Comment: One commenter expressed concern that proposed 40 CFR 63.5420(c)(5) provides an exemption from reporting due to force majeure events. The commenter noted that the Court rejected similar ''affirmative defense'' to civil penalties for malfunctions (*NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014)). The commenter also argued that adding such an exemption would be arbitrary and unlawful because it would undermine the reporting requirements by providing a justification to delay reporting, and, thus, undermine compliance, enforcement, and fulfillment of the emissions standards designed to protect public health and the environment at the core of the CAA's and section 7412's purpose (42 U.S.C. 740).

Response: The commenter is incorrect in referring to 40 CFR 63.5420(c)(5) as an ''exemption.'' This provision provides instructions for actions an affected source should take if it is unable to submit an electronic report (required under 40 CFR 63.5420(c)) ''due to a force majeure event that is about to occur, occurs, or has occurred, or if there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due'' under 40 CFR 63.5420(c). We note that there is no exception or exemption to reporting, only a method for requesting an extension of the reporting deadline. As specified in 40 CFR 63.5420(c)(5), ''[t]he decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.'' There is no predetermined timeframe for the length of extension that can be granted, as this is something best determined by the Administrator when reviewing the circumstances surrounding the request. Different circumstances may require a different length of extension for electronic reporting. For example, a tropical storm may delay electronic reporting for a day, but a category 5 hurricane event may delay electronic reporting much longer, especially if the facility has no power, and, as such, the owner or operator has no ability to access electronically stored data or to submit reports electronically. The Administrator will be the most knowledgeable on the events leading to the request for extension and will assess whether an extension is appropriate and, if so, determine a reasonable length. The Administrator may even request that the report be sent in hardcopy until electronic reporting can be resumed. While no new fixed duration deadline is set, the regulation does require that the report be submitted electronically as soon as possible after the CEDRI outage is resolved or after the force majeure event occurs.

We also note that the force majeure mimics long-standing language in 40 CFR 63.7(a)(4) and 60.8(a)(1) regarding the time granted for conducting a performance test and such language has not undermined compliance or enforcement.

Moreover, we disagree that the reporting extension will undermine enforcement because the Administrator has full discretion to accept or reject the claim of a CEDRI system outage or force majeure. As such, an extension is not automatic and is agreed to on an individual basis by the Administrator. If the Administrator determines that a facility has not acted in good faith to reasonably report in a timely manner, the Administrator can reject the claim and find that the failure to report timely is a deviation from the regulation. CEDRI system outages are infrequent, but the EPA knows when they occur and whether a facility's claim is legitimate. Force majeure events (*e.g.,* natural disasters impacting a facility) are also usually well-known events.

We also disagree that the ability to request a reporting extension would undermine compliance and fulfillment of the emissions standards. While reporting is an important mechanism for the EPA and air agencies to assess whether owners and operators are in compliance with emissions standards, reporting obligations have nothing to do with whether an owner or operator is required to be in compliance with an emissions standard, especially where the deadline for meeting the standard has already passed and the owner or operator has certified that they are in compliance with the standard.

Additionally, the ability to request a reporting extension does not apply to a broad category of circumstances; on the contrary, the scope for submitting a reporting extension request is very limited in that claims can only be made for events outside of the owner's or operator's control that occur in the 5 business days prior to the reporting deadline. The claim must then be approved by the Administrator, and, in approving such a claim, the Administrator agrees that something outside the control of the owner or operator prevented the owner or operator from meeting its reporting obligation. In no circumstance does this reporting extension allow for the owner or operator to be out of compliance with the emissions standards.

The reporting deadline extension differs from the affirmative defense to civil penalties for malfunctions the D.C. Circuit vacated as beyond EPA's authority under the CAA in *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014). Unlike the affirmative defense addressed in *NRDC,* the reporting provision does not address penalty liability for noncompliance with emission standards, but merely addresses, under a narrow set of circumstances outside the control of the facilities, the deadline for reporting.

Based on our evaluation of the comments, we have determined that no changes to our proposed revisions to the SSM provisions are warranted.

4. What is the rationale for our final approach for the SSM provisions?

We evaluated all of the comments on the EPA's proposed amendments to the SSM provisions. For the reasons explained in the proposed rule, we determined that these amendments remove and revise provisions related to SSM that are not consistent with the requirement that the standards apply at all times. More information concerning the proposed amendments to the SSM provisions is in the preamble to the proposed rule (83 FR 11314–11337, March 14, 2018). Therefore, we are finalizing our approach for the SSM provisions as proposed.

D. Requirements for Submission of Performance Tests for the Leather Finishing Operations Source Category

1. What did we propose for the Leather Finishing Operations source category?

We proposed amendments to the Leather Finishing Operations NESHAP to require owners and operators of leather finishing operations facilities to submit electronic copies of certain required performance test reports. More information concerning these proposed revisions is in the preamble to the proposed rule (83 FR 11314–11337, March 14, 2018).

2. How did the requirements for submission of performance tests change for the Leather Finishing Operations source category?

Since proposal (83 FR 11314, March 14, 2018), the requirement for owners and operators of leather finishing operations facilities to submit electronic copies of certain required performance test reports has not changed.

3. What key comments did we receive on submission of performance tests, and what are our responses?

We received one comment providing input on the proposed requirement for owners and operators of leather finishing operations facilities to submit electronic copies of certain required performance test reports, and the commenter generally supported our amendments. We evaluated the comment and determined that no changes to our proposed electronic reporting requirements are warranted. A summary of this comment and our response are located in the memorandum titled *Summary of Public Comments and the EPA's Responses for the Proposed Risk and Technology Review and Amendments for the Leather Finishing Operations NESHAP,* in the docket for this action.

4. What is the rationale for our final approach on requirements for submission of performance tests?

We evaluated the comment on the EPA's proposed amendments requiring owners and operators of leather finishing operations facilities to submit electronic copies of certain required performance test reports. In light of this evaluation and for the reasons explained in the proposed rule, we determined that these amendments would increase the ease and efficiency of data submittal and data accessibility. Further, the EPA estimates that while no existing leather finishing operation subject to the Leather Finishing Operations NESHAP uses a control device to comply with the NESHAP, the rule allows for a source to use a control device to comply, and these electronic reporting provisions are necessary. As such, no existing leather finishing operation is required to conduct performance tests, submit test reports, or submit electronic copies of test reports. More information concerning the proposed requirement for owners and operators of leather finishing operations facilities to submit electronic copies of certain required performance test reports is in the preamble to the proposed rule (83 FR 11314–11337). Therefore, we are finalizing our approach on requirements for submission of performance tests as proposed.

E. Technical Revisions and Corrections for the Leather Finishing Operations Source Category

1. What did we propose for the Leather Finishing Operations source category?

We proposed amendments to the Leather Finishing Operations NESHAP to clarify the monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules, and to correct the title of Table 2 to 40 CFR part 63, subpart TTTT. More information concerning these proposed revisions is in the preamble to the proposed rule (83 FR 11314–11337).

2. How did the technical revisions and corrections change for the Leather Finishing Operations source category?

Since proposal (83 FR 11314, March 14, 2018), the technical revisions and corrections have not changed.

3. What key comments did we receive on the technical revisions and corrections, and what are our responses?

No commenters provided input on the proposed technical revisions and corrections to clarify the monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules, and to correct the title of Table 2 to 40 CFR part 63, subpart TTTT.

4. What is the rationale for our final approach for the technical revisions and corrections?

For the reasons explained in the proposed rule, we determined that these amendments clarify the monitoring, recordkeeping, and reporting requirements for control devices and the provisions for alternative schedules. More information concerning the proposed technical revisions and correction is in the preamble to the proposed rule (83 FR 11314–11337). Therefore, we are finalizing our technical revisions and corrections as proposed.

V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

A. What are the affected facilities?

There are currently four existing leather finishing operations facilities that were identified as subject to the Leather Finishing Operations NESHAP: S.B. Foot Tanning Company of Red Wing, Minnesota; Alliance Leather, Inc. of Peabody, Massachusetts; Pearl Leather Finishers, Inc. of Johnstown, New York; and Tasman Leather Group, LLC of Hartland, Maine.

B. What are the air quality impacts?

The EPA estimates that annual organic HAP emissions from the four leather finishing operations facilities subject to the rule are approximately 22.5 tpy. This final rule does not require compliance with more stringent emission limits or require additional controls; therefore, no air quality impacts are expected as a result of the amendments.

C. What are the cost impacts?

The four leather finishing operations facilities subject to these final amendments will incur costs to review the final amendments. Nationwide annual costs associated with the final amendments are estimated to be a total of $832 for the initial year only. We believe that the four leather finishing operations facilities that are known to be subject to final amendments can comply without incurring additional capital or operational costs. Therefore, the only costs associated with these final amendments are related to reviewing the rule. For further information on the final amendments, see section IV of the proposal preamble (83 FR 11314, March 14, 2018). For further information on the costs associated with the final amendments, see the supporting statement for the Leather Finishing Operations NESHAP (EPA Information Collection Request (ICR) Number 1985.09, Office of Management and Budget (OMB) Control Number 2060–0478), the memorandum titled *Costs for the Leather Finishing Operations Source Category Risk and Technology Review—Final Amendments,* and the memorandum titled *CAA section 112(d)(6) Technology Review for the Leather Finishing Source Category,* in the docket for this action.

D. What are the economic impacts?

The total national cost to comply with these final amendments is estimated to be $832 in 2016 dollars, which is a one-time cost that will be incurred in the first year following promulgation of these final amendments. There are no additional emission control costs or additional emission reductions associated with this rule. The estimated cost of $832 consists of equal costs incurred by each of the four affected facilities, with each facility estimated to incur one-time labor costs of approximately $208 in order to become familiar with the rule. These costs are not expected to result in business closures, significant price increases, or substantial profit loss. No impacts on employment are expected given the minimal economic impact of the action on the affected firms. For further information on the economic impacts associated with these final amendments, see the memorandum titled *Final Economic Impact Analysis for the Reconsideration of the Risk and Technology Review: Leather Finishing Operations Source Category,* in the docket for this action.

E. What are the benefits?

Although the amendments in this final rule will not result in reductions in emissions of HAP, this final rule will improve implementation of the Leather Finishing Operations NESHAP by clarifying the rule requirements as discussed in sections IV.D.1 and IV.D.3 of the proposal preamble (83 FR 11314, March 14, 2018). Also, adding electronic reporting of test reports for any control devices used in the future to comply with these final amendments will provide the benefits discussed in section IV.D.2 of the proposal preamble (83 FR 11314, March 14, 2018), including assisting state and local agencies that elect to use ERT to track compliance of the rule.

F. What analysis of environmental justice did we conduct?

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (58 FR 7629, February 16, 1994). The documentation for this decision is contained in section IV.A of this preamble and the technical report titled *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Leather Finishing Operations,* in the docket for this action. As discussed in section IV.A of this preamble, we performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 50 km and within 5 km of the facilities. In this analysis, we evaluated the distribution of HAP-related cancer risks and noncancer hazards from the leather finishing operations across different social, demographic, and economic groups within the populations living near operations identified as having the highest risks.

The analysis indicates that the minority population living within 50 km (4,632,781 people, of which 25 percent are minority) and within 5 km (158,482 people, of which 13 percent are minority) of the four leather finishing operations facilities is less than the minority population found nationwide (38 percent). The proximity results indicate that the population percentage for the ''Other and Multiracial'' demographic group within 50 km of leather finishing operations emissions is slightly greater than the corresponding nationwide percentage for that same demographic. The percentage of people ages 65 and older residing within 5 km of leather finishing operations (18 percent) is 4 percentage points higher than the corresponding nationwide percentage (14 percent). The other demographic groups included in the assessment within 5 km of leather finishing operations emissions were the same or lower than the corresponding nationwide percentages.

When examining the cancer risk levels of those exposed to emissions from the four leather finishing operations, we find that there are no people within a 50-km radius of modeled facilities exposed to a cancer risk greater than or equal to 1-in-1 million as a result of emissions from leather finishing operations. There are no known cancer risks posed by HAP emissions from the four facilities, because the HAP emitted have no known cancer risks. When examining the noncancer risk levels, we find that there are no people within a 50-km radius of modeled facilities exposed to a noncancer risk (in this analysis, reproductive HI) greater than 1 as a result of emissions from leather finishing operations.

The EPA has determined that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples because the health risks based on actual emissions are low (below 2-in-1 million), the population exposed to risks greater than 1-in-1 million is relatively small (750 persons), and the rule maintains or increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority, low-income, or indigenous populations. Further, the EPA believes that implementation of this rule will provide an ample margin of safety to protect public health of all demographic groups.

G. What analysis of children's environmental health did we conduct?

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III and IV of the proposal preamble (83 FR 11314, March 14, 2018) and further documented in the report titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was, therefore, not submitted to OMB for review.

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1985.09. You can find a copy of the ICR in the docket for this action (Docket ID No. EPA–HQ–OAR–2003–0194), and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions, which are essential in determining compliance and mandatory for all operators subject to national emissions standards. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

We are finalizing changes to the Leather Finishing Operations NESHAP paperwork requirements in the form of requiring review of the final rule in the initial year. We are finalizing no new reporting or recordkeeping requirements for the Leather Finishing Operations source category.

Respondents/affected entities: Respondents include leather finishing operations.

Respondent's obligation to respond: Mandatory (authorized by section 114 of the CAA).

Estimated number of respondents: Four leather finishing operations.

Frequency of response: Initially.

Total estimated burden: 9 hours (per year) for the responding facilities and 0 hours (per year) for the Agency.

Total estimated cost: $832 (per year).

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. 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. The Agency has determined that of the four entities subject to this action, three are small businesses. The Agency has determined that each of the three small entities impacted by this action may experience an impact of less than 0.01 percent of sales. Details of this analysis are presented in the memorandum titled *Final Economic Impact Analysis for the Reconsideration of the Risk and Technology Review: Leather Finishing Operations Source Category,* in the docket for this action. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in the leather finishing operations industry that would be affected by this action. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in sections III and IV of the proposal preamble (83 FR 11314, March 14, 2018) and further documented in the report titled *Residual Risk Assessment for the Leather Finishing Operations Source Category in Support of the December 2017 Risk and Technology Review Proposed Rule,* in the docket for this action.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. Therefore, the EPA conducted searches for the Leather Finishing Operations Sector RTR through the Enhanced National Standards Systems Network Database managed by the American National Standards Institute. We also contacted voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 24 and 311 and identified six VCS as potentially acceptable alternatives for the purpose of this rule. Refer to section VIII.J of the proposal preamble (83 FR 11314, March 14, 2018) for a list of these methods. As proposed, we are not including these VCS in the final rule as alternative test methods because the methods are either impractical as an alternative to EPA Methods 24 and 311, do not address the parameter required to be measured, or have expired. Further, no alternative test methods were brought to our attention in public comments on the March 14, 2018, proposal. A brief summary of these results is provided in section VIII.J of the March 14, 2018, proposal preamble. A thorough summary of the search conducted, and results are included in the memorandum titled *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations,* in the docket for this action.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in section V.F of this preamble and the technical report titled *Risk and Technology Review—Analysis of Socio-Economic Factors for Populations Living Near Leather Finishing Operations,* in the public docket for this action.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 21, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart TTTT—National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

■ 2. Section 63.5320 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.5320 How does my affected major source comply with the HAP emission standards?

(a) All affected sources must be in compliance with the requirements of this subpart at all times.

(b) At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the affected source.

* * * * *

■ 3. Section 63.5360 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 63.5360 How do I demonstrate continuous compliance with the emission standards?

(a) * * *

(2) If you use an emission control device, you must comply with § 63.982(a)(2) (subpart SS of this part) and collect the monitoring data as specified therein.

* * * * *

(b) You must report each instance in which you did not meet the emission standards in § 63.5305. These deviations must be reported according to the requirements in § 63.5420(b).

* * * * *

■ 4. Section 63.5375 is revised to read as follows:

§ 63.5375 When must I conduct a performance test or initial compliance demonstration?

You must conduct performance tests after the installation of any emission control device that reduces HAP emissions and will be used to comply with the HAP emission requirements of this subpart. You must complete your performance tests not later than 60 calendar days before the end of the 12-month period used in the initial compliance determination.

■ 5. Section 63.5380 is amended by revising paragraphs (a) and (b) to read as follows:

§ 63.5380 How do I conduct performance tests?

(a) Each performance test must be conducted according to the requirements in § 63.7(e)(2) through (4) and the procedures of § 63.997(e)(1) and (2).

(b) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. The owner or operator may not conduct performance tests during periods of malfunction. The owner or operator must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions represent normal operation. Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

■ 6. Section 63.5420 is amended by revising paragraphs (b) introductory text and (b)(3) and (4) and adding paragraphs (b)(5) and (6) and (c) to read as follows:

§ 63.5420 What reports must I submit and when?

* * * * *

(b) You must submit a Deviation Notification Report for each compliance determination you make in which the compliance ratio exceeds 1.00, as determined under § 63.5330. Submit the deviation report by the fifteenth of the following month in which you determined the deviation from the compliance ratio. The Deviation Notification Report must include the items in paragraphs (b)(1) through (6) of this section:

* * * * *

(3) The 12-month period covered by the report and each type of leather product process operation performed during the 12-month period.

(4) The compliance ratio comprising the deviation. You may reduce the frequency of submittal of the Deviation Notification Report if the Administrator of these NESHAP approves an alternative schedule.

(5) An estimate of the quantity of HAP (in pounds) emitted during the 12 months specified in paragraph (b)(3) of this section in excess of the allowable HAP loss. Calculate this estimate of excess emissions by subtracting the allowable HAP loss determined as specified in § 63.5340 from the actual HAP loss determined as specified in § 63.5335.

(6) The cause of the events that resulted in the source failing to meet an applicable standard (including unknown cause, if applicable).

(c) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you must submit the results of the performance test following the procedures specified in paragraphs (c)(1) through (3) of this section.

(1) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronicreporting-air-emissions/electronicreporting-tool-ert*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). The CEDRI Interface can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13 unless the Administrator agrees to or specifies an alternate reporting method.

(3) If you claim that some of the performance test information being submitted under paragraph (c)(1) of this section is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website, including information claimed to be CBI, on a compact disc, flash drive or other commonly used electronic storage medium to the EPA. The electronic medium must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (c)(1) of this section.

(4) If you are required to electronically submit a report through the CEDRI in the EPA's CDX, and due

to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date, time and length of the outage; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 7. Section 63.5430 is amended by revising the introductory text and paragraph (g) and adding paragraphs (h) and (i) to read as follows:

§ 63.5430 What records must I keep?

You must satisfy the recordkeeping requirements in paragraphs (a) through (i) of this section by the compliance date specified in § 63.5295.

* * * * *

(g) If you use an emission control device, you must keep records of monitoring data as specified at § 63.982(a)(2) (subpart SS of this part).

(h) In the event that the compliance ratio exceeded 1.00, as determined under § 63.5330, keep a record of the information specified in paragraphs (h)(1) through (5) of this section for each exceedance.

(1) The 12-month period in which the exceedance occurred, as reported in § 63.5420(b).

(2) Each type of leather product process operation performed during the 12-month period in which the exceedance occurred, as reported in § 63.5420(b).

(3) Estimate of the quantity of HAP (in pounds) emitted during the 12 months specified in § 63.5420(b)(3) in excess of the allowable HAP loss, as reported in § 63.5420(b).

(4) Cause of the events that resulted in the source failing to meet an applicable standard (including unknown cause, if applicable), as reported in § 63.5420(b).

(5) Actions taken to minimize emissions in accordance with § 63.5320(b), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

(i) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 8. Section 63.5460 is amended by revising the definition for ''Deviation'' to read as follows:

§ 63.5460 What definitions apply to this subpart?

* * * * *

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source fails to meet any requirement or obligation established by this subpart, including, but not limited to, any emission limits or work practice standards.

* * * * *

■ 9. Table 2 to subpart TTTT of part 63 is revised to read as follows:

As required in § 63.5450, you must meet the appropriate NESHAP General Provision requirements in the following table:

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications..	Yes.	
§ 63.2	Definitions	Definitions for Part 63 standards.	Yes	Except as specifically provided in this subpart.
§ 63.3	Units and abbreviations	Units and abbreviations for Part 63 standards.	Yes.	

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.4	Prohibited activities and circumvention.	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction	Applicability; applications; approvals.	Yes	Except for paragraphs of § 63.5 as listed below.
§ 63.5(c)	[Reserved]			
§ 63.5(d)(1)(ii)(H)	Application for approval	Type and quantity of HAP, operating parameters..	No	All sources emit HAP. Subpart TTTT does not require control from specific emission points.
§ 63.5(d)(1)(i)	[Reserved].			
§ 63.5(d)(1)(iii), (d)(2), (d)(3)(ii)		Application for approval	No	The requirements of the application for approval for new and reconstructed sources are described in § 63.5320(b). General provision requirements for identification of HAP emission points or estimates of actual emissions are not required. Descriptions of control and methods, and the estimated and actual control efficiency of such do not apply. Requirements for describing control equipment and the estimated and actual control efficiency of such equipment apply only to control equipment to which the subpart TTTT requirements for quantifying solvent destroyed by an add-on control device would be applicable.
§ 63.6	Applicability of general provisions.	Applicability of general provisions.	Yes	Except for paragraphs of § 63.6 as listed below.
§ 63.6(b)(1)–(3)	Compliance dates, new and reconstructed sources.		No	Section § 63.5283 specifies the compliance dates for new and reconstructed sources.
§ 63.6(b)(6)	[Reserved].			
§ 63.6(c)(3)–(4)	[Reserved].			
§ 63.6(d)	[Reserved].			
§ 63.6(e)(1)	Operation and maintenance requirements.		No	See § 63.5320(b) for general duty requirement.
§ 63.6(e)(2)	[Reserved].			
§ 63.6(e)(3)	Operation and maintenance requirements.	Startup, shutdown, and malfunction plan requirements.	No	Subpart TTTT does not have any startup, shutdown, and malfunction plan requirements.
§ 63.6(f)–(g)	Compliance with nonopacity emission standards except during SSM.	Comply with emission standards at all times except during SSM.	No	Subpart TTTT does not have nonopacity requirements.
§ 63.6(h)	Opacity/visible emission (VE) standards.		No	Subpart TTTT has no opacity or visual emission standards.
§ 63.6(i)	Compliance extension	Procedures and criteria for responsible agency to grant compliance extension.	Yes.	
§ 63.6(j)	Presidential compliance exemption.	President may exempt source category from requirement to comply with subpart.	Yes.	
§ 63.7	Performance testing requirements.	Schedule, conditions, notifications and procedures.	Yes	Except for paragraphs of § 63.7 as listed below. Subpart TTTT requires performance testing only if the source applies additional control that destroys solvent. § 63.5311 requires sources to follow the performance testing guidelines of the General Provisions if a control is added.
§ 63.7(a)(2) (i) and (iii)	Performance testing requirements.	Applicability and performance dates.	No	§ 63.5310(a) of subpart TTTT specifies the requirements of performance testing dates for new and existing sources.
§ 63.7(e)(1)	Conduct of performance tests	Defines representative conditions; provides an exemption from the standards for periods of startup, shutdown, and malfunction; requires that, upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.	No	See § 63.5380.
§ 63.8	Monitoring requirements	Applicability, conduct of monitoring, operation and maintenance, quality control, performance evaluations, use of alternative monitoring method, reduction of monitoring data.	No	See § 63.5360(a)(2) for monitoring requirements.
§ 63.9	Notification requirements	Applicability and State delegation.	Yes	Except for paragraphs of § 63.9 as listed below.
§ 63.9(e)	Notification of performance test	Notify responsible agency 60 days ahead.	Yes	Applies only if performance testing is performed.
§ 63.9(f)	Notification of VE/opacity observations.	Notify responsible agency 30 days ahead.	No	Subpart TTTT has no opacity or visual emission standards.

TABLE 2 TO SUBPART TTTT OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART TTTT—Continued

General provisions citation	Subject of citation	Brief description of requirement	Applies to subpart	Explanation
§ 63.9(g)	Additional notifications when using a continuous monitoring system (CMS).	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	No	See § 63.5360(a)(2) for CMS requirements.
§ 63.9(h)	Notification of compliance status.	Contents	No	§ 63.5320(d) specifies requirements for the notification of compliance status.
§ 63.10	Recordkeeping/reporting	Schedule for reporting, record storage.	Yes	Except for paragraphs of § 63.10 as listed below.
§ 63.10(b)(2)	Recordkeeping	CMS recordkeeping; CMS records of startup, shutdown, and malfunction events.	No	See § 63.5360 for CMS recordkeeping requirements, except see § 63.5430(h) for CMS recordkeeping requirements if there is a deviation from the standard.
§ 63.10(c)	Recordkeeping	Additional CMS recordkeeping	No	See § 63.5360(a)(2) for CMS recordkeeping requirements.
§ 63.10(d)(2)	Reporting	Reporting performance test results.	Yes	Applies only if performance testing is performed.
§ 63.10(d)(3)	Reporting	Reporting opacity or VE observations.	No	Subpart TTTT has no opacity or visible emission standards.
§ 63.10(d)(4)	Reporting	Progress reports	Yes	Applies if a condition of compliance extension.
§ 63.10(d)(5)	Reporting	Startup, shutdown, and malfunction reporting.	No	See § 63.5420(b) for reporting requirements if there is a deviation from the standard.
§ 63.10(e)	Reporting	Additional CMS reports	No	See § 63.5360(a)(2) for monitoring requirements.
§ 63.11	Control device requirements	Requirements for flares	Yes	Applies only if your source uses a flare to control solvent emissions. Subpart TTTT does not require flares.
§ 63.12	State authority and delegations	State authority to enforce standards.	Yes.	
§ 63.13	State/regional addresses	Addresses where reports, notifications, and requests are sent.	Yes.	
§ 63.14	Incorporation by reference	Test methods incorporated by reference.	Yes.	
§ 63.15	Availability of information and confidentiality.	Public and confidential information.	Yes.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 124 and 125

[EPA–HQ–OW–2016–0145; FRL9988–87–OW]

RIN 2040–AF25

National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing certain revisions to the National Pollutant Discharge Elimination System permitting regulations proposed on May 18, 2016. The final regulatory changes are minor and will improve and clarify the regulations in the following major categories: Regulatory definitions (''new discharger'' and two definitions related to the discharge of pesticides from pesticides application); permit applications; and public notice. This final rule also updates the EPA contact information and web addresses for electronic databases, updates outdated references to best management practices guidance documents, and deletes a provision relating to best practicable waste treatment technology for publicly owned treatment works that is no longer applicable. The final revisions modernize the NPDES regulations, promote submission of complete permit applications, and clarify regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment.

DATES: This final rule is effective on June 12, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2016–0145. 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.,* 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 electronically through *https://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Frank Sylvester, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1279; email address: *sylvester.francis@epa.gov*; or Janita Aguirre, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–1149; email address: *aguirre.janita@epa.gov*.

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I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are: The EPA; authorized state, territorial, and tribal programs; and the regulated community. This table is not intended to be exhaustive, rather, it provides a guide for readers regarding entities that this action is likely to regulate.

TABLE I–1—ENTITIES POTENTIALLY AFFECTED BY THIS FINAL RULE

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments.	States and Territories authorized to administer the NPDES permitting program; States, Territories, and Indian Tribes that provide certification under section 401 of the CWA; States, Territories, and Indian Tribes that own or operate treatment works.
Municipalities	Publicly Owned Treatment Works (POTWs), municipal separate storm sewer systems (MS4s), or other municipal entities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking and why?

The EPA is finalizing certain minor, generally clarifying revisions to the NPDES regulations initially proposed on May 18, 2016.[1] The final regulatory changes improve and clarify regulations in the following major categories: Regulatory definitions (''new discharger'' and two definitions related to the discharge of pesticides from pesticides application); permit applications; and public notice. The final regulatory changes also update the EPA's contact information and web addresses for electronic databases and outdated references to best management practices, and delete a provision that is no longer applicable (40 CFR 125.3(a)(1)(ii), relating to best practicable waste treatment technology for publicly owned treatment works). As a result of this final rule, the NPDES regulations will promote submission of complete permit applications, contain modernized regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment, and be more clear and effective.

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

These regulations are promulgated pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.,* in particular, CWA sections 301, 304(i), 308, 402 and 501.

D. What are the incremental costs and benefits of this action?

This final rule promulgates minor, generally clarifying revisions to the NPDES regulations. The EPA has estimated that the revisions finalized in this action will result in an overall burden decrease to permitting authorities and the regulated community of approximately $2,389,889 and 17,912 hours annually.

E. How was the final rule developed?

In developing this final rule, the EPA considered the public comments and feedback received from stakeholders on the May 18, 2016 proposal (hereafter referred to as the Proposed Rule). The EPA provided a 75-day public comment period after the Proposed Rule was published in the **Federal Register**.

Over 450 organizations and individuals submitted comments on a range of issues. The EPA received an additional 14,438 letters from individuals associated with mass letter writing campaigns. Some comments addressed issues beyond the scope of the proposed rulemaking; however, the EPA did not contemplate expanding the scope of the rulemaking or making regulatory changes to address the substance of these comments. In each section of this preamble, the EPA discusses significant public comments so that the public is fully aware of the Agency's basis for the final rule. For a full response to these and all other comments, see the EPA's Response to Comments document in the official public docket for this rulemaking.

In addition, the EPA met with all stakeholders who requested time to discuss the contents of the proposed rule. Records of each meeting are included in the official public docket.

II. Rule Revisions Finalized in This Action

The EPA has created a comparison document showing the revisions to the current NPDES regulations made by this final rule, and a second document showing the revisions made between the proposed and final rule. The EPA has posted both documents at: *https://www.epa.gov/npdes/npdes-application-and-program-updates,* and placed them in the docket for today's rule.

A. Revisions to Part 122

1. Purpose and Scope (Note to 40 CFR 122.1)—NPDES Contact Information

The EPA is finalizing the correction to the Note to 40 CFR 122.1, NPDES contact information, to delete outdated references to program contact information that are no longer accurate. The final Note also includes the updated website address for the NPDES homepage, *http://www.epa.gov/npdes/*.

The EPA received one public comment associated with this revision. The comment expressed support for the effort to remove the outdated information and questioned whether the EPA could remove the Note entirely or

[1] 81 FR 31343.

provide a more generic approach than including specific contact information that requires a rulemaking to update. While it is true that the Note to 40 CFR 122.1 could be deleted entirely or generically updated, the EPA's view is that providing up-to-date contact information in the Code of Federal Regulations (CFR) will save the permitting authorities and the public time when they seek to contact the EPA about these regulations. For instance, if the Note were deleted entirely, an interested party who is used to the information appearing in the regulatory text may spend unnecessary time searching the internet and navigating the EPA's website for NPDES information. Instead, the EPA is retaining the Note and including the up-to-date NPDES homepage to provide a direct link for interested parties to find the EPA's NPDES-related information about a particular issue or program area.

2. NPDES Program Definitions (40 CFR 122.2)

(a) Pesticide Discharges to Waters of the United States From Pesticide Application

In 2009, the Court of Appeals in *National Cotton Council, et al.* v. *EPA,* 553 F.3d 927 (6th Cir. 2009) found that point source discharges of biological pesticides and chemical pesticides that leave a residue to waters of the United States (U.S.) are pollutants under the CWA and therefore require NPDES permits. In response, the EPA issued the first Pesticide General Permit on October 31, 2011 and reissued the permit on October 24, 2016.[2] The Proposed Rule added a definition of ''pesticide applications to waters of the United States'' to ensure the NPDES regulations are consistent with the 6th Circuit decision as implemented by the Agency's Pesticide General Permit. In this action, the EPA includes a final definition for ''Pesticide discharges to waters of the United States from pesticide application,'' as well as a regulatory definition for ''pesticide residue.''

The comments received on the proposal were mixed. Many comments requested additional language clarifications in order to be consistent with the court decision and to avoid confusion regarding the issue of whether or not pesticides must leave a residue to qualify as pollutants requiring permit coverage under the NPDES program. One comment requested that the EPA include definitions for ''biological pesticides,'' ''chemical pesticides,'' and ''pesticide residue.''

In response to the comments received, this final rule includes minor wording changes from the proposal to use NPDES regulatory terminology such as ''discharge'' and to change ''pesticide application'' to ''discharges to waters of the United States from pesticide application'' to better reflect current NPDES terminology, which is used in both the 6th Circuit decision and the EPA's Pesticide General Permit. Based on the comments received, this final rule also includes a regulatory definition of the term ''pesticide residue'' for purposes of clarifying which discharges to waters of the U.S. from the application of pesticides require NPDES permits. The EPA is not adding a regulatory definition for ''biological pesticide''[3] in 40 CFR 122.2 because this concept and relevant regulatory definitions are already included in 40 CFR 174.3, 40 CFR 158.2000(a)(1), and 40 CFR 158.2100(b).

This definition in the final rule provides that the term ''pesticide residue'' in 40 CFR 122.2 includes the portion of a pesticides application that is discharged from a point source to waters of the U.S. and no longer provides pesticidal benefits. It also includes any degradates of the pesticide. This definition is identical to the definition of ''pesticide residue'' already used in the EPA's Pesticide General Permit.

By including the final definitions related to pesticide discharges to waters of the U.S. in the comprehensive NPDES definitions at 40 CFR 122.2, the regulations have increased clarity and consistency regarding discharges regulated under the CWA and therefore require NPDES permits. The final definitions do not change which pesticide discharges are subject to NPDES permitting.

(b) New Discharger

The EPA is finalizing the proposed correction of a typographical error in paragraph (d) of the New Discharger definition to change ''NDPES'' to ''NPDES.'' The EPA received no public comments associated with this revision.

3. Changes to Existing NPDES Permit Application Requirements (40 CFR 122.21)

The CWA directs the Administrator to ''promulgate guidelines for the purpose of establishing uniform application forms,'' and minimum requirements for the acquisition of information from owners and operators of point-sources of discharge. 33 U.S.C. 1314(i). The EPA regulations at 40 CFR part 122 implement this requirement. The EPA proposed specific revisions to clarify and update the permit application requirements in 40 CFR 122.21. In this action, the EPA is finalizing the revisions to the permit application requirements, as described in the following sections, to update and improve application consistency, accuracy, and usability.

The EPA regulations establish permit application requirements and corresponding forms for use by all applicants for EPA-issued individual permits. Accordingly, the EPA has updated the eight application forms consistent with the final requirements addressed in this final rule.[4] An authorized state program may choose to use the EPA's forms or develop its own application forms; however, an authorized program's forms must collect all of the information that the Agency's regulations require.[5]

In the Proposed Rule, the EPA indicated that it had established a separate docket (EPA–HQ–OW–2016–0146) to receive comments on potential future changes to the application forms and information requests. Specifically, the EPA solicited comment on whether and how a separate future action should address the utility and clarity of the information requests and on how to minimize the information collection burden on respondents, including the use of appropriate automated, electronic, mechanical, or other forms of information technology (see 81 FR 31367, May 18, 2016). The EPA did not receive any substantive comments that identified duplication, redundancy or other ways to reduce burden associated with the forms that have not been otherwise discussed and/or addressed in this rulemaking.

(a) NPDES Contact Information (40 CFR 122.21(a)(2))

The EPA is finalizing the correction to 40 CFR 122.21(a)(2) to update contact information for obtaining application

[2] See *https://www.epa.gov/npdes/pesticide-permitting.* The EPA's Pesticide General Permit applies only to areas and activities where states are not authorized to administer the NPDES program. Authorized states develop and issue their own permits for pesticide discharges to waters of the United States from pesticide application.

[3] This term, also called biopesticides, includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants.

[4] For more information about the NPDES application forms and their history, see the preamble to the proposed rule: 81 FR 31345–31346 (May 18, 2016) and 81 FR 31349 (May 18, 2016).

[5] 40 CFR 122.21(a)(2)(iv).

forms, as proposed. The final provision deletes outdated references to program contact information, and includes the updated website address for the NPDES homepage, *http://www.epa.gov/npdes*. The EPA received no public comments associated with this revision. In general, it is the EPA's view that providing up-to-date contact information in the CFR will save the permitting authorities and the public time when they seek to contact the EPA about these regulations. For instance, if this information were not provided in the regulation, an interested party may spend unnecessary time searching the internet and navigating the EPA's website for NPDES information. Instead, the EPA is providing updated contact information for parties interested in obtaining the NPDES application forms.

(b) Industrial Classification Codes (40 CFR 122.21(f)(3))

The EPA is finalizing the revisions to the requirements at 40 CFR 122.21(f)(3), for all facilities except POTWs and treatment works treating domestic sewage (TWTDSs), to include North American Industry Classification System (NAICS) codes,[6] in addition to Standard Industrial Classification (SIC) codes,[7] that reflect the products or services provided by the facility.

Most comments received either supported or did not oppose the proposed requirement to include NAICS codes. While generally supporting the revision, several comments questioned why the EPA proposed to require submission of both SIC *and* NAICS codes, suggesting instead that the Agency should require one or the other, or provide flexibility to choose which code to submit. Some comments also expressed concern and requested clarification about the overall timing and transition process from SIC codes to NAICS codes.

The EPA's intent with the proposed rulemaking was to require both SIC and NAICS codes, as both codes provide useful information. For example, SIC codes are referenced in several Effluent Limitations Guidelines regulations that serve as the basis for effluent limitations in NPDES permits. While the EPA may elect to replace those SIC codes with NAICS codes at some point in the future, the SIC code is currently a critical piece of information needed for NPDES permitting purposes.[8] While the older SIC codes are still referenced in other regulations, NAICS codes are now the federal data standard typically used to identify and classify industrial operations.[9] Although the NAICS codes are not directly linked to most CWA implementing regulations, they are the recommended industry classification system in OMB's Statistical Policy Directive No. 8, and NAICS codes have effectively replaced SIC codes, which have not been updated since 1987. Use of the NAICS codes as the data standard across all federal data systems ensures consistency in assessments conducted across multiple federal databases. Use of the NAICS codes also allows the NPDES permit program to reflect the evolution of industries to which dischargers belong.

In many cases there is a one-to-one crosswalk between the SIC and NAICS codes; however, this is not always true. [*Note:* The United States Census Bureau provides online resources connecting SIC and NAICS codes: *https://www.census.gov/eos/www/naics/concordances/concordances.html*.]

Given that some CWA regulations use SIC codes, both codes remain important for permitting and data tracking purposes. Therefore, the final rule will require an applicant to provide both SIC and NAICS codes on application forms. After changes are made in the future to replace SIC code references in other CWA regulations, the EPA will evaluate revisiting the application forms to remove or revise the SIC code requirements.

(c) New Discharger Data Submission (40 CFR 122.21(k)(5)(vi), 40 CFR 122.21(j)(4)(i), and 40 CFR 122.21(j)(5)(i))

Because they have not commenced discharge, applications for new dischargers require submission of estimates of the types and quantities of pollutants discharged. The regulations for non-POTWs require submission of actual effluent data (consistent with the effluent characterization data required in the applications for existing dischargers) no later than 24 months after the discharge has commenced. In the EPA's Proposed Rule, the Agency sought to revise application requirements for new dischargers, both POTWs and non-POTWs, to require the submission of effluent data that is required in the application for an existing discharger within 18 months from the commencement of discharge. For non-POTWs, the proposal shortened the period from 24 months to 18 months, and for POTWs, the proposal created the requirement for the first time. The revision sought to ensure that dischargers submit the required effluent data in a manner that is timely and consistent. Providing follow-up effluent data allows the permit writer to evaluate any discrepancies between estimated or anticipated effluent characteristics estimated and reported by the applicant prior to the commencement of discharge, and the effluent characteristics based on actual effluent data after the commencement of discharge.

In the proposed rulemaking, the EPA envisioned three months for a facility's treatment system to be operating efficiently, one year of sampling, and another three months to report data. The EPA received mixed comments on the proposed revisions to 40 CFR 122.21(k)(5)(vi), 40 CFR 122.21(j)(4)(i), and 40 CFR 122.21(j)(5)(i). Multiple comments generally supported the proposed revisions and one comment suggested that the timeframe should be shortened from the proposed 18 months to 16 months by reducing the time to report data from three months to one month. On the other hand, several comments objected to shortening the timeframe from 24 months to 18 months for new industrial (non-POTW) dischargers. They argued that 24 months is necessary for optimizing facility operation and gathering and reporting representative data. One commenter pointed to examples in other rulemakings, such as the EPA's steam electric power sector effluent limitation standards and guidelines,[10] where the need for significant facility startup and optimization time is documented. Additionally, one comment suggested that many treatment systems are affected by rainfall or are dependent on biological treatment that takes longer than three months to establish and optimize. Another commenter suggested that 24 months is a more suitable timeframe for new POTWs as well, suggesting that it provides a more complete data set, representing close to two full annual cycles that account for potential seasonal fluctuations and their impacts on effluent quality and flow variability.

[6] NAICS code numbers and descriptions in the North American Industrial Classification System Manual prepared by the Executive Office of the President, Office of Management and Budget can be found online at: *http://www.census.gov/eos/www/naics/*.

[7] SIC code numbers and descriptions in the 1987 Standard Industrial Classification Manual prepared by the Executive Office of the President, Office of Management and Budget can be found online at: *http://www.osha.gov/pls/imis/sic_manual.html*.

[8] For example, see 40 CFR 414.11(a) which establishes effluent limitations guidelines subcategories using the 1987 SIC categories.

[9] See ''North American Industry Classification System United States, 2017'' Executive Office of the President, Office of Management and Budget, 2017.

[10] *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category,* 80 FR 67837 (November 3, 2015).

When the EPA first established [11] the non-POTW requirement at 40 CFR 122.21(k)(5)(vi) and the corresponding requirements in application Form 2D (for new sources and new dischargers), the Agency considered a range of options for the submission of ''follow-up data.'' The range of options the EPA considered included requiring no additional information at all to requiring the submission of Form 2C (applicable to existing dischargers) after commencement of the discharge. When the EPA first established the requirement to provide follow-up data no later than two years after commencement of discharge, the Agency received no negative comments and the provision was generally supported. At that time, some commenters suggested that a ''steady state'' or optimized operations for non-POTWs may not be reached within one year's time and 24 months was therefore more appropriate.

As the Agency did in 1984 and 1986, the EPA continues to take into consideration the needs of industry for regulatory certainty and the possible necessity for adjusting permit limits after operation commences to protect human health and the environment. As a result, after evaluating the comments received, the EPA is retaining the 24-month requirement for non-POTWs to submit effluent data after the commencement of discharge and is not finalizing the proposed revision to 40 CFR 122.21(k)(5)(vi) to reduce the requirement to 18 months. As suggested by commenters, the additional six months could strengthen the quality of information submitted to the Agency.

The EPA is finalizing, in this action, the editorial changes to 40 CFR 122.21(k)(5)(vi) to remove the reference to a permit holder's presumed gender, as well as correcting the reference to the correct application form—Form 2C. In addition, after evaluating the comments received, and for the reasons discussed above in the context of new non-POTW dischargers, the EPA is finalizing revisions to 40 CFR 122.21(j)(4)(i) and 40 CFR 122.21(j)(5)(i) with modifications to require submission of follow-up data for new POTWs no later than 24 months after commencement of the discharge. Further details regarding the Agency's basis for these actions may be found in the Response to Comment document.

[11] The EPA first proposed 40 CFR 122.21(k)(5)(vi) on October 1, 1984 (49 FR 38812) and first finalized the 24-month requirement on July 28, 1986 (51 FR 26982).

(d) Data Age for Permit Renewal (40 CFR 122.21(g)(7)(ix))

The EPA proposed a new paragraph (ix) to 40 CFR 122.21(g)(7), to mirror the existing language of 40 CFR 122.21(j)(4)(vi) and (vii), which is applicable to POTWs, and corresponding Form 2A. Proposed paragraph 40 CFR 122.21(g)(7)(ix) would have been applicable to industrial applicants and incorporated into Form 2C. The existing regulation for POTWs at 40 CFR 122.21(j)(4)(vi) provides that existing data may be used, if available, in lieu of sampling done solely for the purpose of the application. Additionally, 40 CFR 122.21(j)(4)(vii) provides that for POTWs, existing data for specified pollutants collected within four and one-half years of the application must be included in the pollutant data summary by the applicant. It also provides that if sampling for a specific pollutant is done monthly or more frequently, it is only necessary to summarize all data collected within one year of the application. For the purpose of consistency, the EPA sought to adopt the same conditions on the use of existing data in lieu of sampling data collected solely for the purposes of the application for industrial applicants through the proposed 40 CFR 122.21(g)(7)(ix). The proposed requirement would have superseded the instructions to current Form 2C, applicable to industrial applicants, which provide flexibility to use existing data, but subject to different conditions. The Form 2C instructions provide that data from samples taken in the past may be used in lieu of the otherwise required sampling for application purposes if the samples meet all data requirements, all samples were taken no more than three years before application submission, and all data are representative of the present discharge.

The EPA received several comments on the proposed addition of 40 CFR 122.21(g)(7)(ix) (and conforming changes to the substance of Form 2C). Comments focused on the three years versus four and one-half years for acceptable data age, whether the one-year of summary data provision should be allowed, what constitutes representative samples, and general suggestions attempting to make the rule clearer.

After reviewing public comment, the EPA has decided to finalize its proposal to allow the use of data collected up to four and one-half years prior to the date of permit application, but has decided not to finalize other proposed elements in 40 CFR 122.21(g)(7)(ix) due to differences in data reporting requirements for POTWs in Form 2A and non-POTWs in Form 2C

Specifically, commenters noted that the proposed revisions to 40 CFR 122.21(g)(7)(ix) required that ''All existing data . . . that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant.'' Commenters noted that this requirement was not consistent with the NPDES recordkeeping requirement at 40 CFR 122.41(j)(2), which requires that most effluent monitoring data be retained for three years. Further, commenters noted that the use of the term ''summary data'' that was appropriate in the context of reporting under the POTW application requirements, was confusing with respect to the data reporting format required for non-POTWs in Form 2C.

With respect to the proposed revision that non-POTW applicants ''must'' provide all data from the past four and one-half years, the EPA agrees that the proposed requirement is inconsistent with the existing recordkeeping requirements, and has revised the provision to track the long-standing language in the instructions to Form C. The final data age provision at 40 CFR 122.21(g)(7)(ix) *allows* applicants to use data up to four and one-half years, but does *not require* four and one-half years of data. As discussed in the preamble to the proposed rule, the EPA has determined that the four and one-half year data age allowance, rather than the three-year allowance mentioned only in the existing Form 2C instructions, provides applicants with additional flexibility and a more practical timeframe (*i.e.,* their previous five-year permit term minus the 180-day application period) for collection of effluent characterization data. This four and one-half year timeframe has been in place for POTWs since the revisions to Form 2A were promulgated in 1999, and the EPA has seen no problems associated with this existing POTW requirement.

Consistent with the language from the existing Form 2C application instructions, the final provision at 40 CFR 122.21(g)(7)(ix) also clarifies that existing data may only be used where they remain representative of the current discharge characteristics. With respect to comments regarding whether data are ''representative'' of the discharge, the EPA considers the discussion and examples included in the existing and revised instructions to the application forms to provide the appropriate level of detail.

The final regulatory provision at 40 CFR 122.21(g)(7)(ix) also removes the term ''summary data'' which the EPA agrees is unnecessary and confusing with respect to the data reporting format in Form 2C.

(e) Reporting Electronic Mail Address

The EPA is finalizing revisions to the following paragraphs in 40 CFR 122.21 to request the applicant's electronic mailing address (email) as proposed: 40 CFR 122.21(c)(2)(ii)(B), 40 CFR 122.21(f)(4), 40 CFR 122.21(j)(1)(ii), 40 CFR 122.21(j)(1)(viii)(2) and (3), 40 CFR 122.21(j)(9), 40 CFR 122.21(q)(1)(i), 40 CFR 122.21(q)(2)(i), 40 CFR 122.21(q)(8)(vi)(A), 40 CFR 122.21(q)(9)(iii)(D) and (E), 40 CFR 122.21(q)(9)(iv)(A), 40 CFR 122.21(q)(10)(ii)(A), 40 CFR 122.21(q)(10)(iii)(K)(1), 40 CFR 122.21(q)(11)(ii)(A), 40 CFR 122.21(q)(12)(i), and 40 CFR 122.21(q)(13). The EPA received one public comment associated with these revisions. The comment expressed general support for these revisions, and did not contain any substantive comments requiring the EPA's response.

(f) Reporting Numbers of Significant Industrial Users (SIUs) and Non-Significant Categorical Industrial Users (NSCIUs)

The CWA directs the EPA to publish ''regulations establishing pretreatment standards for introduction of pollutants into treatment works'' (33 U.S.C. 1317). Under the NPDES regulations at 40 CFR 122.21(j)(6), POTW permit applicants must provide certain information for SIUs that discharge to the treatment works (33 U.S.C. 1314(i) and 1317). SIUs are either industrial dischargers that: Deliver either large volumes (daily average of 25,000 gallons or more) of wastewater to the POTW for final treatment, are subject to Categorical Pretreatment Standards (known as categorical industrial users or ''CIUs''), or both. The wastewater from these facilities may affect the operation and performance of the POTW, and may contain pollutants that are otherwise uncharacteristic of domestic sewage. In the Proposed Rule, the EPA proposed revisions to 40 CFR 122.21(j)(6)(i) and (ii) of the NPDES application regulations to reflect changes in the definition of SIU in the general pretreatment regulations at 40 CFR 403.3(v). Before a 2005 regulation which streamlined the pretreatment regulations for existing and new sources (70 FR 60191), all CIUs were defined as SIUs.[12] The 2005 regulation changed the definition to authorize the POTW Control Authority[13] to determine that certain CIUs meeting prescribed conditions could be classified as non-significant CIUs (NSCIUs) as opposed to SIUs. The ability to designate a CIU as an NSCIU resulted in reduced reporting requirements for the facility as well as the control authority because permittees are not required to report information about NSCIUs as often.[14]

In this action, the EPA is finalizing some of the changes to 40 CFR 122.21(j)(6)(i) identified in the Proposed Rule. Prior to this final rule, the EPA's regulations and application Form 2A asked for the number of CIUs and the number of SIUs. By changing the requirement to report only the number of SIUs and NSCIUs, instead of CIUs, the permitting authority will gain a clearer picture in Form 2A of the number of CIUs that are designated as NSCIUs since all CIUs are categorized as either SIUs or NSCIUs.

While the EPA did not receive any comments in opposition to this proposed revision to 40 CFR 122.21(j)(6)(i), the EPA received comments and questions regarding the inclusion of the phrase ''trucked or hauled wastes'' in its definition of SIU to 40 CFR 122.21(j)(6)(i). By including this phrase, the EPA intended to clarify that the reported number should include not only those SIUs and NSCIUs directly connected to the POTW, but also those SIUs and NSCIUs that truck or haul their wastes to the POTW. This rule does not change how trucked or hauled wastes are defined or regulated under the pretreatment program. Based on the comments received, the EPA has modified the final version of the provision from what was proposed to clarify that the number of SIUs and NSCIUs reported on application forms pursuant to 40 CFR 122.21(j)(6)(i) includes the number of SIUs and NSCIUs that deliver their waste to the POTW through means other than direct connection (*e.g.,* pipe), including delivery via truck or haul.

The EPA received additional comments regarding the proposed revisions to 40 CFR 122.21(j)(6)(ii). Multiple comments raised the concern that, as proposed, 40 CFR 122.21(j)(6)(ii) would require POTWs to report detailed information on a potentially significant number of CIUs which the control authority determined to be NSCIUs. Commenters suggested that this would increase the reporting burden for the POTW and would run counter to the flexibility provided by 40 CFR 403.3(v).

The EPA agrees and is not finalizing the proposed revision to 40 CFR 122.21(j)(6)(ii) so that the changes in this final rule carry forward the burden reduction established by previous changes to 40 CFR 403.3(v) and 403.12(q). In accordance with 40 CFR 403.3(v) and 403.12(q), the pretreatment control authority determines that NSCIUs consistently comply with all applicable categorical pretreatment standards, annually submit a certification and data necessary to support the certification, and never discharge any untreated concentrated wastewater. Additionally, in determining whether a CIU is an NSCIU, the control authority must find that the NSCIU has no reasonable potential for adversely affecting the POTW's operation. Annual reports and supporting data submitted to the control authority contain the information sought in 40 CFR 122.21(j)(6)(ii)(A) through (G). As a result, requiring POTWs to submit detailed information for all NSCIUs, as proposed in 40 CFR 122.21(j)(6)(ii), would negate the burden reduction provided by 403.3(v) and 403.12(q). Therefore, the EPA is not finalizing the proposed revision to 40 CFR 122.21(j)(6)(ii) and is instead retaining the previous requirements applicable only to SIUs to provide specific information. The requirements in 40 CFR 122.21(j)(6)(ii)(A)–(G) to provide specific information do not apply to NSCIUs.

(g) Cooling Water Intake Structure Indication (40 CFR 122.21(f)(9))

The EPA is finalizing the proposed revision to add paragraph 40 CFR 122.21(f)(9), with modification. The final rule requires the applicant to indicate whether the facility uses cooling water and to specify the source of the cooling water. The EPA is not finalizing the parenthetical note provided in the proposed version of 40 CFR 122.21(f)(9). The EPA has determined that the explanation about the applicability of application requirements under 40 CFR 122.21(r) is

[12] 70 FR 60134, October 14, 2005.

[13] ''Control authority,'' defined at 403.3(f), means a POTW with an approved POTW pretreatment program; or, in the absence of a POTW pretreatment program, the authorized state pretreatment program; or the EPA in the absence of an authorized state pretreatment program.

[14] CIUs must report in June and December each year (or more frequently) on their continued compliance with categorical pretreatment standards and submit those reports to the (pretreatment) Control Authority. 40 CFR 403.12(e)(1). Significant non-CIUs (SIUs not subject to categorical pretreatment standards) must also report similar information every 6 months to the Control Authority (403.12(h). Where, however, a facility is designated as an NSCIU, it need only submit annual reports certifying that it never discharges more than 100 gallons of total categorical wastewater on any given day, and information to support that certification. 40 CFR 403.12(q).

best placed in the application form instructions. The parenthetical note to 40 CFR 122.21(f)(9) in the proposed rulemaking was not a proposed new requirement and would have imposed no new additional requirements.

Most of the public comments received on this revision were supportive; however, one comment questioned the purpose and need for this revision, and suggested the requirement would create additional burden and costs on facilities that use cooling water, but are not subject to the requirements at 40 CFR 122.21(r). No specific costs or burdens were shared or suggested by the commenter.

The EPA agrees that all facilities, not just those subject to 40 CFR 122.21(r), would be subject to the requirement to indicate the use and source of cooling water; however, the EPA has determined that this requirement would not cause undue burden or impose any significant costs. By requiring indication of the use and source of cooling water, a permitting authority will receive key information necessary to effectively and efficiently develop an NPDES permit for the facility. For facilities already covered by 40 CFR 122.21(r), the final provision would notify the permitting authority that the application information under 40 CFR 122.21(r) is forthcoming. For facilities that are not already covered by 40 CFR 122.21(r), the final provision would provide valuable information on cooling water intake structures at minimal burden to the applicant. The final rule revision does not alter any existing requirements in 40 CFR 122.21(r) or 40 CFR 125.91.

h. Indication of Requests for Technology-Based Variances (40 CFR 122.21(f) and 122.21(j))

The EPA is finalizing revisions, as proposed, to 40 CFR 122.21(f) and 122.21(j) to require applicants to indicate whether they are requesting any of the technology-based variances allowed under 40 CFR 122.21(m) for non-POTWs and 40 CFR 122.21(n) for POTWs.

While some public comments received on this revision expressed support, other comments suggested that there may be instances where it would not be known whether a technology-based variance would be requested at the time of application.

The final rule ensures the permitting authority is aware of a technology-based variance request, if known, at the time of permit application, which will enable the permitting authority to more effectively and efficiently coordinate with the applicant and appropriate regulators on the technology-based variance request. The EPA acknowledges that there may be some instances where an applicant will not yet know at the time of application whether they will request a technology-based variance. The final rule does not and is not intended to limit an applicant's ability to request a technology-based variance only to the time of application. The final rule does not alter any existing requirements in 40 CFR 122.21(m) or 40 CFR 122.21(n), and an applicant continues to be able to request a technology-based variance consistent with existing statutory and regulatory requirements.

4. Best Management Practices (BMPs) (40 CFR 122.44(k)(4))

The EPA is finalizing the correction to the Note to 40 CFR 122.44(k)(4), Best Management Practices (BMPs), as proposed to delete outdated references to information sources that are no longer available. The final Note also includes the website address where updated BMP information is contained to ensure that the most current BMP guidance is provided.

The EPA received several comments on the proposed correction, including those from a municipality, trade associations, an authorized state NPDES program, and a state association. Several of the comments recommended that the listed BMP guidance documents be replaced by a general reference to the website where updated BMP guidance documents are contained to ensure that the most current BMP guidance is provided. One commenter also felt that listing some but not all documents in the note could imply that the included documents are preferred by the EPA, when others may be just or more appropriate for use by states. While the EPA agrees that the list of documents is not exhaustive, the Agency has maintained the list of existing guidance document titles and associated EPA publication numbers because it will save permitting authorities, regulated entities, and the public time when they seek these documents by using the EPA National Service Center for Environmental Publications (NSCEP) website (*https://www.epa.gov/nscep*). Additionally, existing text in the Note to 40 CFR 122.44(k)(4) makes clear that updates to the listed documents may also be available and all guidance documents are available to the public through the NSCEP website.

B. Revisions to Part 124

1. Public Notice Requirements (40 CFR 124.10(c))

The CWA requires that a ''copy of each permit application and each permit issued [under 402 of the Act] shall be available to the public'' (33 U.S.C. 1342(j)). The CWA also requires that notice be provided to the public, as well as any other state whose waters may be affected, of each NPDES permit application and that an opportunity be provided for a public hearing before ruling on each permit application. 33 U.S.C. 1342(a)(2) and (b)(3). The EPA is finalizing 40 CFR 124.10(c)(2)(iv) to allow permitting authorities to provide public notice of permitting actions for NPDES major individual and general permits on the permitting authority's publicly available website in lieu of the newspaper publication requirement in 40 CFR 124.10(c)(2)(i). In addition, the EPA is finalizing the requirement to post the draft permit and fact sheet on the permitting authority's publicly available website for the duration of the public comment period where the permitting authority chooses to use online public notice for a draft permit. However, the EPA is not finalizing the proposed requirement for a permitting authority that chooses the option to use website public notice to additionally post the final permit, fact sheet and response to comments on the website for the entire term of the permit. The final rule meets the objectives of the EPA's proposal, although the EPA made some changes to the regulatory language in response to public comments and after further consideration of the Agency's policy objectives and existing regulatory language. The EPA's objectives in the proposal were to provide permitting authorities with an alternative method of providing notice of permit applications and hearings, and affirm flexibility in reaching the public through a variety of methods that would greatly expand public access to applications and draft permits. In addition to the substantive changes described in the following section, the final rule also includes editorial changes that are not substantive in nature.

Most of the public comments received on providing the option for online posting of public notice via the permitting authority's website in lieu of newspaper publication were supportive. Some comments urged the EPA to retain the option of, or require, public notice in local daily and weekly publications (*e.g.,* newspapers), citing environmental justice (EJ) concerns, lack of access to the internet for certain populations and communities who do not use the

internet for religious or other reasons (*e.g.,* Amish, Mennonite, and Hutterite) as the need for public notice in printed publications. While some comments suggested that only members of the public already aware of where to seek information about permits would have easy access to the public notice and permit documents, many comments also stated that allowing public notice online in lieu of printed publications would result in notice to the broadest possible audience as well as modernize public notice options and potentially allow the permitting authority to save time and money. After consideration of these comments, the EPA is finalizing the option for online public notice for the NPDES actions described in 40 CFR 124.10(a)(1), as well as the regulatory note reminding the permitting authority to ensure that the method(s) of public notice used effectively informs all interested communities and allows access to the permitting process for those seeking to participate. The EPA expects that this would include newspaper notices in areas that continue to be best served by printed publications with NPDES-regulated entities owned or operated by identifiable populations (*e.g.,* Amish, Mennonite, and Hutterite) who do not use certain technologies (*e.g.,* computers or electricity) and areas known or likely to include members of identifiable populations who do not have access to or use certain technologies. The EPA also expects that this would include newspaper notices in areas known or likely to have limited broadband internet access, areas with underserved or economically disadvantaged communities, areas with prolonged electrical system outrages, and during large-scale disasters (*e.g.,* hurricanes).

As noted in the preamble to the Proposed Rule,[15] the EPA has carefully evaluated the potential effect of this revision on underserved communities with EJ concerns. In formulating the proposal, the EPA consulted a study conducted by Native Public Media that found that the primary source for national and international news among Native American tribes is the internet.[16] Newspapers were listed as only the third most commonly used source for news. The EPA also consulted the final National Environmental Justice Advisory Council (NEJAC), EJ in Permitting Subgroup Report.[17] The report states that ''[n]otification of the public by publishing in the legal section of regional newspapers is antiquated and ineffective. This method should not be counted on to communicate, even if legally required.'' [18] The NEJAC specifically listed website postings as a method to ensure meaningful public participation. Given, among other things, the wide availability of the internet and based on the EJ in Permitting Subgroup Report's results, the EPA concludes that notice via the internet would be a viable and effective method of informing the public of the NPDES actions listed in 40 CFR 124.10(a)(1). Mandating publication of public notice in newspapers in all cases was appropriate when 40 CFR 124.10(c)(2)(i) was promulgated in 1982, 12 years before the internet became widely available for public and commercial use. Now, however, websites, along with tailored methods to ensure they are consulted, are often more appropriate avenues for widely disseminating information to the public, and many states currently supplement the required newspaper publication by posting NPDES actions on their websites.

Further, the purpose of this revision is to provide permitting authorities with flexibility in reaching their public in a way that is most effective for their communities (*e.g.,* newspaper publication, internet notice, or a combination of these methods). Although neither the CWA nor its implementing regulations specify the best or preferred method for providing notice to the public, 40 CFR 25.3(c)(7) specifically emphasizes that agencies should ''use all feasible means to create opportunities for public participation, and to stimulate and support participation.'' Additionally, 40 CFR 124.10(c)(4) states that public notice of NPDES actions listed in 40 CFR 124.10(a)(1) *shall* be given by ''[a]ny other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.'' Therefore, permitting authorities are required to consider the appropriate method or methods to best inform and engage with their public.

Permitting authorities continue to have the option to publish public notices in local daily and weekly newspaper publications. The EPA's decision to allow an option for online public notice does not alter the existing requirements of 40 CFR 124.10(c)(2)(i) if a permitting authority chooses to continue the traditional method of providing notice of an NPDES permit action in a newspaper publication. To ensure all interested parties are aware of permitting authorities' intended method(s) of public notification, the EPA expects permitting authorities to make their public aware of whether public notices will be made available online, both online and in local newspapers, or solely in local newspaper publications. In addition, the EPA's decision to allow an option for online public notice does not in any way affect the requirements of 40 CFR 124.10(c)(1) which require that a copy of the notice must be mailed directly to persons who have joined the appropriate mailing list. 40 CFR 124.10(c)(1)(ix)(C) requires notification of the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. In addition, permitting authorities could clearly advertise on the website or in print the ability to sign up for notifications of draft permits via paper mail or email to ensure that all interested parties are aware of and receive effective notification of permitting actions. Further, the EPA's revisions to the public notice requirements for certain enumerated actions in 40 CFR 124.10 do not affect the notice requirements for ''issuance'' of final permit decisions, and the EPA is in no way suggesting that internet posting fulfills the separate final permit decision notice requirements of 40 CFR 124.15.

Public comments received on the proposed requirement to post permit documentation (*e.g.,* final permit, fact sheet, response to comments) online for the term of the permit were mixed. Opposing comments suggested that maintaining permit documentation online for the duration of the permit term would further strain the limited resources of permitting authorities, especially related to creating and maintaining a website and increasing server storage for archived materials. Some comments suggested that these related capital and operating costs would exceed any cost savings from foregoing printing the public notice in local newspaper publications. The EPA is aware of state and EPA permitting

[15] 81 FR 31359 (May 18, 2016).

[16] Morris, Traci L, and Sascha D. Meinrath. ''New Media, Technology and internet Use in Indian Country'' Native Public Media, available at *http://www.atalm.org/sites/default/files/NPM-NAF_New_Media_Study_2009_small.pdf.*

[17] See, ''Enhancing Environmental Justice in EPA Permitting Program.'' National Environmental Justice Advisory Council. April 2011, available at *https://www.epa.gov/sites/production/files/2015-02/documents/ej-in-permitting-report-2011.pdf.*

[18] Id., p.20.

authorities that already post final permits and fact sheets on their websites for the duration of the permit. The EPA supports and encourages the continuation of this additional transparency; however, based on the comments received from permitting authorities concerned with the most effective use of their resources, the Agency is not finalizing the requirement to maintain the permit documentation on the website for the term of the permit. Instead, where the permitting authority opts for online public notice of a draft permit, as defined in 40 CFR 122.2,[19] the draft permit and fact sheet must be posted on the permitting authority's website for the duration of the public comment period, when the public's need for timely access to permitting documents is the greatest. This posting is in addition to meeting the existing requirements in 40 CFR 124.10(d), which outline the required contents of public notices for all NPDES actions described in 40 CFR 124.10(a)(1). This additional requirement for posting draft permits and fact sheets will ensure that interested members of the public are not only aware of the information contained in the public notice document, but are able to view the contents of the draft permit and fact sheet online, as well. Typically, permitting authorities provide copies of final permits upon request.

To be clear, online public notice is an option for all NPDES actions described in 40 CFR 124.10(a)(1), which includes more than draft permits. However, for the NPDES actions described in 40 CFR 124.10(a)(1) other than draft permits, there would not be a draft permit or fact sheet to post on the permitting authority's publicly available website for the duration of the public comment period. Therefore, the EPA is specifying in the final rule that the requirement to post the draft permit and fact sheet on the website for the duration of the public comment period applies only for public notice of draft permits as defined in 122.2. The EPA expects permitting authorities using the option for online public notices to publish the information in a prominent, clear, and easily accessible location on their public website. The EPA notes that in meeting the requirement to make the draft permit and fact sheet available for the duration of the public comment period, the permitting authority's website must clearly include a link to access these documents, while the actual document could be hosted elsewhere, such as in a repository of permit documents.

In the Proposed Rule, the EPA also requested comments on, but did not propose specific regulatory text for, three additional topics related to the public notice regulations: (1) Revising 40 CFR 124.10(c) to *require* NPDES permitting authorities to public notice all NPDES permits and hearings on the permitting authority's publicly available website; (2) whether proposed revisions to public notice requirements in 40 CFR 124.10(c) should be expanded to include NPDES non-major individual and general permits; and (3) ways in which NPDES permits and fact sheets could be posted electronically to make it easier for the Agency's Enforcement and Compliance History Online (ECHO) information system to link to the permit fact sheets. The comments received on these three additional topics generally expressed confusion or requested clarification about what the EPA intended. Based on these comments, the EPA has decided not to make changes to the public notice regulations to address these issues at this time.

The EPA's decision to allow public notice of permitting actions for NPDES major individual and general permits on the permitting authority's publicly available website, in lieu of the newspaper publication requirement, increases transparency and promotes opportunities for public involvement. It also preserves states' flexibility to notice in a way that best ensures their public will be given a meaningful opportunity to participate in the NPDES permitting process. While mandating public notice of permitting activities in newspapers was appropriate when 40 CFR 124.10(c)(2)(i) was promulgated in 1982, the EPA recognizes that websites, along with other tailored means for ensuring the public consults the website, are often more appropriate avenues for widely disseminating information to the public.

C. Revisions to Part 125

1. Deletion of 40 CFR 125.3(a)(1)(ii))

The EPA is finalizing, as proposed, the deletion of 40 CFR 125.3(a)(1)(ii) to remove an outdated regulation that is no longer applicable. The regulation was derived from statutory authority that was repealed in 1981. The removal of this provision from the regulations will avoid confusion regarding its applicability.

III. Rule Revisions Not Finalized in This Action

The EPA is not finalizing the proposed changes to 40 CFR 122.3(a) due to the recent enactment of the Vessel Incidental Discharge Act, which exempts discharges incidental to the normal operations of a vessel from NPDES permitting requirements consistent with the existing regulatory language at 40 CFR 122.3(a).

In addition, the EPA received numerous comments on proposed revisions to the following eleven regulatory sections. The Agency requires additional time to analyze these comments and deliberate on appropriate next steps and thus is not taking final action on the proposed revisions to these at this time. The EPA has not made any final substantive decisions with respect to the proposed revisions to these sections.

At this time, the EPA is deferring final action on the proposed revisions to:

1. Definition of Proposed Permit (40 CFR 122.2)
2. Definition of Whole Effluent Toxicity (WET) (40 CFR 122.2)
3. Application Requirements—Latitude and Longitude (40 CFR 122.21(f)(2); (g)(1); (h)(1); (i)(1)(iii); (j)(1)(i); (j)(3)(i)(C); (j)(8)(ii)(A)(*3*); (k)(1); (q)(1)(i); (q)(8)(ii)(A); (q)(9)(iii)(B); (q)(10)(iii)(B); (q)(11)(iii)(B); (q)(12)(i); (r)(3)(ii))
4. Reasonable Potential Determinations for New Discharges (40 CFR 122.44(d))
5. Dilution Allowances (40 CFR 122.44(d))
6. Antidegradation Reference (40 CFR 122.44(d))
7. Anti-backsliding (40 CFR 122.44(l))
8. Design Flows for POTWs (40 CFR 122.45(b))
9. Objection to Administratively Continued Permits (40 CFR 123.44)
10. CWA Section 401 Certification Process (40 CFR 124.55(b))
11. Fact Sheet Requirements (40 CFR 124.56)

IV. Impacts

This final rule involves minor, mostly clarifying revisions to the NPDES regulations. It is the EPA's view that many of these revisions will generally not result in new or increased impacts or information collection by authorized states or the regulated community. It is also the EPA's view that in some cases, the revisions finalized in this action, including deleting outdated information, modernizing public notice options, and clarifying requirements,

[19] Draft permit means a document prepared under 40 CFR 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a ''permit.'' A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in 40 CFR 124.5, are types of ''draft permits.'' A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR 124.5, is not a ''draft permit.'' A ''proposed permit'' is not a ''draft permit.''

will reduce burden. As the EPA modifies the NPDES application forms to conform with the regulatory changes in this rule, it is also modernizing the instructions and format of the application forms. As discussed below, the changes to the instructions and format of the application forms will also reduce burdens. A summary of the impacts assessment is provided in this section for each topic.

Purpose and Scope of the NPDES Program (40 CFR 122.1)

The revision to this note is being made to inform the public of ways to contact the NPDES program and will not result in changes to the existing program or program requirements. The note in the past regulation contained an outdated address and telephone number for the EPA's Office of Water. Providing updated information will save the permitting authorities and the public time when they seek to contact the EPA about these regulations.

NPDES Program Definitions: Pesticide Discharges to Waters of the United States From Pesticide Application, Pesticide Residue, and New Discharger (40 CFR 122.2)

The final revisions to the NPDES program definitions at 40 CFR 122.2 for ''pesticide discharges to waters of the United States from pesticide application,'' ''pesticide residue,'' and ''new discharger'' will not result in a change to the burden associated with this information collection. These revisions are being made to improve programmatic clarity and would not result in substantive changes to the existing program or program requirements.

Adding definitions for ''pesticide discharges to waters of the United States from pesticide application'' and ''pesticide residue'' brings the NPDES definitions in concert with the way the EPA's Pesticide General Permit has been interpreting and regulating such applications since 2011. These definitions would not change burden and would not change the universe of permittees and activities that the Pesticide General Permit covers.

The EPA is correcting a typographical error in paragraph (d) of the definition ''New discharger'' by correcting ''NDPES'' to ''NPDES.''

Application Requirements (40 CFR 122.21)

The final revisions to 40 CFR 122.21 related to application requirements together with the modifications to the instructions and format of the existing application forms would result in a reduction in burden. In fact, the EPA estimates that the changes to various application requirements will result in a total reduction to permittees and permitting authorities of 17,912 hours and $1,023,042 in costs per year. These savings estimates consist of both specific changes to the information being collected on forms and general efforts to reformat forms for increased clarity. For more details, please refer to section 12 of the ICR Supporting Statement in the docket of this rule (Docket ID No. EPA–HQ–OW–2016–0145) and the docket associated with this rule's ICR (Docket ID EPA–HQ–OW–2018–0629).

Changes to Information Previously Collected by the EPA

The EPA is revising several data fields to refine the content and improve the consistency among the forms, to improve the consistency with the Agency's current data standards, and improve the clarity and usability of the forms. For example, for every question where it is applicable, the revised forms direct the applicant to ''stop'' or ''skip'' to the next appropriate question depending on the applicant's response. As another example, the revisions to Form 2A create a consistent format with the other forms by reformatting the previous sections A, B, and C into six major sections with detailed instructions. Further, instructions are provided for Form 2B for the very first time.

Revisions to the instructions and format of the application forms will make them easier to use and understand and is expected to result in a decrease in effort for permittees applying for coverage. The EPA also expects that the revisions will improve the quality of information being collected, which may reduce the need for follow-up questions and data requests, and the time necessary for the permitting authority to develop a permit. The EPA expects such efforts to reformat forms for increased clarity to result in a reduction of 25,426 hours and $1,534,937 in costs based on an estimated 20,663 responses or applications per year.

New Information To Be Collected by the EPA

The estimated burden associated with the new requirement for permittees to report up to four NAICS codes on application Form 1 (40 CFR 122.21(f)(3) is expected to result in a burden increase of 1,224 hours and $73,893 in added costs based on an estimated 12,240 responses or applications per year. The estimated burden associated with the new requirement for permittees to provide an email address in Forms 1, 2A, 2B, and 2S (multiple locations in 40 CFR 122.21) is expected to result in a burden increase of 11,526 hours and $695,839 in added costs based on an estimated 20,663 responses or applications per year. This increased burden is applicable to permittees only. Permitting authorities (authorized states and the EPA) are expected to experience reduced burden associated with more efficient communication. The estimated burden associated with this new requirement for permitting authorities is a reduction of 5,005 hours and savings of $247,235 per year for state permitting authorities based on 20,019 responses per year.

The estimated burden associated with the change in reporting requirements for permittees reporting the number of SIUs and NSCIUs (40 CFR 122.21(j)(6)(i)) is expected to result in a burden decrease of 77 hours and $3,804 for state permitting authorities based on an estimated 306 responses or applications per year. It is not estimated to result in a change of burden for permittees.

The estimated burden associated with the revision that requires the applicant to indicate whether the facility uses cooling water and to specify the source of the cooling water (40 CFR 122.21(f)(9)) is expected to result in additional burden of 73 hours and $4,416 for power plants and manufacturers that use cooling water, based on an estimated 293 responses or applications per year. For permitting authorities, the revision is expected to result in more efficient permitting because the permitting authority can initiate data submissions and reviews earlier in the permitting process. The EPA estimates this will result in a burden decrease of 227 hours and $11,214 for state permitting authorities based on 227 responses or application per year.

The revision that requests an applicant to indicate whether they are seeking a technology variance (40 CFR 122.21(f)(10) and 122.21(j)) is estimated to have such a small impact due to the small number of technology variance requests made per year that this impact is assumed to be 0 hours and no change in burden. Similarly, the revision that requires new POTW dischargers to provide data for specific analytes (40 CFR 122.21(j)(4)(i) and whole effluent toxicity (40 CFR 122.21(j)(5)(i)) within 24 months of commencement of discharge is estimated to incur no additional burden or costs. Permitting authorities typically require characterization data requirements for new dischargers in the initial NPDES permit, and the only variation made

pursuant to this rule is the timeframe (24 months) for collecting and reporting the data.

Best Management Practices (BMPs) (40 CFR 122.44(k)(4))

The revision to this note is being made to ensure the public is aware of the most current BMP guidance because the note in the past regulation contained outdated references to information sources that are no longer available. This revision will not result in a change to the burden associated with this information collection.

Public Notice Requirements (40 CFR 124.10(c))

The EPA is finalizing 40 CFR 124.10(c)(2)(iv) to allow permitting authorities to provide public notice of permitting actions for NPDES major individual and general permits on the permitting authority's publicly available website in lieu of the newspaper publication requirement in 40 CFR 124.10(c)(2)(i). In addition, where the permitting authority chooses to use online public notice for a draft permit, the EPA is finalizing the requirement to post the draft permit and fact sheet on the permitting authority's publicly available website for the duration of the public comment period. However, the EPA is not finalizing the proposed requirement for a permitting authority that chooses the option to use website public notice to additionally post all final permits, fact sheets, and response to comments on the website for the entire term of the permit. The purpose of this revision is to provide the permitting authority with an alternative method of providing notice of permit applications and hearings and provide flexibility to reach communities in a variety of methods. It is the EPA's understanding that the traditional approach to newspaper publication has become costly for permitting authorities to implement. The EPA's final revisions intend to alleviate those costs by allowing the permitting authority to use its publicly available website as an alternative to the traditional newspaper publication.

At the time of the proposed rulemaking, the EPA estimated the cost of public notice of draft permits in newspapers for NPDES major facilities, sewage sludge facilities and general permits to be approximately $1.6 million per year, nationally.[20] This estimate excluded the costs of preparing the content of the NPDES public notice, and the costs of the other methods to provide notice besides newspaper publication, such as direct mailing. Based on information provided in the public comments received on the proposed rulemaking, the cost to post a public notice online was estimated to be $113 per notice; whereas the cost to post a public notice in a newspaper was estimated to be $1,416 per notice.[21] The EPA estimates that issuance of public notice via website in lieu of newspaper results in a burden reduction of $1,303 per NPDES action (a total reduction of $1,419,673 per year).[22] The rule allows but does not require state and federal permitting authorities to use electronic public notice instead of newspaper publication. In developing burden estimates, the EPA assumed that states and the EPA would continue to publish at least some notifications in newspapers, and therefore the burden associated with public notice would not be reduced in those instances.

Deletion of 40 CFR 125.3(a)(1)(ii)

The deletion of 40 CFR 125.3 (a)(1)(ii) from the NPDES regulations will not result in change to the burden associated with this requirement. By deleting this outdated provision, the EPA clarifies that this provision no longer applies to regulated entities.

V. Compliance Dates

With this final action, authorized states, territories, and tribes have up to one year to revise, as necessary, their NPDES regulations to adopt the requirements of this rule, or two years if statutory changes are needed, as provided at 40 CFR 123.62. At a minimum, the EPA anticipates any permitting authority using state-developed NPDES application forms would need to update their regulations and application forms, as needed, in order to be in compliance with the application requirements finalized in this rulemaking.

The EPA recognizes that each authorized program has unique state statutes and regulations, and that many of the revisions finalized in this rule are clarifying in nature. As a result, the EPA anticipates that in most instances, the program revisions that will be occurring to conform to this rule will be nonsubstantial, as contemplated in 40 CFR 123.62. For those instances where the EPA determines that an authorized program's conforming program revision is substantial, the process outlined in 40 CFR 123.62(b)(2) will be followed. In addition, authorized programs may have to update their NPDES program documents (*e.g.,* program description, Attorney General statement) to reflect these revisions, whether they are substantial or nonsubstantial. See 40 CFR 123.62(b)(1).

VI. Statutory and Executive Order Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any revisions made in response to interagency review have been documented in the docket for this action.

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

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule has been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2575.01. It will be assigned an OMB control number upon approval by OMB. You can find a copy of the ICR submitted to OMB in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable—and EPA cannot collect any information set out in the ICR—until OMB approves them. In additional, the EPA will post a copy of the final ICR to the docket for this rule upon approval by OMB.

CWA section 402 and the NPDES regulations require collection of information primarily used by permitting authorities, permittees, and the EPA to make NPDES permitting decisions. The burden and costs associated with the entire NPDES

[20] In the preamble to the proposed rulemaking, the EPA used $1,000 (in 2010$) as the publication cost for a public notice in a newspaper and assumed that there are 1,600 NPDES permit actions that require public notice via newspaper publication each year; thus, we arrive at the $1.6 million per year estimate. (81 FR 31366, May 18, 2016).

[21] See the EPA's ICR No. 0229.23, Animal Sector public notice burden estimates, adjusted for inflation using *https://www.bls.gov/data/inflation_calculator.htm.*

[22] The EPA based these estimates on authorized states providing public notice for 1,049 individual permits online per year, and the EPA providing public notice for 41 general permits online per year at a savings of $1,303 per notice. This is estimated to result in savings of $ − 1,366,847 and $ − 52,826 for states and the EPA, respectively.

program are accounted in an approved ICR (EPA ICR number 0229.23, OMB control no. 2040–0004). This final rule and the corresponding updated application forms require revisions to the ICR to reflect changes to the forms and other information collection requirements. EPA is reflecting the paperwork burden and costs associated with this rule in a separate ICR instead of revising the existing ICR for the entire program for administrative reasons. Eventually, EPA plans to consolidate the burden and costs in this ICR into that master ICR for the entire NPDES program and discontinue this separate collection. EPA expects the changes set out in this final rule along with changes to the instructions and format of the NPDES permit applications to result in an overall burden decrease to permitting authorities and the regulated community of approximately $2,389,889 and 17,912 hours annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. 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 rule eliminates inconsistencies between regulations and application forms, streamlines and updates application forms, provides clarification to existing regulations, deletes outdated regulatory provisions, updates Agency contact information, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions. We have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This final rule eliminates inconsistencies between regulations and application forms, streamlines and updates application forms, provides clarification to existing regulations, deletes outdated regulatory provisions, updates Agency contact information, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions. This final rule does not impose significant burden on the EPA, states, or the regulated community, or specifically, any significant burden on any small entity. With respect to any impacts on any authorized state programs, the costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program. Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA. For the same reason, the EPA has determined that this rule contains no regulatory requirements that will significantly affect small governments. Thus, this final rule is not subject to the requirements of section 203 of UMRA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This final rule does not have tribal implications, as specified in Executive Order 13175. The EPA considered the impacts on tribes, and concluded that there would be no substantial direct compliance costs or impact on tribes. Because the purpose of the final rule is to eliminate inconsistencies between regulations and application forms, streamline and update application forms, provide clarification to existing regulations, delete outdated regulatory provisions, update Agency contact information, and provide for new programmatic flexibility in providing public notice on NPDES permitting actions, it will not have substantial direct effects on: Tribal governments; the relationship between the federal government and Indian tribes; or the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Executive Order 13175 does not apply to this action and the EPA determined that tribal consultation was not necessary for this action.

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 these changes to procedural requirements and forms do not address environmental health risk or safety risks.

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

This action is not a ''significant energy action'' because it is does not have a significant adverse effect on the supply, distribution or use of energy. This final rule eliminates inconsistencies between regulations and application forms, provides clarifications to existing regulations, deletes outdated provisions, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions.

J. National Technology Transfer and Advancement Act

This final rulemaking does not involve technical standards.

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

The EPA has determined that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This final rule eliminates inconsistencies between regulations and application forms, provides clarifications to existing regulations, deletes outdated provisions, and provides for new programmatic

flexibility in providing public notice on NPDES permitting actions.

In addition, the EPA's final revision related to the option for online public notice, in lieu of newspaper publication, of NPDES actions considered potential effects on environmental justice communities. The final rule includes a regulatory note reminding the permitting authority to ensure that the method(s) of public notice used effectively informs all interested communities and allows access to the permitting process for those seeking to participate. This includes potentially utilizing newspaper notices in areas that continue to be best served by printed publications, such as in areas known or likely to have limited broadband internet access, areas with underserved or economically disadvantaged communities, areas with prolonged electrical system outrages, and during large-scale disasters (*e.g.,* hurricanes).

L. Congressional Review Act (CRA)

This action is subject to the CRA and the 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 U.S. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 125

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 21, 2018.

Andrew R. Wheeler,

Acting Administrator, Environmental Protection Agency.

For the reasons set out in the preamble, EPA amends Chapter I of Title 40 of the Code of Federal Regulations as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A—Definitions and General Program Requirements

■ 2. Section 122.1 is amended by revising ''Note to § 122.1'' to read as follows:

§ 122.1 Purpose and scope.

* * * * *

[Note to § 122.1: Information concerning the NPDES program and its regulations can be obtained by contacting the Water Permits Division (4203), Office of Wastewater Management, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460 and by visiting the homepage at *http://www.epa.gov/npdes/.*]

■ 3. Section 122.2 is amended by:
■ a. Revising paragraph (d) of the definition of ''new discharger''; and
■ b. Adding in alphabetical order definitions for ''pesticide discharges to waters of the United States from pesticide application'' and ''pesticide residue''.

The revision and additions read as follows:

§ 122.2 Definitions.

* * * * *

New discharger * * *

(d) Which has never received a finally effective NPDES permit for discharges at that ''site.''

* * * * *

Pesticide discharges to waters of the United States from pesticide application means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges to waters of the United States from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)).

Pesticide residue for the purpose of determining whether an NPDES permit is needed for discharges to waters of the United States from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

* * * * *

Subpart B—Permit Application and Special NPDES Program Requirements

■ 4. Section 122.21 is amended by:
■ a. Revising paragraphs (a)(2)(i) introductory text and (a)(2)(i)(A), (c)(2)(ii)(B), (f) introductory text, and (f)(3) and (4);
■ b. Adding paragraphs (f)(9) and (10);
■ c. Revising paragraph (g) introductory text;
■ d. Adding paragraph (g)(7)(ix);
■ e. Revising paragraphs (j)(1)(ii) and (j)(1)(viii)(D)(*2*) and (*3*);
■ f. Adding paragraph (j)(1)(ix); and
■ g. Revising paragraphs (j)(4)(i), (j)(5)(i), (j)(6)(i), (j)(9), (k) introductory text, (k)(5)(vi), (q)(2)(i), (q)(8)(vi) introductory text, (q)(8)(vi)(A), (q)(9)(iii)(D) and (E), (q)(9)(iv)(A), (q)(10)(ii)(A), (q)(10)(iii)(K)(*1*), (q)(11)(ii)(A), (q)(12)(i), and (q)(13).

The revisions and additions read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) * * *

(2) * * *

(i) All applicants for EPA-issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting: U.S. EPA, Mail Code 4203M, 1200 Pennsylvania Ave. NW, Washington, DC 20460 or by visiting *http://www.epa.gov/npdes.* Applications for EPA-issued permits must be submitted as follows:

(A) All applicants, other than POTWs, TWTDS, vessels, and pesticide applicators must submit Form 1.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The applicant's name, address, telephone number, electronic mail address and ownership status;

* * * * *

(f) *Information requirements.* All applicants for NPDES permits, other than POTWs and other TWTDS, vessels, and pesticide applicators, must provide the information in paragraphs (f)(1) through (10) of this section to the Director, using the application form provided by the Director. Additional information required of applicants is set forth in paragraphs (g) through (k) and (q) through (r) of this section.

* * * * *

(3) Up to four SIC and up to four NAICS codes that best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, electronic mail address, ownership status, and status as Federal, State, private, public, or other entity.

* * * * *

(9) An indication of whether the facility uses cooling water and the source of the cooling water.

(10) An indication of whether the facility is requesting any of the variances at 40 CFR 122.21(m), if known at the time of application.

(g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of § 122.21(h), shall provide the following information to the Director, using application forms provided by the Director.

* * * * *

(7) * * *

(ix) Where quantitative data are required in paragraphs (g)(7)(i) through (viii) of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: All data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

* * * * *

(j) * * *

(1) * * *

(ii) *Applicant information.* Name, mailing address, telephone number, and electronic mail address of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

* * * * *

(viii) * * *

(D) * * *

(*2*) The name, mailing address, contact person, phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(*3*) The name, mailing address, contact person, phone number, electronic mail address and NPDES permit number (if any) of the receiving facility; and

* * * * *

(ix) An indication of whether applicant is operating under or requesting to operate under a variance as specified at 40 CFR 122.21(n), if known at the time of application.

* * * * *

(4) * * *

(i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Director effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Director may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Director may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge;

* * * * *

(5) * * *

(i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

* * * * *

(6) * * *

(i) Number of significant industrial users (SIUs) and non-significant categorical industrial users (NSCIUs), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

* * * * *

(9) *Contractors.* All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

* * * * *

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

* * * * *

(5) * * *

(vi) No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit items V and VI of NPDES application Form 2C (see § 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which have already been performed and reported under the discharge monitoring requirements of the NPDES permit.

* * * * *

(q) * * *

(2) * * *

(i) The name, mailing address, telephone number, and electronic mail address of the applicant; and

* * * * *

(8) * * *

(vi) If sewage sludge from the applicant's facility is provided to another ''person who prepares,'' as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information for each facility receiving the sewage sludge:

(A) The name, mailing address, and electronic mail address of the receiving facility;

* * * * *

(9) * * *

(iii) * * *

(D) The name, mailing address, telephone number, and electronic mail address of the site owner, if different from the applicant;

(E) The name, mailing address, telephone number, and electronic mail address of the person who applies sewage sludge to the site, if different from the applicant;

* * * * *

(iv) * * *

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to § 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to § 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and electronic mail address if available, of a contact person at the permitting authority;

* * * * *

(10) * * *

(ii) * * *

(A) The site name or number, contact person, mailing address, telephone

number, and electronic mail address for the surface disposal site; and

* * * * *

(iii) * * *

(K) * * *

(*1*) The name, contact person, mailing address, and electronic mail address of the facility; and

* * * * *

(11) * * *

(ii) * * *

(A) The name and/or number, contact person, mailing address, telephone number, and electronic mail address of the sewage sludge incinerator; and

* * * * *

(12) * * *

(i) The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;

* * * * *

(13) *Contractors.* All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal;

* * * * *

Subpart C—Permit Conditions

■ 5. Section 122.44 is amended by revising the ''Note to paragraph (k)(4)'' read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(k) * * *

(4) * * *

Note to Paragraph (k)(4): Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B–93–004, NTIS No. PB 94–178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R–92–005, NTIS No. PB 92–235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R–92–001, NTIS No. PB 93–223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R–92–006, NTIS No. PB 92–235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R–92–002, NTIS No. PB 94–133782; ERIC No. W492. These and other EPA guidance documents can be obtained through the National Service Center for Environmental Publications (NSCEP) at *http://www.epa.gov/nscep.* In addition, States may have BMP guidance documents. These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING

■ 6. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

Subpart A—General Program Requirements

■ 7. Section 124.10 is amended by revising (c) introductory text and adding paragraph (c)(2)(iv) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) Methods (applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

* * * * *

(2) * * *

(iv) For NPDES major permits and NPDES general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, as described in paragraph (c)(2)(i) of this section, the Director may publish all notices of activities described in paragraph (a)(1) of this section to the permitting authority's public website. If the Director selects this option for a draft permit, as defined in § 122.2, in addition to meeting the requirements in paragraph (d) of this section, the Director must post the draft permit and fact sheet on the website for the duration of the public comment period.

Note to paragraph (c)(2)(iv): The Director is encouraged to ensure that the method(s) of public notice effectively informs all interested communities and allows access to the permitting process for those seeking to participate.

* * * * *

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 8. The authority citation for part 125 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C., 1251 *et seq.,* unless otherwise noted.

Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

§ 125.3 [Amended]

■ 9. Section 125.3 is amended by removing and reserving paragraph (a)(1)(ii).

[FR Doc. 2019–01339 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8567]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and notification of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Mississippi:				
Aberdeen, City of, Monroe County	280115	January 31, 1974, Emerg; February 1, 1978, Reg; February 15, 2019, Susp.	Feb. 15, 2019	Feb. 15, 2019.
Amory, City of, Monroe County	280116	December 19, 1973, Emerg; April 17, 1978, Reg; February 15, 2019, Susp.	do	Do.
Fulton, City of, Itawamba County	280081	September 6, 1974, Emerg; September 4, 1985, Reg; February 15, 2019, Susp.	do	Do.
Itawamba County, Unincorporated Areas.	280290	N/A, Emerg; March 12, 1996, Reg; February 15, 2019, Susp.	do	Do.
Mantachie, Town of, Itawamba County	280082	May 27, 1975, Emerg; September 18, 1985, Reg; February 15, 2019, Susp.	do	Do.
Monroe County, Unincorporated Areas	280275	February 28, 1979, Emerg; March 16, 1988, Reg; February 15, 2019, Susp.	do	Do.

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Smithville, Town of, Monroe County	280325	March 16, 1988, Emerg; March 16, 1988, Reg; February 15, 2019, Susp.	.....do	Do.
Region V				
Illinois:				
Beecher, Village of, Will County	170696	December 12, 1974, Emerg; October 15, 1982, Reg; February 15, 2019, Susp.	.....do	Do.
Bolingbrook, Village of, DuPage and Will Counties.	170812	June 28, 1974, Emerg; October 15, 1980, Reg; February 15, 2019, Susp.	.....do	Do.
Braidwood, City of, Will County	170848	March 20, 1991, Emerg; December 1, 1992, Reg; February 15, 2019, Susp.	.....do	Do.
Coal City, Village of, Grundy and Will Counties.	170258	April 23, 1975, Emerg; May 25, 1978, Reg; February 15, 2019, Susp.	.....do	Do.
Crest Hill, City of, Will County	170699	August 5, 1974, Emerg; July 16, 1979, Reg; February 15, 2019, Susp.	.....do	Do.
Crete, Village of, Will County	170700	May 21, 1975, Emerg; March 2, 1981, Reg; February 15, 2019, Susp.	.....do	Do.
Homer Glen, Village of, Cook and Will Counties.	171080	N/A, Emerg; September 6, 2002, Reg; February 15, 2019, Susp.	.....do	Do.
Joliet, City of, Kendall and Will Counties.	170702	April 13, 1973, Emerg; February 4, 1981, Reg; February 15, 2019, Susp.	.....do	Do.
Lemont, Village of, Cook, DuPage and Will Counties.	170117	March 6, 1975, Emerg; June 30, 1976, Reg; February 15, 2019, Susp.	.....do	Do.
Manhattan, Village of, Will County	170704	June 12, 1975, Emerg; October 15, 1982, Reg; February 15, 2019, Susp.	.....do	Do.
Minooka, Village of, Grundy, Kendall and Will Counties.	171019	N/A, Emerg; March 12, 1992, Reg; February 15, 2019, Susp.	.....do	Do.
Mokena, Village of, Will County	170705	June 12, 1974, Emerg; August 1, 1979, Reg; February 15, 2019, Susp.	.....do	Do.
New Lenox, Village of, Will County	170706	September 19, 1974, Emerg; May 1, 1980, Reg; February 15, 2019, Susp.	.....do	Do.
Orland Park, Village of, Cook and Will Counties.	170140	April 15, 1974, Emerg; February 4, 1981, Reg; February 15, 2019, Susp.	.....do	Do.
Plainfield, Village of, Kendall and Will Counties.	170771	May 21, 1975, Emerg; November 17, 1982, Reg; February 15, 2019, Susp.	.....do	Do.
Rockdale, Village of, Will County	170710	May 27, 1975, Emerg; September 15, 1983, Reg; February 15, 2019, Susp.	.....do	Do.
Romeoville, Village of, Will County	170711	July 2, 1975, Emerg; November 3, 1982, Reg; February 15, 2019, Susp.	.....do	Do.
Sauk Village, Village of, Cook and Will Counties.	170157	April 30, 1974, Emerg; May 5, 1981, Reg; February 15, 2019, Susp.	.....do	Do.
Shorewood, Village of, Will County	170712	May 15, 1974, Emerg; November 1, 1979, Reg; February 15, 2019, Susp.	.....do	Do.
Steger, Village of, Cook and Will Counties.	170713	March 7, 1975, Emerg; February 18, 1983, Reg; February 15, 2019, Susp.	.....do	Do.
Tinley Park, Village of, Cook and Will Counties.	170169	July 25, 1974, Emerg; December 4, 1979, Reg; February 15, 2019, Susp.	.....do	Do.
University Park, Village of, Cook and Will Counties.	170708	September 24, 1974, Emerg; July 16, 1980, Reg; February 15, 2019, Susp.	.....do	Do.
Wilmington, City of, Will County	170715	August 7, 1974, Emerg; July 16, 1981, Reg; February 15, 2019, Susp.	.....do	Do.

*-do- =Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: February 1, 2019.

Katherine B. Fox,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2019–02015 Filed 2–11–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 181022971–8999–02]

RIN 0648–BI57

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish Fishery; 2019 and Projected 2020–2021 Specifications

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

ACTION: Final rule.

SUMMARY: NMFS finalizes specifications for the 2019 Mid-Atlantic blueline tilefish fishery north of the North Carolina/Virginia border and projects specifications for 2020 and 2021. This action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. It is also intended to inform the public of these specifications for the 2019 fishing year and projected specifications for 2020–2021.

DATES: This rule is effective February 12, 2019.

ADDRESSES: Copies of the environmental assessment are available on request from the Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, (978) 281–9341.

SUPPLEMENTARY INFORMATION:

Background

The blueline tilefish fishery north of the North Carolina/Virginia border is managed by the Mid-Atlantic Fishery Management Council under the Tilefish Fishery Management Plan (FMP). The blueline tilefish fishery south of the North Carolina/Virginia border is managed by the South Atlantic Fishery Management Council under the Snapper-Grouper FMP. Regulations implementing the Tilefish FMP appear at 50 CFR part 648, subparts A and N. The FMP and its implementing regulations detail the Council's process for establishing specifications. Fishery specifications for blueline tilefish include catch and landing limits for the commercial and recreational fisheries.

Detailed background information regarding the development of the 2019–2021 specifications for this fishery was provided in the specifications proposed rule (November 19, 2018; 83 FR 58219). That information is not repeated here.

2019 and Projected 2020–2021 Specifications

Table 1 shows the 2019 and projected 2020–2021 specifications including the acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), and total allowable catch (TAL) for the commercial and recreational aspects of the Mid-Atlantic blueline tilefish fishery. NMFS will publish a notice in the **Federal Register** before the 2020 and 2021 fishing years notifying the public of the final specifications for each year.

TABLE 1—2018, 2019, AND PROJECTED 2020–2021 BLUELINE TILEFISH SPECIFICATIONS

	2018	2019	Projected 2020–2021
ABC—North of NC/VA line	87,031 lb (39.5 mt)	100,520 lb (45.6 mt)	100,520 lb (45.6 mt).
Recreational ACL/ACT	63,533 (28.8 mt)	73,380 (33.3 mt)	73,380 (33.3 mt).
Commercial ACL/ACT	23,498 lb (10.6 mt)	27,140 lb (12.3 mt)	27,140 lb (12.3 mt).
Recreational TAL	62,262 lb (28.2 mt)	71,912 lb (32.6 mt)	71,912 lb (32.6 mt).
Commercial TAL	23,263 lb (10.5 mt)	26,869 lb (12.2 mt)	26,869 lb (12.2 mt).

This action increases the commercial possession limit from 300 lb (136 kg) to 500 lb (227 kg) per-trip to assist the commercial fishery in harvesting the commercial TAL. To prevent the commercial TAL from being landed too quickly the Regional Administrator may reduce the possession limit to 300 lb (136 kg) per trip when 70 percent of the commercial TAL has been landed.

This action makes no change to the recreational fishery beyond the increase to the recreational TAL (Table 1). The recreational fishery is open from May 1 through October 31 of each year and closed from November 1 through April 30. The bag limit for blueline tilefish depends on the type of fishing vessel being used. On a private boat, each angler may keep up to three blueline tilefish. On uninspected for-hire vessels (charter boats), each angler may keep up to five blueline tilefish. On U.S. Coast Guard-inspected for-hire vessels (party boats), each angler may keep up to seven blueline tilefish.

Comments

The public comment period for the proposed rule ended on December 4, 2018. We received one comment on the proposed rule.

Comment: The commenter opposed the increase in the commercial possession limit and recommended a drastic cut in harvest quotas or risk the species going extinct.

Response: In 2017 and 2018, while operating under a 300 lb (136 kg) possession limit, the commercial blueline tilefish fishery did not exceed the commercial TAL. Analysis conducted by the Mid-Atlantic Council indicates the 500 lb (227 kg) possession limit would not result in exceeding the new, higher commercial TAL. If commercial harvest nears the TAL, the Regional Administrator has the authority to reduce the possession limit to slow harvest rates and to close the fishery if the TAL is landed. The commenter presented no clear rationale or evidence supporting the claim that the harvest quotas would result in extinction of the species. The Council's recommended harvest quotas were set based on the results of a scientifically peer-reviewed stock assessment. NMFS used the best scientific information available when assessing the potential environmental impacts of this action and is approving specifications for the Mid-Atlantic blueline tilefish fishery that are consistent with the FMP, all applicable legal requirements, and the recommendations of the Council.

Changes From Proposed to Final Rule

This final rule adds regulatory text to 50 CFR 648.14(u) and 648.296(b) establishing the recreational blueline tilefish fishing season that was inadvertently omitted from a November 15, 2017, final rule (82 FR 52851). In Amendment 6 to the Tilefish FMP, the Council recommended the recreational blueline tilefish fishery be open from May 1 through October 31 and closed November 1 through April 30 each year. The proposed rule (82 FR 29263; June

28, 2017) and final rule for that action both clearly described the recreational fishing season in the preamble, but neglected to include the measure in the regulatory text. The Amendment 6 final rule clearly intended to implement the recreational closure, and included formal responses to public comments regarding the closure. The recreational season was also included in our public outreach material about the amendment.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness provision of the Administrative Procedure Act for these specifications. This action will increase the annual total allowable landings for the commercial and recreational fisheries by 15 percent and will increase the commercial possession limit from 300 lb (136 kg) to 500 lb (227 kg) per trip. It would be unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment for the implementation of the blueline tilefish recreational season. The Tilefish Amendment 6 proposed rule (82 FR 29263; June 28, 2017) described the recreational fishing season in the preamble and solicited public comment. The November 15, 2017, final rule (82 FR 52851) included our response to public comments on the measure, and stated the season would be implemented as proposed. Seeking additional public comment at this point would be unlikely to provide new insight and would further delay final implementation of the recreational season. Similarly, the need to implement this measure in a timely manner to avoid fishing during a period we had previously announced the fishery would be closed constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date. A delay in the effective date of the recreational season would seemingly conflict with the November 15, 2017, final rule and would cause confusion among the public about whether or not the blueline tilefish recreational fishery is open.

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 6, 2019.

Samuel D. Rauch III,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.14, paragraph (u)(2)(x) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *

(2) * * *

(x) Engage in recreational fishing for blueline tilefish outside of the recreational open season specified at § 648.296(b).

* * * * *

■ 3. In § 648.295, paragraphs (b)(1) and (2) are revised to read as follows:

§ 648.295 Tilefish commercial trip limits and landing condition.

* * * * *

(b) * * *

(1) *Commercial possession limit.* Any vessel of the United States fishing under a tilefish permit, as described at § 648.4(a)(12), is prohibited from possessing more than 500 lb (227 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

(2) *In-season adjustment of possession limit.* The Regional Administrator will monitor the harvest of the blueline tilefish commercial TAL based on dealer reports and other available information.

(i) When 70 percent of the blueline tilefish commercial TAL will be landed, the Regional Administrator may publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the blueline tilefish commercial possession limit is reduced to 300 lb (136 kg) of gutted blueline tilefish per trip in or from the Tilefish Management Unit.

(ii) When 100 percent of the blueline tilefish commercial TAL will be landed, the Regional Administrator will publish a notice in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, the blueline tilefish commercial fishery is closed for the remainder of the fishing year. No vessel may retain or land blueline tilefish in or from the Tilefish Management Unit after the announced closure date.

* * * * *

■ 4. In § 648.296, paragraph (b) introductory text is added to read as follows:

§ 648.296 Tilefish recreational possession limits and gear restrictions.

* * * * *

(b) * * * The recreational blueline tilefish fishery is open May 1 through October 31, and closed November 1 through April 30.

* * * * *

[FR Doc. 2019–01929 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170816769–8162–02]

RIN 0648–XG972

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet length overall (LOA) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2019 Pacific cod total allowable catch apportioned to catcher

vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 7, 2019, through 1200 hours, A.l.t., June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2019 Pacific cod total allowable catch (TAC) apportioned to catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA is 530 metric tons (mt), as established by the final 2018 and 2019 harvest specifications for groundfish of the GOA (83 FR 8768, March 1, 2018).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2019 Pacific cod TAC apportioned to catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 455 mt and is setting aside the remaining 75 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels less than 50 feet LOA using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 5, 2019.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 7, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–02038 Filed 2–7–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 29

Tuesday, February 12, 2019

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 ELECTION COMMISSION

11 CFR Part 110

[Notice 2019–04]

Rulemaking Petition; Size of Letters in Disclaimers

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition; notification of availability.

SUMMARY: On December 4, 2018, the Federal Election Commission received a Petition for Rulemaking asking the Commission to amend the existing regulation pertaining to the size of letters in disclaimers on television ads. The Commission seeks comments on the petition.

DATES: Comments must be submitted on or before April 15, 2019.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at *http://sers.fec.gov/fosers/,* reference REG 2018–05. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Tony Buckley, Attorney, Office of the General Counsel, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: With some exceptions, the Federal Election Campaign Act, 52 U.S.C. 30101–45, and Commission regulations require disclaimers for public communications that are made by a political committee, that expressly advocate the election or defeat of a clearly identified federal candidate, or that solicit contributions. *See* 52 U.S.C. 30120(a); 11 CFR 110.11(a).[1] The information those disclaimers must include vary depending on whether the communications were authorized or paid for by a candidate, an authorized committee, or an agent of either. *See* 52 U.S.C. 30120(d); 11 CFR 110.11(b) and (c). All disclaimers must be presented in a clear and conspicuous manner to give the readers, observers, or listeners, adequate notice of who paid for or authorized the communication. 52 U.S.C. 30120(c) and (d); 11 CFR 110.11(c).

Disclaimers on communications transmitted via television or through any broadcast, cable or satellite transmission are subject to certain additional requirements. Among those requirements, such communications made by political committees (whether or not authorized or paid for by a candidate) must carry a written disclaimer in letters equal to or greater than four percent of the communication's vertical picture height. *See* 52 U.S.C. 30120(d); 11 CFR 110.11(c)(3)(iii)(A), (4)(iii)(A).

On December 4, 2018, the Commission received a Petition for Rulemaking from Extreme Reach (''Petition'') asking the Commission to amend 11 CFR 110.11(c)(3)(iii)(A). The Petition contends that the current standard for TV ads is outdated due to the fact that it was promulgated during a period when television was broadcast in standard definition, rather than the current high definition.

The Petition cites a publication of the International Telecommunication Union, Petition at 13–31, to support its assertion that high definition is the current standard for television broadcasts. The Petition also includes the disclaimer portions of advertising guidelines from the ABC, CBS, and NBC television networks. Petition at 44–47. According to the Petition, these guidelines support the contention that the current industry guidelines for a normal disclaimer size is 22 pixels (approximately two percent of the vertical picture height) using high definition resolution. Petition at 2. The Petition also includes screen shots purporting to show how a disclaimer appears in high definition under the four percent standard, and how a disclaimer appears in high definition using the proposed two percent standard. In light of this, the Petition asks the Commission to open a rulemaking to revise ''[the Commission's regulation] to add a separate requirement for [high definition] where letters must be equal to or greater than two (2) percent of the vertical picture height and specify that the four (4) percent of the vertical picture height requirement only applies to [standard definition].''

The Commission seeks comments on the Petition. The public may inspect the Petition on the Commission's website at *http://sers.fec.gov/fosers/,* or in the Commission's Public Records Office, 1050 First Street NE, 12th Floor, Washington, DC 20463, Monday through Friday, from 9 a.m. to 5 p.m.

The Commission will not consider the Petition's merits until after the comment period closes. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. The Commission will announce any action that it takes in the **Federal Register**.

On behalf of the Commission,

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2019–02092 Filed 2–11–19; 8:45 am]

BILLING CODE 6715–01–P

[1] The term ''public communication'' includes any broadcast, cable, or satellite communication. 11 CFR 100.26.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 46

[Docket ID OCC–2018–0035]

RIN 1557–AE55

Amendments to the Stress Testing Rules for National Banks and Federal Savings Associations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The OCC is requesting comment on a proposed rule that would amend the OCC's company-run stress testing requirements for national banks and Federal savings associations, consistent with section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Specifically, the proposed rule would revise the minimum threshold for national banks and Federal savings associations to conduct stress tests from $10 billion to $250 billion, revise the frequency by which certain national banks and Federal savings associations would be required to conduct stress tests, and reduce the number of required stress testing scenarios from three to two. The proposed rule would also make certain facilitating and conforming changes to the stress testing requirements.

DATES: Comments on the notice of proposed rulemaking must be received by March 14, 2019.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Amendments to the Stress Testing Rules for National Banks and Federal Savings Associations'' 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 ''OCC–2018–0035'' 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–2018–0035'' in your comment. In general, OCC will enter all comments received into the docket and publish the comments 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–2018–0035'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and 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 deaf or hearing-impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Hein Bogaard, Lead Economic Expert, International Analysis and Banking Condition, (202) 649–5450; or Henry Barkhausen, Counsel, or Daniel Perez, Attorney, (202) 649–5490, Chief Counsel's Office; or for persons who are deaf or hearing-impaired, TTY, (202) 649–5597; Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),[1] as initially enacted, required a national bank or Federal savings association (FSA) (collectively, banks) with total consolidated assets of more than $10 billion to conduct and report an annual stress test. In addition, section 165 required these banks to provide a report to the Office of the Comptroller of the Currency (OCC) at such time, in such form, and containing such information as the OCC may require.[2] In addition, section 165 required the OCC to issue regulations that establish methodologies for banks conducting their stress test and required the methodologies to include at least three different stress-testing scenarios: ''baseline,'' ''adverse,'' and ''severely adverse.''[3] In October 2012, the OCC published in the **Federal Register** its rule implementing the Dodd-Frank Act stress testing requirement.[4] The OCC's rule established two subgroups for covered institutions—''$10 to $50 billion covered institutions'' and ''$50 billion or over covered institutions''—and subjected the two subgroups to different stress test requirements and deadlines for reporting and disclosures. In February 2018, the OCC published a second rule making additional technical and conforming changes to the OCC's company-run stress testing regulations.[5]

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended certain aspects of the company-run stress testing requirement in section 165(i)(2) of the Dodd-Frank Act.[6] Specifically, section 401 of EGRRCPA raises the minimum asset threshold for financial companies covered by the company-run stress testing requirement from $10 billion to $250 billion in total consolidated assets; revises the requirement for banks to conduct stress tests ''annually'' and instead require them to conduct stress tests ''periodically''; and no longer requires the OCC to provide an ''adverse'' stress-testing scenario, thus reducing the number of required stress test scenarios from three to two. The amendments made by section 401 of EGRRCPA applicable to financial

[1] Public Law 111–203, 124 Stat. 1376 (2010), codified at 12 U.S.C. 5365.

[2] 12 U.S.C. 5365(i)(2)(B).

[3] 12 U.S.C. 5365(i)(2)(C).

[4] 77 FR 61238 (Oct. 9, 2012).

[5] 83 FR 7951 (Feb. 23, 2018).

[6] Public Law 115–174, 132 Stat. 1296–1368 (2018).

companies become effective eighteen months after EGRRCPA's enactment.[7]

II. Description of the Proposed Rule

The OCC is proposing to revise the OCC's stress testing rule, at 12 CFR part 46, consistent with the amendments made by section 401 of the EGRRCPA (the proposed rule or proposal).[8] The proposal would also make a few additional technical and facilitating changes to the stress testing rule.

A. Covered Institutions

As described above, section 401 of EGRRCPA amends section 165 of the Dodd-Frank Act by raising the minimum asset threshold for banks required to conduct stress tests from $10 billion to $250 billion. The proposed rule implements this change by eliminating the two existing subcategories of ''covered institution''—''$10 to $50 billion covered institution'' and ''$50 billion or over covered institution''—and revising the term ''covered institution'' to mean a national bank or FSA with average total consolidated assets, calculated as required under this part, that are greater than $250 billion. In addition, the proposal makes certain technical and conforming changes to the rule in order to consolidate requirements that were applied differently to $10 to $50 billion covered institutions and $50 billion or over covered institutions.

B. Frequency of Stress Testing

EGRRCPA eliminates the requirement under section 165 of the Dodd-Frank Act for covered institutions to conduct stress tests on an ''annual'' basis and, instead, requires that they be ''periodic.'' The term ''periodic'' is not defined in EGRRCPA, and the OCC is proposing that, in general, a covered institution would be required to conduct, report, and publish a stress test once every two years, beginning on January 1, 2020, and continuing every even-numbered year thereafter (*i.e.,* 2022, 2024, 2026, etc.). However, a covered institution that is consolidated under a holding company that is required to conduct a stress test at least once every calendar year (pursuant to regulations of the Board of Governors of the Federal Reserve (Board) at 12 CFR part 252) would be required to conduct, report, and publish its stress test annually. The proposal also adds a new defined term, ''reporting year,'' to the definitions at § 46.2. A covered institution's reporting year is the year in which a covered institution must conduct, report, and publish its stress test.

Subsequent to these changes, some covered institutions would have a biennial reporting year (biennial stress testing covered institutions) while others would have an annual reporting year (annual stress testing covered institutions). In either case, the dates and deadlines in the OCC's stress testing rule would be interpreted relative to the covered institution's reporting year. For example, if a biennial stress testing covered institution is preparing its 2022 stress test, the covered institution would rely on financial data available as of December 31, 2021; use stress test scenarios that would be provided by the OCC no later than February 15, 2022; provide its report of the stress test to the OCC by April 5, 2022; and publish a summary of the results of its stress test in the period starting June 15 and ending July 15 of 2022.

Based on the OCC's experience overseeing and reviewing the results of company-run stress testing over more than five years, the OCC believes that a biennial stress testing cycle would be appropriate for most covered institutions. For covered institutions that would stress test on a biennial cycle, the OCC expects this level of frequency to provide the OCC and the covered institution with information that is sufficient to satisfy the purposes of stress testing, including: Assisting in an overall assessment of a covered institution's capital adequacy, identifying risks and the potential impact of adverse financial and economic conditions on the covered institution's capital adequacy, and determining whether additional analytical techniques and exercises are appropriate for a covered institution to employ in identifying, measuring, and monitoring risks to the soundness of the covered institution. In addition, the OCC would continue to review the covered intuition's stress testing processes and procedures. Under the proposed rule, all covered institutions that would conduct stress tests on a biennial basis would be required to conduct stress tests in the same reporting year. By requiring these covered institutions to conduct their stress tests in the same year, the proposal would continue to allow the OCC to make comparisons across banks for supervisory purposes and assess macroeconomic trends and risks to the banking industry.

Under the proposal, certain covered institutions would be required to conduct annual stress tests. This subset would be limited to covered institutions that are consolidated under holding companies that are required to conduct stress tests more frequently than once every other year. This requirement reflects the OCC's expectation that covered institutions that would be required to stress test on an annual basis would be subsidiaries of the largest and most systemically important banking organizations (*i.e.,* subsidiaries of global systemically important bank holding companies or bank holding companies that have $700 billion or more in total assets or $75 billion or more in cross-border activity). This treatment aligns with the agencies' long-standing policy of applying similar standards to holding companies and their subsidiary banks.

C. Removal of ''Adverse'' Scenarios

Section 165(i) of the Dodd-Frank Act requires the OCC to establish methodologies for covered institutions conducting a stress test and requires the methodologies to include at least three different stress-testing scenarios: ''baseline,'' ''adverse,'' and ''severely adverse.'' EGRRCPA amends section 165 to no longer require the OCC to include an ''adverse'' stress-testing scenario and reduces the number of required stress test scenarios from three to two. Accordingly, this proposal removes references to the ''adverse'' stress test scenario in the OCC's stress testing rule. In the OCC's experience, the ''adverse'' stress-testing scenario has provided limited incremental information to the OCC and market participants beyond what the ''baseline'' and ''severely adverse'' stress-testing scenarios provide. The proposal would maintain the requirement for the OCC to conduct supervisory stress tests under both a ''baseline'' and ''severely adverse'' stress-testing scenario.

D. Transition Process for Covered Institutions

Section 46.3 of the OCC's current rule provides a transition period between when a bank becomes a covered institution and when the bank must report its first stress test. The OCC is amending the transition period in § 46.3(b) to conform to the other changes in this proposal, including the establishment of annual and biennial stress testing covered institutions.

[7] On July 6, 2018, the OCC, jointly with the Board and the FDIC, extended the deadline for all regulatory requirements related to company-run stress testing for depository institutions with average total consolidated assets of less than $100 billion until November 25, 2019. *See* Interagency statement regarding impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act, July 6, 2018, *available at https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-ia-2018-69a.pdf.*

[8] In addition to requesting comment on this proposed rule, the OCC is currently reviewing the agency's guidance with respect to stress testing, in light of section 401 of EGRRCPA, and will issue amendments or rescissions as appropriate.

Under the proposal, ''A national bank or Federal savings association that becomes a covered institution shall conduct its first stress test under this part in the first reporting year that begins more than three calendar quarters after the date the national bank or Federal savings association becomes a covered institution, unless otherwise determined by the OCC in writing.'' For example, if a covered institution that conducts stress tests on a biennial basis becomes a covered institution on March 31 of a non-reporting year (*e.g.,* 2023), the bank must report its first stress test in the subsequent calendar year (*i.e.,* 2024), which is its first reporting year. If the same bank becomes a covered institution on April 1 of a non-reporting year, it skips the subsequent calendar year and reports its first stress test in the next reporting year (*i.e.,* 2026). As with other aspects of the stress test rule, the OCC may change the transition period for particular covered institutions, as appropriate in light of the nature and level of the activities, complexity, risks, operations, and regulatory capital of the covered institutions, in addition to any other relevant factors.

The proposal would not establish a transition period for covered institutions that move from a biennial stress testing requirement to an annual stress testing requirement. Accordingly, a covered institution that becomes an annual stress testing covered institution would be required to begin stress testing annually as of the next reporting year. The OCC expects covered institutions to anticipate and make arrangements for this development. To the extent that particular circumstances warrant the extension of a transition period, the OCC would do so based on its reservation of authority and supervisory discretion.

E. Review by Board of Directors

The current § 46.6 of the stress testing rule requires the board of directors of a covered institution, or a committee thereof, to review and approve the covered institution's stress testing policies and procedures as frequently as economic conditions or the condition of the institution may warrant, but no less than annually. The proposal would revise the frequency of this requirement from ''annual'' to ''once every reporting year'' in order to make review by the board of directors consistent with the covered institution's stress testing cycle.

F. Reservation of Authority

Section 46.5 of the stress testing rule states the OCC's reservation of the authority, pursuant to which the OCC may revise the frequency and methodology of the stress testing requirement as appropriate for particular covered institutions. The OCC is proposing to add the following sentence to paragraph (a)(2) of § 46.5 to further clarify its reservation of authority: ''The OCC may also exempt one or more covered institutions from the requirement to conduct a stress test in a particular reporting year.''

G. Removal of Transition Language

The proposal would remove certain transition language present in the current stress testing rule that is no longer current. For example, the proposal would strike the following sentence from paragraph (a)(2) of § 46.6: ''Until December 31, 2015, or such other date specified by the OCC, a covered institution is not required to calculate its risk-based capital requirements using the internal ratings-based and advanced measurement approaches as set forth in 12 CFR part 3, subpart E.''

III. Request for Comment

The OCC invites comment on all aspects of this proposed rule, including the following questions:

1. The proposal would require a covered institution that is consolidated under a holding company that is required to conduct a stress test at least once every calendar year to treat every calendar year as a reporting year, unless otherwise determined by the OCC. Is this the appropriate frequency for this group of banks? What are the advantages and disadvantages of requiring a covered institution to conduct a stress test at the same frequency as, or at a different frequency than, its holding company?

2. As an alternative to the requirement that a covered institution be required to stress test annually based on the stress testing requirements of its holding company, should the OCC establish separate criteria to capture certain large banks (*e.g.,* banks above a specified asset threshold), regardless of whether they are consolidated under a holding company?

3. All other covered institutions that are not required to stress test annually would be required to stress test biennially. Is this the appropriate frequency for this category of banks? Should the OCC further subdivide covered institutions into additional categories that would be subject to different frequency requirements?

4. Is the length of the grace period for new covered institutions appropriate? Should the proposal establish a transition period for covered institutions that are already required to stress test and that move from a biennial stress testing requirement to an annual stress testing requirement?

IV. Regulatory Analysis

A. Riegle Community Development and Regulatory Improvement Act (RCDRIA)

The RCDRIA requires that the OCC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (''IDIs''), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. 12 U.S.C. 4802. In addition, in order to provide an adequate transition period, new regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must 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.

The proposed rule imposes no additional reporting, disclosure, or other requirements on IDIs, including small depository institutions, nor on the customers of depository institutions. The proposed rule would reduce the frequency of company-run stress tests for a subset of banks, raise the threshold for covered institutions from $10 billion to $250 billion, and reduce the number of required stress test scenarios from three to two for all banks. Nonetheless, in connection with determining an effective date for the proposed rule, the OCC invites comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and customers of depository institutions.

B. Regulatory Flexibility Act

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 proposed rule on small entities (defined by the Small Business Administration (''SBA'') for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As of December 31, 2017, the OCC supervised approximately 886 small

entities.[9] Because the proposed rule would only cover OCC-supervised banks with more than $250 billion in consolidated assets, the OCC anticipates that it would not impose additional costs on any OCC-supervised institutions. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

C. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements in the proposal are found in §§ 46.6 through 46.8.

Currently, § 46.6(c) requires that each covered institution establish and maintain a system of controls, oversight, and documentation, including policies and procedures, describing the covered institution's stress test practices and methodologies, and processes for validating and updating the covered institution's stress test practices. The board of directors of the covered institution must approve and review these policies at least annually. Section 46.7(a) requires each covered institution to report the results of their stress tests to the OCC annually. Section 46.8(a) requires that a covered institution publish a summary of the results of its annual stress tests on its website or in any other forum that is reasonably accessible to the public.

Under the proposal, the increase in the applicability threshold for these requirements under the proposal would reduce the estimated number of respondents. In addition the frequency of these reporting, recordkeeping, and disclosure requirements for some institutions would be decreased to biennial.

Estimated number of respondents: 8 (biennial testing: 4; annual testing: 4).

Estimated total annual burden: 6,240 hours.

Comments are requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates 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 information collections 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.

D. Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (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 annually for inflation).

The proposed rule does not impose new mandates. Therefore, the OCC concludes that implementation of the proposed rule would not result in an expenditure of $100 million or more annually by state, local, and tribal governments, or by the private sector.

E. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the OCC to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this proposed rule easier to understand.

For example:

- Has the OCC organized the material to inform your needs? If not, how could the OCC present the proposed rule more clearly?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposal be more clearly stated?
- Does the proposed regulation 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 proposed regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the OCC incorporate to make the proposed regulation easier to understand?

List of Subjects in 12 CFR Part 46

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Reporting, Risk, Stress test.

Authority and Issuance

For the reasons stated in the preamble, the OCC proposes to amend 12 CFR part 46 as follows:

PART 46—STRESS TESTING

■ 1. The heading for part 46 is revised to read as set forth above.

■ 2. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

■ 3. Section 46.2 is amended by:

■ a. Removing the definitions for ''$10 to $50 billion covered institution'' and ''$50 billion or over covered institution''.

■ b. Revising the definitions of ''*Covered institution*'' and ''Scenarios''; and

■ c. Adding a definition for ''*Reporting year*'' in alphabetical order.

The additions and revisions read as follows:

§ 46.2 Definitions.

* * * * *

Covered institution means a national bank or Federal savings association with average total consolidated assets, calculated as required under this part, that are greater than $250 billion.

* * * * *

Reporting year means the calendar year in which a covered institution must conduct, report, and publish its stress test.

* * * * *

Scenarios means sets of conditions that affect the U.S. economy or the financial condition of a covered institution that the OCC determines are appropriate for use in the stress tests under this part, including, but not limited to, baseline and severely adverse scenarios.

* * * * *

■ 4. Section 46.3 is amended by revising paragraphs (b) and (c) and removing paragraph (d) to read as follows:

§ 46.3 Applicability.

* * * * *

(b) *Covered institutions that become subject to stress testing requirements.* A

[9] The OCC bases its estimate of the number of small entities on 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 counts the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2017, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

national bank or Federal savings association that becomes a covered institution shall conduct its first stress test under this part in the first reporting year that begins more than three calendar quarters after the date the national bank or Federal savings association becomes a covered institution, unless otherwise determined by the OCC in writing.

(c) *Ceasing to be a covered institution or changing categories.* A covered institution shall remain subject to the stress test requirements until total consolidated assets of the covered institution falls below the relevant size threshold for each of four consecutive quarters as reported by the covered institution's most recent Call Reports, effective on the ''as of'' date of the fourth consecutive Call Report.

■ 5. Section 46.4 is amended by adding a sentence at the end of paragraph (a)(2) to read as follows:

§ 46.4 Reservation of authority.

(a) * * *

(2) * * * The OCC may also exempt one or more covered institutions from the requirement to conduct a stress test in a particular reporting year.

* * * * *

■ 6. Section 46.5 is amended by:

■ a. Revising the section heading as set forth below;

■ b. Removing the word ''annual'' in the introductory paragraph;

■ c. Revising paragraphs (a) and (b); and

■ d. Adding a new paragraph (e).

The revisions and addition read as follows:

§ 46.5 Stress testing.

* * * * *

(a) *Financial data.* A covered institution must use financial data available as of December 31 of the calendar year prior to the reporting year.

(b) *Scenarios provided by the OCC.* In conducting the stress test under this part, each covered institution must use the scenarios provided by the OCC. The scenarios provided by the OCC will reflect a minimum of two sets of economic and financial conditions, including baseline and severely adverse scenarios. The OCC will provide a description of the scenarios required to be used by each covered institution no later than February 15 of the reporting year.

* * * * *

(e) *Frequency.* A covered institution that is consolidated under a holding company that is required, pursuant to applicable regulations of the Board of Governors of the Federal Reserve, to conduct a stress test at least once every calendar year must treat every calendar year as a reporting year, unless otherwise determined by the OCC. All other covered institutions must treat every even-numbered calendar year beginning January 1, 2020 (*i.e.,* 2022, 2024, 2026, etc.), as a reporting year, unless otherwise determined by the OCC.

§ 46.6 [Amended]

■ 7. Section 46.6 is amended by:

■ a. In paragraph (a) (2), by removing the last sentence; and

■ b. In paragraph (c) (2), by removing the word ''annually'' and replacing it with the phrase ''once every reporting year''.

■ 8. Section 46.7 is amended by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b); and

■ c. Redesignating paragraph (c) as paragraph (b).

The revision reads as follows:

§ 46.7 Reports to the Office of the Comptroller of the Currency and the Federal Reserve Board.

(a) *Timing.* A covered institution must report to the OCC and to the Board of Governors of the Federal Reserve System, on or before April 5 of the reporting year, the results of the stress test in the manner and form specified by the OCC.

* * * * *

■ 9. Section 46.8 is amended by:

■ a. In paragraph (a):

■ i. Redesignating paragraph (a)(1) as paragraph (a) introductory text and revising it;

■ ii. Removing paragraph (a)(2); and

iii. Redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2), respectively; and

■ b. In paragraph (b):

■ i. Removing the phrase ''an annual company-run'' and adding the phrase ''a company-run'' in its place; and

■ ii. Removing the phrase ''annual stress test'' in the second sentence and adding the phrase ''stress test'' in its place.

The revision reads as follows:

§ 46.8 Publication of disclosures.

* * * * *

(a) *Publication date.* A covered institution must publish a summary of the results of its stress test in the period starting June 15 and ending July 15 of the reporting year, provided:

* * * * *

Dated: December 18, 2018.

William A. Rowe,

Chief Risk Officer.

[FR Doc. 2018–27875 Filed 2–11–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Miami, FL, Class B Airspace; and the Fort Lauderdale, FL, Class C Airspace Areas; Public Meeting Postponement

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of meeting; postponement.

SUMMARY: This notice announces the postponement of a fact-finding informal airspace meeting regarding a plan to modify the Miami, FL, Class B Airspace, and the Fort Lauderdale, FL, Class C Airspace areas. The meeting was previously scheduled for February 27, 2019.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: The FAA published a notice of meeting in the **Federal Register** (83 FR 66646; December 27, 2018) holding an informal airspace meeting to discuss plans for modifying the Miami, FL, Class B Airspace, and the Fort Lauderdale, FL, Class C Airspace areas. The meeting was to be held on Wednesday, February 27, 2019, at Broward College, Pembroke Pines, FL. In light of the recent federal government shutdown, the FAA has decided to postpone the meeting to provide additional time for planning and preparation.

Once arrangements for a new meeting are finalized, the details will be announced in the **Federal Register**.

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.

Issued in Washington DC, on February 6, 2019.

Rodger A. Dean, Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2019–02058 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 9, 36, 37, 38, 39, and 43

RIN 3038–AE25

Swap Execution Facilities and Trade Execution Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is extending the comment period for a proposed rule regarding swap execution facilities and the trade execution requirement (the ''SEF NPRM'') that published November 30, 2018 in the **Federal Register**.

DATES: The comment period for the SEF NPRM is extended until March 15, 2019.

ADDRESSES: You may submit comments, identified by ''Swap Execution Facilities and Trade Execution Requirement'' and RIN 3038–AE25, by any of the following methods:

- *The agency's website: http://comments.cftc.gov.* Follow the instructions for submitting comments.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established under 17 CFR 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all submissions from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Nhan Nguyen, Special Counsel, (202) 418–5932, *nnguyen@cftc.gov;* Roger Smith, Special Counsel, (202) 418–5344, *rsmith@cftc.gov;* or David Van Wagner, Chief Counsel, (202) 418–5481, *dvanwagner@cftc.gov,* Division of Market Oversight; Michael Penick, Senior Economist, (202) 418–5279, *mpenick@cftc.gov,* Office of the Chief Economist, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On November 6, 2018, the Commission approved for publication in the **Federal Register** the SEF NPRM. The SEF NPRM was published in the **Federal Register** on November 30, 2018, with a 75-day comment period scheduled to close on February 13, 2019.[2] Based on the broad range of topics addressed in the SEF NPRM and the number of questions posed, the Commission has determined to extend the comment period. Accordingly, the comment period for the SEF NPRM is open through March 15, 2019.

Issued in Washington, DC, on February 5, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Swap Execution Facilities and Trade Execution Requirement—Commission Voting Summary

On this matter, Chairman Giancarlo, and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2019–01668 Filed 2–11–19; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter 1

RIN Number 3038–AE79

Post-Trade Name Give-Up on Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is extending the comment period for a request for public comment regarding the practice of ''post-trade name give-up'' on swap execution facilities (the ''Name Give-Up Request for Comment'') that published November 30, 2018 in the **Federal Register**.

DATES: The comment period for the Name Give-Up Request for Comment is extended until March 15, 2019.

ADDRESSES: You may submit comments, identified by ''Post-Trade Name Give-Up on Swap Execution Facilities'' and RIN 3038–AE79, by any of the following methods:

- *The agency's website: http://comments.cftc.gov.* Follow the instructions for submitting comments.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as *Mail* above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established under 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all submissions from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Aleko Stamoulis, Special Counsel, (202) 418–5714, *astamoulis@cftc.gov;* or Nhan Nguyen, Special Counsel, (202) 418–5932, *nnguyen@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: On November 6, 2018, the Commodity Futures Trading Commission (''Commission'') approved a request for public comment regarding the practice

[1] 17 CFR 145.9.

[2] 83 FR 61946 (November 30, 2018).

of ''post-trade name give-up'' on swap execution facilities (the ''Name Give-Up Request for Comment''). The Name Give-Up Request for Comment was published in the **Federal Register** on November 30, 2018, with a 60-day comment period closing on January 29, 2019 (83 FR 61571). On November 6, 2018, the Commission also approved a notice of proposed rulemaking regarding swap execution facilities and the trade execution requirement (the ''SEF NPRM''). Like the Name Give-Up Request for Comment, the SEF NPRM was published in the **Federal Register** on November 30, 2018 (83 FR 61946). However, the SEF NPRM was published with a 75-day comment period that is scheduled to conclude on February 13, 2019. By a separate **Federal Register** release also published today, the Commission has determined to extend the comment period for the SEF NPRM until March 15, 2019. The Commission anticipates that there will be a large degree of overlap between the group of commenters on the SEF NPRM and the group of commenters on the Name Give-Up Request for Comment, as well as certain overlaps in the issues raised by the two matters. In light of these factors, the Commission believes that it would be sensible for the comment periods for the two matters to conclude on the same date. Accordingly, the comment period for the Name Give-Up Request for Comment is open through March 15, 2019.

Issued in Washington, DC, on February 5, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Post-Trade Name Give-Up on Swap Execution Facilities—Commission Voting Summary

On this matter, On this matter, Chairman Giancarlo, and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2019–01667 Filed 2–11–19; 8:45 am]

BILLING CODE 6351–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 203

RIN 0412–AA91

Streamlining the Private Voluntary Organization Registration Process

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: USAID is publishing this proposed rule to rescind agency rules in support of streamlining the Private Voluntary Organization (PVO) registration process. Foreign assistance circumstances have evolved since the establishment of the PVO registration process, and a careful review of USAID's business practices has concluded that there is no longer a need for the current, time-consuming and costly Agency-wide process. The remaining USAID programs that legislatively require PVOs to be registered as a condition of eligibility have incorporated a simplified registration process into each of their program's applications.

DATES: Comments must be received no later than March 14, 2019.

ADDRESSES: Address all comments concerning this notice to Daniel Grant, USAID, Bureau for Economic Growth, Education, and Environment, Office of Local Sustainability (E3/LS), 1300 Pennsylvania Avenue NW, Washington, DC 20523. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov,* following the instructions for submitting comments.

2. *Email:* Submit electronic comments to *rulemaking@usaid.gov.*

3. Mail (not advisable due to security screening): Daniel Grant, USAID, Bureau for Economic Growth, Education, and Environment, Office of Local Sustainability (E3/LS), 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Daniel Grant, Telephone: 202–712–0497 or email: *dgrant@usaid.gov.*

SUPPLEMENTARY INFORMATION: PVOS applying for the Limited Excess Property Program (LEPP), the Ocean Freight Reimbursement Program (OFR), or to other agencies under Section 607(a) of the Foreign Assistance Act must complete and submit to USAID a self-certification form indicating that the organization meets the conditions to register as a PVO. The self-certification form requires that the PVO confirm whether it is registered as a U.S.-based organization or an international PVO and must be signed by an authorized representative of the applicant organization. Rescission of this rule is expected to significantly reduce the burden on the public and produce an estimated annual cost savings of $779,000 to USAID and significant projected savings for the PVO community, ranging from $2 million to $11.2 million per year.

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the **ADDRESSES** section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message. Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington. At the end of the comment period and until finalization of the action, all comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute. USAID will only address substantive comments on the rule. Comments that are insubstantial or outside the scope of the rule may not be considered.

B. Background

USAID is issuing this proposed rule to rescind 22 CFR part 203. The regulation codifies the rules for PVO registration with USAID. More specifically, 22 CFR part 203 provides the registration process for PVOs, including the conditions for registration and documentation required to be submitted to USAID to complete a registration, as well as the annual renewals and termination processes.

The rule is being rescinded because the current PVO registration process is not needed for the majority of programs open to PVOs across the Agency and therefore has been streamlined to apply only to the Agency programs that require registration by statute (Limited Excess Property Program, Ocean Freight Reimbursement Program, and U.S. Government agencies seeking to provide foreign assistance in accordance with Section 607(a) of the Foreign Assistance Act).

USAID's PVO Registration process was originally created for purposes of designating that an organization met the definition of a PVO and specific organizational standards. Today, USAID examines all potential partner organizations, PVOs or otherwise, via a pre-award assessment in accordance with Agency policy (ADS 303: Grants and Cooperative Agreements to Non-

Governmental Organizations; and ADS 302: USAID Direct Contracting), and as required by relevant regulations (*i.e.* 2 CFR 200.205 for assistance, and FAR Part 9 for contracts). This process is carried out by warranted USAID Agreement/Contract Officers. The 22 CFR part 203 due diligence process for PVO registration process is duplicative of these pre-award assessments. In addition, PVOs invest a substantial amount of time and money to obtain and maintain registration.

Only three USAID activities are required by statute to have PVOs register with USAID as a condition of eligibility: The Limited Excess Property Program (LEPP), the Ocean Freight Reimbursement Program (OFR) (see FAA section 123 generally and FAA section 607(a)), and granting approval to U.S. Government agencies seeking to provide foreign assistance under FAA Section 607(a). Combined, these programs serve fewer than 50 organizations. USAID has established a simplified registration process for users of the three activities (consisting of self-certification) to save considerable time and resources.

Finally, USAID's PVO registration has historically played the role that private rating organizations now play—publishing data on PVOs and other types of non-governmental organizations. The extensive information publicly available through other providers has eliminated the need for the Agency to produce information on the sector through the maintenance and publication of a registry.

C. Impact Assessment

1. Executive Orders 12866 and 13563—Regulatory Planning and Review

Under E.O. 12866, USAID must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). USAID has determined that this rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

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, reducing costs, harmonizing rules, and promoting flexibility. Streamlining the duplicative Agency-wide registration program eliminates thousands of labor hours and saves hundreds of thousands of dollars for USAID and the estimated 550 PVOs currently registered with USAID.

USAID utilizes a contractor to manage the PVO registration process, costing the Agency approximately $700,000 per year. In addition, internal USAID labor costs related to the registration process amount to $79,406 in burdened salary and benefit expenses (50% of a GS–13 FTE). With the proposed deregulation, USAID anticipates that it would save $779,406 in government costs per year.

Moreover, USAID estimates that the deregulation will generate significant cost savings for PVOs affected. USAID recently surveyed all PVO registrants (550 in total) to quantify the burden associated with the registration process. Within the past ten years, the number of PVOs registering with USAID on an annual basis has been consistent, ranging from 550 to 553 PVOs per year. Based on survey results, USAID estimates that all 550 PVO registrants spent 4,378 hours to prepare and file registration forms. Using market research, USAID estimates that the burdened labor cost for PVO staff to conduct tasks related to registration ranges from $40 to $80 per hour.[1] Applying those rates to the total 4,378 personnel-hours yields an estimated cost ranging from $175,120 to $350,240 for PVO staff to register.

In addition, with rescission of the rule, USAID concludes that PVOs would achieve significant further cost savings since a component of the PVO registration process is the conduct of a financial audit. USAID estimated the total amount of audits that were conducted for PVO registration purposes but not used to range from 183 (low estimate) to 363 (high estimate). This estimated range refers to PVOs that obtained audits for PVO registration only but did not receive an award from USAID. Based on market research,[2] past experience, and consultations with registered PVOs, the average cost of an audit ranges from $10,000 to $30,000. USAID then calculated a low estimate and high estimate of cost savings. For the high estimate, USAID applied the rate of $30,000 to 363 registrants (two-thirds of the 550 total registrants) that do not receive an award. This yields an annual total of $10,890,000 in expenses avoided. For the low estimate, we applied the $10,000 rate as the audit cost and added the assumption that half of registrants without awards would have procured financial audits, even in absence of the rule. Multiplying $10,000 by 183 (one-third of 550 total registrants) yields a total of $1,830,000 for our low cost estimate of cost savings associated with avoided audit expenses. When estimates for PVO staff time and financial audits are combined, the cost savings for affected PVOs ranges from $2,005,120 to $11,240,240. When added to the expected costs internal to USAID of $779,406, this yields an annual total of incremental cost savings as a result of the rescission from $2,784,526 to $12,019,646. Rescission of our PVO registration rule benefits USAID and our PVOS by streamlining processes and achieving significant cost savings.

2. Executive Order 13771

This proposed rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in the rule's economic analysis.

3. Regulatory Flexibility Act

Because the rescission of this regulation removes rather than imposes collection of information, USAID certifies that the proposed rescission will not have a significant economic impact on a substantial number of small entities.

4. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 3507) applies to this rule since this rule removes information collection requirements formerly approved by the Office of Management and Budget (OMB). Rescission of this rule will significantly reduce paperwork and eliminate information collection requirements on the 550 PVOs that register with the Agency. USAID collects information from all registered PVOs as part of the registration requirement, such as data on their organization, including financial information and provision of a costly financial audit, in order to determine whether the PVO meets the conditions of registration. Under the revised approach, only organizations applying for the Agency's LEPP, OFR awards, or are working with other U.S. government agencies seeking to provide foreign assistance (about 50 organizations in total) would be required to certify that they meet USAID's PVO requirements through the new certification process

[1] Calculated based on nationwide data on nonprofit program manager salaries (*https://www.glassdoor.com/Salaries/nonprofit-program-manager-salary-SRCH_KO0,25.htm*), with employee benefit costs added into the hourly rates (*https://www.bls.gov/news.release/ecec.nr0.htm*).

[2] *https://www.councilofnonprofits.org/nonprofit-audit-guide/what-is-independent-audit, http://www.financialexecutives.org/ferf/download/2015%20Final/2015-018.pdf.*

described earlier. No other data or financial audits would be collected.

USAID previously collected information for PVO registration purposes under the OMB-approved AID Form 1550–2 (OMB Approval Number 0412–0035) but inadvertently operated in non-compliance with the Paperwork Reduction Act (PRA) when OMB approval of this form expired, and USAID did not seek extension of the OMB approval when the Agency moved to an online system for PVO registration. USAID's online PVO registration system required that PVOs provide the same information requested on AID Form 1550–2, including financial data. As such, the public reporting burden for collection of information remained the same under the online system.

5. Administrative Procedures Act

The Agency plans to issue this deregulatory action since the purpose of the rule is to remove an unneeded hurdle to doing business with the Agency that imposes unnecessary and excessive costs on the private sector with no value to the Government. The rule proposed for rescission originally called for the collection of information, such as a company's volunteer make-up—a requirement for PVOs that has since been obviated once the volunteer requirement was removed by law. Apart from that requirement, statutory references to registration of PVOs (such as those in FAA sections 123 or 607) provide no further guidance or requirements to the Agency on what such registration should entail. By rescinding this rule, the Agency is free to simplify and streamline registration to remove costly barriers to doing business with the Agency.

The Agency also conducted surveys of the primary stakeholders to the registration process—that of Agency internal stakeholders and the PVO community. Surveys of registered PVOs in 2012 and in 2017 showed that the PVO community did not see significant value in the registration program delineated by the rule at issue, and internal stakeholders for the Agency determined that the information collected in accordance with the rule at issue served no purpose for the Agency. These findings contributed to the decision to remove both the registration program and the rule that required such a rigorous registration process. Additionally, no new rule is being put in place in lieu of the present rule.

For the Limited Excess Property Program, the Ocean Freight Reimbursement Program, and PVOs who are affiliated with U.S. Government agencies seeking to provide foreign assistance under FAA Section 607(a), which all still require registration due to legislative requirements, as provided above, the Agency has developed a simplified registration process to be implemented as part of the application process.

Dated: December 21, 2018.

James Peters,

Acting Senior Deputy Assistant Administrator, Bureau for Economic Growth, Education, and Environment, U.S. Agency for International Development.

[FR Doc. 2019–01831 Filed 2–11–19; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0008; Notice No. 177A; Re: Notice No. 177]

RIN 1513–AC40

Proposed Establishment of the West Sonoma Coast Viticultural Area; Comment Period Reopening

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; Reopening of comment period.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is reopening the comment period for Notice No. 177, which concerned the proposed establishment of the approximately 141,846-acre ''West Sonoma Coast'' viticultural area in Sonoma County, California, for an additional 60 days. This comment period reopening is in response to requests from two industry members received in response to Notice No. 177.

DATES: For Notice No. 177, a proposed rule published on December 6, 2018 (83 FR 62750), comments are now due on or before April 15, 2019.

ADDRESSES: Please send your comments on this proposal to one of the following addresses:

- *Internet: http://www.regulations.gov* (via the online comment form for Notice No. 177 as posted within Docket No. TTB–2018–0008 at ''*Regulations.gov,*'' the Federal e-rulemaking portal);
- *U.S. mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the Public Participation section of Notice No. 177 for specific instructions and requirements for submitting comments. You may view copies of the West Sonoma Coast viticultural area petition, Notice No. 177, this document, selected supporting materials, and all public comments associated with this proposal within Docket No. TTB–2018–0008 at *www.regulations.gov*. You also may view such materials by appointment at the TTB Public Reading Room, 1310 G Street NW, Washington, DC 20005. Please call 202–453–2135 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION: The Alcohol and Tobacco Tax and Trade Bureau (TTB) published Notice No. 177 in the **Federal Register** on December 6, 2018 (83 FR 62750) proposing the establishment of the West Sonoma Coast American viticultural area (AVA) in Sonoma County, California. The proposed AVA lies entirely within the established Sonoma Coast AVA (27 CFR 9.116) and the North Coast AVA (27 CFR 9.30). In Notice No. 177, TTB described the characteristics of the proposed West Sonoma Coast AVA and solicited public comment on the proposal. In Notice No. 177, the comment period closing date was erroneously listed as January 7, 2019. A correction to the comment period closing date was published in the **Federal Register** on December 17, 2018, (83 FR 64495) and showed the correct comment period closing date of February 4, 2019.

TTB has received two requests to extend the comment period for Notice No. 177. The first comment, from Lester Schwartz of the Fort Ross Vineyard, requested a 60-day extension of the comment period to allow for ''sufficient time to present factually and legally accurate information * * *.'' The second comment, from Daniel and Marion Schoenfeld of Wild Hog Vineyard, requested a 30-day extension so that ''interested parties are given sufficient time and opportunity to investigate the facts [and] analyze the proposed rule * * *.'' These comments are posted as comments 27 and 28 within Docket No. TTB–2018–0008 on the *Regulations.gov* website at *http://www.regulations.gov*.

In response to these requests, TTB is reopening the comment period for Notice No. 177 for an additional 60 days. Therefore, TTB will be accepting

comments on Notice No. 177 through April 15, 2019.

How To Comment

See the **ADDRESSES** section above for instructions on how and where to comment on Notice No. 177 and for instructions on how to view or obtain copies of documents and comments associated with Notice No. 177.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this document.

Signed: February 6, 2019.

John J. Manfreda,

Administrator.

[FR Doc. 2019–01996 Filed 2–11–19; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AQ43

Schedule for Rating Disabilities: Infectious Diseases, Immune Disorders, and Nutritional Deficiencies

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule; correction.

SUMMARY: The Department of Veterans Affairs (VA) is correcting a proposed rule to amend the section of the VA Schedule for Rating Disabilities (VASRD or Rating Schedule) that addresses infectious diseases and immune disorders. This correction addresses minor technical errors in the proposed rule published February 5, 2019.

DATES: February 12, 2019.

FOR FURTHER INFORMATION CONTACT: Ioulia Vvedenskaya, M.D., M.B.A., Medical Officer, Part 4 VASRD Regulations Staff (211C), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA is correcting its proposed rule, Schedule for Rating Disabilities: Infectious Diseases, Immune Disorders, and Nutritional Deficiencies, that published February 5, 2019, in the **Federal Register** at 84 FR 1678.

Corrections

In proposed rule FR Doc. 2019–00636 beginning on page 1678 in the issue of February 5, 2019, make the following corrections.

1. On page 1689, beginning in the first column, correct amendatory instruction number 5 to read as follows:

■ 5. Amend appendix B to part 4 by:

■ a. Revising the entries for diagnostic codes 6300 and 6305;

■ b. Adding in numerical order an entry for diagnostic code 6312;

■ c. Revising the entry for diagnostic code 6317;

■ d. Adding in numerical order entries for diagnostic codes 6325, 6326, 6329 through 6331, and 6333 through 6335; and

■ e. Revising the entry for diagnostic code 6354.

The revisions and additions read as follows:

2. On page 1689, in the amendatory text for Appendix B to Part 4, remove the diagnostic code ''6351 HIV-related infection'' and correct the diagnostic code ''6356'' to read ''6354''.

3. On page 1690, in the amendatory table for Appendix C to Part 4, the entry ''Nontuberculosis mycobacterial infection-Diagnostic code 6312 should be listed before Nontyphoid salmonella infection Diagnostic code 6333''.

Approved: February 7, 2019.

Jeffrey M. Martin,

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

[FR Doc. 2019–01985 Filed 2–11–19; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0651; FRL–9989–27–Region 4]

Air Plan Approval; GA; Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia State Implementation Plan (SIP) submitted by the State of Georgia, through the Georgia Environmental Protection Division (GA EPD) of the Department of Natural Resources, on April 11, 2003. EPA is proposing to approve portions of a SIP revision which include changes to Georgia's rules regarding emissions standards and open burning. This action is being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: Written comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0651 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, or Joel Huey, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Wong can be reached by telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov*. Mr. Huey can be reached by telephone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On April 11, 2003, GA EPD submitted a SIP revision to EPA for approval that involves changes to Georgia's SIP regulations. In this action, EPA is proposing to approve the portions of the Georgia submission that make changes to Georgia's Rule 391–3–1–.02(2)(nnn)—*NO_X Emissions from Large Stationary Gas Turbines* and Rule 391–3–1–.02(5)—*Open Burning*.[1] EPA is not

[1] On August 31, 2018, GA EPD submitted a letter (included in the docket for this action) withdrawing from the submittal a proposed revision to Georgia Rule 391–3–1–.02(5)(d) that would provide exceptions to the 40 percent opacity limit on open burning.

acting on the following three other portions of GA EPD's April 11, 2003, submittal at this time. On October 21, 2009, GA EPD submitted a letter withdrawing from the submittal a proposed revision to Georgia Rule 391–3–1–.02(2)(qqq)—*Volatile Organic Compound From Extruded Polystyrene Products Manufacturing Utilizing a Blowing Agent.*[2] On January 5, 2017 (82 FR 1206), EPA approved changes to Rule 391–3–1–.01—*Definitions* that were included in the April 11, 2003, submittal. On April 16, 2018 (83 FR 16276), EPA published a proposed rulemaking for Rule 391–3–1–.03(11)(b)—*Permit by Rule Standards* that was included in the April 11, 2003, submittal.

II. Analysis of State's Submittal

A. Rule 391–3–1–.02(2)(nnn)—NO_X Emissions from Large Stationary Gas Turbines

EPA is proposing to approve a change to Rule 391–3–1–.02(2)(nnn)—*NO_X Emissions from Large Stationary Gas Turbines* (henceforth, Rule (nnn)), which applies to stationary gas turbines with a maximum potential output of greater than 25 megawatts. This rule was originally approved into the Georgia SIP on July 10, 2001 (66 FR 35906), as one of several rules adopted as part of GA EPD's 1-hour ozone attainment demonstration for the Atlanta nonattainment area (Atlanta Area).

Paragraph 1 of Rule (nnn) establishes nitrogen oxides (NO_X) emission limits for the subject gas turbines in a 45-county area that includes and extends beyond the thirteen counties of the previous Atlanta, Georgia, 1979 1-hour ozone maintenance area.[3] Paragraph 2 of the rule provides that these limits apply during the ''ozone season'' period of May 1 through September 30 of each year.

For existing units, paragraph 5 of Rule (nnn) allowed a source owner or operator to petition the Director, by May 1, 2003, for a change to the rule in case a source is unable to meet the NO_X emission limits of paragraph 1 through combustion modifications. Georgia Power, in a 2002 letter to GA EPD,[4] specified certain combustion turbine units at four sources that would not be able to meet the emission limits in paragraph 1 because either emission reduction technologies failed to achieve compliance with the NO_X limit of the rule or because compliance proved to be prohibitively expensive. Those units are Unit 6 at Plant Bowen, Units 3A and 3B at Plant McDonough, Units 5A and 5B at Plant Atkinson, and Unit 5A at Plant Wansley. As a result, GA EPD's April 11, 2003, SIP revision adds to Rule (nnn) a new paragraph 7, which provides an exemption from the rule for the units that Georgia Power determined were unable to comply with the NO_X limits of paragraph 1 and were therefore taken out of normal service during ozone season. On April 10, 2018, GA EPD informed EPA that only two sources remain affected by this exemption.[5]

Paragraph 7 of Rule (nnn) provides that units are exempt from the provisions of the rule if they only operate up to three hours per month for maintenance purposes or under emergency conditions. Thus, such units are to be maintained in an operational condition for the purpose of being available to operate during emergency situations and for normal operation outside of ozone season. If an owner or operator were to choose to operate in excess of the paragraph 7 limitations, the unit would be required to comply with the NO_X emission limits of paragraph 1 and could no longer avail itself of the exemption provided by paragraph 7.

EPA is proposing to find that the revisions to paragraph 7 to Rule (nnn) are consistent with the CAA, including Section 110(l) of the Act, because the changes will result in reduced overall emissions from the exempted units. This is because the rule restricts the operation of the subject units during ozone season to only limited circumstances—for short periods of time for the purposes of maintenance and for emergency situations—rather than being able to operate continuously for the generation of electricity for sale. Under the existing approved rule, these units are allowed to operate, in compliance with the NO_X emission limits of paragraph 1, for up to 3,672 hours during the ozone season (153 ozone season days multiplied by 24 hours per day). Under the paragraph 7 exemption from the NO_X emissions limits, these units are allowed to operate only up to 15 hours during ozone season (3 hours per month multiplied by 5 ozone season months) for maintenance purposes, and only temporarily for emergency purposes.

On December 14, 2006, GA EPD submitted supplemental information with an evaluation of emission rates under the new subparagraph 7. That correspondence, which is included in the docket for this rulemaking, shows Georgia's analysis of the maximum allowable NO_X emission rate based on the existing paragraph 1 in comparison to the maximum allowable emissions for maintenance purposes under paragraph 7. As shown in the table on page 3 of GA EPD's analysis, the allowable NO_X emissions based on operation for maintenance purposes under paragraph 7 are significantly less than the allowable NO_X emissions under the existing paragraph 1—less than two percent of previously allowable emissions. Indeed, since 2008, data from EPA's Air Markets Program Data (*https://ampd.epa.gov/ampd/*) shows the highest annual NO_X emissions reported for these units is less than 0.5 ton.

Paragraph 7 limits the use of these units to two types of emergency situations. First, the units may be used ''For the purpose of restarting the steam-electric generating units when all steam-electric generating units at a facility are down and off-site power is not available (also known as a 'Black Start').'' A ''Black Start'' occurs in the rare circumstance that there is a system-wide power failure and these combustion turbine units are temporarily started up to provide the necessary power within the facility to re-start other units for the purposes of electricity production for the grid. In an April 10, 2018 email, GA EPD informed EPA that, since the time that Georgia adopted paragraph 7, these combustion turbine units have not been started up for the emergency purpose of a Black Start.[6]

Second, paragraph 7 allows these units to be used ''When power problems on the grid would necessitate implementing manual load shedding procedures for retail customers.'' ''Manual load shedding,'' as described by GA EPD, is a procedure used when Georgia Power directs power consumers to minimize or stop electric consumption, which can occur in conjunction with brownouts.[7] Such a procedure could be used in an attempt to rebalance power in the grid and avoid

[2] The October 21, 2009, letter is included in the docket for this action.

[3] Thirteen counties of the Atlanta Area were designated nonattainment for the 1979 1-hour ozone NAAQS on November 6, 1991 (56 FR 56694) and redesignated to attainment effective June 14, 2005 (70 FR 34660).

[4] *See* Charles H. Huling, Georgia Power, to Harold F. Reheis, GA EPD, August 23, 2002, included in GA EPD's April 11, 2003, SIP submittal.

[5] The two sources are Plant McDonough (combustion turbines 3A (CT5M and CT6M) and 3B (CT7M and CT8M) and Plant Wansley (combustion turbine 5A), as stated in an email from GA EPD to EPA on April 10, 2018. The email is included in the docket for this action.

[6] The GA EPD email of April 10, 2018, is available in the docket for this action.

[7] Brownout is a voltage reduction by power companies during a period of high electricity demand to prevent system overload and thus avoid a potential blackout.

a system-wide power failure. Under paragraph 7, these combustion turbine units could be used in this emergency situation to ensure continued power production at a level sufficient to meet grid demand, thus obviating the need to reduce or stop power to consumers through manual load shedding procedures. Since the time that Georgia adopted paragraph 7, manual load shedding procedures have occurred infrequently,[8] and such events do not necessarily require the start-up of an emergency combustion turbine in all cases.

Section 110(l) provides that ''the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.'' This proposed SIP revision is consistent with these requirements because potential NO_X emissions for maintenance under the new paragraph 7 are significantly less than potential emissions of a unit generating electricity for sale continuously during the 153-day ozone season. In addition, based upon the limited types of emergency use allowed under the rule and the actual operational history and emissions of these units,[9] EPA believes that start-up of these units for emergency purposes is unlikely during any particular ozone season and that any such use that might occur would be brief. Accordingly, EPA is proposing to approve the amendment to Rule (nnn) from GA EPD's April 11, 2003, submittal.

B. Rule 391–3–1–.02(5)—Open Burning

GA EPD's April 11, 2003, submittal makes several changes to the State's *Open Burning* rule at Rule 391–3–1–.02(5). This rule bans open burning in the State of Georgia with the exception of several specific types of open burning listed at subsection (5)(a).[10] In its submittal, GA EPD explains that the purpose of the changes is to make the rule consistent with current interpretation, implementation, and enforcement.

GA EPD's submittal revises paragraph (5)(a)6, which provides an exclusion from the open burning ban for ''Fires set for purposes of training fire-fighting personnel when authorized by the appropriate governmental entity and the guidelines set forth by the Director are strictly observed.'' The submittal revises this exclusion from the open burning ban by deleting the ending phrase, ''and the guidelines set forth by the Director are strictly observed.'' However, the State's ''guidelines set forth by the Director'' apply to acquired structure burns, which as discussed below, are now part of the authorization process for the new standalone exclusion from the open burning ban at paragraph (5)(a)7. Therefore, the State has removed this phrase from paragraph (5)(a)6.

The submittal adds a standalone exemption from the open burning ban at paragraph (5)(a)7 for ''[a]cquired structure burn,'' which is defined as ''the burning of a house, building or structure for the exclusive purpose of providing training to the fire-fighting personnel or arson investigators.''[11] *See* Georgia Rule 391–3–1–.02(5)(e)(3). Under the rule, an acquired structure burn may only be conducted after an Authorization to Burn certificate has been issued by the Division. EPA notes that acquired structure burn activities were previously exempted from the open burning ban throughout the State, with some limitations, under Rule 391–3–1–.02(5)(a)(6) (previously (a)(7)). However, GA EPD has pulled ''acquired structure burns'' out as a standalone exemption to further restrict them during ozone season in the 45 counties encompassing and surrounding the (former) Atlanta ozone 1-hour nonattainment area.[12] EPA is proposing to approve the addition of ''acquired structure burns'' as a standalone exemption from the open burning ban because it was already exempted under the existing SIP-approved rule as part of training to the fire-fighting personnel under paragraph (5)(a)6. As a standalone exemption, it is now specifically banned during ozone season in the 45 counties of the Atlanta Area under Rule 391–3–1–.02(5)(b). Also, conducting an acquired structure burn requires an Authorization to Burn certificate, which includes the ''guidelines set forth by the Director'' that were also previously included in paragraph (5)(a)6.[13] In addition, EPA notes that because acquired structure burns are no longer allowed in the 45-county area surrounding the Atlanta Area during ozone season, this change will prevent them from having an adverse impact on the seven counties of the only current nonattainment area in the State.[14] Taken together, the exclusions at paragraphs (5)(a)6 and (5)(a)7 retain the exemption for fires set for purposes of training fire-fighting personnel, provided that proper authorization has been obtained, but now prohibit acquired structure burns during the ozone season in 45 counties of the Atlanta Area.

The submittal also removes the following two types of open burning from the list of activities at subsection (5)(a) that are excluded from the open burning ban: (1) ''Destruction of combustible demolition or construction materials either on site or transported to a burning facility upon approval by the Director, unless prohibited by local ordinance and/or regulation'' (subparagraph (5)(a)3); and (2) ''Setting and maintenance by contractors and tradesmen of miscellaneous small fires necessary to such activities as street-paving work installation or repair of utilities, provided that such fires are kept small in size, no smoke emissions exceed 40 percent opacity, and that local ordinances and regulations do not prohibit such actions'' (subparagraph (5)(a)11). Since these two types of open burning would no longer be excluded from the State's open burning ban, they would be prohibited in the State, and this strengthens protection of air quality.

GA EPD's submittal revises another existing exclusion at paragraph (5)(a)8, where the exclusion for ''Disposal of tree limbs from storm damage'' is changed to ''Disposal of vegetative debris from storm damage.'' EPA believes the change from ''tree limbs'' to ''vegetative debris'' is minimal and will have no impact on air quality.

Paragraph (5)(a)11 (previously (5)(a)12) provides an exception to the open burning ban in ''other than predominantly residential areas for the purpose of land clearing or construction or right-of-way maintenance provided the following [five] conditions are met.'' The second condition that must be met for this type of open burning to be allowed is that ''[t]he location of the

[8] *See* GA EPD email of April 10, 2018.

[9] A summary of the NO_X emissions from the affected sources for the past 10 years is included in the docket for this action.

[10] The submittal revises the definition of ''slash burning'' at paragraph (5)(e)2 (formerly (5)(f)2). However, EPA is not acting on this change because the State deleted the term from the Rule in a later submittal of November 6, 2006, which EPA has already approved. *See* 75 FR 6309 (February 9, 2010).

[11] EPA has already approved changes to the definition for ''[a]cquired structure burn'' at paragraph (5)(e)3. *See* 70 FR 50199 (August 26, 2005).

[12] *See* Rule 391–3–1–.02(5)(b), which limits the categories of open burning allowed in the 45-county area.

[13] The ''guidelines set forth by the Director'' are provided in the memorandum ''Guidance for Acquired Structure for Live Fire Training'' from GA EPD to Georgia Fire Department Chiefs and Personnel, July 13, 2016, downloaded from *https://epd.georgia.gov/air/acquired-structure-burn-information* on September 14, 2018, and included in the docket for this rulemaking.

[14] On June 4, 2018, EPA designated the counties of Bartow, Cobb, Clayton, DeKalb, Fulton, Gwinnett and Henry as nonattainment for the 2015 8-hour ozone national ambient air quality standards (NAAQS). *See* 83 FR 25776.

burning is at least 1,000 feet from any dwelling located in a predominately residential area.'' Two changes are made here. The revised language (1) removes the limitation of this exception to ''other than predominantly residential areas,'' and (2) changes the second condition that must be met such that rather than requiring this type of burning occur at least 1,000 feet from any ''dwelling located in a predominantly residential area,'' the rule requires it to occur at least 1,000 feet from any ''occupied structure, or lesser distance if approved by the Division.'' Thus, the revised rule establishes a minimum distance required from all occupied structures (*e.g.,* schools, work places and shops), not just residential area dwellings, and provides that the GA EPD Director may approve lesser distances as evaluated and deemed appropriate. The revised language is more protective of air quality because it requires that burning for the purpose of land clearing, construction or right-of-way maintenance must be conducted at least 1,000 feet away from all occupied structures, not just residential dwellings. Any distance less than 1,000 feet must be specifically reviewed and, if deemed appropriate, approved by the Director. EPA believes the amount of distance required is unrelated to attainment or maintenance of the NAAQS, and thus is appropriately left to the State's discretion.

Paragraph (5)(a)13 (previously (5)(a)14) provides seven conditions that must all be met before anyone may conduct ''[o]pen burning of vegetative material for the purpose of land clearing using an air curtain destructor.'' The revision removes the ''Georgia Forestry Office'' as one of the entities that may be required to authorize such burning under the first condition at subparagraph (5)(a)13(i). As revised, authorization for such burning must be obtained, if required, from the fire department having local jurisdiction but is not required from the Georgia Forestry Office. EPA believes this revision is within the State's discretion. The revision also adds a new condition, subparagraph (5)(a)13(viii), stating that ''[t]he air curtain destructor cannot be fired before 10:00 a.m. and the fire must be completely extinguished, using water or by covering with dirt, at least one hour before sunset.'' Thus, the burning of vegetative material for the purpose of land clearing using an air curtain destructor must be limited to daytime hours. This approach is more protective of air quality because it allows less time each day for the burning of vegetative material and enables better oversight by enforcement personnel.

Subsection 391–3–1–.02(5)(b) provides specific county restrictions to implement more stringent limitations on open burning in the counties that were previously part of the Atlanta nonattainment area for the 1997 8-hour ozone NAAQS. GA EPD's April 11, 2003, revision moves the counties of Bartow, Carroll, Hall, Newton, Spalding, and Walton from paragraph (b)2 to paragraph (b)1 (and thus deletes paragraph (b)2) and makes administrative edits to reflect the adopted changes in the allowed types of open burning listed in subsection (5)(a). This is an administrative change that will not impact air quality. The SIP revision also deletes from paragraph (b)4 (renumbered as (b)3) a statement which provides the Division with authority to allow additional types of open burning if it can be demonstrated that adequate disposal facilities are not reasonably available. EPA proposes to approve this revision because it strengthens the SIP by disallowing additional types of open burning currently allowed in some circumstances under the specific county open burning restrictions of subsection (5)(b).

The submittal also includes a revision that would delete the following provision from subsection (5)(c): ''A written notification to a person of a violation at one site shall be considered adequate notice of the rules and regulations and subsequently observed violations by the same person at the same or different site will result in immediately appropriate legal action by the Director.'' EPA is not proposing to act on this deletion because the provision was never approved into the SIP.

The SIP revision also removes subsection (5)(e) of the State's Open Burning Rule, which prohibits open burning during an ''air pollution episode,'' defined at Rule 391–3–1–.04 as a condition that could ''lead to a substantial threat to the health of persons in the specific area affected.'' Georgia has separate state-adopted regulations establishing three levels of an air pollution episode: ''Alert,'' ''Warning,'' and ''Emergency.'' The lowest level, ''Alert,'' occurs at 0.17 parts per million (ppm) over an 8-hour average for ozone; 150 micrograms per cubic meter (μg/m^3) over a 24-hour average for $PM_{2.5}$; and 350 μg/m^3 over a 24-hour average for PM_{10}.[15]

In this action, EPA is proposing to approve removal of the prohibition on open burning during an air pollution episode at Rule 391–3–1–.02(5)(e), which currently states: ''During an air pollution episode declared by the proper authorities, no open burning of any kind shall be permitted unless open burning is required in the performance of an official duty of any public office, or a fire is necessary to thwart or prevent a hazard which cannot be properly managed by any other means, or is necessary for the protection of public health.'' In comparison with the NAAQS, the ''Alert'' levels under the State's Air Pollution Episode rule are 2.3 times the ozone and PM NAAQS levels or greater. In other words, an exceedance of the NAAQS would occur well before the concentration of air contaminants gets high enough for an air pollution episode declaration, meaning a ban on open burning during an episode, by definition, cannot impact attainment or maintenance of the NAAQS. Further, there have been only a few instances of pollutant levels above the Alert threshold in Georgia,[16] and no recorded declaration of an air pollution episode. And as discussed below, EPA notes the State has ample authority to implement an open burning ban to the extent needed to protect public health. For these reasons, EPA believes that removal of Rule 391–3–1–.02(5)(e) from the SIP is consistent with the CAA, including section 110(l) of the Act, and its implementing regulations.

EPA also notes that removal of this provision will not impact the State's separate ''emergency powers'' authority under section 110(a)(2)(G) of the Act. That provision requires the SIP to include ''emergency powers'' to restrain pollution sources presenting an imminent and substantial endangerment to public health or welfare, or the environment. EPA has previously approved Georgia Air Quality Act § 12–9–14 as satisfying the State's section 110(a)(2)(G) obligations. Thus, removal of Rule 391–3–1–.02(d) will not impact this separate applicable requirement.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is

[15] Georgia's adopted air pollutant concentration thresholds for the ''Alert,'' ''Warning,'' and ''Emergency'' levels are not in the State's federally-approved SIP, but are available on the State's website at *https://epd.georgia.gov/existing-rules-and-corresponding-laws.*

[16] EPA conducted a review of historical data and identified two exceedances of the $PM_{2.5}$ and PM_{10} threshold. The ''Georgia Emergency Response Memo'' and associated attachments are in the docket for this action.

proposing to incorporate by reference the GA EPD Rule 391–3–1–.02(2)(nnn)—*NO_X Emissions from Large Stationary Gas Turbines* which revises emissions limits for some large stationary gas turbines and Rule 391–3–1–.02(5)—*Open Burning,* which revises the State's open burning rules, state effective March 26, 2003. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve portions of Georgia's April 11, 2003, submittal. Specifically, EPA is proposing to approve the changes to GA EPD Rule 391–3–1–.02(2)(nnn)—*NO_X Emissions from Large Stationary Gas Turbines* and Rule 391–3–1–.02(5)—*Open Burning.* EPA believes that these proposed changes to the regulatory portion of the SIP are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs. EPA also believes that these proposed changes are specifically consistent with CAA section 110(l), which states that the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

The SIP is not approved to apply on any Indian reservation land 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0617; FRL–9989–40–Region 4]

Air Plan Approval; GA: Non-Interference Demonstration and Maintenance Plan Revision for Federal Low-Reid Vapor Pressure Requirement in the Atlanta Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision that would support a change to the Federal Reid Vapor Pressure (RVP) requirements in 13 counties in Atlanta, Georgia. They comprise the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (the ''Atlanta fuel volatility Area''). The Atlanta fuel volatility Area is a subset of the Atlanta 15-county 2008 8-hour ozone maintenance area. The 15-county 2008 8-hour ozone maintenance area is comprised of the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale (the ''Atlanta maintenance Area''). This proposed approval is based in part on EPA's analysis of whether the SIP revision would interfere with the 15-county Atlanta maintenance Area's ability to meet the requirements of the Clean Air Act (CAA or Act). On August 15, 2018, Georgia through the Georgia Environmental Protection Division (GA EPD), submitted a noninterference demonstration to support its SIP revision requesting that EPA relax the federal RVP requirements for the Atlanta fuel volatility Area. This SIP revision updates Georgia's 2008 8-hour ozone maintenance plan for the 15-county Atlanta maintenance Area and its emissions inventory, the associated motor vehicle emissions budgets (MVEBs) and includes measures to offset the emissions increases expected from the relaxation of the federal RVP requirements. Georgia's noninterference demonstration concludes that relaxing the federal RVP requirement from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline sold between June 1 and September 15 of each year in the Atlanta fuel volatility Area would not interfere with attainment or maintenance of any national ambient air quality standards

(NAAQS or standards) or with any other CAA requirement. EPA is proposing to approve this SIP revision because EPA has preliminarily determined that the revision is consistent with the applicable provisions of the CAA.

DATES: Comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0617 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Myers can be reached via telephone at (404) 562–9207 or via electronic mail at *Myers.Dianna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What is EPA proposing?

This rulemaking proposes to approve Georgia's SIP revision for the maintenance plan, submitted on August 15, 2018, that would support the State's request that EPA relax the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold between June 1 and September 15 of each year (high ozone season) in the Atlanta fuel volatility Area. EPA is also proposing to find that Georgia has demonstrated that changing the federal RVP requirements in the Atlanta fuel volatility Area will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

On July 18, 2016, Georgia submitted a 2008 8-hour ozone redesignation request and maintenance plan for the 15-county 2008 8-hour ozone Atlanta maintenance Area, which EPA approved on June 2, 2017 (82 FR 25523). With its redesignation request, Georgia included a maintenance plan demonstration that estimated emissions through 2030 and modeled the federal 7.8 psi RVP summer gasoline volatility limit in the emissions calculations. The August 15, 2018, submittal updates Georgia's 2008 8-hour ozone maintenance plan mobile emissions inventory, associated MVEBs, and includes measures to offset the emissions increases resulting from any relaxation of the federal RVP requirements. The offset measures are described in Section V, below. The updates are summarized in Georgia's submittal which can be viewed at *http://www.regulations.gov.*

To support the August 15, 2018, SIP revision Georgia evaluated whether changing the 7.8 psi RVP to 9.0 psi RVP federal requirement would interfere with air quality in the 15-county Atlanta maintenance Area. To make this demonstration of noninterference, Georgia completed a technical analysis, including using the current version of EPA's Motor Vehicle Emissions Simulator (MOVES2014a) to project the change in emissions that would result from the RVP relaxation of 7.8 psi to 9.0 psi in the 15-county Atlanta maintenance Area.

In this noninterference demonstration, Georgia used MOVES2014a to develop its projected emissions inventory according to EPA's guidance for on-road and nonroad mobile sources. Georgia used the NONROAD 2008 model within MOVES2014a to develop the nonroad emissions inventory to reflect the emissions changes from relaxing the RVP of 7.8 psi to 9.0 psi in the Atlanta fuel volatility Area.

The 2014 attainment base year mobile emissions were taken directly from the 2008 maintenance SIP and future-year on-road mobile source emissions estimates for 2018, 2020, 2030, and 2040 were modeled using a RVP input parameter of 10.0 psi.[1] Georgia interpolated years 2025 and 2035 to further illustrate the downward trend in emissions. Georgia selected years 2020, 2030 and 2040 because these years are used by the Atlanta Regional Commission in Atlanta's transportation conformity determinations. The 2008 8-hour maintenance plan showed compliance with and maintenance of the 2008 8-hour ozone NAAQS until the 2030 outyear by providing information to support the demonstration that current and future emissions of nitrogen oxides (NOx) and volatile organic compounds (VOC) remained at or below the 2014 base year emissions inventory. For more detailed information on the current approved maintenance plan, see EPA's December 23, 2016 (81 FR 94283), proposed approval of Georgia's maintenance plan for the 2008 8-hour ozone NAAQS.

In this action, EPA is proposing to approve the State's technical demonstration that the 15-county Atlanta maintenance Area can continue to attain and maintain the 2008 ozone NAAQS, as well as other NAAQS, and meet all other CAA requirements after changing to the sale of gasoline with a RVP of 9.0 psi during the high ozone season in the 13-county Atlanta fuel volatility Area. EPA is also proposing to approve the revised mobile emissions inventory, the associated MVEBs, and the measures to offset the emissions increases due to relaxation of the federal RVP requirements. EPA's section 110(l) analysis of the noninterference demonstration included as a part of Georgia's August 15, 2018, SIP revision is provided below. Consistent with CAA section 211(h) and the Phase II volatility regulations, EPA will initiate a separate rulemaking to relax the current federal requirement to use gasoline that complies with the federal RVP limit from 7.8 psi to 9.0 psi in the 13-county Atlanta fuel volatility Area.

II. What is the background for the Atlanta Area?

On November 6, 1991 (56 FR 56694), EPA designated and classified the following counties in and around the Atlanta, Georgia metropolitan area as a Serious ozone nonattainment area for the 1-hour ozone NAAQS: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. This 13-county 1-hour ozone area is the ''Atlanta fuel volatility Area.'' The nonattainment designation triggered various requirements for the Atlanta 1-hour ozone nonattainment area. One of those requirements for the 1-hour ozone nonattainment area was the federal 7.8 psi RVP limit for gasoline sold between June 1 and September 15, which is the subject of this action.

Because the Atlanta 1-hour ozone nonattainment area failed to attain the 1-hour ozone NAAQS by November 15, 1999, EPA issued a final rulemaking action on September 26, 2003, to

[1] The input parameter of 10.0 psi includes a RVP of 9.0 psi with a 1 percent ethanol waiver.

reclassify or ''bump up,'' the area to a Severe ozone nonattainment area. This reclassification became effective on January 1, 2004 (68 FR 55469). EPA redesignated the Atlanta 1-hour ozone nonattainment area to attainment for the 1-hour ozone NAAQS, effective June 14, 2005 (70 FR 34660).

On April 30, 2004 (69 FR 23858), EPA designated the following 20 counties in and around metropolitan Atlanta as a Marginal nonattainment area for the 1997 8-hour ozone NAAQS: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding, and Walton. The Atlanta fuel volatility Area is a sub-set of this 20-county area. Subsequently, EPA reclassified the Atlanta 1997 8-hour ozone nonattainment area as a Moderate nonattainment area on March 6, 2008 (73 FR 12013), because the area failed to attain the 1997 8-hour ozone NAAQS by the required attainment date of June 15, 2007. Subsequently, the Atlanta 1997 8-hour ozone nonattainment area attained the 1997 8-hour ozone standard, and on December 2, 2013 (78 FR 72040), EPA redesignated the area to attainment for the 1997 8-hour ozone NAAQS.

Effective July 20, 2012, EPA designated the following 15-counties Marginal nonattainment for the 2008 8-hour ozone NAAQS: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale. As mentioned before, the Atlanta fuel volatility Area is sub-set of this 15-county area. The 15-county Atlanta 2008 8-hour ozone nonattainment area did not attain the 2008 8-hour ozone NAAQS by the attainment date of July 20, 2015, and therefore on May 4, 2016, EPA published a final rule reclassifying the area from a Marginal nonattainment area to a Moderate nonattainment area for the 2008 8-hour ozone standard (81 FR 26697). Moderate areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, six years after the effective date of the initial nonattainment designations. *See* 40 CFR 51.1103.

Under the provisions of EPA's ozone implementation rule for the 2008 8-hour ozone NAAQS (40 CFR part 51, subpart AA), EPA can issue a determination that an area is attaining the relevant standard, also known as a Clean Data Determination (40 CFR 51.1118). On July 14, 2016 (81 FR 45419), EPA determined that the Atlanta 2008 8-hour ozone nonattainment area attained the 2008 8-hour ozone NAAQS based on complete, quality-assured, and certified ozone monitoring data for years 2013 through 2015. On July 18, 2016, Georgia submitted a 2008 8-hour ozone redesignation request and maintenance plan for the area (hereafter the ''Atlanta maintenance Area), which EPA approved on June 2, 2017 (82 FR 25523).

At the time of all of the redesignations to attainment noted above (for the 1979 1-hour ozone NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS), Georgia did not request relaxation of the federal 7.8 psi RVP requirement for the Atlanta fuel volatility Area. Georgia is now requesting relaxation of the federal 7.8 psi RVP requirement to 9.0 psi for the Atlanta fuel volatility Area.

On October 1, 2015, EPA revised the 8-hour ozone standard from 0.075 ppm to 0.070 ppm (80 FR 65292). Subsequently, on June 4, 2018, EPA published a final rule (effective date August 3, 2018) designating the following 7 Atlanta counties Marginal nonattainment for the 2015 8-hour ozone NAAQS: Bartow, Clayton, Cobb, Dekalb, Fulton, Gwinnett and Henry (83 FR 25776). The 7 counties comprising the 2015 8-hour ozone nonattainment area are also part of the 13-county Atlanta fuel volatility Area. Areas designated Marginal nonattainment must attain the standard by August 3, 2021.

III. What is the history of the gasoline volatility requirement?

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide had become increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as VOCs, are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function (thereby aggravating asthma or other respiratory conditions), increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under section 211(c) of CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868), that set maximum limits for the RVP of gasoline sold during the high ozone season. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of commercial gasoline during the summer ozone control season. 40 CFR 80.27(a)(1). On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS during the high ozone season).

The 1990 CAA Amendments established a new section, 211(h), to address fuel volatility. Section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a RVP level in excess of 9.0 psi during the high ozone season. Section 211(h) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with section 211(h) of the CAA. 40 CFR 80.27(a)(2). The modified regulations prohibited the sale of gasoline with a RVP above 9.0 psi in all areas designated attainment for ozone, beginning in 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658). A current listing of the federal RVP requirements for states can be found on EPA's website at: *https://www.epa.gov/gasoline-standards.*

As explained in the December 12, 1991 (56 FR 64704), Phase II rulemaking, EPA believes that relaxation of an applicable federal RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone nonattainment area to be redesignated as an attainment area, section 107(d)(3) of the Act requires the state to make a showing, pursuant to section 175A of the Act, that the area is capable of maintaining attainment for the ozone NAAQS for ten years after redesignation. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area can maintain attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not relax the volatility standard unless the state requests a relaxation and the maintenance plan demonstrates, to the satisfaction of EPA,

that the area will maintain attainment without the need for the more stringent volatility standard. As mentioned before, under the initial 1-hour ozone nonattainment designation, the 13-county Atlanta fuel volatility Area was required to sell gasoline that complied with the federal 7.8 psi RVP limit from June 1 to September 15 of each year.

Additionally, to comply with the 1-hour ozone NAAQS, Georgia adopted a state fuel program through Georgia Rule 391–3–1-.02(2)(bbb), *Gasoline Marketing,* (hereafter ''Georgia Rule''), which required the sale of low sulfur gasoline with an RVP of 7.0 psi during the high ozone season in a 45-county Georgia Fuel Area. The Georgia Fuel Area included the 20-county 1997 8-hour ozone maintenance and the 15-county 2008 8-hour nonattainment areas (the 15-county area being a subset of the 20-county area) with the remaining counties considered ''counties of influence.'' The Georgia Rule was implemented through a waiver under section 211(c)(4)(C) of the CAA, which allowed the adoption of a state fuel program more stringent than the Federal requirement. EPA incorporated the Georgia Rule into the Georgia SIP on July 19, 2004 (69 FR 33862). The Georgia Rule was removed from the Georgia SIP effective October 1, 2015 (80 FR 52627).

Again, Georgia did not request relaxation of the applicable 7.8 psi federal RVP standard for the 13-county Atlanta fuel volatility Area when the Area was redesignated to attainment for the 1979 1-hour ozone NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS. Georgia is therefore now submitting a revision to the 2008 8-hour ozone NAAQS maintenance plan and a non-interference demonstration concluding that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold between June 1st and September 15th of each year in the Atlanta fuel volatility Area would not interfere with attainment or maintenance of the any of the NAAQS.

IV. What are the Section 110(l) requirements?

The modeling associated with Georgia's maintenance plan for the 2008 8-hour ozone NAAQS, approved on June 2, 2017, was premised upon the future-year emissions estimates for 2018, 2022, 2026, and 2030, which include the federal 7.8 psi RVP requirement in the Atlanta fuel volatility Area. To approve Georgia's request to relax the federal RVP requirement in the Atlanta fuel volatility Area, EPA must conclude that requested change will satisfy section 110(l) of the CAA. Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. In this submittal, Georgia's modeling includes the same future years but is based on the federal 9.0 psi RVP limit. EPA is proposing approval of the noninterference demonstration based on an evaluation of current air quality monitoring data and the information provided in the noninterference demonstration.

Additionally, in the absence of an attainment demonstration, to demonstrate no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any change to a SIP-approved program, as long as actual emissions in the air are not increased. ''Equivalent'' emissions reductions are reductions that are equal to or greater than those reductions achieved by the control measure approved in the SIP. To show that compensating emissions reductions are equivalent, adequate justification must be provided. The compensating, equivalent reductions should represent actual emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure order to preserve the status quo level of emission in the air. If the status quo is preserved, noninterference is demonstrated. In addition to being contemporaneous, the equivalent emissions reductions should also be permanent, enforceable, quantifiable, and surplus.

EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those for which SIP submissions have not been made. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on a number of relevant factors, including the nature of the emissions associated with the proposed SIP revision. EPA's section 110(l) analysis of the noninterference demonstration included as part of Georgia's August 15, 2018, SIP revision is provided below.

V. What is EPA's analysis of Georgia's submittal?

a. Proposed Conclusions Regarding Georgia's Noninterference Demonstration

On August 15, 2018, Georgia submitted a noninterference demonstration to support the State's request to relax the federal summertime gasoline RVP limit from 7.8 psi to 9.0 psi for the Atlanta fuel volatility Area. This noninterference demonstration evaluates the 15-county Atlanta maintenance Area, which encompasses the smaller Atlanta fuel volatility Area, and the 7-county 2015 8-hour ozone nonattainment area. This demonstration includes an evaluation of the impact that the relaxation of the 7.8 psi RVP requirement would have on Atlanta's ability to maintain the 1997 and 2008 ozone standards. It also evaluates whether the relaxation of the federal RVP requirement would interfere with the ability of the 7-county 2015 8-hour ozone nonattainment area to attain the ozone standard by August 3, 2021, which is the attainment date for areas classified as Marginal, or with any of the other applicable NAAQS. Although the attainment date is August 3, 2021, Marginal areas must show attainment using air quality data for years 2018 through 2020. The 2015 8-hour ozone NAAQS and other NAAQS are addressed later in this notice.

Georgia EPD focused its analysis on the impact of the relaxed federal RVP limit of 9.0 psi to attainment and maintenance of the ozone standards and its precursors NO_X and VOC. RVP requirements do not affect lead (Pb), sulfur dioxide (SO_2), or carbon monoxide (CO) emissions. Because VOC and NO_X emissions are also precursors for PM, and NO_X is a precursor for nitrogen dioxide (NO_2), these pollutants will be discussed later in this Section. Georgia is currently in attainment for all PM NAAQS, SO_2, NO_2, CO, and Pb. The relaxation of the RVP requirement will have little to no impact on emissions of these pollutants or their related precursors.

In this noninterference demonstration, Georgia used EPA's MOVES2014a model to develop its projected mobile (on-road and nonroad) emissions inventory according to EPA's guidance for on-road and nonroad mobile sources. As mentioned before, the future-year on-road mobile source emissions estimates for 2018, 2020, 2025 and 2030, 2035 and 2040 were generated with MOVES2014a using a RVP input parameter of 10.0 psi. This noninterference demonstration modeled year 2018 to align with the 2008 8-hour

ozone maintenance plan. Therefore, the year 2018 serves as a surrogate for the year 2019 when Georgia projects the relaxation of the federal RVP requirement would take place. The maintenance plan showed compliance with and maintenance of the 2008 8-hour ozone NAAQS by providing information to support this demonstration that current and future emissions of NO_X and VOC remained at or below the 2014 2008 8-hour ozone attainment base year emissions inventory.[2] The analysis in this proposal will primarily refer to the years 2018 and 2030 to stay in alignment with the 2008 8-hour ozone maintenance plan. The emissions trend for year 2020 will be discussed later in the notice because attainment for the 2015 8-hour ozone NAAQS will be based on years 2018 through 2020. Also, based on modeling data from EPA's Cross State Air Pollution Rule, the entire State of Georgia is showing attainment for the 2015 8-hour ozone NAAQS through 2023.[3]

Tables 1 and 2, below, show the direct impact on the on-road mobile source emissions due to a relaxation of the federal RVP requirements from 7.8 psi to 9.0 psi for the Atlanta fuel volatility Area. As summarized below, on-road NO_X and VOC emissions increase when the requirement is relaxed to 9.0 psi. NO_X emissions increased by 0.29 and 0.05 tons per day (tpd) in 2018 and 2030, respectively in the 15-county Atlanta maintenance Area. VOC emissions also increased by 0.75 and 0.14 tpd in 2018 and 2030, respectively in the same area. While emissions of both precursors increase with a RVP relaxation to 9.0 psi, the increases decrease over time from 0.27 percent in 2018 to 0.13 percent in 2030 for NO_X emissions and from 1.11 percent in 2018 down to 0.39 percent in 2030 for VOC emissions in the 15-county Atlanta maintenance Area. Even with the small increases in emissions for the 15-county Atlanta maintenance Area, the overall on-road emissions for NO_X decrease from 106.23 tpd in 2018 to 39.60 tpd in 2030. Similarly, the overall on-road emissions for VOC decrease from 68.35 tpd in 2018 to 35.96 tpd in 2030 in the 15-county Atlanta maintenance Area. This indicates that changes in on-road emissions due to a relaxation of the federal RVP limit from 7.8 psi to 9.0 psi will not interfere with continued maintenance of the 2008 8-hour NAAQS in the 15-county Atlanta maintenance Area.

TABLE 1—ON-ROAD NO_X EMISSIONS BEFORE AND AFTER RVP RELAXATION[4]

Pollutant and region	Year	7.8 psi gasoline for 13 counties and 9.0 psi gasoline for 2 counties[5] (tpd)	9.0 psi gasoline for 15-counties (tpd)	Emissions increase with RVP relaxation (tpd)	Emissions increase with RVP relaxation (percent)
13-county area	2018	94.49	94.78	0.29	0.31
	2020	76.49	76.70	0.21	0.28
	2025	55.61	55.74	0.13	0.23
	2030	34.74	34.78	0.05	0.14
	2035	29.08	29.10	0.02	0.07
	2040	23.43	23.42	−0.01	−0.04
2-county area	2018	11.45	11.45	0.0	0.0
	2020	9.49	9.49	0.0	0.0
	2025	7.16	7.16	0.0	0.0
	2030	4.82	4.82	0.0	0.0
	2035	4.36	4.36	0.0	0.0
	2040	3.90	3.90	0.0	0.0
15-county[6] area	2018	105.94	106.23	0.29	0.27
	2020	85.98	86.19	0.21	0.24
	2025	62.77	62.90	0.13	0.21
	2030	39.56	39.60	0.05	0.13
	2035	33.44	33.46	0.02	0.06
	2040	27.33	27.32	−0.01	−0.04

[2] The 2014 base year emissions are unchanged from the 2008 8-hour ozone maintenance plan included in Appendix A of this SIP revision.

[3] *See* the Peter Tsirigotis Memorandum dated October 19, 2018, entitled ''Considerations for Identifying Maintenance Receptors for Use in Clean Air Act Section 11 0(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards.'' *See also https://www.epa.gov/airmarkets/memo-and-supplemental-information-regarding-interstate-transport-sips-2015-ozone-naaqs.*

[4] In this table, and in tables 2 and 3 below, the 13-county area refers to the Atlanta 1-hour ozone area (referenced herein as the Atlanta fuel volatility Area) whereas the 15-county area refers to the Atlanta 2008 8-hour ozone area (referenced herein as the Atlanta maintenance Area). The 2-county area is the difference between the Atlanta 1-hour ozone area boundary and the Atlanta 2008 8-hour ozone boundary. This table is how the State references these areas in their submittal.

[5] As mentioned before, the 1 psi waiver for E10 is included in all calculations in this table. E10 is a fuel blend with 10 percent ethanol. Therefore, the actual input parameter is 8.8 psi and 10.0 psi. The 2-county area is not included in the original 13-county Atlanta fuel volatility Area and was never subject to the 7.8 psi RVP requirements. Federal RVP limits are 7.8 psi and 9.0 psi, not including the additional 1.0 psi that applies to 10 percent ethanol blends. Throughout the rest of the proposal we will refer to the RVP limits as 7.8 psi and 9.0 psi.

[6] In final calculations for the nonattainment area, an additional 0.03 tpd would be added to these values to account for the Senior Exemption. Senior citizens are exempt from the Inspection and Maintenance (I/M) program testing and thus 0.03 tpd (based on 2002 emissions comparisons) is used as a conservative estimate of disbenefit.

TABLE 2—ON-ROAD VOC EMISSIONS BEFORE AND AFTER RVP RELAXATION

Pollutant and region	Year	7.8 psi gasoline for 13 counties and 9.0 psi gasoline for 2 counties [7] (tpd)	9.0 psi gasoline for 15-counties (tpd)	Emissions increase with RVP relaxation (tpd)	Emissions increase with RVP relaxation (percent)
13-county area	2018	62.14	62.89	0.75	1.21
	2020	53.64	54.14	0.50	0.94
	2025	43.26	43.59	0.32	0.75
	2030	32.89	33.03	0.14	0.43
	2035	28.56	28.69	0.13	0.45
	2040	24.24	24.36	0.11	0.47
2-county area	2018	5.46	5.46	0.0	0.0
	2020	4.72	4.72	0.0	0.0
	2025	3.83	3.83	0.0	0.0
	2030	2.93	2.93	0.0	0.0
	2035	2.59	2.59	0.0	0.0
	2040	2.26	2.26	0.0	0.0
15-county [8] area	2018	67.60	68.35	0.75	1.11
	2020	58.36	58.86	0.50	0.86
	2025	47.09	47.41	0.32	0.68
	2030	35.82	35.96	0.14	0.39
	2035	31.16	31.29	0.13	0.42
	2040	26.50	26.61	0.11	0.42

Nonroad mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways (*e.g.,* lawn mowers, construction equipment, and railroad locomotives). Georgia did not address nonroad NO_X emissions because the NONROAD model within MOVES 2014a model indicated that the change in the RVP limit did not result in changes in NO_X emissions from nonroad sources. Therefore, Georgia did calculate changes in nonroad VOC emissions before and after the relaxation as shown in Table 3, below.

TABLE 3—NONROAD VOC EMISSIONS BEFORE AND AFTER RVP RELAXATION

Pollutant and region	Year	7.8 psi gasoline for 13 counties and 9.0 psi gasoline for 2 counties (tpd)	9.0 psi gasoline for 15-counties (tpd)	Emissions increase with RVP relaxation (tpd)	Emissions increase with RVP relaxation (percent)
13-county area	2018	45.15	45.97	0.82	1.82
	2020	44.74	45.58	0.84	1.88
	2025	46.48	47.37	0.89	1.91
	2030	48.23	49.17	0.94	1.95
	2035	51.11	52.11	1.00	1.96
	2040	54.00	55.06	1.06	1.96
2-county area	2018	1.59	1.59	0.0	0.0
	2020	1.51	1.51	0.0	0.0
	2025	1.48	1.48	0.0	0.0
	2030	1.46	1.46	0.0	0.0
	2035	1.52	1.52	0.0	0.0
	2040	1.59	1.59	0.0	0.0
15-county NAA [9] area	2018	46.74	47.56	0.82	1.75
	2020	46.25	47.09	0.84	1.82
	2025	47.97	48.86	0.89	1.86
	2030	49.69	50.63	0.94	1.89
	2035	52.64	53.64	1.00	1.90
	2040	55.59	56.65	1.06	1.91

[7] As mentioned before, the 1 psi waiver for E10 is included in all calculations in this table. E10 is a fuel blend with 10 percent ethanol. Therefore, the actual input parameter is 8.8 psi and 10.0 psi. The 2-county area is not included in the original 13-county Atlanta fuel volatility Area and was never subject to the 7.8 psi RVP requirements. Federal RVP limits are 7.8 psi and 9.0 psi, not including the additional 1.0 psi that applies to 10 percent ethanol blends. Throughout the rest of the proposal we will refer to the RVP limits as 7.8 psi and 9.0 psi.

[8] In final calculations for the nonattainment area, an additional 0.03 tpd would be added to these values to account for the Senior Exemption. Senior citizens are exempt from the I/M program testing and thus 0.03 tpd (based on 2002 emissions comparisons) is used as a conservative estimate of disbenefit.

[9] In final calculations for the nonattainment area, an additional 0.03 tpd would be added to these values to account for the Senior Exemption. Senior citizens are exempt from the Inspection and Maintenance (I/M) program testing and thus 0.03 tpd (based on 2002 emissions comparisons) is used as a conservative estimate of disbenefit.

As shown in Table 3, in the 15-county Atlanta maintenance Area, nonroad VOC emissions increased by 0.82 tpd in 2018 from 46.75 tpd to 47.56 tpd and by 0.94 tpd in 2030 from 49.69 tpd to 50.63 tpd when the federal RVP limit is relaxed to 9.0 psi. The nonroad VOC emissions increase from 1.75% in 2018 to 1.89% in 2030.

Tables 4 and 5, below show the 2014 NO_X and VOC attainment inventories from all sectors (point, area, nonroad, and on-road) comparing the current 7.8 psi gasoline RVP to gasoline that complies with the federal gasoline RVP limit of 9.0 psi. Georgia calculated the change in emissions from attainment levels for both the 7.8 psi and 9.0 psi RVP gasoline and used the term ''margin'' to indicate the amount of the decrease in tpd from attainment (2014) to the maintenance (2030) and beyond (2040). The ''allotted'' amount is the difference in emissions from the 7.8 psi RVP gasoline to the 9.0 psi RVP gasoline. Georgia also shows the allotted difference as a percent.

TABLE 4—2014 NO_X ATTAINMENT INVENTORY COMPARISON 7.8 PSI TO 9.0 PSI RVP

Year	Total 2014 NO_X attainment inventory (tpd)	Total NO_X emissions inventory with current (7.8) RVP gasoline (tpd)	Total NO_X emissions inventory with relaxed (9.0) RVP gasoline (tpd)	Current RVP (7.8) gasoline margin (NO_X) (tpd)	Relaxed RVP (9.0) gasoline margin (NO_X) (tpd)	Amount of margin allotted to relax RVP (tpd)	Percent of margin allotted to relax RVP
2014	283.09	283.09	N/A	0	N/A	N/A	N/A
2018	283.09	205.86	206.15	77.23	76.94	0.29	0.38
2020	283.09	181.23	181.44	101.86	101.65	0.21	0.21
2025	283.09	153.16	153.29	129.93	129.80	0.13	0.10
2030	283.09	125.09	125.14	158.00	157.95	0.05	0.03
2035	283.09	118.67	118.69	164.42	164.40	0.02	0.01
2040	283.09	112.25	112.24	170.84	170.85	-0.01	0.00

TABLE 5—2014 VOC ATTAINMENT INVENTORY COMPARISON 7.8 PSI TO 9.0 PSI RVP

Year	Total 2014 VOC attainment inventory (tpd)	Total VOC emissions inventory with current (7.8) RVP gasoline (tpd)	Total VOC emissions inventory with relaxed (9.0) RVP gasoline (tpd)	Current RVP (7.8) gasoline margin (VOC) (tpd)	Relaxed RVP (9.0) gasoline margin (VOC) (tpd)	Amount of margin allotted to relax RVP (tpd)	Percent of margin allotted to relax RVP
2014	266.25	266.25	N/A	0	N/A	N/A	N/A
2018	266.25	246.71	248.29	19.54	17.96	1.58	8.09
2020	266.25	236.32	237.67	29.93	28.58	1.34	4.48
2025	266.25	225.15	226.36	41.10	39.89	1.21	2.94
2030	266.25	213.97	215.06	52.28	51.19	1.08	2.07
2035	266.25	210.64	211.77	55.61	54.48	1.13	2.03
2040	266.25	207.31	208.48	58.94	57.77	1.17	1.99

As shown in Table 4, when the RVP is relaxed, the total NO_X emissions increase the most in 2018 by 0.29 tpd, from 205.86 tpd to 206.15 tpd. In the outyear, 2030, NO_X emissions increase slightly by 0.05 tpd, from 125.09 tpd to 125.14 tpd when the federal RVP limit is relaxed. Although there are small increases in NO_X, overall, total NO_X emissions decrease by 170.85 tpd from the attainment year 2014 to the future year 2040.

Table 5 shows that the total VOC emissions increase in 2018 by 1.58 tpd, from 246.71 tpd to 248.29 tpd. In the outyear 2030, VOC emissions increase by 1.08 tpd, from 213.97 tpd to 215.06 tpd. Although there are emissions increases in VOC when the federal RVP limit is relaxed to 9.0 psi, there is an overall downward trend in emissions from the 2014 attainment year to the 2030 maintenance year. VOC emissions decrease from 266.25 tpd in 2014 down to 208.48 tpd in 2040 an overall decrease of 57.77 tpd.

Based on Tables 4 and 5, total NO_X emissions in the 2014 attainment year when the RVP is relaxed to 9.0 psi trends downward from 283.09.15 tpd to 125.14 tpd. This gives a safety margin of 157.95 tpd. The VOC safety margin is 51.19 tpd because of the downward trend from the attainment level of 266.25 tpd to the maintenance level of 215.06 tpd with 9.0 psi RVP. A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan.

Even with the increases in nonroad VOC emissions shown in Table 3, there is a downward trend in overall NO_X and VOC. The downward trend in the total NO_X and VOC emissions in the 2014 attainment inventories indicate that the 15-county Atlanta maintenance Area can continue to maintain the 1997 and 2008 8-hr ozone NAAQS because overall emissions will be below the 2014 attainment levels for the 2008 ozone NAAQS which is more than the 1997 ozone NAAQS.[10] Further, Georgia will need to offset the increase in emissions of 0.29 tpd of NO_X and 1.58 tpd of VOC in order to demonstrate non-interference with the 2015 ozone NAAQS, as discussed below. Georgia will get contemporaneous, compensating, equivalent emissions reductions to offset the increase in emissions. Therefore, Atlanta's ability to attain the 7-county 2015 8-hour ozone NAAQS will not be affected. The offsets are explained in more detail later in this Section.

[10] The 2008 ozone NAAQS is 0.075 ppm compared to the 1997 ozone NAAQS is 0.08 ppm, effectively 0.084 ppm.

b. Noninterference Analysis for the 2015 Ozone NAAQS

As mentioned above, EPA determined that the 20-county Atlanta metropolitan area attained the 1997 8-hour ozone NAAQS of 0.08 ppm, effectively 0.084 ppm, and redesignated the area to attainment on December 2, 2013 (78 FR 72040). EPA determined that the 15-county Atlanta maintenance Area attained the 0.075 ppm 2008 8-hour ozone NAAQS on July 14, 2016, and EPA redesignated the area to attainment on June 2, 2017 (82 FR 25523).

The current 3-year design value for 2015–2017 for the Atlanta area is 0.075 ppm,[11] which demonstrates Atlanta is continuing to maintain the 1997 and 2008 8-hour ozone NAAQS. The 2015 8-hour ozone NAAQS is 0.070 ppm and the 7-county Atlanta area is currently designated nonattainment for this NAAQS as the current ozone design value is 0.075 ppm.

Table 6 below shows the ozone monitoring data from monitoring stations in Atlanta. As previously mentioned, the 7-county 2015 8-hour ozone nonattainment area must attain the 2015 8-hour ozone NAAQS by August 3, 2021, with air quality data for years 2018 through 2020. Tables 4 and 5 above show the trend in emissions from the 2008 8-hour ozone NAAQS attainment year (2014) through the maintenance year (2030). The emissions trend shows that even with a 9.0 psi RVP fuel, emissions remain below the attainment inventory level of 283.09 tpd for NO_X and 266.5 for VOC. NO_X emissions decrease by 76.94 tpd in 2018 and even more to 101.65 tpd in 2020. By 2030, NO_X emissions will decrease by 157.95 tpd. Likewise, VOC emissions decrease by 17.96 tpd in 2018 to 28.58 tpd in 2020. By 2030, VOC emissions will decrease by 51.19 tpd. Based on the overall downward trend in emissions even with a 9.0 RVP fuel, and the offsetting, contemporaneous, compensating, equivalent, emissions reductions obtained for the 15-county Atlanta maintenance Area to account for the small increases due to a relaxation of the RVP requirement, EPA believes that a relaxation of the federal RVP requirement from 7.8 psi to 9.0 psi will not affect Atlanta's ability to attain the 2015 8-hour ozone NAAQS. Again, a more detailed discussion regarding the offsets and ozone sensitivities in Atlanta will be given later in the notice.

TABLE 6—2015–2017 DESIGN VALUE CONCENTRATIONS FOR ATLANTA (PPM) [12]

Location (county)	Monitoring station	4th highest 8-hour ozone value			3-Year design values
		2015	2016	2017	2015–2017
Cobb	GA National Guard, McCollum Pkwy (13–067–0003).	0.066	0.070	0.065	0.067
Coweta	University of W. Georgia at Newnan (13–077–0002).	0.066	0.066	0.057	0.063
DeKalb	2390–B Wildcat Road Decatur (13–089–0002)	0.071	0.074	0.068	0.071
Douglas	Douglas Co. Water Auth. W. Strickland St. (13–097–0004).	0.070	0.071	0.066	0.069
Gwinnett	Gwinnett Tech, 5150 Sugarloaf Pkwy. (13–135–0002).	0.071	0.078	0.065	0.071
Henry	Henry County Extension Office (13–151–0002)	0.070	0.078	0.067	0.071
Paulding	Yorkville, King Farm (13–223–0003)	0.065	0.067	—	0.066
Rockdale	Conyers Monastery, 2625 GA Hwy. 212 (13–247–0001).	0.068	0.076	0.065	0.069
Fulton	Confederate Ave., Atlanta (13–121–0055)	0.077	0.075	0.074	0.075

c. Noninterference Analysis for the PM NAAQS

Over the course of several years, EPA has reviewed and revised the $PM_{2.5}$ NAAQS several times. On July 18, 1997, EPA established an annual $PM_{2.5}$ NAAQS of 15 micrograms per cubic meter (μg/m³) and designated the Atlanta area nonattainment for the 1997 annual $PM_{2.5}$ NAAQS on April 14, 2005 (70 FR 19844). The Atlanta area attained the 1997 annual NAAQS and was redesignated attainment on February 24, 2016 (81 FR 9114).

On September 21, 2006, EPA retained the 1997 annual $PM_{2.5}$ NAAQS of 15.0 μg/m³ but revised the 24-hour $PM_{2.5}$ NAAQS from 65.0 μg/m³ to 35.0 μg/m³, (71 FR 61144) effective October 17, 2006. The Atlanta area was never designated nonattainment for the 24-hour $PM_{2.5}$ NAAQS.

On December 14, 2012, EPA strengthened the annual primary $PM_{2.5}$ NAAQS from 15 μg/m³ to 12.0 μg/m.³ (78 FR 3086). EPA designated Atlanta unclassifiable/attainment for the 2012 annual primary $PM_{2.5}$ NAAQS (80 FR 2206) on January 15, 2015. The current 2015–2017 design value for the annual and 24-hour $PM_{2.5}$ is 10.5 and 23.0 μg/m³, respectively.

The main precursor pollutants for $PM_{2.5}$ are NO_X, SO_2, VOC, and ammonia. As mentioned above, relaxing the federal RVP requirements only results in small emissions increases of VOC and NO_X. Moreover, there have been a number of studies which have indicated that SO_2 is the primary driver of $PM_{2.5}$ formation in the Southeast.[13]

As previously stated, RVP does not affect the most significant $PM_{2.5}$ precursor (SO_2).

Based on this and the fact that the current $PM_{2.5}$ design values for the Atlanta area are below the level of the 2012 annual primary and 2006 24-hour $PM_{2.5}$ NAAQS, EPA is proposing to determine that a relaxation of the federal 7.8 psi gasoline RVP limit to 9.0 psi for the affected counties would not interfere with the Atlanta area's ability to attain or maintain the annual primary and 24-hour $PM_{2.5}$ NAAQS in the area.

[11] The design value for an area is the highest 3-year average of the annual fourth-highest daily maximum 8-hour concentration recorded at any monitor in the area.

[12] These monitoring stations are representative of the air quality in the entire Atlanta area even though not all counties in the 7-county 2015 ozone nonattainment area have a monitoring station.

[13] *See, e.g., Quantifying the sources of ozone, fine particulate matter, and regional haze in the Southeastern United States,* Journal of Environmental Engineering (June 24, 2009), available at: *http://www.sciencedirect.com/science/article/pii/S0301479709001893?via%3Dihub.*

d. Noninterference Analysis for the 2010 NO_2 NAAQS

There are currently two primary nitrogen dioxide (NO_2) standards. On February 9, 2010 (75 FR 6474), EPA established a 1-Hour NO_2 standard set at 100 ppb. In 1971, an annual standard was set at a level of 53 ppb and has remained unchanged. EPA designated all counties in Georgia, including all of those in the Atlanta area as unclassifiable/attainment for the 2010 NO_2 NAAQS on February 17, 2012 (77 FR 95320). Currently, Atlanta's 2015–2017 design value for the 2010 1-hour and annual NO_2 NAAQS is 56.0 and 17.9 ppb, respectively. Given that the area is well below the level of the NAAQS, the small NO_2 emissions increase from a RVP relaxation will not interfere the area's ability to continue to attain the NAAQS. EPA is proposing to determine that a change to a federal 9.0 psi RVP limit for the Atlanta fuel volatility Area would not interfere with attainment or maintenance of the 1-hour or annual NO_2 NAAQS.

e. Noninterference Analysis for the SO_2 NAAQS

On June 22, 2010 (75 FR 35520), EPA revised the SO_2 standard. There are both primary and secondary standards for SO_2. The primary SO_2 NAAQS is a 3-year average of the 99th percentile of the daily maximum 1-hour concentration not to exceed 75 ppb. The secondary standard is a 3-hour concentration not to exceed 0.5 ppm more than once per year. On December 21, 2017, EPA designated all counties in Atlanta attainment/unclassifiable for the 2010 SO_2 NAAQS effective April 9, 2018 (83 FR 1098).

As mentioned earlier, SO_2 is the driver of $PM_{2.5}$ formation and it does not influence RVP. Therefore, based on the current designation and the 2015–2017 design value of 6.0 ppb, EPA is proposing to find that a change to federal 9.0 psi RVP limit fuel for the Atlanta fuel volatility Area will not interfere with attainment or maintenance of the 1-hour SO_2 NAAQS.

f. Sensitivity of Ozone in Atlanta to NO_X and VOC Emissions

Control of NO_X and VOC are generally considered the most important components of an ozone control strategy, and NO_X and VOC make up the largest controllable contribution to ambient ozone formation. However, the metro Atlanta nonattainment/maintenance area has shown a greater sensitivity of ground-level ozone to NO_X controls rather than VOC controls. This is due to high biogenic VOC emissions compared to anthropogenic VOC emissions in Georgia. Therefore, implemented control measures have focused on the control of NO_X emissions. The Atlanta nonattainment/maintenance area is NO_X limited in such a way that changes in anthropogenic VOC emissions have little effect on ozone formation.[14]

Sensitivities were modeled relative to 2018 emissions to evaluate the impact of NO_X and VOC reductions on daily 8-hour maximum ozone concentrations. Each emissions sensitivity run reduced the 2018 anthropogenic NO_X or VOC emissions (point, area, mobile, nonroad, marine/aircraft/rail) within a specific geographic region by 30 percent. Georgia EPD examined the normalized sensitivities of NO_X and VOC emissions on 8-hour daily maximum ozone concentrations (ppb ozone/TPD) at nine ozone monitors in Atlanta.[15]

The site-specific normalized NO_X and VOC sensitivities were applied to the expected emissions increases due to a relaxation of the federal RVP limit from 7.8 to 9.0 psi. The emissions increases are based on 2018 values and represent the largest impact as the emissions increase will decrease each successive year. A relaxation of the federal RVP limit results in an increase of VOC emissions of 1.58 tpd in 2018. *See* Table 5. This includes nonroad vehicles and represents the largest impact in any of the modeled years. A relaxation of the federal RVP limit results in an increase of 0.29 tpd of NO_X in 2018 in the 15-county Atlanta maintenance Area decreasing over time to near zero by 2040. *See* Table 5. The corresponding ozone increases at each monitor are found in Table 7 below and demonstrate insignificant increases in ozone concentrations. The calculated changes in ozone levels are well below the level of precision of the ambient ozone monitors (1 ppb or 0.001 ppm).[16] Since the corresponding ozone increase at all nine monitors would only be seen at the fifth decimal place,[17] these small increases could not impact maintenance or attainment of any ozone NAAQS.

TABLE 7—EMISSIONS INCREASES DUE TO RELAXATION OF THE RVP AND EFFECTS ON OZONE FORMATION

Monitor	Relaxation of the RVP from 7.8 psi to 9.0				Combined
	2018 NO_X emissions increase (tpd)	Corresponding ozone increase at monitor due to NO_X increase[18] (ppb)	2018 VOC emissions increase (tpd)	Corresponding ozone increase at monitor due to VOC increase (ppb)	Corresponding ozone increase at monitor (ppb)
Kennesaw	0.29	0.02149	1.58	0.00776	0.029
Newnan	0.29	0.02337	1.58	0.00278	0.026
Dawsonville	0.29	0.01488	1.58	0.00009	0.015
South Dekalb	0.29	0.02536	1.58	0.01083	0.036
Douglasville	0.29	0.02311	1.58	0.00658	0.030
Confederate Ave	0.29	0.01864	1.58	0.01663	0.035
Gwinnett	0.29	0.02211	1.58	0.00417	0.026
McDonough	0.29	0.02521	1.58	0.00530	0.031
Conyers	0.29	0.02628	1.58	0.00521	0.031

[14] As part of the Southeastern Modeling Analysis and Planning (SEMAP) project, Georgia Institute of Technology performed an analysis of the sensitivity of ozone concentrations in the Eastern U.S. to reductions in emissions of both NO_X and VOCs. This analysis was based off the 2007 and 2018 SEMAP modeling which used the Community Multi-scale Air Quality (CMAQ) model, version 5.01 with updates to the vertical mixing coefficients and land-water interface. May 1st through September 30th was modeled using a 12-km modeling grid that covered the Eastern U.S. Details of the modeling platform set-up can be found in Appendix C.

[15] For further details on the approach used to calculate the normalized sensitivities of NO_X and VOC, please see Appendix D in Georgia's submittal.

[16] Ozone concentrations are reported in ppm and to three decimal places (*e.g.,* 0.070 ppm); any additional decimal places are truncated.

[17] Because the increases in Table 7 is reported in ppb, the changes are in the 2nd decimal place.

g. Emissions Increases and Offsets From Locomotive Retrofits and School Bus Replacements

As shown in Section V, Tables 4 and 5, relaxing the federal RVP limit from 7.8 to 9.0 psi results in an increase in NO_X emissions in 2018 of 0.29 tons per day and 1.58 tons per day of VOC. The high ozone season runs from June 1st to September 15th, which is 107 days per calendar year. 40 CFR 80.27(a)(2). This results in equivalent emissions increases of 31.03 tons/year of NO_X and 169.06 tons/year of VOC in the Atlanta fuel volatility Area during the high ozone season.

As discussed above, Table 7 shows ozone formation in the 15-County Atlanta maintenance Area and the sensitivity to reductions of NO_X and VOC emissions. The Area is a NO_X limited area; therefore, the control of NO_X emissions result in greater reductions of ozone compared to control of VOC emissions. The maximum VOC emissions increase resulting from a relaxation of the RVP from 7.8 psi to 9.0 psi is 1.58 tons per day (169.06 tons/year). This increase in VOC emissions can be converted to an equivalent increase in NO_X emissions based on the ratio of normalized ozone sensitivities described in Paragraph f. as follows:

169.06 tons/year VOC * (− 0.00417ppb/TPD VOC)/(− 0.07680 ppb/TPD NOx) = 9.179 tons/year NO_X

By adding the actual NO_X emissions increase to the equivalent NO_X emissions increase from VOC emissions using the sensitivity calculation, the resulting offset NO_X emissions are:

31.03 tons/year of NO_X + 9.179 tons/year of NO_X (VOC equivalent reduction) = 40.21 tons/year NO_X offsets required

Georgia's SIP revision includes two offset measures—school bus replacements and rail locomotive conversions—to obtain the necessary emissions reductions. Georgia EPD has a strong school bus early replacement program. School bus replacement projects that were completed in 2017 using Diesel Emissions Reduction Act funding have resulted in NO_X emissions reductions of 7.20 tons per year (tpy) in the Atlanta maintenance Area. Specifically, five old school buses (built in 2000–2003) in Paulding County were replaced with five 2017 school buses. Also, forty old school buses (built in 1999–2003) in Fulton County were replaced with forty 2017 school buses.[19] The replacements took place in 2017, which falls within the contemporaneous timeframe. Georgia has not previously relied on these emissions reductions to satisfy any CAA requirement.

The Locomotive Conversion Program consists of two components: (1) The conversion of three older traditional switcher locomotives into newly-available low emissions engine technology from Norfolk Southern Railway, Inc., and (2) Norfolk Southern Railway, Inc.'s conversion of two switchers into ''slugs'' which are driven by electrical motors whose electricity is received from companion ''mother'' locomotives. This configuration is referred to as mother-slug locomotives. Slugs do not have any direct emissions. The conversion took place in December 2017, which also falls within the contemporaneous timeframe and generated 38.81 tpy of NO_X reductions. Georgia has not previously relied on the emissions reductions from the Locomotive Conversion Program to satisfy any CAA requirement. *See* Table 8 below for a summary of the offsets.

TABLE 8—NO_X EMISSIONS INCREASES/OFFSETS REQUIRED FROM RELAXING THE RVP STANDARD IN 2018

Source of offset	Locomotive conversions (tpy)	School bus replacements (tpy)	Total decrease (tpy)
NO_X Emissions Decrease	38.81	7.20	46.01

Based on the available offsets from the locomotive conversion projects and school bus early replacement projects, Georgia EPD has offsets in excess of the increase in emissions associated with relaxing the federal gasoline RVP limit from 7.8 psi to 9.0 psi.

TABLE 9—EMISSIONS INCREASES COMPARED TO AVAILABLE EMISSIONS OFFSETS

Emissions increases due to relaxing GA RVP requirements (tpy)	Total offsets available (tpy)	Residual offsets (tpy)
40.21	46.01	5.80

The offsets available from both bus replacements and locomotive conversions total 46.01 tpy of NO_X. As shown in Table 9, the annual NO_X decrease from the locomotive conversions and school bus replacements are more than adequate to offset the maximum NO_X and VOC emissions increases (40.21 tpy of equivalent NO_X) associated with relaxing the federal 7.8 psi RVP requirements. There is a 5.80 ton per year residual NO_X emissions offset that will remain available.

Georgia has demonstrated noninterference by substituting quantifiable, permanent, surplus, enforceable and contemporaneous measures described above to achieve equivalent emissions reductions to offset the potential emission increases related to a relaxation of the federal 7.8 psi RVP requirements. The locomotive conversions and school bus replacements occurring in 2017 are surplus since they have not been relied upon by any attainment plan or demonstration or credited in any RFP demonstration. The converted locomotives must remain operational for a period of ten years from the date placed into revenue service (December 2027). The school buses replaced must be scrapped or rendered permanently disabled or remanufactured to a cleaner emissions standard within 90 days of replacement. Therefore, the emissions reductions obtained are considered permanent. The emissions reductions have been quantified. Enforceability of the emissions reductions from locomotive conversions and school bus replacements are addressed in the contract commitments between Georgia EPD and Norfolk Southern Railway, Inc.[20] The locomotive and school replacements are contemporaneous since they occurred within one year of this submittal.

[18] *See* Appendix D of the submission.

[19] Calculations of NO_X emission reductions for the locomotives and school bus replacements are in Appendix E.

[20] *See* Appendix E for the contract terms for the permanence of locomotive conversions and school bus replacements.

h. Conclusion Regarding the Noninterference Analysis

EPA believes that the emissions reductions from the offset measures included in the SIP revision are greater than those needed to maintain the status quo in air quality and are permanent, enforceable, quantifiable, surplus, contemporaneous and equivalent. This RVP relaxation will not worsen air quality because Georgia has provided offsets as compensating, equivalent emissions reductions to negate the increases in emissions from NO_X and VOCs. The amount of NO_X reductions obtained from the school bus and locomotive retrofits are more than what is needed to compensate for the small amount of NO_X and VOC increases due to relaxation of the federal RVP requirement. In addition, the downward trend in emissions reflected in the NO_X and VOC attainment inventories summarized in Tables 4 and 5 shows the safety margins in the maintenance year 2030 of 157.95 tpd for NO_X and 51.19 tpd for VOC. Therefore, EPA has preliminarily determined that the SIP revision adequately demonstrates that relaxing the 7.8 psi RVP limit will not interfere with Atlanta's ability to attain the 2015 8-hour ozone NAAQS or maintain the 1997 and 2008 8-hour ozone NAAQS, and will not interfere with any other NAAQS, or with any other applicable requirement of the CAA.

i. Analysis of Updated 2030 MVEBs

This SIP revision includes an update to the mobile emissions inventory and associated 2030 MVEBs due to a relaxation of the 7.8 psi fuel to the 9.0 psi RVP fuel. Georgia used the same approach as outlined in the June 2, 2017, EPA approval of the 2008 8-hour ozone redesignation to determine the portion of the safety margin allocated to the MVEBs for this SIP revision. The on-road emissions inventory and safety margin allocation for the year 2030 were updated but the MVEB totals themselves remain unchanged. *See* Table 10 below. As a result, EPA is proposing to approve the updated MVEBs.

TABLE 10—UPDATED MVEBS FOR THE ATLANTA MAINTENANCE AREA (tpd)

	2014		2030 [21]	
	NO_X	VOC	NO_X	VOC
On-Road Emissions	170.15	81.76	39.63	36.01
Safety Margin Allocation	.....	.....	18.37	15.99
MVEBs with Safety Margin	170.15	81.76	58	52

VI. Proposed Action

EPA is proposing to approve Georgia's August 15, 2018, SIP revision to the 2008 8-hour ozone standard maintenance plan and corresponding noninterference demonstration. This SIP revision includes an update to the mobile emissions inventory (on-road and nonroad), the associated 2030 MVEBs, and the measures to offset the emissions increases due to a relaxation of the 7.8 psi RVP requirement. All would support revisions to the maintenance plan that Georgia will rely on for the relaxation of the federal RVP requirement from 7.8 psi to 9.0 in the Atlanta fuel volatility Area. EPA is proposing to find that a relaxation in the RVP requirements for the Atlanta fuel volatility Area will not interfere with attainment or maintenance of any NAAQS or with any other applicable requirement of the CAA.

EPA has preliminarily determined that Georgia's August 15, 2018, SIP revision is consistent with the applicable provisions of the CAA, including section 110(l). Should EPA decide to relax the 7.8 psi federal RVP standard in the Atlanta fuel volatility Area, such action will occur in a separate and subsequent rulemaking.

[21] The 2014 on-road emissions and MVEBs in this chart are shown for illustration purposes because no changes were made to the 2014 attainment year emissions inventory due to the relaxation.

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 Act and applicable Federal regulations. *See* 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 they meet the criteria of the CAA. This action merely proposes to approve changes to Georgia's maintenance plan emissions inventory, the safety margins and safety margin allocations, the associated MVEBs, and the measures used to offset the emissions increases due to relaxing the federal RVP requirements. For that reason, this proposed action:

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

The SIP is not approved to apply on any Indian reservation land 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial

direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–01863 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0730; FRL–9989–12—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Removal of Stage II Gasoline Vapor Recovery Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Maryland. This revision seeks to remove requirements for gasoline vapor recovery systems installed on gasoline dispensers, the purpose of which are to capture emissions from vehicle refueling operations (otherwise known as Stage II vapor recovery). Specifically, this action would remove from the approved SIP prior approved Stage II requirements applicable to new gasoline dispensing facilities (GDFs) and existing GDF's undergoing major modification. GDF's will have the choice whether to install Stage II at new stations or whether to decommission Stage II at existing stations already equipped with Stage II. Owners that elect to retain existing Stage II equipment can do so, but in doing must continue to test and to maintain or replace existing equipment. Maryland's SIP revision includes a demonstration that removal of Stage II requirements is consistent with the Clean Air Act (CAA) and meets all relevant EPA guidance.

DATES: Written comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0730 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we refer to EPA. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Summary of Maryland's Stage II Vapor Recovery Program and SIP Revision
III. EPA's Evaluation of Maryland's SIP Revisions
IV. Proposed Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background and Purpose

On August 25, 2017, the Maryland Department of the Environment (MDE) submitted a revision to its SIP. This SIP submittal consists of Maryland's revised Stage II requirement regulations, at COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities,* which have been revised to allow the decommissioning of existing Stage II vapor recovery systems and which allows newly constructed GDFs (or those undergoing major modifications) the option not to install Stage II equipment. The SIP submittal also includes a demonstration that removal of Stage II vapor recovery systems in Maryland will not interfere with any requirement concerning attainment or reasonable progress of any National Ambient Air Quality Standard (NAAQS), or any other applicable requirement of the CAA. Maryland's SIP demonstration is also intended to show that removal of Stage II requirements is consistent with all relevant EPA guidance.

Stage II vapor recovery is an emission control system that is installed on gasoline dispensing equipment at GDFs for the purpose of capturing fuel vapor that would otherwise be released from vehicle gas tanks into the atmosphere during vehicle refueling. Stage II vapor recovery systems installed on dispensing equipment capture these refueling emissions at the dispenser and route the refueling vapors back to the GDF's underground storage tank, preventing volatile organic compounds (VOCs) that comprise these vapors from escaping to the atmosphere.

Beginning in 1998, newly manufactured gasoline-burning cars and trucks have been equipped with on-board vapor recovery (ORVR) systems that utilize carbon canisters installed directly on the vehicle to capture refueling vapors in the vehicle to be later routed to the vehicle's engine for combustion during engine operation.

Stage II vapor recovery systems and ORVR systems were initially both required by the 1990 amendments to the CAA. Section 182(b)(3) of the CAA requires areas classified as moderate and above ozone nonattainment to implement Stage II vapor recovery programs. Also, under CAA section 184(b)(2), states in the Northeast Ozone Transport Region (OTR) are required to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty cars and trucks (passenger vehicles). EPA adopted these requirements in a final action published in the April 6, 1994 **Federal Register** (59 FR 16262 (hereafter referred to as the ORVR rule). Upon the effective date of that final rule, moderate ozone nonattainment areas were no longer subject to CAA section 182(b)(3) Stage II vapor recovery requirements. Under the ORVR rule, new passenger cars built in model year 1998 and later were required to be equipped with ORVR systems, followed by model year 2001 and later light-duty trucks. ORVR equipment has been installed on nearly all new gasoline-powered light-duty cars, light-

duty trucks, and heavy-duty vehicles manufactured since 2006.[1]

During the phase-in of ORVR controls, Stage II has provided VOC emission reductions in ozone nonattainment areas and in certain areas of the OTR. Congress recognized that ORVR systems and Stage II vapor recovery systems would over time become largely redundant technologies acting to capture the same pollutants. Therefore, Congress provided authority in the 1990 amendments to the CAA for EPA to allow states to remove Stage II vapor recovery programs from their SIPs upon EPA making a finding that ORVR is in ''widespread use.'' EPA issued a widespread use finding in a final rule published in the May 16, 2012 **Federal Register** (77 FR 28772), in which EPA determined that ORVR was in widespread use on a nationwide basis. EPA estimated that as of the end of 2016, more than 88 percent of gasoline refueling nationwide would occur with ORVR-equipped vehicles.[2] Thus, Stage II vapor recovery programs have become largely redundant control systems (for ORVR-equipped vehicles) and as a result, Stage II vapor recovery systems achieve ever declining emissions benefits as more ORVR-equipped vehicles continue to enter the on-road motor vehicle fleet.[3] In areas where certain types of vacuum-assist Stage II vapor recovery systems are used, the interaction between ORVR systems and certain configurations of Stage II vapor recovery systems results in the reduction of overall control system efficiency in capturing VOC refueling emissions compared to what would otherwise be achieved by ORVR or Stage II acting in the absence of the other. In its May 16, 2012 widespread use rulemaking, EPA also exercised its authority under CAA section 202(a)(6) to waive certain federal statutory requirements for Stage II vapor recovery systems at GDFs, which among other things, exempted all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II vapor recovery programs. Finally, EPA's May 16, 2012 rulemaking also noted that any state currently implementing Stage II vapor recovery program may submit SIP revisions that would allow for the phase-out of Stage II vapor recovery systems.

II. Summary of Maryland's Stage II Vapor Recovery Program and SIP Revisions

The Maryland portion of the Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD metropolitan area (hereafter referred to as the Maryland portion of the Philadelphia area or the Philadelphia area) and the Baltimore, MD metropolitan area were designated by the CAA as severe nonattainment for the 1979 1-hour ozone NAAQS.[4] At the same time, the Maryland portion of the Washington, DC–MD–VA metropolitan area (hereafter referred to as the Maryland portion of the Washington area, or the Washington area) was designated as serious nonattainment under the 1-hour ozone NAAQS. As a result, Maryland adopted Stage II vapor recovery regulations (COMAR 26.11.24) for the Maryland portion of the Washington area, the Maryland portion of the Philadelphia area, and for the Baltimore, MD area on January 18, 1993 (Maryland Register, February 5, 1993, Vol. 20, Issue 3). Maryland submitted a revision to EPA on January 18, 1993 to request the addition of Maryland Stage II requirements to the Maryland SIP, which EPA approved in a final action published in the June 9, 1994 **Federal Register** (59 FR 29730). Maryland submitted a revised version of this regulation to EPA as a SIP revision on May 23, 2002, which EPA approved in a final action published in the May 7, 2003 **Federal Register** (68 FR 24363). Maryland further amended its Stage II regulation on January 26, 2005, and EPA approved that revised rule as a revision to the Maryland SIP in a final rule published in the May 8, 2006 **Federal Register** (71 FR 26688).

Maryland was also required to adopt Stage II, or comparable measures, on a statewide basis under the Stage II OTR provisions of CAA section 184(b)(2). Maryland submitted a comparable measures demonstration to satisfy the Stage II comparability requirement to EPA on November 5, 1997. EPA approved Maryland's November 1997 Stage II comparability SIP in a final rule published in the December 9, 1998 **Federal Register** (63 FR 67780). Maryland's OTR Stage II comparability demonstration relied on five area source VOC control rules as comparable measures to Stage II.

On August 25, 2017, Maryland submitted a SIP revision to EPA consisting of revised Stage II requirements (COMAR26.11.24) adopted by MDE on November 2, 2015 (state effective November 23, 2015), along with a demonstration of the emission impacts of removal of the Stage II requirements on affected Maryland areas. The revised rule removes the requirements for new Stage II vapor recovery systems in Maryland Stage II areas, while allowing GDFs with installed Stage II systems the option to decommission their equipment or to retain it. Maryland's revised Stage II vapor recovery requirements rule incorporates by reference requirements and procedures for stations opting to decommission Stage II vapor recovery equipment, based on Section 14 of the Petroleum Equipment Institute's *Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle-Fueling Sites,* 2009 edition, PEI/RP300–09.

Under Maryland's revised rule, GDFs opting to continue to operate Stage II vapor recovery equipment, as well as those opting to decommission Stage II vapor recovery equipment, are subject to continued testing requirements (at specified intervals) and recordkeeping and reporting requirements related to testing. Maryland's revised rule incorporates by reference several test methods applicable to GDFs that opt to decommission or to continue to operate Stage II vapor recovery systems (*Leak Rate and Cracking Pressure of Pressure/Vacuum Valves,* TP–201.1E, California EPA Air Resources Board) and (*Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test),* TP–201.3C, California EPA Air Resources Board). For GDFs opting to continue Stage II operation (in addition to prior Stage II test requirements), new tests are added to include a periodic leak rate and cracking pressure test (per TP–201.1E), as well as a tie tank test (per TP–201.3C). GDFs opting to decommission will be subject only to the newly added periodic leak rate and cracking pressure test (TP–201.1E) and the tie tank test (TP–201.3C). Copies of test results must be forwarded to MDE within 30 days of the test.

The August 25, 2017 SIP revision also includes a demonstration supporting the discontinuation of the Maryland Stage II vapor recovery program. This demonstration, discussed in greater detail below, consists of an analysis that after the year 2016, the overall emissions benefits associated with the Stage II program (operated in conjunction with ORVR) are overwhelmed by an emissions disbenefit caused by an ORVR incompatibility with certain vacuum-assist type Stage II equipment. MDE's

[1] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, August 7, 2012, Table A–1.

[2] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, Table A–1, August 7, 2012.

[3] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, p.1.

[4] 40 CFR 81–321, effective November 15, 1990.

analysis shows that continued operation of the Stage II vapor recovery program beyond 2016 actually increases VOC emissions due to the incompatibility between certain Stage II and ORVR equipment, coupled with the increasing prevalence of ORVR-equipped vehicles. While Maryland is not requiring every Stage II-equipped GDF to decommission their equipment, it is assumed a majority of existing stations will do so upon the removal of state and federal Stage II mandates. Even if all stations do no decommission their equipment (or delay doing so), overall emission benefits will be improved by the shift to primarily ORVR use in current Stage II subject areas.

III. EPA's Evaluation of Maryland's SIP Revision

EPA has reviewed Maryland's revised COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities,* and accompanying SIP narrative, and has concluded that Maryland's August 25, 2017 SIP revision is consistent with EPA's widespread use rule (77 FR 28772, May 16, 2012) and with EPA's ''Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plan and Assessing Comparable Measures'' (EPA–457/B–12–001; August 7, 2012), hereafter referred to as EPA's Stage II Removal Guidance.

Maryland's August 25, 2017 SIP revision includes a demonstration supporting the discontinuation of the Maryland Stage II vapor recovery program, in compliance with the requirements of the CAA sections 110(l) requirement that revision of the SIP will not interfere with attainment of or reasonable further progress towards attainment of any NAAQS or any other applicable CAA requirement. This demonstration was prepared by MDE based on relevant equations provided in EPA's Stage II Removal Guidance. From this analysis, Maryland determined that by 2016 the emissions benefits from the Stage II vapor recovery program (in conjunction with ORVR) will be overwhelmed by the emission disbenefits stemming from an incompatibility between certain Stage II vacuum-assist based systems and ORVR. Beyond 2016, the continuation of Stage II vapor recovery requirements would increase emissions in the Maryland portions of all analyzed areas, as summarized in Table 1. Based on this analysis, Maryland elected to allow decommissioning of Stage II vapor recovery systems beginning in October 2016.

TABLE 1—STAGE II VOC REDUCTIONS FOR MARYLAND OZONE NONATTAINMENT COUNTIES/AREAS

[In metric tons per day]

County	2014	2015	2016	2017	2018	2019	2020
Anne Arundel	0.07	0.01	−0.03	−0.07	−0.09	−0.11	−0.12
Baltimore	0.09	0.01	−0.05	−0.09	−0.13	−0.15	−0.17
Calvert	0.01	0.01	−0.00	−0.01	−0.01	−0.01	−0.02
Carroll	0.02	0.00	−0.01	−0.02	−0.02	−0.03	−0.03
Cecil	0.04	0.02	0.01	0.00	−0.01	−0.01	−0.02
Charles	0.02	0.01	0.00	−0.01	−0.02	−0.03	−0.03
Frederick	0.05	0.02	−0.01	−0.03	−0.04	−0.05	−0.06
Harford	0.03	0.01	−0.01	−0.03	−0.04	−0.05	−0.05
Howard	0.04	0.00	−0.02	−0.05	−0.06	−0.08	−0.08
Montgomery	0.11	0.03	−0.03	−0.08	−0.12	−0.15	−0.17
Prince George's	0.13	0.04	−0.04	−0.09	−0.13	−0.16	−0.18
Baltimore City	0.03	0.00	−0.03	−0.05	−0.06	−0.07	−0.08
Baltimore Area Total	0.28	0.04	−0.15	−0.30	−0.41	−0.48	−0.54
Maryland Portion of Washington Area Total	0.33	0.10	−0.08	−0.22	−0.33	−0.40	−0.46
Maryland Portion of Philadelphia Area Total	0.04	0.02	0.01	0.00	−0.01	−0.01	−0.02
Stage II Area Total	0.65	0.17	−0.22	−0.52	−0.74	−0.90	−1.01

In evaluating whether a given SIP revision would interfere with attainment of a NAAQS, EPA generally considers whether the SIP revision will allow for an increase in actual emission into the air over what is allowed under the existing EPA-approved SIP. EPA has not required that states produce a new complete attainment demonstration for every SIP revision, provided that the status quo air quality is preserved. See *e.g., Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006).[5] EPA believes that a planned Stage II decommissioning that is shown not to result in an increase in areawide VOC emissions would be consistent with the conditions of CAA section 110(l), and would not jeopardize attainment or maintenance of an area that formerly relied upon Stage II emission reductions in the approved SIP. Maryland has demonstrated that Stage II vapor recovery will no longer provide emission reductions when compared to ORVR without Stage II vapor recovery in all Maryland ozone nonattainment areas. Since 2016, Stage II vapor recovery (operated in conjunction with ORVR) has been shown by Maryland to result in increased VOC emissions in Maryland's three ozone nonattainment areas—due to incompatibilities between certain types of Stage II equipment and vehicle ORVR systems. Therefore, EPA believes discontinuance of Stage II in Maryland's three ozone nonattainment areas will not interfere with those areas' ability to attain or maintain the NAAQS, or to provide reasonable further progress in meeting the NAAQS.

[5] EPA Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures, August 7, 2012, Section 2.2.

States in the OTR defined by the CAA remain obligated under CAA section 184(b)(2) to implement (on a statewide basis) either a Stage II vapor recovery program, or other measures capable of achieving emission reductions ''comparable to those achievable'' by Stage II vapor recovery. EPA issued guidance on this OTR comparability demonstration in 1995 and later updated that guidance as part of its August 2012 Stage II Removal Guidance—in light of the decreasing role of Stage II as a means of controlling refueling emissions and the increasing prominence of ORVR-equipped vehicles.

Maryland submitted a comparable measures SIP revision to EPA on November 5, 1997 demonstrating that control measures already implemented in those counties in Maryland not subject to Stage II vapor recovery under CAA section 182(b)(3) achieved comparable emission reductions to Stage II vapor recovery. Maryland's chosen Stage II comparable measures included non-point, or area source, controls on: Cold and vapor degreasing operations, lithographic printing, screen printing, expandable polystyrene operations, and vehicle refinishing. To address areas in Maryland subject to Stage II or a comparable measure (as a result of the CAA section 184 requirements specific to OTR states), EPA approved Maryland's November 1997 Stage II comparability SIP for attainment and marginal ozone nonattainment counties in a final action published in the December 9, 1998 **Federal Register** (63 FR 67780). Maryland is not required to further demonstrate Stage II comparability for those counties as that action remains in effect.

However, Maryland is required to newly demonstrate Stage II comparability for the Philadelphia, Baltimore, and Washington areas—where Stage II vapor recovery was previously mandated by CAA section 182(b)(3) prior to EPA's issuance of its ORVR ''widespread use'' determination. The 110(l) demonstration in Maryland's August 25, 2017 SIP revision shows that Stage II no longer yields VOC emissions benefits in these three nonattainment areas after 2016, when operated in conjunction with ORVR. Therefore, since Stage II provides no additional benefits beyond ORVR (and results in increases in VOC emissions beyond 2016) in these three nonattainment areas, EPA believes that removal of Stage II after 2016 satisfies the Stage II comparability requirement of section 184 for these three ozone nonattainment areas.

In addition to the CAA section 182 and 184 requirements applicable to Stage II vapor recovery, CAA section 193 prohibits modification of any control requirement in effect before enactment of the CAA of 1990 (*i.e.,* November 15, 1990) in a current nonattainment area—unless modification ''ensures equivalent or greater emission reductions.'' Therefore, a Stage II vapor recovery control program implemented under a SIP prior to November 1990 may not be removed from the SIP until another requirement is shown to achieve equal or greater emissions reductions than Stage II vapor recovery. Maryland did not have a Stage II program prior to November 15, 1990, so Stage II was not a part of the Maryland SIP prior to that date. Therefore, this ''general savings clause'' requirement of CAA section 193 does not apply to Maryland or to this action.

IV. Proposed Action

EPA is proposing to approve Maryland's August 25, 2017 SIP revision for statewide removal of Stage II vapor recovery requirements. Specifically, EPA is proposing to approve Maryland's revised COMAR 26.11.24, *Vapor Recovery at Gasoline Dispensing Facilities,* and incorporate it into the Maryland SIP. EPA is proposing to approve this SIP revision because it meets all applicable requirements of the Clean Air Act and relevant EPA guidance and because approval of this SIP revision will not interfere with attainment or maintenance of the ozone NAAQS.

EPA is soliciting public comments on the issues discussed in this notice or other relevant matters. These comments will be considered before taking final action.

V. Incorporation by Reference

In this proposed rule, EPA proposes to include in our subsequent final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the State of Maryland's revised COMAR 26.11.24 Vapor Recovery at Gasoline Dispensing Facilities (effective date November 23, 2015), which includes amendments to Regulations .01, .01–1, .02, .03, .03–1, .04, and .07 and the addition of Regulation .03–1. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule to remove Maryland Stage II vapor recovery requirements does not have tribal implications as specified by

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 28, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

[FR Doc. 2019–01882 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0353: FRL–9988–98—Region 8]

Clean Data Determination; Provo, Utah 2006 Fine Particulate Matter Standards Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to make a clean data determination (CDD) for the 2006 24-hour fine particulate matter ($PM_{2.5}$) Provo, Utah (UT) nonattainment area (NAA). The proposed determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data for the period 2015–2017, available in the EPA's Air Quality System (AQS) database, showing the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). Based on our proposed determination that the Provo, UT NAA is currently attaining the 24-hour $PM_{2.5}$ NAAQS, the EPA is also proposing to determine that the obligation for Utah to make submissions to meet certain Clean Air Act (CAA or the Act) requirements related to attainment of the NAAQS for this area is not applicable for as long as the area continues to attain the NAAQS.

DATES: Comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0353 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, U.S. EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

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

I. Background

On October 17, 2006 (71 FR 61144), the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS, lowering the primary and secondary standards from the 1997 standard of 65 micrograms per cubic meter (μg/m³) to 35 μg/m³. The EPA retained the form of the 1997 24-hour standard, that is, the 98th percentile of the annual 24-hour concentrations at each population-oriented monitor within an area, averaged over 3 years. *See* 71 FR 61164–5 (October 17, 2006).

On November 13, 2009 (74 FR 58688), the EPA designated a number of areas as nonattainment for the 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³, including the Provo, UT NAA. The EPA originally designated these areas under the general provisions of CAA title I, part D, subpart 1 (''subpart 1''), under which attainment plans must provide for the attainment of a specific NAAQS (in this case, the 2006 $PM_{2.5}$ standards) as expeditiously as practicable, but no later than 5 years from the date the areas were designated nonattainment.

Subsequently, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit held in *NRDC* v. *EPA* [1] that the EPA should have implemented the 2006 24-hour $PM_{2.5}$ standard based on both the general NAA requirements in subpart 1 and the PM-specific requirements of CAA title I, part D, subpart 4 (''subpart 4''). In response to the Court's decision in *NRDC* v. *EPA,* on June 2, 2014 (79 FR 31566), the EPA finalized the ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate ($PM_{2.5}$) NAAQS and 2006 $PM_{2.5}$ NAAQS.'' This rule classified the areas that were designated in 2009 as nonattainment to Moderate and set the attainment SIP submittal due date for those areas at December 31, 2014. After the court's decision and the EPA's June 2, 2014 rule, on December 16, 2014 the Utah Division of Air Quality (UDAQ) withdrew all prior Provo, UT $PM_{2.5}$ SIP submissions and submitted a new SIP to address both the general requirements of subpart 1 and the PM-specific requirements of subpart 4 for Moderate areas.

On August 24, 2016, the EPA finalized the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (''$PM_{2.5}$ SIP Requirements Rule''), 81 FR 58010, which addressed the January 4, 2013, court ruling. The final $PM_{2.5}$ SIP Requirements Rule provides the EPA's interpretation of the requirements applicable to $PM_{2.5}$ NAAs and explains how air agencies can meet the statutory SIP requirements that apply under subparts 1 and 4 to areas designated nonattainment for any $PM_{2.5}$ NAAQS.

The EPA has previously acted on portions of Utah's Moderate area attainment plan for the Provo, UT NAA. Specifically, we approved certain area source rules and related reasonably available control measure (RACM) analyses on February 25, 2016 (81 FR 9343), October 19, 2016 (81 FR 71988) and September 14, 2017 (82 FR 43205). We have not disapproved any portions of the plan; as a result, the clocks for sanctions under 179(a) and for a Federal Implementation Plan (FIP) under 110(c) are not in effect for the Provo, UT NAA.

Finally, on May 10, 2017 (82 FR 21711), the EPA determined that the Provo, UT NAA failed to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the Moderate attainment date of December 31, 2015. With this determination, the Provo, UT NAA was reclassified as a ''Serious'' area for the 2006 24-hour $PM_{2.5}$ NAAQS, with a new attainment date of December

[1] 706 F.3d 428 (D.C. Cir. 2013).

31, 2019. This reclassification triggered an obligation for Utah to submit a new, Serious area attainment plan consisting of several elements, including a control strategy and demonstration of attainment by the new attainment date. *See* 40 CFR 51.1003(b)(1).

II. Clean Data Determination

Over the past two decades, the EPA has consistently applied its ''Clean Data Policy'' interpretation to attainment related provisions of Part D of the CAA. The EPA codified the Clean Data Policy in the $PM_{2.5}$ SIP Requirements Rule (40 CFR 51.1015(a)) for the implementation of current and future $PM_{2.5}$ NAAQS. *See* 81 FR 58010, 58161 (August 24, 2016). For a complete discussion of the Clean Data Policy's history and the EPA's longstanding interpretation under the CAA, please refer to the $PM_{2.5}$ SIP Requirements Rule.

As codified at 40 CFR 51.1015(a) in the $PM_{2.5}$ SIP Requirements Rule, upon a determination by the EPA that a Moderate $PM_{2.5}$ NAA has attained the $PM_{2.5}$ NAAQS, the requirements for the State to submit an attainment demonstration, provisions demonstrating timely implementation of RACM (including reasonably available control technology (RACT)), a reasonable further progress (RFP) plan, quantitative milestones and quantitative milestone reports, and contingency measures shall be suspended. Additionally, under 40 CFR 51.1015(b), upon determination by the EPA that a Serious $PM_{2.5}$ NAA has attained the $PM_{2.5}$ NAAQS, the requirements for the State to submit an attainment demonstration, RFP, quantitative milestones and quantitative milestone reports, and contingency measures for the area will be suspended. However, the EPA's longstanding policy for the best available control measure (BACM)/best available control technology (BACT) requirement of CAA section 189(b)(1)(B) is that the requirement is independent of attainment. Thus, a CDD would not suspend the obligation for UDAQ to submit any applicable outstanding BACM/BACT requirements or other requirements that are independent of attainment.

By extension, the requirement to submit a motor vehicle emission budget (MVEB) for the attainment year (both for a Moderate and Serious NAA) for the purposes of transportation conformity is also suspended. A MVEB is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting RFP milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.[2] For the purposes of the transportation conformity regulations, the control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of RFP and attainment.[3] Given that MVEBs are required to support the RFP and attainment demonstration requirements in the attainment plan, suspension of the RFP and attainment demonstration requirements through a CDD also suspends the requirement to submit MVEBs for the attainment and RFP years. The suspension of planning requirements pursuant to 40 CFR 51.1015 does not preclude the State from submitting suspended elements of its Moderate and Serious area attainment plans for the EPA approval for the purposes of strengthening the State's SIP.

The planning elements under subpart 1 and subpart 4 generally include RFP, attainment demonstrations, RACM/RACT, NAA contingency measures, and other state planning requirements related to attaining the NAAQS.[4] The suspension of the obligation to submit such requirements applies regardless of when the plan submissions are due. The CDD does not suspend CAA requirements that are independent of helping the area achieve attainment, such as the requirements to submit an emissions inventory, nonattainment new source review (NNSR), and BACM/BACT requirements. The determination of attainment is not equivalent to a redesignation, and the State must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

In accordance with 40 CFR 51.1015(a) and (b), the CDD suspends the aforementioned SIP obligations until such time as the area is redesignated to attainment, after which such requirements are permanently discharged; or 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 and Serious NAA plans 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.

[2] 40 CFR 93.101.

[3] 40 CFR 93.101.

[4] $PM_{2.5}$ SIP Requirements Rule (81 FR 58010).

A. Monitoring Network Considerations

Determining whether an area has attained the NAAQS is based on monitored air quality data; thus, the validity of a determination of attainment depends in part on whether the monitoring network adequately measures ambient $PM_{2.5}$ levels in the NAA. The UDAQ is the governmental agency with the authority and responsibilities under the State's laws for collecting ambient air quality data for the Provo, UT NAA and submitting the data to AQS. UDAQ annually certifies that the data they submit to AQS are quality assured. UDAQ also submits an annual monitoring network plan (AMNP) to the EPA. These plans discuss the status of the air monitoring network, as required under 40 CFR part 58. With respect to $PM_{2.5}$ monitoring in the Provo, UT NAA, the EPA found that UDAQ's annual network plans met the applicable requirements under 40 CFR part 58 for the relevant period, 2015–2017, with the exception (discussed below) of UDAQ's 2015 network plan.[5] The UDAQ operated three $PM_{2.5}$ State and Local Air Monitoring Station (SLAMS) monitors during the 2015–2017 period within the Provo, UT $PM_{2.5}$ NAA: North Provo, Lindon and Spanish Fork.

B. Provo, UT Monitoring During 2015

UDAQ submitted the 2015 AMNP and 5-Year Network Assessment in June 2015. UDAQ's submissions were not reviewed and acted on by Region 8 because the Region was conducting a Technical Support Audit (TSA) of UDAQ's ambient air monitoring program at the time. The TSA was completed in August 2015 and found major and minor/observation issues with the monitoring program. The objective of a TSA is to review a monitoring program's quality assurance (QA) system, in this case the reporting of valid data to the EPA's AQS database. *See* 40 CFR part 58, appendices A through E. A major finding may indicate that invalid data have been loaded in AQS or that future operations may result in the collection of invalid data. A minor/observation finding will not necessarily lead to data loss or invalidation, but warrants investigation, appropriate follow-up, and audit response. Additional details pertaining to the major and minor findings can be

[5] In letters dated April 20, 2017, and April 10, 2018, UDAQ completed the data certification process in AQS and certified that the 2016 and 2017 air quality data are accurate. The 2015 data is discussed below with the discussion of UDAQ's 2015 network plan.

found in the August 2015 TSA, available in the docket.

Due to these monitoring issues, the EPA did not approve UDAQ's 2015 AMNP and a large number of samples from the filter-based Federal Reference Method (FRM) monitors in the Provo, UT NAA were invalidated.[6] The EPA worked with UDAQ to correct the deficiencies found in the August 2015 TSA and after their review of the $PM_{2.5}$ data for 2015, UDAQ removed the invalid samples for the Provo, UT FRM monitors and left the valid samples in the AQS database. However, some continuous sampler data from the Provo, UT co-located Federal Equivalent Method (FEM) monitors were determined to have sufficient QA to meet NAAQS comparison requirements. Data from these co-located monitors were used to fill in some of the missing days in 2015, adding to the total number of samples that can be used to determine a 98th percentile value for that year and providing for a complete 2015 monitoring year. Utah used the methodology found in 40 CFR part 50, appendix N 3.0(d)(2) and 3.0(e) to substitute FEM data for the days without FRM data.

The EPA has reviewed the Provo, UT monitoring sites and, using the criteria found in 40 CFR part 58, appendix A, has determined that the QA for the continuous FEM monitors is acceptable. We therefore agree that the data from the FEM monitors can be substituted for the days for which the FRM monitor data was invalid. The data from the FEM monitor at the Spanish Fork monitoring site was used to substitute for invalid FRM data; however, 2015 was still incomplete. Further discussion on the Spanish Fork monitoring site can be found below.

On November 29, 2016, UDAQ submitted a letter that contained the Air Monitoring Program (AMP) 430, AMP 450, AMP 256, and AMP 450NC reports required to certify the 2015 air quality data in Utah. UDAQ completed the data certification process in AQS and with the November 29, 2016 letter, certified that the 2015 air quality data is accurate. Additional information related to these monitors can be found in the November 23, 2016 memoranda found in the docket for this proposed action. Additional details and evaluation of the 2015–2017 AMNPs can be found in our notice proposing to issue a CDD for the Logan, UT–ID Moderate $PM_{2.5}$ nonattainment area. *See* 83 FR 33886 (July 18, 2018). The Logan, UT–ID CDD was subsequently finalized on October 19, 2018 (83 FR 52983).

C. Evaluation of Current Attainment

The EPA's evaluation of whether the Provo, UT $PM_{2.5}$ NAA has attained the 2006 24-hour $PM_{2.5}$ NAAQS is based on our review of all valid monitoring data ''produced by suitable monitors that are required to be submitted to AQS, or otherwise available to EPA . . . .'' *See* Appendix N, 3.0(a). Based on our review, the $PM_{2.5}$ monitoring network for the Provo, UT NAA meets the requirements stated above and is therefore adequate for use in determining whether the area attained the 2006 24-hour $PM_{2.5}$ NAAQS.

The EPA reviewed the $PM_{2.5}$ ambient air monitoring data from the North Provo (AQS site 49–049–0002), Lindon (AQS site 49–049–4001), and Spanish Fork (AQS site 49–049–5010) monitoring sites consistent with the requirements contained in 40 CFR part 50, as recorded in the EPA AQS database for the Provo, UT NAA. As shown in Table 1 below, the North Provo monitor in the Provo, UT NAA has collected complete data since 2011 and is trending downward overall. The Lindon monitor had incomplete data in 2012; however, all other years have been complete and the monitor shows a downward trend too.

The Spanish Fork monitor had incomplete data during the first quarter of 2015 and 2016 and is not eligible for the high value data substitution test in 40 CFR part 50, appendix N. However, based upon the analysis detailed in the monitoring memorandum located in the docket for today's action,[7] the EPA has preliminarily determined that the upper end of the probable range for the 2015–2017 design value at the Spanish Fork monitor (30 μg/m³) is well below the NAAQS. As a result, the EPA has preliminarily concluded that the Provo, UT NAA continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS of 35 μg/m³ for the period 2015–2017, the most recent 3-year period of certified data availability. Should there be a subsequent violation of the 2006 $PM_{2.5}$ standards in the Provo, UT NAA, the EPA will withdraw the CDD.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE PROVO, UT NAA FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS [μg/m³]

Monitor site	Monitor ID	3-Year design values				
		2011–2013	2012–2014	2013–2015	2014–2016	2015–2017
Lindon	49–049–4001	[a] 44	[a] 43	43	31	31
North Provo	49–049–0002	45	42	44	29	28
Spanish Fork	49–049–5010	[b] 47	[b] 45	[b] 46	[b] 28	[b] 28

[a] Invalid design values—Lindon monitor had incomplete data in 2012.
[b] Invalid design values—Spanish Fork had incomplete data in 2013, 2015, and 2016.

D. Clean Data Determination for the Provo, UT Nonattainment Area

Based on the monitoring data for the period 2015–2017, the EPA is proposing to determine that the area has clean data for demonstrating attainment of the 2006 24-hr $PM_{2.5}$ NAAQS. In accordance with 40 CFR 51.1015, a CDD can be made upon a determination by the EPA that a Moderate or Serious $PM_{2.5}$ NAA is attaining the $PM_{2.5}$ NAAQS. As provided in 40 CFR 51.1015, so long as this area continues to meet the standard, finalization of this determination suspends the requirements for this area to submit an attainment demonstration, associated RACM/RACT, RFP plan, contingency measures, and any other planning SIP requirements related to the attainment of the 2006 $PM_{2.5}$ NAAQS. For purposes of this NAAQS, the requirements to submit a projected attainment inventory as part of an attainment demonstration or RFP as well as a MVEB are also suspended by this determination.

As discussed in the $PM_{2.5}$ SIP Requirements Rule, the nonattainment base emissions inventory required by section 172(c)(3) is not suspended by this determination because the base

[6] April 19, 2017 EPA Region 8 Memorandum; Salt Lake and Provo, Utah $PM_{2.5}$ 2013–2015 24-hour Design Value.

[7] Memorandum; Subject: Utah Clean Data Determination of the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standard for the Provo, Utah Nonattainment Area.

inventory is a requirement independent of planning for an area's attainment. *See* 81 FR 58009 at 58028 and 58127–8 and 80 FR 15340 at 15441–2. Additionally, NNSR requirements are discussed in the $PM_{2.5}$ SIP Requirements Rule and required by CAA sections 110(a)(2)(C); 172(c)(5); 173; 189(a); and 189(e), as not being suspended by a CDD because this requirement is independent of the area's attainment planning. *See* 81 FR 58010 at 58107 and 58127. Furthermore, the BACM/BACT requirements found in CAA section 189(b)(1)(B) are not suspended with a CDD for a Serious NAA due to this requirement being independent of attainment. *See* 81 FR 58010 at 58128.

Under the proposed CDD, the planning requirements noted above (for both Moderate and Serious areas) shall be suspended, until such time as the area is redesignated to attainment, after which such requirements are permanently discharged. This proposed action, if finalized, will not constitute a redesignation to attainment under CAA section 107(d)(3)(E), because the State must have an approved maintenance plan for the area as required under section 175A of the CAA, and the EPA must determine that the area has met the other requirements for redesignation in order to be redesignated to attainment. The designation status of the area will remain nonattainment for the 2006 $PM_{2.5}$ NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment under CAA section 107(d)(3)(E).

It is possible, although not expected, that the Provo, UT area could violate the 24-hour $PM_{2.5}$ NAAQS before a maintenance plan is adopted, submitted, and approved, and the area is redesignated to attainment. Under 40 CFR 51.1015(a)(2) and (b)(2), if the EPA determines that the area has re-violated the 24-hour $PM_{2.5}$ NAAQS, the EPA will rescind the CDD and the State shall be required to submit the suspended attainment plan elements. Even so, submission of the suspended elements may be insufficient to eliminate future violations. Therefore, the issuance of a SIP call under section 110(k)(5) could be an appropriate response. This SIP call could require the State to submit, by a reasonable deadline not to exceed 18 months, a revised plan demonstrating expeditious attainment and complying with other requirements applicable to the area at the time of this finding. Under CAA section 172(d), the EPA may reasonably adjust the dates applicable to these requirements.

III. Proposed Action

The EPA is proposing to make a CDD for the 2006 24-hour $PM_{2.5}$ Provo, Utah (UT) NAA based on the area's current attainment of the standard. Pursuant to 40 CFR 51.1015(a) and (b), the EPA proposes to determine that the obligation to submit any remaining attainment-related SIP revisions arising from classification of the Provo, UT area as a Moderate NAA and subsequent reclassification as a Serious NAA under subpart 4 of part D (of title I of the Act) for the 2006 24-hour $PM_{2.5}$ NAAQS is not applicable for so long as the area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. However, the CDD does not suspend UDAQ's obligation to submit non-attainment-related requirements, which includes the base-year emission inventory, NNSR revisions, and BACM/BACT. This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3).

IV. Statutory and Executive Order Reviews

This action proposes to issue a determination of attainment based on air quality and to suspend certain federal requirements, and thus, would not impose additional requirements beyond those imposed by state law. For this reason, this proposed action:

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

In addition, this proposed action does not 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 proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: February 6, 2019.

Douglas Benevento,

Regional Administrator, Region 8.

[FR Doc. 2019–01909 Filed 2–11–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2018–0569; FRL–9989–24–Region 5]

Air Plan Approval; Wisconsin; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, as a State Implementation Plan (SIP) revision, Wisconsin's certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality

Standard (NAAQS). The State's submittal is in response to EPA's February 3 and December 11, 2017 Findings of Failure to Submit (FFS) final rule, which found that Wisconsin failed to timely submit certain SIP elements to satisfy CAA requirements for implementation of the 2008 ozone NAAQS in nonattainment areas. EPA is proposing to approve this revision in accordance with the requirements of the CAA. Approval of the NNSR requirements would address EPA's finding that Wisconsin failed to submit moderate ozone NNSR requirements and turn off the sanctions and Federal Implementation Plan (FIP) clock.

DATES: Comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–RO5–OAR–2018–0569, at *http://www.regulations.gov,* or via email to *damico.genvienve@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: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7017, *rineheart.rachel@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. What Is the Background for This Action?
II. What is EPA's Evaluation of Wisconsin's Submittal?
III. What Action Is EPA Proposing?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

A. Background on the 2008 Ozone Standard

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).[1] Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standard. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[2] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.[3]

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources, and implement a NNSR program for the relevant ozone NAAQS.[4] For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit a reasonable further progress (RFP) plan, the requirement to adopt and implement certain emissions controls, such as RACT and I/M, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program.[5]

B. Background on the Wisconsin Ozone Nonattainment Areas

On June 11, 2012,[6] EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,[7] pursuant to section 18l(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. Pleasant Prairie and Somers townships in Kenosha County are part of the Chicago area nonattainment area. The remainder of Kenosha County is designated as unclassifiable/attainment.

On May 21, 2012,[8] EPA designated Sheboygan County in Wisconsin as a marginal nonattainment area for the 2008 ozone NAAQS. On December 19, 2016,[9] pursuant to section 18l(b) of the CAA, EPA determined that Sheboygan County failed to attain the 2008 ozone NAAQS by the July 20, 2016 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas.

Effective March 6, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 ozone NAAQS.[10] This finding established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which the finding was made and for EPA to promulgate a FIP to address any outstanding SIP requirements. As part of that action, EPA made a finding that Wisconsin failed to submit a marginal NNSR SIP for the Wisconsin portion of the Chicago area and for Sheboygan County.

[1] 73 FR 16436.
[2] CAA sections 107(d)(1) and 181(a)(1).
[3] CAA section 181(a)(1).
[4] CAA section 182(a).
[5] CAA section 182(b).
[6] CAA section 182(b).
[7] 81 FR 26697.
[8] 77 FR 30088 (May 21, 2012).
[9] 81 FR 91841 (December 19, 2016).
[10] 82 FR 9158 (February 3, 2017).

II. What is EPA's evaluation of Wisconsin's submittal?

On July 19, 2018, Wisconsin submitted a SIP revision requesting EPA approve Wisconsin's certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. The NNSR certification addresses the deficiency that was the basis for the March 6, 2017 finding; therefore, approval of the certification would turn off both the sanctions and FIP clocks for the Wisconsin portion of the Chicago area and for Sheboygan County.

A. Background

CAA sections ll0(a)(2) and 172(c)(5) require permits for the construction of new or modified major stationary sources anywhere in a nonattainment area in accordance with CAA section 173. CAA section 182 contains additional requirements applicable to ozone nonattainment areas. NNSR requirements are codified at 40 CFR 51.165.

On March 6, 2017, EPA found that Wisconsin failed to submit moderate ozone NNSR rules for the Wisconsin portions of the Chicago area 2008 ozone nonattainment areas and for the Sheboygan County 2008 ozone nonattainment area. On July 19, 2018, Wisconsin submitted its NNSR certification to address NNSR requirements for marginal and moderate ozone nonattainment areas.

Wisconsin has certified that specific sections of its NNSR rules at NR 408 continue to meet the NNSR program requirements for ozone nonattainment areas under the 2008 ozone NAAQS. The table below provides the sections of Wisconsin's NNSR rule corresponding to the relevant requirements at 40 CFR 51.165. NR 408 was originally approved into the SIP effective February 17, 1995,[11] with revisions subsequently approved into the SIP effective January 16, 2009.[12] Each requirement identified in Wisconsin's certification has not been revised since EPA last approved it. The following table lists the specific provisions of Wisconsin's NNSR rules that address the required elements of the Federal NNSR rules:

Federal rule	Wisconsin rule
40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv)	NR 408.02(21), NR 408.02(21)(a)(1)(b), (C), (d) and (e).
40 CFR 51.165(a)(1)(iv)(A)(2)	NR 408.02(21)(b), NR 408.02(21)(b)(1)(a)–(c), and NR 408.02(21)(b)(2)–(4).
40 CFR 51.165(a)(1)(iv)(A)(3)	NR 408.02(21)(a)(3).
40 CFR 51.165(a)(1)(v)(E)	NR 408.02(20)(c).
40 CFR 51.165(a)(1)(v)(F)	NR 408.02(20)(a).
40 CFR 51.165(a)(1)(x)(A)	NR 408.02(32)(a) and NR 408.02(32)(a)(6).
40 CFR 51.165(a)(1)(x)(B)	NR 408.02(32)(c).
40 CFR 51.165(a)(1)(x)(C)	NR 408.02(32)(f) and NR 408.03(5).
40 CFR 51.165(a)(1)(x)(E)	NR 408.02(32)(d).
40 CFR 51.165(a)(3)(ii)(C)(1)	NR 408.06(7)(a), NR 408.06(7)(a)(1), and NR 408.06(7)(a)(4).
40 CFR 51.165(a)(3)(ii)(C)(2)	NR 408.06(7)(b).
40 CFR 51.165(a)(8)	NR 408.03(5).
40 CFR 51.165(a)(9)(ii)–(iv)	NR 408.06(4)(a)–(e), NR 408.06(5), and NR 408.05(2)(b).

B. Analysis of Wisconsin's NNSR Rules

For the following reasons, we are proposing to approve Wisconsin's certification that NR 408 is consistent with 40 CFR 51.165 and meets the requirements of CAA sections 172(c)(5), 173, 110(a)(2), 182(a)(4), and 182(b)(5) under the 2008 ozone standard for the Wisconsin portion of the Chicago area ozone nonattainment area and for Sheboygan County. Approval of Wisconsin's NNSR certification would address the deficiency that was the basis for the March 6, 2017 finding. Therefore, approval of this SIP revision would turn off both the sanctions and FIP clocks for the Wisconsin 2008 ozone nonattainment areas.

1. Major Source Thresholds for Ozone—40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2)

The major source thresholds for both volatile organic compounds (VOC) and nitrogen oxides (NO_X) (*i.e.* ozone precursors) are defined in 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2). The applicable thresholds vary depending on the classification of the ozone nonattainment area. For marginal and moderate ozone nonattainment areas, a major stationary source of ozone is a source that emits, or has the potential to emit, 100 tons per year of VOC or NO_X. Different emissions thresholds apply for Serious, Severe and Extreme ozone nonattainment areas and for areas located in an ozone transport region (OTR).

Wisconsin has certified that the Federal requirements for major source thresholds for VOC and NO_X are addressed by NR 408.02(21). Under NR 408.02(21)(a), for an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit VOC in an amount equal to or greater than (1) 100 tons per year in an area classified as marginal or moderate nonattainment for ozone (NR 408.02(21)(a)(1); (2) 50 tons per year of VOC in an area designated as serious nonattainment for ozone (NR 408.02(21)(a)(1)(b)); (3) 25 tons per year of VOC in an area designated as severe for ozone (NR 408.02(21)(a)(1)(d)); and (4) 10 tons per year of VOC in an area designated as extreme for ozone (NR 408.02(21)(a)(1)(e)). Under NR 408.02(21)(b), for an area designated as nonattainment for ozone, a major stationary source is a stationary source which emits or has the potential to emit NO_X in an amount equal to or greater than (1) 100 tons per year in an area classified as marginal or moderate nonattainment for ozone (NR 408.02(21)(b)(1)(a)); (2) 50 tons per year in an area classified as serious nonattainment for ozone (NR 408.02(21)(b)(2)); (3) 25 tons per year in an area classified as severe nonattainment for ozone (NR 408.02(21)(b)(3)); and (4) 10 tons per year in an area classified as extreme nonattainment for ozone (NR 408.02(21)(b)(4)).

Wisconsin's thresholds are consistent with the Federal thresholds; therefore, we propose to find that Wisconsin's NNSR provisions at NR 408.02(21)

[11] See 60 FR 3538.

[12] See 73 FR 76560.

satisfy the requirements of 40 CFR 51.165(a)(1)(iv)(A)(1)(i)–(iv) and (2).

2. Change Constitutes Major Source by Itself—40 CFR 51.165(a)(1)(iv)(A)(3)

Under 40 CFR 51.165(a)(1)(iv)(A)(3), any physical change that would occur at a stationary source not qualifying as major stationary source becomes a major stationary source if the change would constitute a major stationary source by itself. Wisconsin has certified that the requirement is addressed by NR 408.02(21)(a)(3) which states that a major source includes ''any physical change that would occur at a stationary source not qualifying under subd. 1. or 2. as a major source, if the change would constitute a major source by itself.'' Wisconsin's provisions are consistent with Federal provisions; therefore, we propose to find that the Wisconsin SIP at NR 408.02(21)(a)(3) satisfies the requirements of 40 CFR 51.165(a)(1)(iv)(A)(3).

3. Significant Net Emissions Increase of NO_X Is Significant for Ozone—40 CFR 51.165(a)(1)(v)(E)

Under 40 CFR 51.165(a)(1)(v)(E), any significant net emissions increase of NO_X is considered significant for ozone. Wisconsin has certified that this requirement is addressed by NR 408.02(20)(c), which provides that any significant net emissions increase of NO_X is considered significant for ozone in addition to any separate requirements for nitrogen oxides. Wisconsin's provisions at NR 408.02(20)(c) are consistent with the Federal requirements at 40 CFR 51.165(a)(1)(v)(E); therefore, we propose to find that NR 408.02(20(c) satisfies the requirements of 40 CFR 51. 165(a)(1)(v)(E).

4. Any Emissions Change of VOC in an Extreme Area Triggers NNSR—40 CFR 51.165 (a)(1)(v)(F)

Under 40 CFR 51.165(a)(1)(v)(F), any physical change in, or change in the method of operation of, a major stationary source of VOC that results in any increase in emissions of VOC from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment are that is subject to CAA title 1, part D, subpart 2. Wisconsin has certified that this requirement is addressed by NR 408.02(20)(a). NR 408.02(20)(a) provides that ''any physical change in, or change in the method of operation of a major source of VOCs located in an extreme nonattainment area for ozone which results in any increase in emissions of VOCs from any discrete operation, emissions unit or other pollutant emitting activity at the source shall be considered a major modification for ozone.'' Wisconsin's provision at NR 408.02(20)(a) is consistent with the Federal requirements of 40 CFR 51.165(a)(1)(v)(F); therefore, we propose to find that NR 408.02(20)(a) satisfies the requirements of 40 CFR 51.165(a)(1)(v)(F).

5. Significant Emission Rates for VOC and NO_X as Ozone Precursors—40 CFR 51.165(a)(1)(x)(A)–(C) and (E)

Under 40 CFR 51.165(a)(1)(x)(A), (B) and (e), the significant emission rate for ozone is 40 tons per year of VOC or NO_X, except that the significant emission rate in serious or severe nonattainment areas shall be 25 tons per year. Under 40 CFR 51.165(a)(1)(x)(E), any increase in actual emissions of VOC from any emissions unit at a major stationary source of VOC located in an extreme ozone nonattainment area shall be considered a significant net emissions increase.

Wisconsin has certified that NR 408.02(32)(a),(c),(d) and (f) satisfy these requirements. NR 408.02(32)(a) defines significant emission rates for NO_X of 40 tons per year and for ozone of 40 tons per year of VOC. NR 408.02(32)(c) defines significant for serious and severe ozone nonattainment areas as 25 tons per year of VOC. NR 408.02(32)(d) states that any increase in VOC emissions at a major source of VOC in an extreme ozone nonattainment area is considered significant. NR 408.02(32)(f) states that for purposes of applying NR 408.03(5)(major NSR applicability) to major sources of NO_X located in ozone nonattainment areas, the significant emission rates and other requirements for VOC shall apply to NO_X emissions. These provisions satisfy the requirements of 40 CFR 51.165(a)(1)(x)(A)–(C) and (E) with respect to VOC emissions. While the significant emission rate for ozone in NR 408.02(32)(a) does not specifically include NO_X, Wisconsin has certified that other provisions ensure NO_X would also be subject to the 40 tons per year significance rate for ozone. NR 408.03(2) provides that the NNSR requirements shall apply to any new source or major modification that is major for the pollutant, or precursor of the pollutant, for which the area is designated as nonattainment. Therefore, a major modification of NO_X in an ozone nonattainment area would trigger NNSR requirements for ozone. EPA is proposing to find that NR 408.02(32)(a), (c), (d) and (f) in conjunction with NR 408.03(2) satisfy the requirements of 40 CFR 51.165(a)(1)(x)(A)–(C) and (E).

6. Provisions for Emissions Reduction Credits—40 CFR 51.165 (a)(3)(ii)(C)(1)–(2)

Under 40 CFR 51.165(a)(3)(ii)(C)(1) and (2), to be considered creditable, emission reductions achieved by shutting down an existing emission unit or curtailing production or operating hours must be surplus, permanent, quantifiable, and federally enforceable. Shutdowns or curtailments must have occurred after the last day of the base year for the SIP planning process. Reviewing authorities may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes emissions from the previously shutdown or curtailed emissions units, but in no event may credit be granted for shutdowns that occurred prior to August 7, 1977. Shutdown or curtailment reductions occurring before the last day of the base year for the SIP planning process may also be generally credited if the shutdown or curtailment occurred on or after the date the construction permit application is filed or if the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emission unit and the emission reductions that result are surplus, permanent, quantifiable, and federally enforceable. Wisconsin has certified that the requirements of NR 408.06(7)(a), NR 408.06(7)(a)(1), NR 408.06(7)(a)(4), and NR 408.06(7)(b) satisfy these requirements.

NR 408.06(7)(a) states that ''emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if (1) The reductions are surplus, permanent, quantifiable and federally enforceable . . . (4) The shutdown or curtailment occurs on or after the date specified for this purpose in the state implementation plan, and if the date specified is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. The department may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from the previously shut down or curtailed sources. However, no credit is available for shutdowns which occurred prior to August 7, 1977.'' NR

408.06(7)(b) states that ''the emission reductions described in par. (a) may be credited in the absence of a U.S. environmental protection agency approved state implementation plan only if the shutdown or curtailment occurs on or after the date the construction permit application is filed or if the applicant can establish that the proposed new source is a replacement for the shut down or curtailed source, and the cutoff date provisions of par. (a)4. are observed.'' EPA finds these provisions to be consistent with the Federal requirements; therefore, we propose to find that the provisions of NR 408.06(7)(a), NR 408.06(7)(a)(1), NR 408.06(7)(a)(4) and NR 408.06(7)(b) satisfy the requirements of 40 CFR 51.165(a)(3)(ii)(C)(1) and (2).

7. Requirements for VOC Apply to NO_X as Ozone Precursors—40 CFR 51.165(a)(8)

Under 40 CFR 51.165(a)(8), all requirements applicable to major stationary sources and major modifications of VOC shall apply to NO_X except where the Administrator has granted a NO_X waiver applying the standards set forth under CAA section 182(f) and the waiver continues to apply. Wisconsin has certified that these Federal requirements are satisfied by NR 408.03(5). NR 408.03(5) states ''The requirements of ss. NR 408.04 to 408.10 applicable to new major sources or major modifications of VOC shall apply to nitrogen oxides emissions from new major sources or major modifications of nitrogen oxides, except that the requirements do not apply if the administrator determines, when the administrator approves a plan, plan revision or petition under provisions of section 182(f) of the CAA (42 U.S.C. 7511a(f)), that the statutory requirements of section 1829f) do not apply.'' We find that NR 408.03(5) is consistent with the requirements of 40 CFR 51.165(a)(8); therefore, we propose to find that the Wisconsin SIP satisfies the requirements of 40 CFR 51.165(a)(8).

8. Offset Ratios for VOC and NO_X for Ozone Nonattainment Areas—40 CFR 51.165(a)(9)(ii)–(iv)

Under 40 CFR 51.165(a)(9)(ii)(A)–(E), the VOC offset ratios shall be 1.1:1 in marginal ozone nonattainment areas, 1.15:1 in moderate ozone nonattainment areas, 1.2:1 in serious ozone nonattainment areas, and 1.3:1 in severe ozone nonattainment areas, and 1.5:1 in extreme ozone nonattainment areas. NR 408.06(4) states ''In meeting the requirements of sub. (3) for ozone nonattainment areas classified under section 182 of the CAA (42 U.S.C. 7511a), the ratio of total actual emission reductions of VOCs, and nitrogen oxides where applicable, to the net emissions increase for the same air contaminant class shall be as follows:

(a) In any rural transport or marginal nonattainment area for ozone: at least 1.1 to 1.

(b) In any moderate nonattainment area for ozone: At least 1.15 to 1.

(c) In any serious nonattainment area for ozone: At least 1.2 to 1.

(d) In any severe nonattainment area for ozone: At least 1.3 to 1.

(e) In any extreme nonattainment area for ozone: At least 1.5 to l.'' The offset ratios for both VOC and NO_X are consistent with 40 CFR 51.165(a)(9)(ii)(A)–(E); therefore, we propose to find that the requirements of NR 408.06(4) satisfy the requirements of 40 CFR 51.165(a)(9)(ii)(A)–(E).

40 CFR 51.165(a)(9)(iv) requires, for ozone nonattainment areas subject to CAA title 1, part D, subpart 1 but not subpart 2, an offset ratio of at least 1:1. All of the current ozone nonattainment areas in Wisconsin were designated pursuant to CAA title 1, part D, subpart 2 and so this requirement does not apply to Wisconsin at this time.

9. OTR Requirements

Wisconsin is not located in an OTR, and has certified as such. Wisconsin is not required to include the OTR provisions set forth in 40 CFR 51.165(a)(1)(iv)(A)(1)(ii), 40 CFR 51.165(a)(1)(iv)(A)(2)(ii), 40 CFR 51.165(a)(1)(v)(E), 40 CFR 51.165(a)(1)(x)(C), 40 CFR 51.165(a)(8), and 40 CFR 51.165(a)(9)(iii) in the SIP until such time that EPA publishes rules that establish Wisconsin as part of the OTR.

10. Anti-Backsliding Provisions—40 CFR 51.165(a)(12)

Anti-backsliding provisions are designed to ensure that for existing ozone nonattainment areas that are designated nonattainment for a revised and more stringent ozone NAAQS, (1) there is protection against degradation of air quality (*i.e.,* the areas do not ''backslide''), (2) the areas continue to make progress toward attainment of the new, more stringent NAAQS, and (3) there is consistency with the ozone NAAQS implementation framework outlined in CAA title 1, part D, subpart 2. See 78 FR 34211. As part of the SIP Requirements Rule, EPA revoked the 1997 NAAQS for all purposes and established anti-backsliding requirements for areas that remained designated nonattainment for the revoked NAAQS. See 80 FR 12265 and 40 CFR 51.165(a)(12). Under 40 CFR 51.165(a)(12), the anti-backsliding requirements at 40 CFR 51.1105 apply in any area designated nonattainment for the 2008 ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015. The anti-backsliding requirements apply to Sheboygan County, which was designated as a moderate ozone nonattainment area for the 1997 ozone NAAQS. Anti-backsliding requirements are addressed in documents issued by the Wisconsin Department of Natural Resources pursuant toss. 285.23(2), and are included as part of a separate SIP action.

III. What action is EPA proposing?

EPA is proposing to approve Wisconsin's July 18, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Wisconsin portion of the Chicago Nonattainment Area and for Sheboygan County. EPA has concluded that Wisconsin's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. Approval of the NNSR requirements would address EPA's finding that Wisconsin failed to submit moderate ozone NNSR requirements and turn off the sanctions and FIP clock.

IV. 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);
- 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).

List of Subjects in 40 CFR Part 52

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

Dated: December 20, 2018.

James O. Payne,

Acting Deputy Regional Administrator, Region 5.

[FR Doc. 2019–02055 Filed 2–11–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0078; FRL–9989–37—Region 4]

Air Plan Approval; North Carolina; Miscellaneous Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality (NCDEQ), through letters dated April 4, 2017, August 22, 2017, and September 28, 2018. These SIP revisions make amendments, most of which are structural and minor, to North Carolina's source testing rules. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0078 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-pa-dockets.*

FOR FURTHER INFORMATION CONTACT: Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Febres can be reached by telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is the EPA taking today?

Through letters dated April 4, 2017, August 22, 2017, and September 28, 2018, the State of North Carolina, through NCDEQ, submitted three SIP revisions for EPA approval.[1] These SIP revisions include structural amendments to 15A North Carolina Administrative Code (NCAC) 02D Section .0501—*Compliance with Emission Control Standards,* and typographical amendments to 15A NCAC 02D Section .0536—*Particulate Emissions from Electric Utility Boilers.*[2] Additionally, the SIP revisions incorporate, for primarily structural, organizational reasons, four new rules: 15A NCAC 02D Sections .2609—*Particulate Testing Method,* .2610—*Opacity,* .2611—*Sulfur Dioxide Testing Methods,* and .2617—*Total Reduced Sulfur.* EPA has preliminarily determined that a number of these changes to the North Carolina SIP are either structural or minor and ministerial and do not alter the meaning of any SIP provisions, that others are SIP-strengthening, and that all are consistent with federal regulations regarding source testing and are approvable pursuant to section 110 of the CAA. The changes that are the subject of this proposed rulemaking are described in further detail in section III below.

II. Background

On November 19, 2008, North Carolina submitted to EPA for approval a SIP revision which restructured the way the SIP identified source testing methods. The November 19, 2008, SIP revision removed all references to required source testing methods from the source-category rules of the SIP and compiled them into a new section: Subchapter 2D Section .2600, *Source Testing.* This new rule section consolidated North Carolina's testing protocols with federal air source testing methods formerly located throughout DEQ's rules and amended existing source-category standards to add cross-references to the applicable testing rules in the new section, 2D Section .2600. EPA partially approved the November 19, 2008, SIP revision, together with several other SIP revisions, but did not act on some of the proposed amendments at the time. *See* 78 FR 27065 (May 9, 2013).

Through a letter dated April 4, 2017, North Carolina submitted a request to withdraw some of the proposed changes from the November 19, 2008, SIP revision and to resubmit these changes

[1] EPA received the SIP revisions on April 28, 2017, September 6, 2017, and October 10, 2018, respectively.

[2] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as ''Subchapter 2D Air Pollution Control Requirements.''

for EPA's approval. In its request, North Carolina withdrew amendments to 2D Sections .0501—*Compliance with Emission Control Standards,* .0536—*Particulate Emissions from Electric Utility Boilers,* and .2609—*Particulate Testing Methods,* as well as one rule under Subchapter 2Q, Section .0523—*Changes Not Requiring Permit Revisions* and resubmitted these changes with an updated redline strikeout of each section.

Similarly, through a letter dated August 22, 2017, North Carolina withdrew from the November 19, 2008, SIP revision, new provisions found at 2D Sections .2610—*Opacity,* .2611—*Sulfur Dioxide Testing Methods,* and .2617—*Total Reduced Sulfur,* and resubmitted these new provisions with an updated redline strikeout of each new section.

Lastly, in letters dated September 28, 2018, North Carolina submitted: (1) An additional SIP withdrawal and revision, and (2) a separate withdrawal. Specifically, the September 28, 2018, SIP revision withdrew the changes to 2D Sections .0501 and addition of .2609 from the April 4, 2017, SIP revision, and concurrently resubmitted these for incorporation into the SIP with updated redline strikeouts. In the separate withdrawal letter, also dated September 28, 2018, North Carolina withdrew 2Q Section .0523 from the April 4, 2017, SIP revision.[3] North Carolina decided not to resubmit 2Q Section .0523 because this provision applies to North Carolina's Title V permitting program and is not appropriate for approval into the SIP.

The changes proposed for approval herein are a part of North Carolina's strategy to attain and maintain the national ambient air quality standards (NAAQS), and EPA has preliminarily determined that they are approvable pursuant to section 110 of the CAA. The changes that are the subject of this proposed rulemaking and EPA's rationale for proposing to approve them are described in further detail below.

III. Analysis of the State Submittal

EPA is proposing to approve into the North Carolina SIP amendments to Subchapter 2D Sections .0501—*Compliance with Emission Control Standards,* and .0536—*Particulate Emissions from Electric Utility Boilers,* as well as the addition of four new rules, Sections .2609—*Particulate Testing Methods,* .2610—*Opacity,* .2611—*Sulfur Dioxide Testing Methods,* and .2617—*Total Reduced Sulfur.* Below is a description of these changes and our rationale for proposing to approve them.

A. Section .0501—Compliance With Emission Control Standards

Section .0501 is amended by removing all language regarding testing methods for determining compliance with emission control standards, which was previously found in paragraphs (b) and (c)(1) through (c)(18). As mentioned in Section II, above, North Carolina's November 19, 2008, SIP revision included a new set of rules at 2D Section .2600, *Source Testing.* As described in more detail below, the operative portions of the deleted language from Section .0501 have all been relocated to the appropriate subsections of 2D Section .2600, some of which were previously approved into the SIP in 2013. *See* 78 FR 27065 (May 9, 2013). Other subsections of 2D Section .2600 are now being proposed for SIP approval through the April 4, 2017, August 22, 2017, and September 28, 2018, SIP revisions. In addition, all of the corresponding deletions of Section .0501 language are now being proposed for SIP approval. Further details on the proposed deletions of the Section .0501 testing methods and their current or new locations are presented below.

1. Whereas the relocation of Section .0501's testing methods to Section .2600 was previously approved in the 2013 final rule for the November 19, 2008, SIP revision, the corresponding deletion of the paragraphs from Section .0501 now being proposed for approval is as follows[4]:

- Paragraphs (b), (c)(14), and (c)(18) language is found in current Section .2602—*General Provisions on Test Methods and Procedures.*
- Paragraph (c)(1) language is found in current Section .2604—*Number of Test Points.*
- Paragraph (c)(2) language is found in current Section .2605—*Velocity and Volume Flow Rate.*
- Paragraph (c)(7) language is found in current Section .2612—*Nitrogen Oxide Testing Methods.*
- Paragraph (c)(12) language is found in current Section .2608—*Number of Runs and Compliance Determination.*
- Paragraph (c)(13) language is found in current Section .2606—*Molecular Weight.*
- Paragraph (c)(15) language is found in current Section .2621—*Determination of Fuel Heat Content Using F-Factor.*
- Paragraph (c)(17) language is found in current Section .2613—*Volatile Organic Compound Testing Methods.*

2. Deletion being proposed for approval through the April 4, 2017, SIP revisions:

- Paragraph (c)(3) and (c)(16) language is found in new Section .2609—*Particulate Testing Methods.*

3. Deletion being proposed for approval through the August 22, 2017, SIP revision:

- Paragraph (c)(4), (c)(5), and (c)(6) language is found in new Section .2611—*Sulfur Dioxide Testing Methods.*
- Paragraph (c)(8) language is found in new Section .2610—*Opacity.*
- Paragraph (c)(10) language is found in new Section .2617—*Total Reduced Sulfur.*

If EPA finalizes this proposed approval, all of the necessary testing methods will have been deleted from Section .0501 and relocated to one of the current or new subsections in Section .2600. EPA has reviewed these changes to Section .0501 and has preliminarily determined that they are approvable pursuant to section 110 of the CAA because they are structural in nature and the deleted language is relocated and retained in 2D Section .2600 of the North Carolina SIP.

B. Section .0536—Particulate Emissions From Electric Utility Boilers

Section .0536 is amended by updating cross-references that identify the location of the testing method procedures and requirements. Previously, Section .0536 referred to Section .0501 to identify the applicable procedures and requirements for stack testing when measuring emission rates for electric utility boilers. Because North Carolina has relocated all language regarding testing methods to Section .2600, amendments to Section .0536 substitute all cross-references to Section .0501 with cross-references to Section .2600.

Additionally, North Carolina is adding a reference in Section .0536 to its quality assurance program found in Section .0613 and making a minor typographical change by substituting the word ''director'' with ''Director'' throughout Section .0536.

EPA has reviewed these changes and has preliminarily determined that the amendments to Section .0536 are minor ministerial changes that do not result in a change to the existing source testing

[3] The September 28, 2018, withdrawal letter can be found in the docket for this proposed rulemaking.

[4] Paragraph (c)(9) language is found in Section .2616—*Fluorides,* and paragraph (c)(11) language is found in Section .2618—*Mercury,* but these Sections are currently not part of the North Carolina SIP. Sections .2616 and .2618 have not been incorporated into the SIP because North Carolina withdrew its request to adopt them into its SIP on September 1, 2016, letter. These rules pertain to CAA section 111(d) or 129 plans and not CAA section 110.

requirements in the North Carolina SIP and are approvable pursuant to section 110 of the Act.

C. Section .2609—Particulate Testing Methods

As noted in Section III.A.2, above, most of the language of new Section .2609 was previously found in paragraphs (c)(3) and (c)(16) of Section .0501, which are now being proposed for deletion. Section .2609 adopts the federal testing Method 5 of Appendix A of 40 CFR part 60, and Method 202 of Appendix M of 40 CFR part 51, which are meant to demonstrate compliance with particulate matter (PM) emission standards. As an alternative to Method 5, Section .2609 also adopts Method 17 of Appendix A of 40 CFR part 60, which can be used under certain testing conditions. For steam generators that use soot blowing as a routine method of cleaning heat transfer surfaces, Section .2609 also establishes specific testing requirements to account for the soot's contribution to particulate emissions. Lastly, paragraph (f) of Section .2609 establishes requirements for sources to use Method 201 or 201A, in combination with Method 202, to demonstrate compliance specifically for PM_{10} emission standards.

Method 5 and Method 17, which are meant to measure filterable PM, were testing method options previously found in Section .0501 that are now relocated to new Section .2609. A source's total particulate emissions, however, also includes condensable PM, and is measured using different testing methods. The additional requirement in .2609 to use Method 202 to demonstrate compliance with particulate emission standards, as well as the option to use a combination of Methods 201 or 201A in conjunction with Method 202 for PM_{10} compliance, are new provisions to this rule that require testing of condensable PM as well as filterable PM. North Carolina requires the use of testing methods for both filterable and condensable PM to capture total particulate emissions.

EPA has reviewed this change and has preliminarily determined that the addition of Section .2609, including the additional test methods, is consistent with federal regulations. The addition of new Section .2609 both retains and strengthens the existing source testing requirements of the North Carolina SIP.

D. Section .2610—Opacity

As noted in Section III.A.3, above, most of the language of new Section .2610 was previously found in paragraph (c)(8) of Section .0501, which is being proposed for deletion. Section .2610 adopts the federal Method 9 of Appendix A of 40 CFR part 60, which is meant to determine compliance with opacity standards by visual observation, and Method 22 of Appendix A of 40 CFR part 60, which is meant to determine compliance with opacity standards when they are based upon the frequency of fugitive emissions from stationary sources as specified in an applicable rule.

The requirement to use Method 9 when determining opacity by visual observation was previously found in Section .0501 and is now relocated to new Section .2610. A new provision not found in Section .0501 is the option to use Method 22 for determining compliance with opacity standards based upon the frequency of fugitive emissions from stationary sources. The use of Method 22, as described in Section .2609, is allowed only in cases where this method is required by a permit condition or another applicable regulation.

EPA has reviewed this change and has preliminarily determined that the addition of new Section .2610, including the option to use Method 22, is consistent with federal regulations. The addition of new Section .2610 both retains and strengthens the existing source testing requirements of the North Carolina SIP.

E. Section .2611—Sulfur Dioxide Testing Methods

As noted in Section III.A.3, above, the language of this new provision, Section .2611, was previously found in paragraphs (c)(4), (5), and (6) of Section .0501, which are being proposed for deletion. Section .2611 establishes testing methods and methodologies for sulfur dioxide in different types of sources, specifically:

a. If compliance is to be demonstrated for a combustion source through stack sampling, the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR part 60 shall be used. When using Method 6 procedures to demonstrate compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20-minute run requirement applies to Method 6 only, not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.

b. Fuel burning sources not required to use continuous emissions monitoring to demonstrate compliance with sulfur dioxide emission standards may determine compliance with sulfur dioxide emission standards by stack sampling or by analyzing the sulfur content of the fuel.

c. For stationary gas turbines, Method 20 of 40 CFR part 60 shall be used to demonstrate compliance with applicable sulfur dioxide emissions standards.

d. When compliance is to be demonstrated for a combustion source by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be according to American Society of Testing and Materials (ASTM) methods. The Director may approve ASTM methods different from those described in the regulation if they will provide equivalent or more reliable results. The Director may prescribe alternate ASTM methods on an individual basis if that action is necessary to secure reliable test data. Paragraph (d)(1) of Section .2611 outlines specific ASTM methods for Coal Sampling, and paragraph (d)(2) outlines specific ASTM methods for Oil Sampling.

e. When compliance is shown for sulfuric acid manufacturing plants or spodumene ore roasting plants through stack sampling using the methods provided in Sections .0517 and .0527, respectively, the procedures described in Method 8 of Appendix A of 40 CFR part 60 shall be used. When Method 8 of Appendix A of 40 CFR part 60 is used to determine compliance, compliance shall be determined by averaging emissions measured by three one-hour test runs unless otherwise specified in the applicable rule or subpart of 40 CFR part 60.

f. When compliance is shown for a combustion source emitting sulfur dioxide not covered under paragraphs (a) through (e) of Section .2611 through stack sampling, the procedures described in Method 6 or Method 6C of Appendix A of 40 CFR part 60 shall be used. When using Method 6 procedures to demonstrate compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. The 20-minute run requirement applies to Method 6 only, not to Method 6C. Method 6C is an instrumental method and the sampling is done continuously.

All of the above the testing methods identified in Section .2611 were previously found in Section .0501, with the exception of Method 6C. This new alternative method allows for the use of a sampling instrument that tests continuously rather than periodically.

EPA has reviewed this change and has preliminarily determined that the addition of new Section .2611, including the addition of Method 6C as

an alternative method, is consistent with federal regulations. The addition of new Section .2611 both retains and strengthens the existing source testing requirements of the North Carolina SIP.

F. Section .2617—Total Reduced Sulfur

As noted in Section III.A.3, above, the language of this new provision, Section .2617, was previously found in paragraph (c)(10) of Section .0501, which is being proposed for deletion. Section .2617 adopts the use of federal testing Method 16 of Appendix A of 40 CFR part 60 or Method 16A of Appendix A of 40 CFR part 60 to demonstrate compliance with total reduced sulfur emissions standards. The rule also adopts the federal testing Method 15 of Appendix A of 40 CFR part 60 to be used as an alternative to determine total reduced sulfur emissions from tail gas control units of sulfur recovery plants, hydrogen sulfide in fuel gas for fuel gas combustion devices, and where specified in other applicable subparts of 40 CFR part 60.

The requirement to use Method 16 or 16A was previously found in Section .0501 and is now relocated to new Section .2617. The option to use Method 15 in certain circumstances is a new provision to this rule. Although Method 15 has a slightly different process of testing for reduced sulfur, the resulting conclusions are the same. Additionally, consistent with section 1.2.1 of Method 15 in the CFR, Section .2617 provides that Method 15 may be used only as an alternative in certain specified sources, as described in the paragraph above, or where specified in other applicable federal subparts.

EPA has reviewed this change and has preliminarily determined that the addition of Section .2617, including the addition of Method 15 for certain sources, is consistent with federal regulations. EPA is proposing to approve all changes in this section of this rulemaking pursuant to section 110 of the Act.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference under Subchapter 2D, of the North Carolina SIP, Sections .0501—*Compliance with Emission Control Standards,* .0536—*Particulate Emissions from Electric Utility Boilers,* .2609—*Particulate Testing Methods,* .2610—*Opacity,* .2611—*Sulfur Dioxide Testing Methods,* and .2617—*Total Reduced Sulfur,* state effective June 1, 2008. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Actions

EPA is proposing to approve North Carolina's April 4, 2017, August 22, 2017, and September 28, 2018, SIP revisions. Specifically, EPA is proposing to approve under Subchapter 2D of the North Carolina SIP, the adoption of new Sections .2609, .2610, .2611, and .2617, as well as amendments to existing Sections .0501 and .0536. EPA is proposing to approve these revisions under section 110 of the CAA, including section 110(l), for the reasons stated above.[5]

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 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. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–01880 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

[5] Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0626; FRL–9989–13—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to the Regulatory Definition of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the State of Delaware. This revision pertains to amendments made to the definition of ''volatile organic compound'' (VOC) in the Delaware Administrative Code to conform with EPA's regulatory definition of VOC. The EPA found that certain compounds have a negligible photochemical reactivity and therefore has exempted them from the regulatory definition of VOC in several rulemaking actions, as discussed below. This revision to the Delaware SIP requested the exemption of these compounds from the regulatory definition of VOC to match the actions EPA has taken. The revision also requested minor changes to the format of some of the chemical formulas for VOCs that are already excluded from the definition of VOC in the Delaware SIP. EPA is approving these revisions to update the definition of VOC in the Delaware SIP under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0626 at *http://www.regulations.gov,* or via email to *spielberger.susan@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gaige, (215) 814–5676, or by email at *gaige.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: On May 25, 2018, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), formally submitted a SIP revision requesting that the definition of VOC in the Delaware SIP be updated to conform to several EPA rulemakings that exempted compounds from the regulatory definition of VOC in 40 CFR 51.100(s). The May 25, 2018 SIP revision requested that the definition of VOC in the Delaware SIP be updated to add the following compounds to the list of compounds excluded from the definition of VOC: t-butyl acetate (also known as tertiary butyl acetate or TBAC), HFE–7000 (1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane), HFE–7500 [3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane], HFC–227ea (1,1,1,2,3,3,3-heptafluoropropane), methyl formate, HFE–7300 (1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane), propylene carbonate and dimethyl carbonate. These compounds were excluded from the regulatory definition of VOC in 40 CFR 51.100(s) by EPA in several rulemakings, which are discussed in more detail later in this notice of proposed rulemaking (NPRM). Delaware's May 25, 2018 SIP revision also requested minor changes to the format of some of the chemical formulas for VOCs that are already excluded from the definition of VOC in the Delaware SIP.[1]

I. Background

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO_X) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible reactivity to form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of VOC and what compounds shall be treated as VOCs for regulatory purposes. It is EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented subsequently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (70 FR 54046, September 13, 2005). The regulatory definition of VOC as well as a list of compounds that are designated by EPA as negligibly reactive can be found at 40 CFR 51.100(s).

On September 30, 1999, EPA proposed to revise the regulatory definition of VOC in 40 CFR 51.100(s) to exclude TBAC as a VOC (64 FR 52731). In most cases, when a negligibly reactive VOC is exempted from the definition of VOC, emissions of that compound are no longer recorded, collected, or reported to states or the EPA as part of VOC emissions. However, EPA's final rule excluded TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC (69 FR 69290, November 29, 2004) (2004 Final Rule).[2]

[1] The SIP revision requests that the format of the chemical formulas for the following compounds be revised to incorporate subscripts: 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$), 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$), 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$), and 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$).

[2] On February 25, 2016, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (81 FR 9341). EPA's rationale for this action is explained in more detail in the final rule for that action. However, Delaware's May 25, 2018 SIP revision retains the recordkeeping and reporting requirements for TBAC

Continued

On November 29, 2004 (69 FR 69290), EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE–7000, HFE–7500, HFC 227ea, and methyl formate to the list of compounds excluded from EPA's regulatory definition of VOC. On January 18, 2007 (72 FR 2193) and January 21, 2009 (74 FR 3437) EPA promulgated additional final rules revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE–7300, propylene carbonate and dimethyl carbonate, to the list of compounds excluded from the regulatory definition of VOC. These actions were based on EPA's consideration of the compounds' negligible reactivity and low contribution to ozone as well as the low likelihood of risk to human health or the environment. EPA's rationale for these actions is explained in more detail in the final rules for these actions.

II. Summary of SIP Revision and EPA Analysis

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), Delaware amended the definition of VOC in 7 DE Admin. Code 1101—*Definitions and Administrative Principles,* to add HFE–7000, HFE–7500, HFC 227ea, methyl formate, HFE–7300, propylene carbonate, and dimethyl carbonate to the list of compounds excluded from the regulatory definition of VOC. Delaware also amended the definition of VOC in 7 DE Admin. Code 1101 to exclude TBAC from the definition of VOC for the purposes of VOC emissions limitations or VOC content requirements, but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC.[3] Delaware also made minor formatting changes to some of the chemical formulas for VOCs that are already excluded from the definition of VOC in the Delaware SIP.[1] These revisions were adopted by Delaware on August 14, 2009 and were effective September 10, 2009. DNREC formally submitted these amendments to the regulatory definition of VOC as a SIP revision on May 25, 2018.

Delaware's amendments to the definition of VOC in 7 DE Admin. Code are in accordance with EPA's regulatory changes to the definition of VOC in 40 CFR 51.100(s) and are therefore approvable for the Delaware SIP in accordance with CAA section 110. Also, because EPA has made the determination that HFE–7000, HFE–7500, HFC 227ea, methyl formate, HFE–7300, propylene carbonate, dimethyl carbonate and TBAC are of negligible reactivity and therefore have low contributions to ozone as well as low likelihood of risk to human health or the environment, removing these chemicals from the definition of VOC in the Delaware SIP will not interfere with attainment of any NAAQS, reasonable further progress, or any other requirement of the CAA. Thus, the addition of these compounds to the list of compounds excluded from the regulatory definition of VOC is in accordance with CAA section 110(l).

III. Proposed Action

EPA is proposing to approve Delaware's May 25, 2018 SIP revision because it meets the requirements of CAA section 110. This revision updates the regulatory definition of VOC in the Delaware SIP to add HFE–7000, HFE–7500, HFC 227ea, methyl formate, HFE–7300, propylene carbonate and dimethyl carbonate to the list of compounds excluded from the regulatory definition of VOC. The revision also updates the regulatory definition of VOC in the Delaware SIP to exclude TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements, but continues to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC. The revision also makes minor changes to the format of some of the chemical formulas for VOCs that are already excluded from the definition of VOC in the Delaware SIP.[1] EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the updated definition of VOC in 7 DE Admin. Code 1101—*Definitions and Administrative Principles,* which adds HFE–7000, HFE–7500, HFC 227ea, methyl formate, HFE–7300, propylene carbonate, dimethyl carbonate and TBAC to the list of compounds excluded from the regulatory definition of VOC, and makes minor formatting changes to the chemical formulas for several compounds already excluded from the definition of VOC in the Delaware SIP.[4] EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

as these updates were adopted August 14, 2009 and became effective September 10, 2009, which was prior to EPA's final rule removing the recordkeeping and reporting requirements for TBAC.

[3] As stated previously, on February 25, 2016, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (81 FR 9341). However, Delaware's May 25, 2018 SIP revision retains the recordkeeping and reporting requirements for TBAC as these updates were adopted August 14, 2009 and became effective September 10, 2009, which was prior to EPA's final rule removing the recordkeeping and reporting requirements for TBAC.

[4] As stated previously, TBAC continues to be defined in Delaware's regulations as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC. EPA expects that Delaware will amend its regulations in the near future to remove these remaining requirements now that EPA has removed these requirements from the Federal regulations.

Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, amending the definition of VOC in the Delaware SIP to conform with the regulatory definition of VOC in 40 CFR 51.100(s), does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 20, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2019–01883 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2018–0513; FRL–9989–17—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Commercial Fuel Oil Sulfur Limits for Combustion Units in Allegheny County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision updates Allegheny County's portion of the Pennsylvania SIP, which includes regulations concerning sulfur content in fuel oil. This revision will implement low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units which will aid in reducing sulfates that cause decreased visibility. This revision will strengthen the Pennsylvania SIP. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2018–0513 at *http://www.regulations.gov,* or via email to *Spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Erin Trouba, (215) 814–2023, or by email at *trouba.erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 2018, the Allegheny County Health Department (ACHD) through the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal revision to the Pennsylvania SIP. The SIP revision consists of an amendment to ACHD regulations under Article XXI (Air Pollution Control) which adds sections to implement the use of low sulfur fuel oils used in combustion units in Allegheny County, adding sampling and testing methods, and amending associated definitions.

Sulfur dioxide (SO_2) emissions contribute to the formation of fine particulate matter ($PM_{2.5}$) and sulfates in the atmosphere, and subsequently to the formation of regional haze. Regional haze is visibility impairing pollution that scatters and absorbs light. The pollutants that cause visibility impairment come from sources and activities that emit fine particles and their precursors, SO_2, $PM_{2.5}$, nitrogen oxides (NO_X), and volatile organic compounds (VOCs).

The May 8, 2018 SIP revision included revisions to Article XXI to implement low sulfur fuel oil provisions in Allegheny County that align with the state-wide low sulfur fuel oil provisions in 25 Pa Code Section 123.22 (Section 123.22), which is part of the Pennsylvania SIP. The SIP revision seeks to add Sections 2104.10 (Commercial Fuel Oil) and 2107.16 (Sulfur in Fuel Oil) of Article XXI to the Pennsylvania SIP and amend, within the SIP, Section 2101.20 (Definitions) of Article XXI.[1]

EPA previously approved amendments to Pennsylvania's low sulfur fuel oil regulation in July 2014. The regulations in 25 Pa Code Section 123.22 specified and established SO_2 emission levels and maximum allowable sulfur contents for certain fuel oil types by specific air basins through June 30, 2016, and consistent state-wide maximum allowable sulfur contents for certain fuel oil types beginning July 1, 2016. 79 FR 39330 (July 10, 2014). The July 2014 regulation established maximum allowable sulfur-content in fuels prior to June 30, 2016 in all Pennsylvania air basins except Allegheny County, Lower Beaver Valley, and Monongahela Valley. It also established a statewide maximum allowable sulfur content in fuel oil, including Allegheny County, beginning on July 1, 2016.

II. Summary of SIP Revision and EPA Analysis

Through the May 2018 SIP revision submittal, Pennsylvania seeks to add Sections 2104.10 and 2107.16 of ACHD's Article XXI to the Pennsylvania SIP. Section 2104.10 implements low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils

[1] These revisions became effective within Allegheny County as of December 8, 2017.

that are offered for sale, delivered for use, exchanged in trade or permitted to use in Allegheny County, Pennsylvania. Section 2104.10(a) establishes maximum allowable sulfur content for commercial fuel oil, expressed as parts per million (ppm) by weight or percentage by weight, for number 2 and lighter distillate oil to 0.05 percent sulfur content by weight (500 ppm), number 4 residual oil to 0.25 percent sulfur content by weight (2,500 ppm), and 0.5 percent sulfur content by weight (5,000 ppm) for number 5 and number 6 and heavier commercial fuel oils by no later than July 1, 2016. Commercial fuel oil stored by the ultimate consumer in the County prior to the applicable compliance date may be used after the applicable compliance date if the fuel oil met the applicable maximum allowable sulfur content at the time it was stored.

The provision in Section 2104.10(a)(2) of Article XXI allows for a temporary suspension or increase to the maximum allowable sulfur content for a commercial fuel oil according to provisions set forth in 25 Pa Code Section 123.22(d)(2)(iii) and (iv). In the event that compliant fuel is not reasonably available in the air basin, and a written waiver request is appropriately filed, and subsequently approved by PADEP, a suspension of these sulfur levels can be granted for the shortest duration in which adequate supplies can be made reasonably available, but for no more than 60 days.

Section 2104.10(c) and (d) of Article XXI establish sampling, testing, recordkeeping, and reporting requirements. Recordkeeping and reporting requirements in Section 2104.10(d) apply to transferors and transferees in the manufacture and distribution chain for commercial fuel oil from the refinery owner or operator to the ultimate consumer. If any transferor accepts a shipment of commercial fuel oil of a shipment that lacks the required records specified in Section 2104.10(d), they are required to test for sulfur content under Section 2104.10(c)(3).

Definitions for terminology which relate to reporting and recordkeeping requirements were added. Pennsylvania's May 2018 SIP revision submittal also seeks to amend Section 2101.20 (Definitions) to add the following new terms: (1) ''Commercial fuel oil;'' (2) ''Noncommercial fuel;'' (3) ''Transferee;'' (4) ''Transferor;'' and (5) ''Ultimate consumer.'' Additionally, the revision to Section 2101.20 (Definitions) of Article XXI seeks to amend the definition of the following terms to provide clarity and support the amendments to Section 2104.10 and Section 2107.16: (1) ''Carrier;'' (2) ''Distributor;'' (3) ''Retail outlet;'' and (4) ''Terminal.''

Section 2107.16 of Article XXI establishes the sampling methods that must be used. Refinery owners and operators who produce commercial fuel oil intended for use or used in Allegheny County are required to sample, test and calculate the actual sulfur content of each batch of the commercial fuel oil according to the methods established in Section 2107.16. The regulations ACHD seeks to add to the Pennsylvania SIP require the use of various American Standards of Testing Materials (ASTM) methods for the sampling of petroleum and for the determination of sulfur content in fuel oil, including updates and revisions to those methods. These methods match those cited in 25 Pa Code Section 123.33(f), which is part of the Pennsylvania SIP.

Pennsylvania asserts that lowering the maximum allowable sulfur content in commercial fuel oils combusted or sold in Allegheny County will aid in reducing SO_2 emissions that are a cause of regional haze. EPA proposes to approve these regulations to strengthen Pennsylvania's SIP.

III. Proposed Action

EPA has determined that the revisions made to Article XXI of ACHD's rules and regulations, Sections 2101.20, 2104.10 and 2107.16, meet the requirements of the CAA and is proposing to approve the amendments to ACHD's regulations for commercial fuel oil sulfur limits for combustion units into the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference ACHD's maximum allowable sulfur content regulation. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

In addition, this SIP revision for commercial fuel oil sulfur limits for combustion units in Allegheny County, Pennsylvania, does not have tribal

implications as specified in Executive Order 13175, because the SIP is not approved to apply in Indian Country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 27, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2019–01901 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2018–0723; FRL–9988–63—Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Interstate Transport for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a submission from the State of Wyoming that is intended to demonstrate that the Wyoming State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). This submission addresses interstate transport ''prong 2,'' which requires each state's SIP to prohibit emissions which will interfere with maintenance of the NAAQS in other states. The EPA is proposing to approve this submittal as meeting the requirement that Wyoming's SIP contain adequate provisions to prohibit emissions in amounts which will interfere with maintenance of the 2008 ozone NAAQS in any other state.

DATES: Written comments must be received on or before March 14, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2018–0723, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

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

I. Background

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone NAAQS to 0.075 parts per million (ppm). 73 FR 16436 (Mar. 27, 2008). The 2008 ozone NAAQS are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to the NAAQS, as determined in accordance with Appendix P to 40 CFR part 50. Under Appendix P, digits to the right of the third decimal place are truncated.

Section 110(a)(1) of the CAA requires states to submit, within 3 years after promulgation of a new or revised NAAQS, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to address the ''good neighbor'' provision which requires states to prohibit certain adverse air quality effects on other states due to interstate transport of pollution.

A. The EPA's Interpretation and Implementation of the Good Neighbor Provision

Specifically, section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in any other state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interfere with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

The EPA has established a four-step interstate transport framework to address the prong 1 and 2 requirements for ozone and fine particulate matter ($PM_{2.5}$) NAAQS through the development and implementation of several previous rulemakings.[1] The four steps of this framework are as follows: (1) Identify downwind air quality problems; (2) identify upwind states that impact those downwind air quality problems enough to warrant further review and analysis; (3) identify the emissions reductions, if any, necessary to prevent an identified upwind state

[1] *See, e.g.,* 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 NOx SIP Call). 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR) Final Rule. 70 FR 25162 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR) Final Rule. 76 FR 48208 (August 8, 2011); CSAPR Update. 81 FR 74504 (October 26, 2016).

from contributing significantly or interfering with maintenance with respect to those downwind air quality problems; and (4) adopt permanent and enforceable measures needed to achieve those emissions reductions. The EPA has applied this framework in various actions addressing prongs 1 and 2 for the $PM_{2.5}$ and ozone NAAQS.[2]

On August 4, 2015, the EPA issued a Notice of Data Availability (NODA) containing air quality modeling to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS within the context of the four-step framework.[3] Specifically, the air quality modeling helped states address steps 1 and 2 of the framework by (1) identifying locations in the United States where the EPA anticipated nonattainment or maintenance issues in 2017 for the 2008 ozone NAAQS, and (2) quantifying the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. The EPA also used this modeling to support the Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (''CSAPR Update'') proposed rule (80 FR 75706, December 3, 2015); we updated the modeling in 2016 to support the CSAPR Update final rule (81 FR 74504, October 26, 2016). The projections in this updated version of the modeling (hereon referred to as the ''CSAPR Update modeling'') were part of the technical record for the EPA's February 3, 2017 final action on the prongs 1 and 2 portions of the Wyoming 2008 Ozone Infrastructure SIP, which is discussed in more detail later in this notice. 82 FR 9153.

In the CSAPR Update, the EPA used the CSAPR Update modeling to identify downwind nonattainment and maintenance receptors at step 1 of the four-step framework (*see* 81 FR 74530–74532, October 26, 2016). Specifically, the EPA identified nonattainment receptors as those monitoring sites with current measured design values exceeding the NAAQS that also have projected (*i.e.,* in 2023) average design values exceeding the NAAQS. The EPA identified maintenance receptors as those monitoring sites with projected maximum design values exceeding the NAAQS. The EPA considered all nonattainment receptors to also be maintenance receptors because a monitoring site with a projected average design value above the standard necessarily also has a projected maximum design value above the standard. Monitoring sites with projected maximum design values that exceed the standard and which are not also nonattainment receptors are thus referred to as maintenance-*only* receptors.

To address step 2 of the framework for the CSAPR Update, the EPA used the CSAPR Update modeling to determine whether an eastern state's impact on each projected downwind air quality problem would be at or above a specific threshold. The EPA's modeling projected ozone concentrations and contributions in 2017, which would be the last ozone season before the then-upcoming July 2018 attainment date for nonattainment areas classified as Moderate for the 2008 ozone NAAQS. Consistent with the original CSAPR rulemaking (76 FR 48208, August 8, 2011), the EPA applied a threshold of one percent of the 2008 ozone NAAQS of 75 ppb (0.75 ppb) to identify linkages between upwind states and downwind nonattainment and maintenance receptors in the CSAPR Update. 81 FR 74518 (October 26, 2016). If a state's impact on identified downwind nonattainment and maintenance receptors did not exceed 0.75 ppb, the state was not considered ''linked'' to those receptors and was therefore not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state's impact exceeded the 0.75 ppb threshold, that state was considered ''linked'' to the downwind nonattainment or maintenance receptor(s) and the state's emissions were evaluated further, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

B. Wyoming's Submittals To Address the Good Neighbor Provisions

On February 6, 2014, the Wyoming Department of Environmental Quality (WDEQ) submitted a certification that the approved Wyoming SIP adequately addressed the ''good neighbor'' provision for the 2008 ozone NAAQS. *See* 81 FR 71712, 71713 (Nov. 18, 2016). On November 18, 2016, the EPA proposed to approve Wyoming's submission for prong 1 and disapprove Wyoming's submission for prong 2 of the good neighbor provision (81 FR 81712), and on February 3, 2017, the EPA finalized the proposed approval and disapproval. 82 FR 9153. This disapproval established a 2-year deadline, under CAA section 110(c), for the EPA to promulgate a federal implementation plan (FIP) or approve a SIP that meets the requirements of prong 2 of the good neighbor provision for the 2008 ozone NAAQS for Wyoming. The EPA acted on the portions of the submission addressing prongs 1, 3 and 4 of the good neighbor provision for the 2008 ozone NAAQS.[4]

The EPA based its February 3, 2017 disapproval for prong 2 in the first instance on a determination that the February 6, 2014 submission lacked an analysis to support the conclusion that the Wyoming SIP contained adequate provisions prohibiting emissions that will interfere with maintenance of the 2008 ozone NAAQS in any other state. 81 FR 81714 (proposal); 82 FR 9147 (final). As explained in the notices for the proposed and final action, in accordance with the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (2008), states and the EPA are required to give ''independent significance'' to prong 2 by considering the potential impacts of emissions on areas that may have issues maintaining the standards. 82 FR 9145.

However, if the EPA's supplemental analysis supports the state's conclusion that the SIP is adequate to address the statutory requirements, we may approve the state's submittal. 82 FR 9149. In this case, the EPA evaluated the CSAPR Update modeling, described above. That modeling showed that emissions from Wyoming were not linked to any nonattainment receptors for the 2008 ozone NAAQS in the 2017 analytic year. However, the modeling also showed that emissions from Wyoming were projected to contribute above the 1% threshold to one maintenance receptor at the Chatfield Reservoir in Douglas County, Colorado (monitor I.D. # 80350004).[5] The CSAPR Update

[2] *See, e.g.,* ''Interstate Transport Prongs 1 and 2 for the 2012 Fine Particulate Matter ($PM_{2.5}$) Standard for Colorado, Montana, North Dakota, South Dakota and Wyoming,'' 83 FR 21227 (May 9, 2018); ''Approval and Promulgation of Air Quality State Implementation Plans; California; Interstate Transport Requirements for Ozone, Fine Particulate Matter, and Sulfur Dioxide,'' 83 FR 5375 (February 7, 2018).

[3] *See* Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS), 80 FR 46271 (August 4, 2015); *see also* ''Updated Air Quality Modeling Technical Support Document for the 2008 Ozone NAAQS Transport Assessment,'' August 2015 (included in the docket to the NODA).

[4] *See* 81 FR 70362 (Oct. 12, 2016) for prong 3 final action, and 82 FR 9142 (February 3, 2017) for prongs 1 and 4 final action.

[5] The Douglas County maintenance receptor is located in the 2008 ozone Denver Metro/North Front Range (DMNFR) Moderate nonattainment area. *See https://www3.epa.gov/airquality/greenbook/hnp.html#Ozone_8-hr.2008.Denver.* However, the EPA has routinely interpreted the section 110(a)(2)(D)(i)(I) requirements to be

modeling identified two other maintenance receptors in the Denver Metro/North Front Range (DMNFR) 2008 Ozone Moderate nonattainment area, but emissions from Wyoming were projected to impact those receptors below the 0.75 ppb threshold. For the purpose of our action on the Wyoming SIP submission, we determined that a 1% screening threshold was appropriate to use for the Douglas County maintenance receptor because the air quality problem in that area resulted in part from the relatively small individual contributions of upwind states that collectively contribute a large portion of the ozone concentrations (9.7%), comparable to some eastern receptors addressed in the CSAPR Update. 82 FR 9149–50. The CSAPR Update modeling projected that Wyoming emissions would contribute 1.18 ppb, or approximately 1.57% of the 2008 ozone NAAQS, at the Douglas County maintenance receptor in 2017.[6] As this contribution was above the screening threshold, we could not conclude on the basis of the CSAPR Update modeling that Wyoming's SIP contained sufficient provisions to prohibit emissions that will interfere with maintenance of the 2008 ozone NAAQS at the Douglas County maintenance receptor. As a result, the EPA disapproved the February 6, 2014 submittal for prong 2.

II. State Submittal

WDEQ submitted a new interstate transport SIP on October 17, 2018, providing additional information to demonstrate that the State meets the prong 2 requirement for the 2008 ozone NAAQS. In this submittal, WDEQ addressed the prong 2 requirements of section 110(a)(2)(D)(i)(I) using a weight of evidence analysis and concluded that emissions from Wyoming will not interfere with maintenance of the 2008 ozone NAAQS in any other state. The submittal states that weight of evidence analyses are a valid approach to assessing ozone transport in western states and have been used by the EPA and in submittals by other western states, specifically California. Consistent with the CSAPR Update modeling, which only found one potential linkage with the Douglas County maintenance receptor, WDEQ focused its analysis on the potential impacts of Wyoming emissions on that receptor. WDEQ's analysis included information about recent and forthcoming emission reductions at sources in Wyoming; ozone modeling for the 2023 analytic year from the EPA's October 27, 2017 memorandum ''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)'' (hereon ''October 2017 Memo''); and the EPA's proposed approval (since finalized) of the ''Colorado Attainment Demonstration for the 2008 8-Hour Ozone Standard for the DMNFR Moderate nonattainment area'' (hereon ''DMNFR attainment demonstration''). 83 FR 14807 (April 6, 2018).

WDEQ indicated that the Douglas County monitor was projected to be a maintenance receptor for the year 2017 in the CSAPR Update modeling. However, WDEQ stated that it is unclear whether it should still consider the Douglas County monitor to be maintenance for this NAAQS, given its review of information available subsequent to the CSAPR Update modeling. Specifically, WDEQ cited the EPA's October 2017 Memo and the State of Colorado's attainment demonstration for the 2008 8-Hour Ozone Standard for the DMNFR nonattainment area to argue that the Douglas County receptor should not be considered a maintenance receptor for the 2008 ozone NAAQS.

First, WDEQ referenced the EPA's October 2017 Memo. As described in further detail in Section III of this notice, the EPA performed air quality modeling, released in the October 2017 Memo, to project 2008 ozone nonattainment and maintenance receptors for the analytic year 2023 to assist the states in addressing remaining prong 1 or prong 2 obligations for the 2008 ozone NAAQS. This modeling projected a maximum design value of 73.2 ppb (below the 75 ppb NAAQS) for the Douglas County receptor in the 2023 analytic year. October 2017 Memo at A–7. WDEQ also cited language from the October 2017 Memo which states that ''no areas in the United States, outside of California, are expected to have problems attaining and maintaining the 2008 ozone NAAQS in 2023.'' *Id.* at 4.

WDEQ then referenced modeling performed by the State of Colorado as part of its DMNFR attainment demonstration.[7] Specifically, WDEQ referenced modeling from Colorado's weight of evidence attainment demonstration in which Colorado removed monitoring data for certain days during 2010–2013 from the calculation of the 2011 baseline ozone design value because these data were likely influenced by atypical events such as stratospheric intrusions or wildfires. Colorado's modeling, which will be discussed in further detail in Section III of this notice, projected the Douglas County monitor would have a maximum modeled design value below the 2008 NAAQS in 2017 when the adjusted 2011 baseline was used. 83 FR 14813 (April 6, 2018). As noted by WDEQ, in the EPA's proposed approval of Colorado's DMNFR attainment demonstration, we concurred with Colorado's assessment that this modeling was properly configured, met EPA performance requirements, and was appropriately used in its application. *Id.* The EPA has since finalized our proposed approval of Colorado's DMNFR attainment demonstration. 83 FR 31068 (July 3, 2018).

In its October 17, 2018 submission, WDEQ asserted that the modeling from both the EPA's October 2017 Memo and Colorado's DMNFR attainment demonstration indicate that all future design values for the Douglas County receptor are below the 2008 ozone NAAQS. Therefore, WDEQ asserts that this receptor should no longer be considered a maintenance receptor, as it was identified in the CSAPR Update modeling, but should instead be considered to be attainment.

WDEQ also included information about recent and forthcoming emission reductions at sources in Wyoming in its weight-of-evidence analysis. Specifically, WDEQ provided information about nitrogen oxide (NO_X) and volatile organic compounds (VOC) emissions reductions that occurred between 2011 and 2017, and NO_X reductions that will occur before 2023. WDEQ focused on these pollutants as both are precursors to ozone. WDEQ calculated that permitting actions, including Title V permit rescissions for sources that have reduced their emissions from major to minor source levels, accounted for a statewide reduction of 12,392.5 tons per year (tpy) of NO_X and 905.6 tpy of VOC between 2011 and 2017. WDEQ noted that regulations covering nonpoint sources and reductions from leak detection and repair or fugitive emissions monitoring programs had led to additional VOC reductions, though WDEQ had not quantified the reductions from these regulations. WDEQ also calculated a 21,525 tpy NO_X reduction between 2017

independent of formal designations because any area may be in nonattainment or struggle to maintain the NAAQS, regardless of formal area designation.

[6] The updated modeling data (published on EPA's website at *https://www.epa.gov/airmarkets/final-cross-state-air-pollution-rule-update* on September 7, 2016) are available in the docket for this action.

[7] The Colorado 2008 Ozone Moderate Nonattainment Area SIP Submission is available on *regulations.gov* as document ID # EPA–R08–OAR–2017–0567–0004.

and 2023, concluding NO_X emissions would decrease by nearly 18% from those reported in the 2011 Emission Inventory (the inventory used in the CSAPR Update modeling and October 2017 Memo modeling) by 2023 through permitting actions alone. WDEQ also asserted that the emissions reductions listed in its submission do not appear to have been accounted for in the CSAPR Update modeling.

WDEQ concludes that all elements of its weight-of-evidence analysis combined demonstrate that emissions from the State of Wyoming will not interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state, including at the Douglas County, Colorado receptor.

III. EPA's Evaluation

The EPA has reviewed all elements of WDEQ's weight-of-evidence analysis and additional relevant technical information to determine whether the SIP has adequate provisions to ensure emissions from the state will not interfere with maintenance of the 2008 ozone NAAQS in any other state. The EPA conducted this review within the four-step interstate transport framework. Therefore, the EPA's first step in reviewing WDEQ's submission is to identify downwind air quality problems.

A. Identification of Downwind Air Quality Problems

The EPA first reviewed WDEQ's information about modeling conducted by the State of Colorado that projected attainment of the 2008 ozone NAAQS at the Douglas County receptor and all other ozone monitors in the DMNFR Moderate ozone nonattainment area in 2017. Based on Colorado's DMNFR attainment demonstration modeling results, WDEQ asserts that the Douglas County receptor should not be considered a maintenance receptor at step 1 of the four-step interstate transport framework. As noted, the Douglas County receptor was the only maintenance receptor to which emissions from Wyoming contributed above 1% of the 2008 ozone NAAQS in the EPA's 2016 CSAPR Update modeling.

The EPA's review of Colorado's DMNFR attainment demonstration modeling, provided below, begins with an overview of the modeling analysis in the attainment planning context for which it was originally generated. Then, we expand on Wyoming's analysis by considering Colorado's modeling in the context of interstate transport. Specifically, we consider how Colorado's removal of atypical event-influenced monitor data in 2010, 2011 and 2012 from the 2011 baseline ozone design value would impact the CSAPR Update modeling results with regard to the Colorado receptor to which Wyoming was linked.

In Colorado's primary modeling for the DMNFR attainment demonstration, the State calculated relative response factors (RRFs) using the maximum modeled ozone in a 3x3 matrix of grid cells around each ozone receptor to model a 2017 projected concentration of 76.2 ppb at the Douglas County receptor. *See* 83 FR 14811 (April 6, 2018). Because this projection was close to the 75 ppb NAAQS, Colorado developed its DMNFR attainment demonstration using a weight-of-evidence analysis, as recommended by EPA guidance. *Id.* at 14812. Colorado's weight-of-evidence analysis included two modeling analyses in addition to the primary (3x3 matrix) analysis. The first was performed using a 7x7 matrix of grid cells around each receptor. Colorado contended that this model performed better than the 3x3 matrix in simulating the 2011 period when monitored concentrations were compared to model results in the 7x7 matrix, potentially as a result of challenges in accurately simulating meteorological data in Colorado's complex terrain combined with the use of a high resolution 4-km grid in the Colorado modeling platform. In this modeling analysis, Colorado modeled the Douglas County receptor as attaining the NAAQS in 2017 with a projected concentration of 75 ppb. *Id.* All other receptors in the Denver ozone moderate nonattainment area were also projected as attainment in the modeling analysis using the 7x7 matrix.

In the second modeling analysis, Colorado evaluated high ozone days from 2009 to 2013 that were likely influenced by atypical, extreme, or unrepresentative events (collectively, ''atypical events'') such as wildfire or stratospheric intrusion, but were included in the calculation of the 2011 baseline ozone design value.[8] Colorado did not submit formal demonstrations under the Exceptional Events Rule (40 CFR 50.14) for these days because they do not affect the DMNFR's attainment status and thus do not have regulatory significance under the Exceptional Events Rule. However, these days do affect the baseline design value and thus affect the model projected future design value for 2017. After removing the data that were likely influenced by atypical events, Colorado modeled attainment in 2017 at the Douglas County receptor using both the 3x3 (74 ppb) and 7x7 (73 ppb) matrices for calculating the model RRF. *Id.* at 14813. All other receptors in the DMNFR ozone Moderate nonattainment area were also projected as attainment in 2017 when atypical event-influenced data were removed from the baseline calculation, with the highest projection at any receptor in the area at 74 ppb. As noted in Section II, the EPA concurred with Colorado's assessment that this modeling was appropriate for Colorado's weight of evidence attainment demonstration, and subsequently finalized our approval of Colorado's attainment demonstration. 83 FR 31068 (July 3, 2018).

While Wyoming listed the DMNFR attainment demonstration modeling results as evidence that the Douglas County receptor should not be considered a maintenance receptor as of 2017, the EPA did not reach the same conclusion based on these results alone. This is because the Colorado modeling results, while appropriate in an attainment planning context, were calculated from a baseline design value that is the weighted average of three 3-year design values. In an interstate transport modeling context, EPA evaluates the transport contribution for both the weighted average design value and individually for each of the three 3-year average design values. As noted in Section I of this proposed action, in the CSAPR Update the EPA identified as ''nonattainment receptors'' monitoring sites with a current measured value exceeding the NAAQS that also have a projected average design value exceeding the NAAQS and identified maintenance receptors as those monitoring sites with a *projected maximum design value* exceeding the NAAQS. Colorado's DMNFR attainment demonstration modeling results calculated the 2011 baseline by averaging the three relevant design values (2009–2011, 2010–2012, and 2011–2013). Therefore, the 2017 modeled projections presented in the DMNFR attainment demonstration (and referenced by Wyoming) would only have some relevance with regard to whether the Douglas County receptor should be identified as a nonattainment receptor in an interstate transport context. However, the determination of whether the Douglas County receptor should continue to be identified as a maintenance receptor, as it was in the CSAPR Update modeling, is based on the 2017 projection of the maximum of

[8] *See* Colorado's November 17, 2016 TSD ''Analyses in Support of Exceptional Event Flagging and Exclusion for the Weight of Evidence Analysis,'' in the docket for this action.

the three base year design values (in this case, 2011–2013).

Nonetheless, the information regarding atypical event-influenced data in the DMNFR attainment demonstration is relevant to the determination of whether the Douglas County monitor should continue to be identified as a maintenance receptor in the EPA's 2017 modeling for the 2008 ozone NAAQS. Because the CSAPR Update modeling was conducted in 2016, the EPA did not consider Colorado's ''Analyses in Support of Exceptional Event Flagging and Exclusion for the Weight of Evidence Analysis'' in the CSAPR Update modeling.[9] After reviewing this document, the EPA finds it appropriate to consider the impact of removing atypical event-influenced data from the CSAPR Update modeling baseline as part of our review of Wyoming's prong 2 weight-of-evidence analysis. After removal of the atypical event-influenced data from the 2009–2013 baseline, listed in Table 1 below, the baseline maximum design value at the Douglas County receptor (2011–2013) decreases from 83 ppb to 81 ppb, as shown in Table 2.

TABLE 1—DOUGLAS COUNTY OZONE MONITORING DATA FLAGGED AS ATYPICAL EVENT AND EXCLUDED FROM BASELINE DESIGN VALUE CALCULATION

Date	April 13, 2010	June 7, 2011	July 4, 2012	August 9, 2012	August 21, 2012
8-hour Ozone Concentration (ppb)	79	84	96	98	80

TABLE 2—DOUGLAS COUNTY OZONE MONITORING WITH DATA FLAGGED AS ATYPICAL EVENT INCLUDED AND EXCLUDED

Year	2011	2012	2013	2011–2013 DV (truncated)
4th Max Monitored Value with Atypical Event Data Included (ppb)	82	86	83	83
4th Max Monitored Value with Atypical Event Data Excluded (ppb)	81	79	83	81

We then applied the RRF from the CSAPR Update Modeling to this adjusted design value, and the results are shown in Table 3 below.[10]

TABLE 3—REVISED CSAPR UPDATE MODELING MAXIMUM DESIGN VALUE FOR THE DOUGLAS COUNTY RECEPTOR

2009–2013 Max DV	2009–2013 Max DV with atypical event data excluded	CSAPR Update Modeling 2017 RRF	CSAPR Update Modeling 2017 Max DV	CSAPR Update Modeling 2017 Max DV with atypical event data excluded
83	81	.9358	77.6	75.8

The projected maximum design value of 75.8 shown in Table 3 (which excludes monitoring data determined by Colorado to be influenced by atypical events from the baseline period) indicates attainment of the 2008 ozone NAAQS at the Douglas County receptor in 2017. On this basis, the EPA is proposing to concur with Wyoming's assertion that the Douglas County receptor should not be considered a maintenance receptor at step 1 of the four-step interstate transport framework.

In its weight of evidence analysis, WDEQ also asserted that the modeling from the EPA's October 2017 Memo indicates no areas in the United States are expected to have problems attaining and maintaining the 2008 ozone NAAQS in 2023 outside of California. This includes a projection of attainment for each receptor in the DMNFR Moderate nonattainment area, most notably the Douglas County receptor. The EPA finds that the modeling from the EPA's October 2017 Memo supports the analysis above regarding whether emissions from Wyoming will interfere with maintenance of the 2008 ozone NAAQS. Details about this modeling analysis are provided in the October 2017 Memo, which is available in the docket for this action.

As with the CSAPR Update, the EPA used the results of the October 2017 Memo modeling to identify as *nonattainment* receptors those monitors that both measure nonattainment based on measured 2014–2016 design values and have a projected average design value exceeding the 2008 ozone NAAQS in 2023 and identify receptors that have a projected maximum design value exceeding the NAAQS in 2023 as *maintenance* receptors.

The October 2017 Memo modeling results indicate that Wyoming emissions will not interfere with maintenance at the Douglas County receptor or elsewhere in the DMNFR Moderate nonattainment area in 2023, because each receptor in the area is projected to attain and maintain the NAAQS in that year. Table 4, below, shows the projected 2023 maximum design values for the three receptors in Colorado that had been projected as maintenance (there were no projected nonattainment receptors in the state) for the year 2017 in the CSAPR Update modeling. Table 4 also shows the projected maximum design values for these receptors when the 2010–2012 DMNFR monitor values that were likely influenced by atypical events were removed from the 2011 baseline, as this baseline was also used for the October 2017 Memo modeling.

[9] As noted, this document is available in the docket for this proposed action.

[10] The EPA notes that the RRFs are based on the ''3x3'' approach as recommended in EPA's Draft Modeling Guidance for Demonstrating Attainment of the Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, December 2014.

TABLE 4—MODELED 2023 MAXIMUM DESIGN VALUES FOR COLORADO RECEPTORS PREVIOUSLY MODELED AS MAINTENANCE

Monitor I.D.	County	Modeled 2023 Max Design Value (ppb)[11]	Modeled 2023 Max Design Value with Atypical Event Data Excluded from 2011 baseline
80350004	Douglas, CO	73.2	71.5
80590006	Jefferson, CO	73.7	71.1
80590011	Jefferson, CO	73.9	72.1

The modeled 73.9 ppb projection at one of the Jefferson County, Colorado receptors is the highest maximum design value for any receptor in the DMNFR Moderate nonattainment area (and the state overall). This decreases to a 72.1 maximum design value when the atypical event-influenced data in the DMNFR are removed from the model's 2011 baseline. As noted by WDEQ in its October 17, 2018 submission, the only 2008 ozone maintenance receptors projected in 2023 are located in the state of California. Wyoming's highest modeled contribution to any projected 2023 maintenance receptor is 0.02 ppb (less than 0.03% of the NAAQS) in Kern County, California (monitor I.D. 60295002).[12] Therefore, the EPA proposes to find that emissions from Wyoming will not interfere with maintenance at any area [or monitor] outside of California in 2023, because there are no projected maintenance receptors outside of California in that year. Moreover, the EPA proposes to find emissions from Wyoming will not interfere with any projected maintenance receptors in California in 2023 because their modeled contribution at each such receptor is well below 1% of the 2008 ozone NAAQS at step 2 of the four-step framework.

In referencing the modeling from both the EPA's October 2017 Memo and Colorado's DMNFR attainment demonstration, WDEQ asserted that the Douglas County receptor is projected to attain and maintain the NAAQS in both 2017 and 2023. On this basis, there would be no requirement for any state to address upwind ozone contributions to the Douglas County receptor in advance of 2023, because Colorado's DMNFR attainment demonstration modeling projects the 2008 ozone NAAQS is currently being met.[13] As just discussed, the EPA finds that the relevance of the DMNFR attainment demonstration modeling to Wyoming's weight-of-evidence analysis is not the projection of attainment Wyoming references, because that modeling does not project a maximum design value as is done in interstate transport modeling. Rather, the relevance of the DMNFR attainment demonstration is the showing that monitor values from the 2011 baseline were likely influenced by atypical events, which supports the EPA's exclusion of the same values from the CSAPR Update modeling and shows that the Douglas County monitor should not be identified as a maintenance receptor in 2017. Based on the EPA's review of the two modeling analyses referenced in WDEQ's submission, and our additional analysis as described, the EPA is proposing to conclude that there are no downwind air quality (specifically maintenance) problems in 2017 to which Wyoming contributes, and that this conclusion is further bolstered by the October 2017 Memo modeling that shows these areas will continue to maintain the standard in 2023. Therefore, the EPA proposes to find that emissions from Wyoming sources will not interfere with maintenance of the 2008 ozone NAAQS in downwind states.

As discussed in Section II, WDEQ also provided information about recent and forthcoming ozone precursor emissions reductions in Wyoming. The EPA agrees with WDEQ that these reductions have been and/or will be beneficial in reducing ozone transport from Wyoming to downwind states. However, we did not quantitatively analyze these reductions because of our proposed finding above that there are no relevant downwind air quality issues. However, we invite comment on these reductions and their relevance to our proposed action. Regarding WDEQ's assertion that the emissions reductions listed in its submission that occurred between 2011 and 2017 do not appear to have been accounted for in the EPA's 2016 CSAPR Update modeling, the CSAPR Update modeling includes all implemented or scheduled federally enforceable emissions reductions measures that were known at the time the EPA conducted this modeling, and therefore, we are not relying on WDEQ's assertion.

B. EPA's Proposed Conclusion

Based on our review of WDEQ's October 17, 2018 submission and other relevant information, the EPA proposes to concur with WDEQ's conclusion that Wyoming will not interfere with maintenance of the 2008 ozone NAAQS in the DMNFR Moderate nonattainment area, specifically the Douglas County receptor, or in any other downwind state. The EPA is therefore proposing to approve Wyoming's October 17, 2018 submittal, which states that Wyoming's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting ozone precursors in amounts that will interfere with maintenance by any other state with respect to the 2008 ozone NAAQS.

IV. Proposed Action

The EPA is proposing to fully approve Wyoming's October 17, 2018 submittal addressing CAA section 110(a)(2)(D)(i)(I), prong 2, for the 2008 ozone NAAQS. Should we finalize this proposed approval, the EPA will no longer have an obligation under CAA section 110(c)(1) to promulgate a FIP addressing the previous disapproval. The EPA is soliciting public comments on this proposed action and will consider public comments received during the comment period.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the

[11] *See* October 2017 Memo at page A–7.

[12] *See* the EPA's March 27, 2018 Memo ''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),'' at page C–6.

[13] The EPA is not proposing to make any determinations regarding the DMNFR Moderate nonattainment area, most notably the CAA section 181(b)(2) requirement that the EPA determine whether the area attained the NAAQS by its applicable attainment date. Colorado's attainment demonstration modeling cited by WDEQ was found by the EPA to meet the requirements for a modeled demonstration that the area will meet the standard in the attainment year. 83 FR 31069.

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: February 6, 2019.

Douglas Benevento,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–01908 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2018–0056; FRL–9989–46–OW]

Extension of Public Comment Period for Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule ''Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California'' for an additional 45 days, from February 11, 2019, to March 28, 2019. The EPA will offer virtual public hearings on the proposed rule via the internet on March 19, 2019, and March 20, 2019. The EPA is taking this action in order to ensure the public comment period remains open to accommodate the public hearings, originally scheduled for January 29, 2019, and January 30, 2019, and rescheduled due to the recent federal government shutdown. This extension is necessary to comply with public notice requirements.

DATES: Comments must be received on or before March 28, 2019.

ADDRESSES: *Comments:* Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0056, at *https://www.regulations.gov* (our preferred method), or the other methods identified at *https://www.epa.gov/dockets/commenting-epa-dockets.* Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at two Docket Facilities. The Office of Water (OW) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. 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.

Public Hearings: The EPA is offering two online public hearings so that interested parties may provide oral comments on this proposed rulemaking. For more details on the public hearings and a link to register, please visit *https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california.*

FOR FURTHER INFORMATION CONTACT: Danielle Anderson, Office of Water, Standards and Health Protection Division (4305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1631; email address: *Anderson.Danielle@epa.gov;* or Diane E. Fleck, P.E., Esq., Water Division (WTR–2–1), U.S.

Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105; telephone number: (415) 972–3527; email address: *Fleck.Diane@EPA.gov.*

SUPPLEMENTARY INFORMATION: On December 13, 2018, the Environmental Protection Agency (EPA) published the proposed rule, ''Water Quality Standards; Establishment of a Numeric Criterion for Selenium for the State of California'' in the **Federal Register** (83 FR 64059). The EPA is proposing to establish a federal Clean Water Act (CWA) selenium water quality criterion applicable to California that protects aquatic life and aquatic-dependent wildlife in the fresh waters of California.

The original deadline to submit comments on the proposed rule was February 11, 2019, and the public hearings were originally scheduled for January 29, 2019, and January 30, 2019. This action extends the comment period for 45 days. Due to the recent federal government shutdown, the public hearings have been rescheduled for March 19, 2019, and March 20, 2019, and written comments must now be received by March 28, 2019. Under CWA section 303(c)(1) and the EPA's regulation at 40 CFR 131.20, states and authorized tribes are required to hold public hearings when revising water quality standards. When preparing for or conducting such public hearings, states and authorized tribes must comply with the EPA's public hearing requirements at 40 CFR 25.5. Under 40 CFR 131.22(c), when the EPA promulgates a federal water quality standard for a state, it must comply with the same procedures established for states and authorized tribes. These provisions include requirements for providing at least 45 days advance notice of a public hearing. This public comment period is extended in order to accommodate complying with the public hearing requirements and to ensure the public comment period remains open to accommodate the rescheduled public hearings. Notice of the rescheduled public hearings was posted on the EPA's website on January 30, 2019 at *https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california.*

The EPA will offer virtual public hearings on the proposed rule via the internet on Tuesday, March 19, 2019, from 9:00 a.m.–11:00 a.m. Pacific Time and Wednesday, March 20, 2019, from 4:00 p.m.-6:00 p.m. Pacific Time. For details on these public hearings, as well as registration information, please visit *https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criterion-selenium-fresh-waters-california.*

Dated: February 6, 2019.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2019–02072 Filed 2–11–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2018–0682; FRL–9988–56]

Asbestos; TSCA Section 21 Petition; Reasons for Agency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This document provides the reasons for EPA's response to a September 27, 2018, petition it received under the Toxic Substances Control Act (TSCA) from the following organizations: Asbestos Disease Awareness Organization, American Public Health Association, Center for Environmental Health, Environmental Working Group, Environmental Health Strategy Center, and Safer Chemicals Healthy Families (''petitioners''). Generally, the petitioners requested that EPA make multiple amendments to the Chemical Data Reporting (CDR) rule under TSCA by January 1, 2019, in order to increase the reporting of asbestos. After careful consideration, EPA denied the petition for the reasons discussed in this document.

DATES: EPA's response to this TSCA section 21 petition was signed on December 21, 2018, and a copy is available in the docket.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Tyler Lloyd, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–4016; email address: *lloyd.tyler@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 particular interest to those persons who manufacture or process or may manufacture (which includes import) or process the chemical asbestos (CAS No. 1332–21–4). 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 access information about this petition?

The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0682, is available at *https://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 *https://www.epa.gov/dockets.*

II. TSCA Section 21

A. What is a TSCA section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or an order under TSCA sections 4, 5(e), or (f). A TSCA section 21 petition must set forth the facts which it is claimed establish that it is necessary to initiate the action requested. EPA is required to grant or deny the petition with 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding either within 60 days of either a denial or, if EPA does not issue a decision, within 60 days of the expiration of the 90-day period.

B. What criteria apply to a decision on a TSCA section 21 petition?

TSCA section 21(b)(1) requires that the petition ''set forth the facts which it is claimed establish that it is necessary to issue, amend or repeal a rule.'' 15 U.S.C. 2620(b)(1).

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers (including importers) and processors of chemical substances must maintain such records and submit such information as the EPA Administrator may reasonably require (15 U.S.C. 2607). TSCA section 8(a)(2) outlines the information that the EPA Administrator may require under TSCA section 8(a)(1), insofar as it is known to the person making the report or insofar as reasonably ascertainable. Under TSCA section 8(a), EPA has promulgated several data collection rules, including the Chemical Data Reporting (CDR) rule at 40 CFR part 711.

III. Summary of the TSCA Section 21 Petition

A. What action was requested?

On September 27, 2018, the Asbestos Disease Awareness Organization, American Public Health Association, Center for Environmental Health, Environmental Working Group, Environmental Health Strategy Center, and Safer Chemicals Healthy Families (petitioners) petitioned EPA to amend the CDR rule under TSCA section 8(a), within 90 days of the petition being filed, in order to increase the reporting of asbestos under the CDR rule (Ref. 1).

The petitioners requested the following specific amendments to the existing CDR rule in order to collect information for the ongoing asbestos risk evaluation being conducted under TSCA section 6(b), which is required to be completed by December 22, 2019, and, if necessary, any subsequent risk management decisions under TSCA section 6(a):

- Amend the CDR rule to require immediate submission, ''from January 1, 2019, to April 31, 2019,'' of reports on asbestos for the 2016 reporting cycle (*note:* The petitioners incorrectly stated that there are 31 days in April. EPA has corrected this error throughout the remainder of this notice);
- Amend the naturally occurring chemical substance exemption at 40 CFR 711.6(a)(3) to make the exemption inapplicable to asbestos;
- Amend the articles exemption at 40 CFR 711.10(b) to require reporting pursuant to the CDR rule for all imported articles in which asbestos is present at detectable levels;
- Amend the CDR rule to exclude asbestos from the exemption at 40 CFR 711.10(c) to require the reporting of asbestos as a byproduct or impurity;
- Amend the reporting threshold for CDR at 40 CFR 711.8(b) to set a reporting threshold of 10 pounds for asbestos; and
- Amend 40 CFR 711.8 to add processors of asbestos and asbestos-containing articles as persons required to report under the CDR rule.

In addition to these amendments to the CDR rule, the petitioners requested that EPA ''commit to making all reports submitted on asbestos publicly available notwithstanding any claims that these reports contain Confidential Business Information (CBI)'' (Ref. 1). To disclose CBI reported under the CDR rule, the petitioners requested that EPA use its authority under TSCA section 14(d)(3) or 14(d)(7).

After submitting their petition on September 27, 2018, petitioners followed up with a subsequent email to Jeff Morris, Director of EPA's Office of Pollution Prevention and Toxics, on November 29, 2018, requesting to ''incorporate in the petition by reference all the materials in EPA–HQ–OPPT–2016–0736, the docket for the TSCA Review and Risk Evaluation for asbestos'' (Ref. 2). EPA has discretion (but not an obligation) to consider this type of request in this subsequent email when evaluating a petition submitted under TSCA section 21. In cases where the petitioners themselves attempt to enlarge the scope of materials under review while EPA's petition review is pending, EPA exercises its discretion to consider or not consider the additional material based on whether the material was submitted early enough in EPA's petition review process to allow adequate evaluation of the additional materials prior to the petition response deadline and the relation of the late materials to materials already submitted. In this instance, and as a threshold matter, EPA believes the petitioners have failed to set forth the facts contained in all those docket materials that they claim establish that it is necessary for EPA to amend the CDR rule in the manner requested. Indeed, they have made no showing at all in this regard. Thus, EPA believes that petitioners' attempt to supplement the petition record in this way does not fulfill the requirements of TSCA section 21(b)(1). Furthermore, EPA believes that through its evaluation of the petition, it already has, in fact, made use of the information in the docket for the TSCA Review and Risk Evaluation for asbestos, because, as discussed in Unit IV.A.i., that information informs much of EPA's understanding of the current uses of asbestos.

B. What support do the petitioners offer?

The petitioners state that TSCA section 8(a)(1) gives EPA broad authority to require manufacturers and processors of chemical substances to submit such reports as the ''Administrator may reasonably require.'' The CDR rule, which is one of several reporting rules promulgated under TSCA section 8, requires manufacturers (including importers) to provide EPA with information on the production and use of chemicals in commerce, generally 25,000 pounds or more of a chemical substance at any single site, with a reduced reporting threshold (2,500 pounds) applying to chemical substances subject to certain TSCA actions, including, as applicable here, TSCA section 6. As the petitioners state, ''the CDR rule is EPA's primary tool under TSCA for obtaining basic information on the manufacture, importation, and use of chemicals and the nature and extent of exposure to these substances'' (Ref 1).

While asbestos is already required to be reported under the CDR rule by manufacturers (including importers) meeting certain criteria, the petitioners request amendments to the CDR rule that they contend will increase the reporting of asbestos. Petitioners contend that these amendments could provide EPA with ''the comprehensive information on asbestos importation and use it needs for its ongoing risk evaluation'' (Ref. 1). The petitioners claim that ''the [CDR] rule has played no role in informing EPA about asbestos uses that could be addressed in the Agency's TSCA risk evaluation'' (Ref. 1). Petitioners add that their amendments would ''maximize EPA's ability to use the information reported to conduct the ongoing risk evaluation and the subsequent risk management rulemaking under TSCA section 6(a).''

In their request, the petitioners state that ''asbestos is among the most dangerous chemicals ever produced, with expert bodies agreeing that there is no safe level of exposure.'' The petitioners cite research finding dangers from asbestos and provide a review of asbestos assessments and regulations under TSCA. In their petition, they state that in 1989, EPA determined that ''nearly all uses of asbestos presented an 'unreasonable risk of injury' under section 6 of TSCA'' and assert that ''the basis for this conclusion is even more compelling today'' (Ref. 1).

The petitioners state their belief that EPA ''lacks the basic information required for a complete and informed

risk evaluation that assures that unsafe asbestos uses are removed from commerce'' (Ref. 1). To support their assertion, the petitioners point to EPA's asbestos Problem Formulation (83 FR 26998, June 11, 2018) (FRL–9978–40), which, they say, ''attempts to identify the asbestos uses that EPA will address in its risk evaluation but its description of these uses is limited, vague and incomplete.'' Moreover, the petitioners cite language in the Problem Formulation that states that ''the import volume of products containing asbestos is not known'' (Ref 1).

IV. Background Considerations

A. Review of EPA Actions, Activities, and Regulations

To understand EPA's reasons for denying the petitioners' requests, it is important to first review the details of EPA's ongoing risk evaluation of asbestos, the CDR rule, exemptions under the CDR rule, and past reporting of asbestos under the CDR rule, which are explained in the following sections.

i. Risk evaluation of asbestos. On June 22, 2016, Congress passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114–182), which amended TSCA (15 U.S.C. 2601 *et seq.*). The new law includes statutory requirements related to the risk evaluations of conditions of use for existing chemicals. On December 19, 2016, in the **Federal Register**, EPA designated asbestos as one of the first 10 chemical substances subject to the Agency's initial chemical risk evaluations (81 FR 91927) (FRL–9956–47) pursuant to TSCA section 6(b)(2)(A) (15 U.S.C. 2605(b)(2)(A)), which required EPA to identify the first 10 chemicals to be evaluated no later than 180 days after the date of enactment of the Act.

EPA is currently evaluating the risks of asbestos under its conditions of use, pursuant to TSCA section 6(b)(4)(A). Through scoping and subsequent research for the asbestos risk evaluation, EPA identified the conditions of use of asbestos, including imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production; several imported chrysotile asbestos-containing materials, including sheet gaskets for production of titanium dioxide; brake blocks for oil drilling, aftermarket automotive brakes/linings, and other vehicle friction products; other gaskets and packing; cement products; and woven products (Ref. 3). In identifying the conditions of use for asbestos and the rest of the first 10 chemicals undergoing risk evaluation under amended TSCA, EPA included use information reported under the CDR rule. In addition to using CDR data to identify the current conditions of use of asbestos, EPA conducted extensive research and outreach. This included EPA's review of published literature and online databases including Safety Data Sheets (SDSs), the United States Geological Survey's Mineral Commodities Summary and Minerals Yearbook, the U.S. International Trade Commission's Dataweb, and government and commercial trade databases. (See Docket EPA–HQ–OPPT–2016–0736). Additionally, EPA worked with its federal partners, such as Customs and Border Protection, to enhance its understanding of import information on asbestos-containing products in support of the risk evaluation.

EPA also reviewed company websites of potential manufacturers, importers, distributors, retailers, or other users of asbestos and received public comments (1) during the February 2017 public meeting on the scoping efforts for the risk evaluations for the first ten chemicals, (2) when EPA published the Scope of the Risk Evaluation for Asbestos in June 2017, and (3) when EPA published the Problem Formulation of the Risk Evaluation for Asbestos in June 2018, all of which were used to identify the conditions of use. (See Docket EPA–HQ–OPPT–2016–0736). In addition, to inform EPA's understanding of the universe of conditions of use for asbestos for the scope document published in June 2017, EPA convened meetings with companies, industry groups, chemical users, and other stakeholders (Ref. 3). Lastly, on June 11, 2018, EPA proposed a significant new use rule (SNUR), in an administrative proposal separate and apart from the ongoing risk evaluation process under TSCA section 6, for certain uses of asbestos (including asbestos-containing goods) (83 FR 26922; FRL–9978–76) and asked for public comment or information on ongoing uses of asbestos. In the public comments submitted on the SNUR, EPA received no new information on any ongoing uses. (See Docket EPA–HQ–OPPT–2018–0159).

In the Problem Formulation for asbestos, based on the aforementioned outreach and research, EPA did not identify any conditions of use of asbestos as a byproduct or as an impurity. As stated in EPA's Problem Formulation for asbestos (Ref. 3), EPA has identified the conditions of use as imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production; several imported chrysotile asbestos-containing materials, including sheet gaskets for production of titanium dioxide; brake blocks for oil drilling, aftermarket automotive brakes, linings, and other vehicle friction products; other gaskets and packing; cement products; and woven products.

The purpose of EPA's risk evaluation is to determine whether a chemical substance presents an unreasonable risk to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation (15 U.S.C. 2605(b)(4)(A)). As part of this process, EPA must evaluate both hazard and exposure, excluding consideration of costs or other non-risk factors, use scientific information and approaches in a manner that is consistent with the requirements in TSCA for the best available science, and ensure decisions are based on the weight-of-scientific-evidence. EPA intends to finalize the risk evaluation for asbestos by December 2019, as required by TSCA.

ii. The CDR rule. The CDR rule requires U.S. manufacturers (including importers) of chemicals on the TSCA Inventory, with some exceptions, to report to EPA every four years the identity of chemical substances manufactured (including imported) for all years since the last principal reporting year (40 CFR 711.8(a)(2)). For example, for the 2020 submission period, the principal reporting year will be 2019; the principal reporting year for the 2016 submission period was 2015. Per the CDR rule at 40 CFR 711.20, the 2020 submission period will be from June 1, 2020, to September 30, 2020, followed by EPA review and validation of the reported data before it is released to the public. Reporting during the 2020 submission period will cover the manufacture of chemicals in 2016, 2017, 2018, and 2019. To reduce reporting burden, detailed information is required only for the principal reporting year (*i.e.,* 2019), including a breakout of the production volume to provide separate volumes for domestically manufactured and imported amounts. Generally, reporting is required for substances with production volumes of 25,000 pounds or more at any single site during any of the calendar years since the last principal reporting year. However, a lower threshold applies for chemical substances that are the subject of certain TSCA actions (see 40 CFR 711.8(b)). The CDR regulation generally exempts several groups of chemical substances from its reporting requirements, *e.g.,* polymers, microorganisms, naturally occurring chemical substances, certain

forms of natural gas, and water (see 40 CFR 711.5 and 711. 6).

iii. Exemptions from reporting under the CDR rule. In addition to the exemption for naturally occurring chemical substances, if the chemical substance is imported solely as part of an article, the chemical substance is exempt from being reported under the CDR rule (40 CFR 711.10(b)). An article is defined in 40 CFR 704.3 as ''a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end-use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.''

Under the CDR rule, a byproduct may be reportable when it is manufactured for a commercial purpose. The definition of manufacture for commercial purposes at 40 CFR 704.3 includes: ''. . . substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts . . .'' Under 40 CFR 720.30(g) a byproduct is exempt from reporting if: '' . . . its only commercial purpose is for use by public or private organizations that (1) burn it as a fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) extract component chemical substances from it for commercial purposes. (This exclusion only applies to the byproduct; it does not apply to the component substances extracted from the byproduct.)''

Impurities are exempt from CDR requirements. See 40 CFR 711.10(c) and 40 CFR 720.30(h)(1). An impurity is defined as a chemical substance unintentionally present with another chemical substance (40 CFR 704.3). Impurities are not manufactured for distribution in commerce as chemical substances per se and have no commercial purpose separate from the substance, mixture, or article of which they are a part.

Furthermore, processors do not report under the CDR rule. Processing information is reported by the manufacturers: If a manufacturer reports a chemical under the CDR rule, it must also report processing and use information for the chemical substance unless it is exempted from this reporting by 40 CFR 711.6(b).

iv. Asbestos reporting under the CDR rule. Two companies, both from the chlor-alkali industry, reported importing raw asbestos during the 2016 CDR reporting cycle (Ref. 4) and did not claim the exemption for naturally occurring substances. Both companies claimed their reports as CBI. Because asbestos has not been mined or otherwise produced in the United States since 2002 (Ref. 5), all raw asbestos used in the U.S. is imported.

V. Petition Response

A. What was EPA's response?

After careful consideration, EPA has denied the petition. A copy of the Agency's response, which consists of a letter to the signatory petitioner from the Asbestos Disease Awareness Organization (Ref. 6), is available in the docket for this TSCA section 21 petition. In accordance with TSCA section 21, the reasons for the denial are set forth in this **Federal Register** document.

B. What are the details of the petitioners' requests and EPA's decision to deny each of the requests?

This unit provides the reasons for EPA's decision to deny the petition asking EPA to amend the CDR rule and lift CBI protection for asbestos for all reports under the CDR rule.

i. Require immediate reporting of asbestos to CDR for the 2016 reporting cycle.

a. Petitioners' request. The petitioners requested revisions to the CDR rule that would ''trigger immediate reporting on asbestos for the 2012–2016 reporting cycle.'' To do this, the petitioners requested that EPA amend 40 CFR 711.20 to read: ''For asbestos, the 2016 CDR submission period is from January 1, 2019 to April [30], 2019'' (Ref. 1). The petitioners believe that this information will be useful to EPA in support of the ongoing asbestos risk evaluation, which is required to be completed by December 22, 2019, and any subsequent risk management rulemakings under TSCA section 6(a).

More specifically, the request for immediate reporting was made by the petitioners to ''make it possible for EPA to review and analyze the reports submitted while the risk evaluation is underway and to revise the draft evaluation on the basis of new information reported on asbestos importation and use'' (Ref. 1). Additionally, the petitioners suggested that EPA ''extend the completion date for the asbestos risk evaluation by six months under section 6(b)(4)(G)(ii)'' to allow the Agency time to receive the new data collected under the CDR rule as proposed (Ref. 1).

b. Agency response. EPA does not believe that the requested amendments would result in the reporting of any information that is not already known to EPA. As noted in more detail in Unit IV, EPA conducted extensive research and outreach to develop its understanding of import information on asbestos-containing products in support of the ongoing asbestos risk evaluation. After more than a year of research and stakeholder outreach, EPA believes that the Agency is aware of all ongoing uses of asbestos and already has the information that EPA would receive if EPA were to amend the CDR requirements. As such, amending the CDR requirements would not provide the Agency with any additional information, and EPA does not believe it would collect information on any new ongoing uses by making the requested amendments to the CDR rule.

Furthermore, even if EPA believed that the requested amendments would collect information on any new ongoing uses, EPA would not be able to finalize such amendments in time to inform the ongoing risk evaluation or, if needed, any subsequent risk management decision(s). The petitioners stated that their requested revisions should ''trigger immediate reporting on asbestos for the 2012–2016 reporting cycle'' (Ref. 1). Specifically, the petitioners asked that EPA amend 40 CFR 711.20 to require reporting for the 2016 CDR submission period (*i.e.,* 2012–2015); they requested that this reporting be required to start on January 1, 2019, and to end on April 30, 2019.

The petitioners, however, submitted their request on September 27, 2018, less than 120 calendar days before they would like the submission period to begin. While EPA understands that petitioners desire prompt collection of the requested information under the CDR rule to inform the ongoing risk evaluation, this request does not factor in the necessary timeframes for any rulemaking processes that would be required to propose and then finalize such amendments. To allow for the notice and comment period for the public and regulated community required under the Administrative Procedure Act (5 U.S.C. 553) and for appropriate internal deliberation prior to proposal and after the close of the comment period, EPA typically needs at least 18 months to finalize a rulemaking. Furthermore, even if EPA were able to use expedited rulemaking procedures to quickly promulgate a requirement to

report additional information on asbestos for the 2016 CDR cycle, it is important to note that potential reporters have had no prior notice or expectation of a need to retain the records necessary to report on past chemical manufacturing. Therefore, EPA has no reason to expect that potential reporters subject to such a rule amendment would have information that could be reasonably ascertainable for submission.

Additionally, the January through April 2019 submission period that the petitioners requested would not, in fact, provide timely information for the ongoing risk evaluation on asbestos. While the petitioners suggest that EPA ''should extend the completion date for the asbestos risk evaluation by six months under section 6(b)(4)(G)(ii)'' (Ref. 1), such an extension would not allow time for EPA to (1) conduct a data collection effort under the CDR rule and (2) incorporate this data into the ongoing risk evaluation prior to public comment and peer review.

Petitioners' request to extend the completion date of the final risk evaluation for asbestos by six months would move the completion from December 2019 to June 2020. Yet, any changes to the CDR rule would need to be made by notice-and-comment rulemaking that would involve, at a minimum, five to eight months to develop the proposed rule, a 30 to 60-day comment period, and five to eight months to complete the final rule. Under this hypothetical rulemaking scenario outlined, even if the rulemaking process began in December 2018, the data elements requested by the petitioners would not result in available data until, at the very earliest, March 2020 (only three months prior to completion of the six-month deferred risk evaluation). Petitioners' request ignores the fact that the draft risk evaluation must undergo public comment and peer review, which is a four to eight-month process (see 15 U.S.C. 2605(b)(4)(H); 40 CFR 702.45; 40 CFR 702.49).

Moreover, even if the regulations were amended and, in response to the finalized amendments, chemical manufacturers could reasonably ascertain and provide the newly-required information, EPA would be receiving information on manufacturing, import, and processing for conditions of use that may no longer be ongoing conditions of use. As an example, in comparing the 2012 and 2016 United States Geological Survey Minerals Yearbook for asbestos (Refs. 7 and 5), EPA has observed that a number of importers of raw asbestos and asbestos-containing articles are exiting or have already exited the market. As a result, all or a significant part of the information they would report for activities undertaken during the 2016 CDR submission period (*i.e.,* 2012–2015) would likely consist of conditions of use that are no longer ongoing, and, thus, uninformative for the risk evaluation.

In sum, EPA believes—based on the extensive research and data gathering already conducted during the asbestos risk evaluation process—that the requested amendments to the CDR rule would not lead to the reporting of new information that would contribute to EPA's ongoing asbestos risk evaluation or, if needed, subsequent risk management decision(s). Based on outreach and research, EPA believes that the Agency already has the information that would be collected, without amending the CDR rule. Furthermore, and, as previously discussed, EPA would not be able to promulgate a rulemaking to require the reporting by the submission period (beginning January 1, 2019) the petitioners requested, nor would the rulemaking amendments discussed above allow EPA to receive any new information in time to inform the ongoing asbestos risk evaluation.

EPA finds that petitioners have failed to set forth sufficient facts to establish that it is necessary to issue the requested amendment to require immediate past reporting of the manufacturing and use of asbestos under the CDR rule for the 2016 reporting cycle.

ii. Lift exemption for naturally occurring chemical substances for asbestos.

a. Petitioners' request. Several times in the petition, the petitioners requested that EPA either add asbestos to the CDR rule or close what they referred to as a ''reporting loophole'' for asbestos under the CDR rule. Under the exemption for naturally occurring chemical substances at 40 CFR 711.6(a)(3), manufacturers (including importers) do not have to report a chemical substance when the substance is manufactured as described at 40 CFR 710.4(b).

As support for the petitioners' claim of a reporting loophole for asbestos, the petitioners cited EPA's letter to Occidental Chemical Corporation (Occidental), dated July 28, 2017, wherein EPA stated that it did not believe Occidental was required to report its imports of asbestos under the CDR rule because Occidental's operations satisfied the criteria of the naturally occurring chemical substances exemption (Ref. 1). EPA issued this letter in response to the Asbestos Disease Awareness Organization's notice of intent to sue Occidental for what the Organization believed to be a CDR violation. In reaction to EPA's letter to Occidental, the petitioners stated that ''EPA's interpretation of the CDR rule means that no manufacturers or importers of asbestos or asbestos-containing products were required to report on their activities'' (Ref. 1). The petitioners further posited that ''this loophole in the rule has resulted in a troubling—and wholly avoidable—lack of reliable information about who is importing asbestos and in what quantities, where and how asbestos is being used in the U.S., and who is being exposed and how that exposure is occurring'' (Ref. 1).

b. Agency response. EPA emphasizes that manufacturers and importers of asbestos are *already* required to report asbestos under the CDR rule if they meet the production volume threshold of 2,500 pounds and do not qualify for an exemption (including the naturally occurring substances exemption). As noted above, during the last reporting cycle, two companies reported under the CDR rule the import of asbestos for use in the chloro-alkali industry to make asbestos diaphragms. After extensive research and outreach, including with Customs and Border Protection, EPA believes that the chloroalkali industry is the only importer of raw bulk asbestos, and the Agency has sufficient volume, import, use, and hazard data from the industry to conduct the risk evaluation.

Petitioners mistakenly seem to believe that *no* domestically manufactured or imported asbestos is currently required to be reported under the CDR rule as a result of the exemption for naturally occurring substances. EPA's letter to Occidental, however, found that the exemption for naturally occurring substances applied under the specific circumstances described in the letter. EPA did not find that the exemption applied for all ''manufacturers or importers of asbestos or asbestos-containing products'' as claimed by petitioners.

In general, the petitioners, misunderstand the naturally occurring substances exemption's specific definition. As defined by 40 CFR 711.6(a)(3), a naturally occurring chemical substance is:

> Any naturally occurring chemical substance, as described in 40 CFR 710.4(b). The applicability of this exclusion is determined in each case by the specific activities of the person who manufactures the chemical substance in question. Some chemical substances can be manufactured both as described in 40 CFR 710.4(b) and by

means other than those described in 40 CFR 710.4(b). If a person described in § 711.8 manufactures a chemical substance by means other than those described in 40 CFR 710.4(b), the person must report regardless of whether the chemical substance also could have been produced as described in 40 CFR 710.4(b). Any chemical substance that is produced from such a naturally occurring chemical substance described in 40 CFR 710.4(b) is reportable unless otherwise excluded.

A chemical substance qualifies as naturally occurring only if it is: (1)(i) Unprocessed or (ii) processed only by manual, mechanical, or gravitational means; by dissolution in water; by flotation; or by heating solely to remove water; or (2) extracted from air by any means (40 CFR 710.4(b)). Mined materials such as metal ores, minerals, and clays that are separated from the natural environment by only physical means are examples of chemical substances that are considered naturally occurring for TSCA purposes and are exempt from reporting under the CDR rule. If this specifically defined exemption does not apply (and if no other exemption applies), then a manufacturer or importer of asbestos must report under the CDR rule.

In addition, given that the purpose of domestic manufacturing or importing of raw asbestos is to make asbestos diaphragms, for which EPA already has use and exposure information, removing the exemption for reporting on naturally occurring substances for asbestos would not provide any additional data to EPA. EPA already has this information obtained through extensive outreach and research (as described in Unit IV.A.i.).

EPA finds that petitioners have failed to set forth sufficient facts to establish that it is necessary to issue the requested amendment to lift the naturally occurring chemical substances exemption for asbestos under the CDR rule.

iii. Require reporting of imported articles containing asbestos.

a. Petitioners' request. As noted by the petitioners, 40 CFR 711.10(b) exempts from reporting persons who import a reportable substance as part of an article. Additionally, the petitioners asserted that ''since a large number of the asbestos-containing products historically in use are articles, this exemption would prevent EPA from obtaining a considerable amount of useful information about asbestos use and exposure in the U.S.'' As such, the petitioners requested that EPA make the articles exemption at 40 CFR 711.10 inapplicable to asbestos. Furthermore, they requested that reporting be required for ''all imported articles in which asbestos is present at detectable levels'' (Ref. 1).

b. Agency response. Import of a chemical substance as part of an article is not subject to reporting under the CDR rule (40 CFR 711.10(b)). A chemical substance is considered to be imported ''as part of an article'' if the substance is not intended to be removed from that article and has no end use or commercial purpose separate from the article of which it is a part (Ref. 8).

While the petitioners correctly pointed out that ''a large number of the asbestos-containing products historically in use [were] articles'' (Ref. 1), these uses, along with most uses of asbestos, have ceased and thus are not being evaluated as part of the ongoing asbestos risk evaluation (Ref. 3). As identified in the Problem Formulation of the Risk Evaluation for Asbestos, currently imported articles include asbestos-containing sheet gaskets, other gaskets and packing, aftermarket automotive brakes/linings, other vehicle friction products, brake blocks, asbestos cement products, and woven products. EPA has relied on extensive outreach and research, including sources other than the CDR rule, to determine the conditions of use of asbestos, as described in Unit IV.A.i. The Agency does not believe amending the CDR rule would be helpful in collecting additional import information on articles. EPA has sufficient information on imported articles containing asbestos to conduct the risk evaluation and inform subsequent risk management decisions based the risk determination.

Though the petitioners suggested that there may be import of additional articles containing asbestos that EPA is unaware of, they provide no examples of any such known or ongoing imports of asbestos articles and provide no reason to believe that there may be any of which EPA is unaware. Considering the extensive outreach and research that has been conducted since December 2016, EPA has no reason to believe there are ongoing imports of articles containing asbestos that are unknown to EPA.

While the petitioners requested that EPA require reporting for ''all imported articles in which asbestos is present at detectable levels'' (Ref. 1), the information that manufacturers are required to report under the CDR rule is limited to information ''known to or reasonably ascertainable'' by the reporter (40 CFR 704.3). EPA could not require manufacturers to test these products for the purposes of CDR reporting under TSCA section 8. Therefore, EPA would not be able to require CDR reporters to report articles in which the potential presence of asbestos could be determined only through testing.

Additionally, because information reported under the CDR rule is limited to that which is ''known to or reasonably ascertainable'' by the reporter, even if EPA were to require the reporting of asbestos-containing articles under the CDR rule, importers would rely on information readily available to them, such as Safety Data Sheets or other documentation provided by their foreign supplier. EPA does not believe that making the requested amendment to the CDR rule would result in importers reporting articles that are not already known to EPA because the Agency has conducted its own research to analyze Safety Data Sheets and other evidence in order to determine the conditions of use of asbestos for the risk evaluation. EPA believes that lifting the articles exemption for the reporting of asbestos under the CDR rule would not provide any new use information that would inform the ongoing risk evaluation or any subsequent risk management decisions, if needed.

For these reasons, EPA believes that the petitioners have failed to set forth sufficient facts to establish that it is necessary to issue the requested amendment to lift the articles exemption for asbestos under the CDR rule.

iv. Lift the byproduct and impurity exemption for asbestos.

a. Petitioners' request. The petitioners cited 40 CFR 711.10(c), which exempts from CDR reporting activities described in 40 CFR 720.30(g) and (h). Under this exemption, manufacturers (including importers) do not have to report a chemical substance when the substance is an impurity or a byproduct not used for commercial purposes. The petitioners requested that these exemptions be made inapplicable to asbestos, ''since the low levels of asbestos that have been found in makeup and crayons may be unintended contaminants that comprise byproducts and impurities'' (Ref. 1). Moreover, the petitioners stated that, ''EPA needs information about asbestos-contaminated consumer products to conduct a complete and protective risk evaluation'' (Ref. 1)

b. Agency response. Under 40 CFR 720.30(g), a byproduct is exempt from reporting if: ''. . . its only commercial purpose is for use by public or private organizations that (1) burn it as a fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) extract component chemical substances from it for commercial purposes.''

Under 40 CFR 720.30(h), any (1) impurity or (2) any byproduct that is not used for a commercial purpose is not subject to reporting. Based on the extensive outreach and research undertaken by EPA in connection with developing the ongoing asbestos risk evaluation, EPA is unaware of any examples of asbestos as a byproduct. Thus, EPA anticipates there would be no new information reported if the Agency were to lift the byproduct exemption for asbestos.

With regard to the impurity exemption, the petitioners requested that these exemptions be made inapplicable to asbestos ''since the low levels of asbestos that have been found in makeup and crayons *may be* unintended contaminants that comprise byproducts and impurities'' (emphasis added). However, these findings were made only after independent laboratory testing of final consumer products, and petitioners make no attempt to explain why they believe these findings are the result of the *manufacture* of asbestos as a byproduct or impurity such that it would be reportable under the CDR rule if the Agency required such reporting. Indeed, the CDR rule does not require submitters to perform chemical analyses of products containing the chemicals they manufacture. Instead, the information required when reporting on a chemical is limited to information that is ''known to or reasonably ascertainable'' by the manufacturer. This standard is applicable to all information reported in accordance with 40 CFR 711.15(b) as required by TSCA section 8(a)(2). Thus, it is unlikely that EPA would receive new information that would change its understanding of the conditions of use for asbestos that can be addressed under TSCA.

EPA does not believe that making the requested amendment to the CDR rule would result in reporting of asbestos as an impurity or a byproduct, for uses that are known or reasonably ascertainable, and the petitioners have not provided evidence that there are such known uses that are ongoing but remain outside the scope of the asbestos risk evaluation. EPA finds that the petitioners have failed to set forth sufficient facts to establish that it is necessary to issue the requested amendment to lift the byproducts and impurities exemptions for asbestos under the CDR rule.

v. Lower asbestos reporting threshold to 10 pounds.

a. Petitioners' request. Manufacturers (including importers) are required to report under the CDR rule if they meet certain production volume thresholds, generally 25,000 pounds or more of a chemical substance at any single site. However, a reduced reporting threshold of 2,500 pounds applies to chemical substances subject to certain TSCA actions (40 CFR 711.8). The petitioners correctly point out that because asbestos is subject to a TSCA section 6 action (40 CFR 763, subpart I), it is subject to the lower reporting threshold of 2,500 pounds. The petitioners believe that even the reduced reporting threshold ''is too high in view of the absence of any safe level of exposure to asbestos and the need for comprehensive use and exposure information for the ongoing risk evaluation'' (Ref. 1). The petitioners therefore request that the reporting threshold for asbestos be lowered to 10 pounds for any year in the CDR reporting period.

b. Agency response. Since asbestos is no longer mined in the United States and the only importation of raw asbestos is for production of asbestos diaphragms, for which yearly imports for each site well exceed the threshold of 2,500 pounds, lowering the reporting threshold would not provide additional information to EPA. As a result, EPA believes that it already sufficient import data from the chloralkali industry to support conducting the risk evaluation.

While the petitioners believe that the current reporting threshold ''is too high in view of the absence of any safe level of exposure to asbestos and the need for comprehensive use and exposure information for the ongoing risk evaluation,'' they fail to show that lowering the reporting threshold would provide any new information to EPA. Therefore, EPA finds that the petitioners have failed to set sufficient facts to establish that it is necessary to issue the requested amendment to lower the CDR reporting threshold for asbestos.

vi. Add processors of asbestos to CDR.

a. Petitioners' request. The petitioners pointed out that, while EPA has the authority to require that processors report under the CDR rule, processors are not currently subject to CDR reporting requirements. The petitioners requested that EPA amend the CDR rule to require reporting from asbestos processors asserting that, while manufacturers (including importers) of a chemical substance are required to report downstream processing and use information under the CDR rule, ''in many cases, importers will be unable to provide the detailed information about use and exposure necessary for full understanding of the risks posed by these products. Therefore, the additional information available to processors will be essential'' (Ref. 1).

b. Agency response. Currently, the CDR rule does not require processors of any chemical substances to report. However, EPA knows of only two ongoing uses of asbestos that constitute processing: (1) The processing of raw asbestos into diaphragms and (2) the fabrication of gaskets from imported asbestos-containing sheet gaskets. Information on these uses is well understood by EPA as a result of direct communication with these processors (see Problem Formulation for asbestos (Ref. 3)). Accordingly, EPA does not believe that requiring processors of asbestos under the CDR rule will provide useful information not already in the Agency's possession. The petitioners have failed to indicate what additional information EPA would collect by requiring asbestos processors to report under the CDR rule. Therefore, EPA finds that the petitioners have failed to set forth sufficient facts to establish that it is necessary to issue the requested amendment to require processors of asbestos to report under the CDR rule.

vii. Lift CBI claims for all reports to CDR for asbestos.

a. Petitioners' request. In addition to the requests made under TSCA section 8, the petitioners requested that EPA use its authority under TSCA sections 14(d)(3) and 14(d)(7) to lift CBI claims on asbestos information reported under the CDR rule.

TSCA section 14(d)(3) states that CBI ''shall be disclosed if the Administrator determines that disclosure is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use'' (15 U.S.C. 2613(d)(3)). The petitioners requested that EPA use its authority under TSCA section 14(d)(3) to lift CBI claims on information reported under the CDR rule, ''given the significant risk of harm that asbestos presents at any level of exposure, knowledge of how, where and in what quantities asbestos and asbestos-containing products are being imported and used is clearly necessary to protect against unreasonable risks and EPA would have an ample basis to make a determination to that effect'' (Ref. 1).

TSCA section 14(d)(7) states that CBI ''may be disclosed if the Administrator determines that disclosure is relevant in a proceeding under this Act, subject to the condition that the disclosure is made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding'' (15 U.S.C. 2613(d)(7)). For EPA's authority under TSCA section 14(d)(7), the

petitioners posited that ''the ongoing asbestos risk evaluation is such a 'proceeding' and information on asbestos importation and use is clearly 'relevant' because it has a direct bearing on EPA's determinations of exposure and risk and the ability of the public to comment on these elements of the risk evaluation'' (Ref. 1).

b. Agency response. Petitioners' request is not appropriate for a TSCA section 21 petition. Under TSCA section 21 (15 U.S.C. 2620(a)), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or an order under TSCA sections 4 or 5(e) or (f). Under this express statutory language, therefore, a TSCA section 21 petition is not a vehicle to petition EPA to initiate an action under TSCA section 14.

Moreover, even if petitioners could use the TSCA section 21 mechanism to request an action under TSCA section 14, the petitioners have not made a sufficient case for lifting CBI protections as described by either TSCA section 14(d)(3) or section 14(d)(7). TSCA section 14(d)(3) states that CBI ''shall be disclosed if the Administrator determines that disclosure is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment. . . .'' The asbestos risk evaluation is ongoing for the uses reported under the CDR rule, and EPA has yet to determine if these uses pose an unreasonable risk. In the absence of an unreasonable risk finding for a condition of use, EPA cannot make a determination whether disclosure is necessary under TSCA section 14(d)(3). TSCA section 14(d)(7) states that CBI ''may be disclosed if the Administrator determines that disclosure is relevant in a proceeding under this Act, subject to the condition that the disclosure is made in such a manner as to preserve confidentiality to the extent practicable without impairing the proceeding.'' However, EPA believes that disclosure of CBI would have no practical relevance to the risk evaluation or risk determination as the CBI claims are limited and EPA retains the ability to characterize the information without revealing the actual protected data. Accordingly, EPA denies this request.

V. References

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

1. Asbestos Disease Awareness Organization, American Public Health Association, Center for Environmental Health, Environmental Working Group, Environmental Health Strategy Center, and Safer Chemicals Healthy Families to Andrew Wheeler, Acting Administrator, Environmental Protection Agency. Re: Petition under TSCA Section 21 to Require Reporting on Asbestos Manufacture, Importation and Use under TSCA Section 8(a). Received September 27, 2018.
2. Bob Sussman email to Jeff Morris, Director of EPA's Office of Pollution Prevention and Toxics. RE: TSCA Section 21 Petition. Received November 29, 2018.
3. EPA. Problem Formulation of the Risk Evaluation for Asbestos. May 2018. Washington, DC: US Environmental Protection Agency, Office of Pollution Prevention and Toxics. *https://www.epa.gov/sites/production/files/2018-06/documents/asbestos_problem_formulation_05-31-18.pdf.*
4. EPA. Public database 2016 chemical data reporting (May 2017 release). Washington, DC: US Environmental Protection Agency, Office of Pollution Prevention and Toxics. Retrieved from *https://www.epa.gov/chemical-data-reporting.*
5. Flanagan, DM. (2016). 2015 Minerals yearbook. Asbestos [advance release]. In US Geological Survey 2015 Minerals Yearbook. Reston, VA: U.S. Geological Survey. *https://minerals.usgs.gov/minerals/pubs/commodity/asbestos/myb1-2015-asbes.pdf.*
6. EPA. Response to Petition to Require Reporting on Asbestos Manufacture, Importation and Use under TSCA Section 8(a). Letter. 2018.
7. Virta, Robert. (2012). 2012 Minerals yearbook. Asbestos. In US Geological Survey 2015 Minerals Yearbook. Reston, VA: U.S. Geological Survey. *https://minerals.usgs.gov/minerals/pubs/commodity/asbestos/myb1-2012-asbes.pdf.*
8. EPA. TSCA Chemical Data Reporting. Fact Sheet: Articles. August 3, 2012. *https://www.epa.gov/sites/production/files/documents/articlesfactsheetforcdr_reporting_080312.pdf.*

List of Subjects in 40 CFR Chapter I

Environmental protection, Asbestos, Flame retardants, Chemicals, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 21, 2018.

Nancy B. Beck,

Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 180426419–8419–01]

RIN 0648–BH91

Pacific Halibut Fisheries; Revisions to Catch Sharing Plan and Domestic Management Measures in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed action would apply the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided fishing to all Pacific halibut on board a fishing vessel when Pacific halibut caught and retained by anglers that were guided and by anglers that were not guided are on the same fishing vessel. Currently, sport fishing activities for halibut in International Pacific Halibut Commission Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska) are subject to different regulations, depending on whether those activities are guided or unguided. This proposed action is intended to aid the enforcement and to ensure the proper accounting of halibut taken when sport fishing in Areas 2C and 3A.

DATES: Comments must be received no later than March 14, 2019.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2018–0057, by either of the following methods:

- *Federal eRulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0057,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address),

confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region website at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to NMFS at the above address, and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Kurt Iverson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed in Washington, DC, on March 29, 1979). For the United States, regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

The Halibut Act, at sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating, which is currently the Department of Homeland Security.

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, the limited access program for charter operators in the charter halibut fishery, and the catch sharing plan and domestic management measures in waters in and off Alaska, codified at 50 CFR 300.61, 300.65, 300.66, and 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 5 of the Halibut Act (16 U.S.C. 773c(c)) and section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Management of the Halibut Fishery

Description of the Action Area

This proposed rule would change regulations for the management of the sport halibut fishery in IPHC Regulatory Areas 2C (Southeast Alaska) and 3A (Southcentral Alaska). These regulatory areas are referred to as ''IFQ regulatory areas'' throughout the IFQ Program regulations at 50 CFR part 679 and as ''Commission regulatory areas'' throughout the halibut management regulations at 50 CFR 300.61, 300.65, 300.66, and 300.67. These terms are synonymous with ''IPHC regulatory areas.'' This preamble uses the term ''Area 2C'' and ''Area 3A'' to refer to IPHC Regulatory Areas 2C and 3A, respectively.

Background on the Halibut Fishery

The harvest of halibut in Alaska occurs in three fisheries—the commercial, sport, and subsistence fisheries. The commercial halibut fishery is managed under the IFQ Program. The sport fishery includes guided and unguided anglers. Guided anglers are also referred to as ''charter vessel anglers'' herein; ''charter vessel anglers'' is also defined in § 300.61, and means persons, paying or non-paying, receiving sport fishing guide services for halibut. Throughout this preamble, the term ''charter halibut fishery'' is used to refer to the sport fishery prosecuted by charter operators who hold Charter Halibut Permits and offer sport fishing guide services for halibut. This preamble uses the terms ''guided fishing'' to refer to sport fishing by an angler who receives sport fishing guide services for halibut, and ''guided angler'' to an angler receiving those sport fishing guide services. This preamble uses the terms ''unguided fishing'' to refer to sport fishing by an angler who does not receive sport fishing guide services for halibut sport fishing, and ''unguided angler'' to an angler who does not receive those sport fishing guide services.

This proposed rule would not apply to the subsistence fishery, which provides an opportunity for rural residents and members of an Alaska Native tribe to retain halibut for personal use or customary trade.

The following sections of the preamble summarize charter halibut fishery management. Section 2.7 of the RIR prepared for this proposed action provides additional detail on charter halibut management programs that have been implemented in Areas 2C and 3A.

Charter Halibut Fishery

Sport fishing activities for Pacific halibut in Areas 2C and 3A are subject to different regulations, depending on whether those activities are guided or unguided. Guided sport fishing (charter fishing) for halibut is subject to charter restrictions under Federal regulations that are generally more restrictive than the regulations for unguided anglers. NMFS regulations at § 300.61 describe guided and unguided fishing. Guided fishing occurs if a charter vessel guide receives compensation to provide assistance or to physically direct a person who is sport fishing, and that person takes or attempts to take fish during any part of a charter vessel fishing trip. Unguided fishing occurs when anglers do not fish with the assistance of a guide. In some instances, halibut caught and retained by guided anglers are on the same vessel as halibut caught and retained by unguided anglers. This proposed action is limited to those instances.

Over the years, the Council and NMFS have developed specific management programs for the charter halibut fishery to achieve allocation and conservation objectives. These management programs maintain stability and economic viability in the charter fishery by (1) limiting the number of charter vessel operators, (2) allocating halibut to the charter fishery that vary with abundance, and (3) establishing a process for determining harvest restrictions for charter vessel anglers to keep the charter halibut fishery within its allocations.

The charter halibut fisheries in Areas 2C and 3A are currently managed under

the Charter Halibut Limited Access Program (CHLAP) and the Catch Sharing Plan (CSP). The CHLAP limits the number of operators in the charter halibut fishery, while the CSP establishes annual allocations to the charter and commercial fisheries. The CSP also describes a process for determining annual management measures to limit charter harvest to the allocations in each management area. The CHLAP and the CSP are summarized below.

Description of CHLAP

The CHLAP established Federal charter halibut permits (CHPs) for operators in the charter fisheries in Areas 2C and 3A. Since 2011, all vessel operators in Areas 2C and 3A with charter vessel anglers on board must have an original, valid permit on board during every charter vessel fishing trip on which Pacific halibut are caught and retained. CHPs are endorsed for the appropriate regulatory area and the number of anglers that may catch and retain charter halibut on a trip.

NMFS implemented this program, based on recommendations by the Council, to meet allocation objectives in the charter halibut fishery. This program provides stability in the fishery by limiting the number of charter vessels that may participate in Areas 2C and 3A. Vessel operators had to meet minimum participation requirements to receive an initial issuance of CHPs. Implementation of the CHLAP has resulted in consolidation in the charter halibut fishery as operators who did not meet the qualification criteria exited the fishery. Complete regulations for the CHLAP are published at 50 CFR 300.65, 300.66, and 300.67.

Description of CSP and Limits on Charter Vessel Anglers

The CSP in Areas 2C and 3A was adopted by the Council and implemented by NMFS in January 2014 (78 FR 75844, December 12, 2013). The CSP defines an annual process for allocating halibut between the charter and commercial halibut fisheries in Areas 2C and 3A. It establishes sector allocations that vary proportionally with changing levels of annual halibut abundance and that balance the differing needs of the charter and commercial halibut fisheries over a wide range of halibut abundance in each area. The CSP describes a public process by which the Council develops recommendations to the IPHC for charter harvest restrictions that are intended to maintain harvest within the annual charter halibut fishery catch limit for each area.

The CSP also authorizes limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF). Charter vessel anglers can use GAF to retain halibut up to the limits provided for unguided halibut anglers.

Catch Monitoring and Estimation in the Sport Halibut Fisheries

The Alaska Department of Fish and Game (ADF&G) Saltwater Charter Logbook (hereafter, logbook) is the primary reporting requirement for operators in the charter fisheries for all species harvested in saltwater in Areas 2C and 3A. ADF&G developed the logbook program in 1998 to provide information on participation and harvest by individual vessels and businesses in charter fisheries for halibut and for state-managed species, such as salmon and other bottomfish. Please consult State of Alaska regulations for the logbook requirements. These requirements are currently found at 5 AAC 75.076. Logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual charter vessel anglers. This information is essential to estimate harvest for regulation and management of the charter fisheries in Areas 2C and 3A. ADF&G collects logbook information from charter vessel guides on halibut harvested by charter vessel anglers to accommodate the information requirements for implementing and enforcing Federal charter halibut fishing regulations, such as the current Area 2C one-halibut per day bag limit and the CHLAP.

ADF&G uses the Statewide Harvest Survey (SWHS) to estimate halibut harvests in the unguided sport halibut fishery. The SWHS is a mail survey of households containing at least one licensed angler. Survey respondents are asked to report the numbers of fish caught and kept by all members of the entire household, and the data are expanded to cover all households.

IPHC Annual Management Measures

Each year, through an open public process, the Council reviews and recommends annual management measures for implementation in the charter halibut fishery. Each fall, the Council reviews an analysis of potential charter management measures for the Area 2C and Area 3A charter fisheries for the upcoming fishing year. The Council considers stakeholder input and the most current information regarding the charter halibut fishery and its management. After reviewing the analysis and considering public testimony, the Council identifies the charter halibut management measures to recommend to the IPHC that will most likely constrain charter halibut harvest for each area to its catch limit, while considering impacts on charter operations.

The IPHC considers the Council's recommendations, along with the analysis upon which those recommendations were based, and input from its stakeholders and staff. The IPHC then adopts either the Council's recommendations or alternative charter halibut management measures designed to keep charter harvest in Area 2C and Area 3A to the allocations specified under the CSP. These measures are necessary to limit the combined commercial and charter harvest in Area 2C and 3A within each area's combined catch limit.

Once accepted by the Secretary of State with the concurrence of the Secretary of Commerce, NMFS publishes in the **Federal Register** the charter halibut management measures for each area as part of the IPHC annual management measures. NMFS published the 2018 IPHC annual management measures on March 9, 2018 (83 FR 10390). Subsequently, NMFS revised portions of the annual management measures with an interim final rule on March 20, 2018 (83 FR 12133).

Unguided anglers are currently managed under a two-fish of any size daily bag limit in Alaska. Since 2008, guided anglers in Area 2C have been managed under more restrictive limits than unguided anglers. In Area 3A, guided anglers have been managed under more restrictive limits since 2014. For example, in 2018, guided anglers in Area 2C are limited to a daily bag limit of one fish and size limits that prohibit retention of halibut greater than 38 inches and less than 80 inches. In 2018, guided anglers in Area 3A may retain two halibut per day; however, one fish must be 28 inches or less, and guided anglers are allowed to retain a maximum of four fish in a calendar year. Additionally, guided anglers in Area 3A in 2018 are prohibited from retaining halibut on any Wednesday, and on six Tuesdays from July 10 through August 14. To enforce the halibut size limit restrictions in Areas 2C and 3A, if the fish are filleted on board the charter vessel, guided anglers are required to retain the carcasses of fish until the vessel offloads at the end of the fishing trip.

The maximum number of halibut an angler may possess at any one time in Areas 2C and 3A is two daily bag limits.

Those possession limits correspond to the respective daily bag limits for guided or unguided anglers. For example, the 2018 daily bag limit for unguided anglers in Area 2C is two halibut, so the possession limit for unguided anglers is four halibut; however, for guided anglers in Area 2C in 2018, the daily bag limit is one halibut (within the size limit), so the possession limit for that sector is two halibut (within the size limit).

Mixing of Guided and Unguided Halibut

Some sport fishing businesses offer anglers the option to fish either guided or unguided. A charter vessel fishing trip is defined in § 300.61 and is the period of time between the first deployment of fishing gear by a charter vessel angler, to the point when one or more charter vessel anglers or any halibut from the vessel are offloaded. Typically, if there is a mix of guided and unguided fishing, it occurs on larger charter vessels that transport clients on trips that span more than one day. The unguided portion of the fishing trip most commonly occurs on small vessels deployed away from the main vessel. Unguided fishing can also occur on the main vessel itself. In either case, anglers who do not receive sport fishing guide services are unguided anglers.

Sport fishing guide services are defined in NMFS regulations, and were recently clarified in a final rule published June 19, 2015 (80 FR 35195). The definition of sport fishing guide services in § 300.61 means assisting a sport fisherman by accompanying or physically directing the sport fisherman's fishing activities, and being compensated for doing so. ''Compensation,'' as defined in § 300.61, is purposely broad and includes direct or indirect payment, remuneration, or other benefits received in return for services, regardless of the source.

Sport fishing businesses that have multi-day trips typically offer a suite of activities to their clients that includes marine fishing for halibut, salmon, and various species of groundfish; freshwater fishing for salmon, char, and trout; personal use shellfish harvesting; sightseeing; bird and wildlife viewing; photography; and small boat and kayak excursions. This diversity of services allows businesses the flexibility to respond to different social, environmental, and regulatory conditions and to broaden their appeal to potential clients. Some unguided sport fishing may be a reaction to the more restrictive regulations imposed on guided halibut anglers. For example, in Area 3A, unguided fishing provides an opportunity for persons to keep halibut on days when catching and retaining halibut by guided anglers is closed. Public testimony to the Council suggests that pricing, convenience, and the personal preferences of the clients can also be reasons for sport fishing businesses to offer unguided fishing.

Section 2.7.5 of the RIR indicates there is a lack of systematic information or data sources that can precisely identify which sport fishing businesses offer unguided fishing, or the number of fishing trips where there is a mix of guided and unguided fishing. In an attempt to establish an upper-bound estimate of the current number of businesses potentially affected by this action, Section 2.7.5 of the RIR cites an informal survey performed by the NOAA Office of Law Enforcement (OLE). OLE determined there are approximately 30 fishing vessel businesses currently operating in Area 2C and 14 similar businesses in Area 3A that offer multi-day fishing trips for their clients. However, among these businesses, the specific number of vessels where halibut are comingled from both guided and unguided fishing is unknown. Note that businesses that offer exclusively guided fishing or exclusively unguided fishing would not be affected by this proposed action.

Although the intention of this proposed action is specific to fishing vessels that simultaneously have halibut caught and retained by guided and unguided anglers, the Council recognizes that some shoreside sport fishing businesses or stationary floating facilities also offer saltwater fishing. In some cases, unguided anglers leave the facility in boats provided by the operator to fish for salmon, halibut, or other species without receiving sport fishing guide services. Other operations offer a mix of both guided and unguided fishing, which allows anglers to alternate between fishing with and without a charter vessel guide. The Council received public comments that indicated mixed guided and unguided fishing occurs when anglers based out of shoreside businesses or stationary floating facilities spend part of their time with a guide and part of their time unguided. Typically, at the end of the day, the anglers return to the facility to offload their catch. The fundamental difference between shoreside or stationary floating facilities and the businesses that are the subject of this proposed rule is that in most cases, at shoreside or stationary floating facilities, an angler's catch is offloaded and is no longer on a fishing vessel as defined by the Halibut Act. The Council determined that these proposed regulations should apply to fishing vessels on Convention waters.

Need for Action

This proposed rule would address a concern initially raised at the Council's Enforcement Committee meeting in June 2016. When halibut are caught and retained by both guided and unguided anglers and those halibut are on the same fishing vessel, it presents enforcement challenges due to the different regulations for guided versus unguided anglers. The greatest challenge is for accountability under the bag and possession limits and halibut size restrictions. Under the current regulations, when halibut are caught and retained by guided and unguided anglers and those halibut are on the same fishing vessel, enforcement officers have no positive means to verify which angler harvested a particular fish, or whether that angler harvested the fish while fishing unguided or while being guided. It is important to note these enforcement challenges occur when the halibut from guided and unguided anglers is on board a fishing vessel on Convention waters. Therefore, this proposed rule would not apply to Pacific halibut that is not on a fishing vessel. Section 2.3 of the RIR provides additional information on the history of this proposed action.

This Proposed Rule

To address the purpose and need for this action, the Council and NMFS considered three alternatives, which are described in Sections 2.4 and 2.8 of the RIR. Under the preferred alternative (Alternative 3), anglers would have the option to fish guided or to fish unguided. However, if Pacific halibut caught and retained by one or more unguided anglers is on board a fishing vessel in the Convention waters with Pacific halibut caught and retained by one or more guided anglers, then all Pacific halibut on board and the anglers that caught and retained that Pacific halibut would be subject to the daily bag limits, possession limits, size limits, and carcass retention requirements for guided anglers for that IPHC area. For example, if halibut caught and retained by an unguided angler is on board a fishing vessel with halibut caught and retained by a guided angler in Area 2C, then all halibut on board would be subject to the guided angler daily bag limit and possession limit for Area 2C. To enforce size limits, if applicable, the fish must be retained whole, or if the halibut are filleted on the vessel, the carcasses must be retained in one piece and a patch of skin must be left on each fillet until the fish are offloaded.

Similarly, in Area 3A, if halibut caught and retained from guided and unguided anglers are on the same vessel at the same time, then all halibut on board would be subject to the Area 3A guided angler daily limit and possession limit. As in 2C, if any halibut are filleted before the end of the fishing trip, a patch of skin must be left on each fillet and the carcasses of a size-restricted halibut must be retained on board the vessel until the fish are offloaded.

The Council and NMFS considered an alternative (Alternative 2), that would prohibit the possession of halibut caught and retained by a guided angler and by an unguided angler on the same fishing vessel simultaneously. This alternative would likely maximize regulatory compliance. However, the Council also expressed concern that an outright prohibition on having Pacific halibut caught and retained by a guided angler and Pacific halibut caught and retained by an unguided angler on the same fishing vessel could be overly restrictive, especially to sport fishing businesses that currently offer guided and unguided fishing options for anglers.

Under this proposed rule, sport fishing businesses that currently offer a mix of guided and unguided fishing opportunities could continue to do so, but unguided anglers would be subject to the daily bag limits, possession limits, size limits, and carcass retention requirements for guided anglers for that IPHC regulatory area if halibut caught and retained by the unguided angler is onboard a fishing vessel with halibut caught and retained by a guided angler. This proposed rule would provide uniform halibut retention regulations, provide clearer regulatory standards for the public, reduce the amount of time needed by enforcement officers when boarding fishing vessels, and improve overall compliance with daily bag limits, possession limits, size limits, and carcass retention requirements.

Other regulations for guided and unguided anglers would remain unchanged under this proposed rule. This proposed rule would not require halibut harvested by an unguided angler to be accounted for in charter logbooks. This proposed rule would not apply halibut harvested by an unguided angler to the charter halibut allocation in the CSP. Section 2.8.3 of the RIR provides additional information on reporting harvests in logbooks.

This proposed rule would not impose day-of-the-week closures on unguided anglers, but guided anglers would continue to fish under those restrictions. The Council and NMFS recognize that uniform day-of-the-week closures for all anglers who comingle halibut from guided and unguided fishing on a vessel could potentially enhance the enforcement of their preferred alternative; however, this proposed rule balances the enforcement objective with rules that could present an unnecessary burden on businesses offering guided and unguided fishing opportunities.

Under this proposed rule, halibut harvested by unguided anglers would not be included in the annual harvest limit assigned to persons when they fish with a guide. Currently, guided anglers in Area 3A can harvest no more than four fish per year, and are required to record each retained fish on the back of their Alaska sport fishing license or on an ADF&G Sport Fishing Harvest Record Card. This proposed rule would not require maintaining harvest records of halibut harvested while anglers are unguided. Section 2.8.3 of the RIR discusses annual harvest limits and recordkeeping in additional detail.

This proposed action would apply to fishing vessels, as they are defined in the Halibut Act. The term ''fishing vessel' in the Halibut Act means: ''(1) any vessel engaged in catching fish in Convention waters or in processing or transporting fish loaded in Convention waters; (2) any vessel outfitted to engage in any activity described in paragraph (1); or (3) any vessel in normal support of any vessel described in paragraph (1) or (2).'' 16 U.S.C. 773(f).

In general, § 300.65(d)(3) restricts a charter vessel guide, charter vessel operator, or crew member from catching and retaining halibut on charter vessel fishing trips in Areas 2C and 3A. However, that regulation does not prohibit crew members and other charter vessel support persons from participating as unguided anglers and retaining halibut if there are no sport fishing guide services being rendered. For example, on a multi-day charter vessel trip, crew members may use their free time to fish unguided. Under this proposed rule, if that halibut is on board a fishing vessel with halibut caught and retained by a guided angler, then the daily bag limit, the possession limit, size restrictions, and carcass retention requirements for guided anglers for that IPHC Area applies to all halibut on board that fishing vessel and applies to all anglers that caught and retained halibut on board that fishing vessel.

This proposed rule would not modify regulations related to the management of GAF. Regulations for GAF are principally found in § 300.65(c)(5). The regulations allow transfers of commercial halibut IFQ to a charter operator, where the IFQ is translated to fish that individual anglers can use to increase their harvests up to the limits of unguided anglers, which is currently two fish of any size per day, with no annual limit. Under this proposed rule, guided anglers will be able to continue to use GAF on charter vessel fishing trips. Regulations applicable to GAF permitting, transfer, use, and reporting requirements in § 300.65 would still apply.

Proposed Revisions to the CSP Regulations in § 300.65

This proposed rule would add a new paragraph at § 300.65(d)(6). The new paragraph at § 300.65(d)(6) would require that all Pacific halibut on board a fishing vessel be subject to the daily bag limit, the possession limit, size restrictions, and carcass retention requirements for guided anglers for that IPHC Area if any halibut caught and retained by a guided angler is on board that vessel. This paragraph applies to Pacific halibut caught and retained by guided and unguided anglers when those halibut are on the same fishing vessel. If sport fishing guide services are performed at any point during a charter fishing trip, then all anglers on board, for the full extent of the fishing trip, would be subject to the daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided charter vessel anglers, as specified for the applicable IPHC regulatory area, and determined by the annual management measures recommended by the IPHC and NMFS and published by NMFS in the **Federal Register**.

Attention to both the IPHC and NMFS regulations is critical because there may be differences between the IPHC management measures and NMFS regulations. For example, in 2018, the IPHC adopted management measures for halibut size restrictions in Area 2C that were initially accepted by the Secretary of State and published by NMFS (83 FR 10390, March 9, 2018), but those regulations were eventually superseded by a subsequent action implemented by NMFS in an interim final rule (83 FR 12133, March 20, 2018).

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the regional fishery management council having authority for a particular geographical area to develop regulations governing fishing for halibut in U.S. Convention waters as long as those

regulations do not conflict with IPHC regulations. The Halibut Act at 16 U.S.C. 773c(a) and (b) provides the Secretary of Commerce with the general responsibility to carry out the Convention with the authority to, in consultation with the Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. This proposed rule is consistent with the Halibut Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

Regulatory Impact Review

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended this proposed action based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis (IRFA)

This IRFA was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate (1) sport fishing businesses that currently offer, or would offer, both guided and unguided halibut fishing opportunities, and the sport fishing guides that work for those businesses; and (2) unguided anglers whose halibut are on board vessels where halibut caught and retained by guided anglers are on board at the same time.

NMFS does not collect information on the number of entities that offer mixed guided and unguided halibut fishing, and there appears to be no systematic means to determine an accurate number of those entities. An informal survey by enforcement officers, combined with testimony and comments from the public, indicates the practice of mixing guided and unguided fishing primarily occurs on larger charter vessels that provide multi-day fishing trips. Section 2.7.5 in the RIR provides the best available estimate based on informal surveys by NOAA Office of Law Enforcement. Approximately 30 fishing vessel businesses in Area 2C and 14 similar businesses in Area 3A currently offer multi-day fishing trips for their clients. This should be considered an upper-bound estimate of the number of businesses directly affected by this action at this time because the number of those operations that offer mixed guided and unguided fishing is unknown. Public comment also indicates that on relatively rare occasions, anglers will mix guided and unguided fishing when they are based out of a shoreside lodge or facility that provides rental boats.

In these cases, as with multi-day charter vessels, comingling of retained halibut from guided and unguided fishing on the same vessel presents enforcement and accountability issues when those vessels are boarded by enforcement officers on Convention waters.

For RFA purposes only, the Small Business Administration has established a small business size standard for businesses, including their affiliates, whose primary industry is scenic and sightseeing transportation on water, or all other amusement and recreation (NAICS codes 487210, and 713990, respectively). A business primarily engaged in these activities is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $7.5 million for all its affiliated operations worldwide.

It is unlikely that the largest of the affected charter vessel operations would be considered large entities under Small Business Administration (SBA) standards; however, that cannot be confirmed because NMFS does not have or collect economic data on lodges or charter vessels necessary to definitively determine total annual receipts. Thus, all charter vessel operations are considered small entities, based on SBA criteria, because NMFS cannot confirm if any entities have annual gross revenues greater than $7.5 million.

Community quota entities may apply for and receive community CHPs and some of those charter operations could potentially offer mixed guided and unguided halibut fishing; therefore, this proposed rule may directly regulate entities representing small, remote communities in Areas 2C and 3A. There are 20 communities in Area 2C and 14 in Area 3A eligible to receive community CHPs. Of these 34 communities, 20 hold community CHPs. Again, the number of these CHP holders who offer, or would offer, mixed guided and unguided fishing is unknown; however, this proposed action is not expected to adversely impact communities that hold CHPs.

This proposed rule would apply more restrictive halibut bag and possession limits on clients that take multi-day charters with mixed guided and unguided halibut fishing activity. These individuals are not considered directly regulated small entities under the RFA. However, the proposed action will also apply these more restrictive catch and possession limits on vessel crew and guides who choose to fish for halibut in any time off they may have during a guided trip. It is possible that these crew and guides may operate as subcontractors to the primary vessel and, as such, may be defined as small entities. However, the applicability of the more restrictive limits to any of these potential small entities is as an indirect consequence of their being aboard the vessel on a mixed guided and unguided trip. Thus, they are not considered to be directly regulated small entities for RFA purposes.

Based on this analysis, NMFS preliminarily determines that there are a substantial number of directly regulated small entities affected by this action. However, no small entities would be subject to significant adverse effects by this proposed rule. Due to the assumptions necessary to come to this conclusion and the lack of information available to conduct this analysis, NMFS has prepared this IRFA in order to provide potentially affected entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying that this action will not have a significant economic impact on a substantial number of small

entities prior to publication of the final rule.

Recordkeeping, Reporting, and Other Compliance Requirements

Under this proposed rule, the current recording and reporting requirements for guided and unguided halibut anglers will not change. Therefore, on charter vessels where mixed guided and unguided fishing occurs, aligning the bag limits, possession limits, size limits, and carcass retention requirements so they are the same for both guided and unguided anglers will not change recordkeeping and reporting costs for fishery participants or impose any additional or new costs on participants.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The Council recognizes, and NMFS agrees that unguided fishing by charter operations is largely used as an option to attract clients who have diverse desires and needs. Charter vessels, especially those that offer multi-day trips, offer a broad range of services. In addition to transportation, food, and lodging on the boat, a typical trip might include marine fishing for salmon, halibut, and various species of groundfish, freshwater fishing for trout, salmon, and char, wildlife and bird viewing, small boat and shore excursions, photography, and personal-use shellfish fishing. The flexibility for competent anglers to fish unguided is attractive to some clients; unguided fishing often includes reduced fees relative to guided fishing, and for halibut anglers, unguided fishing offers less restrictive bag and size limits and no day of the week closures.

Alternative 1, the status quo, would continue to maintain different daily bag limits, possession limits, size restrictions, and carcass retention requirements for guided anglers and unguided anglers even if halibut caught and retained by both guided and unguided anglers are on the same fishing vessel simultaneously. The benefit of status quo is the flexibility and business advantages for operators seeking to accommodate the desires of a broad range of clients, and their anglers can choose guided fishing, unguided fishing, or alternating between guided and unguided fishing at different times.

The concerns about status quo are expressed in the Council's purpose and need statement and in the discussion of alternatives in Section 2.8 of the RIR. In Areas 2C or 3A, guided anglers are frequently subject to greater harvest restrictions than unguided anglers. When halibut from guided and unguided fishing are commingled on a vessel in these management areas, it is difficult for enforcement officers to determine whether the halibut were caught by guided or unguided anglers. When vessels are boarded by enforcement officers, establishing each person's catch and whether that person was guided or unguided can become a lengthy and complicated process for both officers and charter operators.

Alternative 2 would prevent the commingling of halibut catches from guided and unguided anglers on fishing vessels by prohibiting the possession of halibut retained by guided anglers with halibut retained by unguided anglers on the same fishing vessel simultaneously. The primary advantage of this alternative is that it would maximize compliance of the regulations and likely reduce the duration of at-sea boardings by enforcement officers.

The RIR describes the disadvantages of Alternative 2, which is primarily the reduced flexibility and potential lost revenue for multi-day fishing vessels that currently provide, or would seek to provide, the option of mixed guided and unguided fishing. If charter operations wanted to switch from guided to unguided fishing, the vessels would need to assume the time and cost of returning to port, offloading the fish, and then beginning a new trip to prevent comingling of halibut.

Alternative 3, the preferred alternative, is intended to balance the enforcement concerns that result from commingling of halibut from guided and unguided fishing with an allowance for charter operations to maintain the flexibility of offering a mix of guided and unguided fishing, as they do now. Moreover, Alternative 3 allows other operations to assume the practice of offering both guided and unguided fishing in the future. The Council's enforcement concerns are addressed by establishing uniform bag limits, possession limits, size restrictions, and carcass retention requirements for all halibut retained by anglers on a fishing vessel, irrespective of whether the angler was guided or unguided. These harvest restrictions would align with the rules specified for guided anglers in the respective regulatory areas, as determined by annual IPHC and NMFS management measures and specified in NMFS regulations in 50 CFR part 300, subparts A and E.

Under Alternative 3, some of the requirements for guided anglers would not be imposed on unguided anglers, largely because the proposed alignment of bag and possession limits, size restrictions, and carcass retention requirements effectively serve to mitigate the compliance risks associated with the commingling of halibut on a fishing vessel that were caught and retained by both guided and unguided anglers. For example, halibut caught by unguided anglers would not be entered into the charter operator's logbook and would not be recorded on the ADF&G charter harvest database. Section 2.3.3 of the RIR indicates that revising logbooks and logbook databases to accommodate entries of halibut caught and retained by unguided anglers would not only add an unnecessary burden, it would add difficult complications and significant cost to the managing agencies. This proposed rule would not require unguided anglers to individually record their daily catch and accrue it toward guided angler annual limits, which is currently a maximum of four fish in Area 3A. Additionally, day of the week closures for guided anglers, which is a restriction to catching and retaining Pacific halibut on specific days and is currently used in Area 3A, would not apply to unguided anglers.

The RIR examines the potential negative effects of this proposed action, which largely relate to reduced harvest limits for unguided anglers who have their halibut on the same fishing vessel as guided anglers. One of the advantages of fishing unguided is that anglers are allowed to keep two fish of any size per day and keep a possession limit of four fish. Relative to the status quo, it is possible that this proposed action, which would reduce the number and size of halibut that can be retained by unguided anglers in some situations, could also reduce the incentive to purchase charter halibut trips.

As noted above, the entities directly regulated under this proposed action are assumed to be small, by the SBA definition, and substantial in number. Overall, this action is likely to have a limited effect on net benefits to the Nation. The majority of Area 2C and 3A halibut charter operations, which includes business owners, guides and crew members, would not be subject to significant negative economic impacts

by this proposed rule. Thus, NMFS is not aware of any alternatives, in addition to the alternatives considered, that would more effectively meet the RFA criteria with the objectives of the Halibut Act and other applicable statutes at a lower economic cost to directly regulated small entities.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0575 (Alaska Pacific Halibut Fisheries: Charter Recordkeeping). Public reporting burden per response is estimated to average 4 minutes for the ADF&G Saltwater Sport Fishing Charter Trip Logbook, 5 minutes for the GAF Landing Report, and 2 minutes for the GAF Permit Log. The response time includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The ADF&G Saltwater Sport Fishing Charter Trip Logbook, GAF Electronic Landing Report, and GAF Permit Log are mentioned in this proposed rule. These requirements apply only to the harvest accounting of charter vessel anglers by charter vessel guides. Under this proposed rule, the harvests of unguided charter vessel anglers would not be subject to these requirements; therefore, this rulemaking imposes no additional burden or cost on the regulated community.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: February 6, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 300 as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. Amend § 300.65 by adding paragraph (d)(6) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(d) * * *

(6) If a charter vessel angler catches and retains halibut, and that halibut is on board a fishing vessel with halibut caught and retained by persons who are not charter vessel anglers, then the daily bag limit, possession limit, size limit, and carcass retention regulations applicable to charter vessel anglers shall apply to all halibut on board the fishing vessel.

* * * * *

[FR Doc. 2019–01912 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 29

Tuesday, February 12, 2019

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

Rural Housing Service

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Housing Service (RHS) invites comments on this information collection for the Housing Preservation Grant (HPG) Program, which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this Notice must be received by April 15, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

For program inquires, contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, U.S. Department of Agriculture Rural Development, STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250–0782, telephone (202) 690–0759 (voice) (this is not a toll-free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via email at, *bonnie.edwards@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for revision.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms and information technology.

Comments may be sent to: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, Room 5164, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email *Thomas.dickson@usda.gov.*

Title: 7 CFR part 1944–N Housing Preservation Grants.

OMB Control Number: 0575–0115.

Type of Request: Extension of a currently approved collection.

Abstract: The primary purpose of the HPG Program is to repair or rehabilitate individual housing, rental properties, or co-ops owned or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental prope1iies and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation of dwellings to bring them up to code or minimum property standards. Where repair and rehabilitation assistance are not economically feasible or practical the replacement of existing, individual owner-occupied housing is available.

These grants were established by Public Law 98–181, the Housing Urban-Rural Recovery Act of 1983, which amended the Housing Act of 1979 (Pub. L. 93–383) by adding section 533, 42 U.S.C. S 2490(m), Housing Preservation Grants. In addition, the Secretary of Agriculture has authority to prescribe rules and regulations to implement the HPG and other programs under 42 U.S.C. S 1480(G). Section 533(d) is prescriptive about the information applicants are to submit to RHS as part of their application and in the assessments and criteria RHS is to use in selecting grantees. An applicant is to submit a ''statement of activity'' describing its proposed program, including the specific activities it will undertake, and its schedule. RHS is required in turn to evaluate proposals on a set of prescribed criteria, for which the applicant will also have to provide information, such as: (1) Very low- and low-income persons proposed to be served by the repair and rehabilitation activities; (2) participation by other public and private organizations to leverage funds and lower the cost to the HPG program; (3) the areas to be served in terms of population and need: (4) cost data to assure greatest degree of assistance at lowest cost; (5) administrative capacity of the applicant to carry out the program. The information collected will be the minimum required by law and by necessity for RHS to assure that it funds responsible grantees proposing feasible projects in areas of greatest need. Most data are taken from a localized area, although some are derived from census reports of city, county and Federal governments showing population and housing characteristics.

Estimated Total Annual Burden on Respondents: 8,262 hours.

Estimated Number of Respondents: 1,093.

Estimated Number of Responses per Respondent: 7.55.

Copies of this information collection can be obtained from MaryPat Daskal, Rural Development Innovation Center—Regulations Team. Telephone: (202) 720–7853. Email: *MaryPatDaskal@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joel C. Baxley,

Administrator, Rural Housing Service.

[FR Doc. 2019–02047 Filed 2–11–19; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Extension of Public Comment Period for Draft Environmental Impact Statement for Cardinal-Hickory Creek 345-kv Transmission Line Project

AGENCY: Rural Utilities Service, USDA.

ACTION: Extension of Public Comment Period for Draft Environmental Impact Statement for Cardinal-Hickory Creek 345-kv Transmission Line Project.

SUMMARY: A notice of availability, public meetings, and Section 106 notification was published in the **Federal Register** by the Rural Utilities Service (RUS) on December 7, 2018 (83 FR 63149) for the Cardinal-Hickory Creek 345-kV Transmission Line Project Draft Environmental Impact Statement (EIS). Meetings were scheduled for January 2019 and the public review period was to conclude on February 5, 2019. Due to the lapse in federal funding, this notice announces an extension of the public comment period to April 1, 2019. Additionally, previously scheduled Draft EIS public comment meetings in January 2019 were also cancelled and will be rescheduled, once RUS receives full funding for FY 2019.

DATES: Written comments on this Draft EIS will be accepted until April 1, 2019. RUS will reschedule the Draft EIS public comment meetings for later in 2019 and publish another Notice.

ADDRESSES: A copy of the Draft EIS may be viewed online at the following website: *https://www.rd.usda.gov/publications/environmental-studies/impact-statements/cardinal-%E2%80%93-hickory-creek-transmission-line* and Dairyland Power Cooperative, 3521 East Avenue, South, La Crosse, WI 54602 and at local libraries in the project area.

FOR FURTHER INFORMATION CONTACT: To obtain copies of the Draft EIS, to request further participation or request consulting party status under section 106 of the NHPA or for further information, contact: Lauren Cusick (202) 720–1414) or Dennis Rankin (202–720–1953), Environmental Protection Specialist, USDA, Rural Utilities Service, 1400 Independence Avenue SW, Room 2244, Stop 1571, Washington, DC 20250–1571, or email *Lauren.Cusick@usda.gov* or *Dennis.Rankin@usda.gov.*

SUPPLEMENTARY INFORMATION: Rural Utilities Service (RUS) has prepared a Draft Environmental Impact Statement (EIS) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR 1794 related to providing financial assistance to Dairyland Power Cooperative (DPC) for its share in the construction of a proposed 345-kilovolt (kV) transmission line and associated infrastructure connecting the Hickory Creek Substation in Dubuque County, Iowa, with the Cardinal Substation in the Town of Middle, Wisconsin (near Madison, Wisconsin). The Project also includes a new intermediate 345/138-kV substation near the Village of Montfort in either Grant County or Iowa County, Wisconsin. The total length of the 345-kV transmission lines associated with the proposed project will be approximately 125 miles. DPC and the other project participants have identified proposed and alternate segments and locations for transmission lines and associated facilities and for the intermediate substation. Dairyland Power Cooperative is requesting RUS to provide financing for its portion of the proposed project. DPC is participating in the proposed project with two other utilities, American Transmission Company LLC, and ITC Midwest LLC (Utilities).

The purpose of the proposed project is to: (1) Address reliability issues on the regional bulk transmission system, (2) alleviate congestion that occurs in certain parts of the transmission system and remove constraints that limit the delivery of power, (3) expand the access of the transmission system to additional resources, (4) increase the transfer capability of the electrical system between Iowa and Wisconsin, (5) reduce the losses in transferring power and increase the efficiency of the transmission system, and (6) respond to public policy objectives aimed at enhancing the nation's transmission system and to support the changing generation mix.

RUS is the lead agency for the federal environmental review with U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (USEPA) serving as cooperating agencies, and the National Park Service (NPS) as a participating agency.

Dated: February 5, 2019.

Christopher A. McLean,

Assistant Administrator, Electric Programs Rural Utilities Service.

[FR Doc. 2019–01930 Filed 2–11–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting on Friday March 1, 2019 at 2:00 p.m. Central time. The Committee will discuss next steps in their study of civil rights and criminal justice in the state.

DATES: The meeting will take place on Friday March 1, 2019 at 2:00 p.m. Central.

Public Call Information: Dial: 855–719–5012, Conference ID: 5900516.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. These meetings are available to the public through the above call in numbers. 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 1–800–877–8339 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 Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the

Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Arkansas: Mass Incarceration
Future Plans and Actions
Public Comment
Adjournment

Dated: February 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–02088 Filed 2–11–19; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee Public Meeting

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The CSAC will meet in a virtual plenary session on Thursday, February 28, 2019. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees website for the most current meeting agenda at: *http://www.census.gov/cac/.* Topics of discussion will include the following items:

- 2020 Census Program Update
- 2018 End-to-End Test Update
- Cybersecurity Update
- Disclosure Avoidance for Block Level Data and Protection of Confidentiality
- Census Use of Disaster Data
- Administrative Records Update
- Measuring Technology Use by U.S. Businesses
- 2017 Economic Census Update

DATES: On Thursday, February 28, the meeting will begin at 2:00 p.m. and end at approximately 4:00 p.m.

ADDRESSES: The meeting will be held via WebEx at the following URL link: *https://census.webex.com/census/j.php?MTID=me3a67c575a5f8e3062be53dd96e8e311.* For audio please call the following phone number: 1–800–988–9407. When prompted, please use the following Participant Code: 2829145.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Chief, Advisory Committees Branch, Office of Program, Performance and Stakeholder Integrations, *census.scientific.advisory.committee@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the CSAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside during the virtual meeting for public comment on February 28. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''February 2019 CSAC Meeting Public Comment''), or by letter submission to Tara Dunlop Jackson, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233.

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Dated: February 5, 2019.

Steven D. Dillingham,

Director, Bureau of the Census.

[FR Doc. 2019–01988 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–844]

Certain Lined Paper Products From India: Rescission of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the countervailing duty (CVD) order on certain lined paper products from India for the period of review (POR) January 1, 2017, through December 31, 2017.

DATES: February 12, 2019.

FOR FURTHER INFORMATION CONTACT: John Conniff, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2018, Commerce published a notice of opportunity to request an administrative review of the CVD order on certain lined paper products from India for the POR.[1] On October 1, 2018, Goldenpalm Manufacturers PVT Limited (Goldenpalm) filed a timely request for an administrative review of itself.[2] On that same day, the Association of American School Paper Suppliers (the petitioner), filed a timely request for an administrative review of Goldenpalm.[3] No other interested party submitted a request for review.

On October 18, 2018, the petitioner timely withdrew its request for review.[4] On November 15, 2018, Commerce published in the **Federal Register** a notice of initiation of the administrative review with respect to Goldenpalm.[5]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 45888 (September 11, 2018).

[2] *See* Letter from Goldenpalm, ''Lined Paper Products from India; C–533–844; Request for Review by Goldenpalm Manufacturers PVT Limited,'' dated October 1, 2018.

[3] *See* Letter from the petitioner, ''Certain Lined Paper Products from India: Request for Administrative Review,'' dated October 1, 2018.

[4] *See* Letter from the petitioner, ''Certain Lined Paper Products from India: Withdrawal of Request for Administrative Review,'' dated October 18, 2018.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411, 57418 (November 15, 2018) (*Initiation*).

Subsequently, on December 20, 2018, Goldenpalm timely withdrew its request for an administrative review.[6]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Goldenpalm and the petitioner, each timely submitted a withdrawal request within the 90-day period, and no other party requested an administrative review of this order. Therefore, we are rescinding, in its entirety, the administrative review of the CVD order on certain lined paper products from India covering the period January 1, 2017, through December 31, 2017, in accordance with 19 CFR 351.213(d)(1).

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries of certain lined paper products from India during January 1, 2017, through December 31, 2017. Countervailing duties shall be assessed at rates equal to the cash deposit rate for estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

[6] *See* Letter from Goldenpalm, ''Lined Paper Products from India; C–533–844; Withdrawal of Review Request,'' dated December 20, 2018.

Dated: February 6, 2019.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–02014 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG764

Pacific Fishery Management Council; Public Meeting; Cancellation

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The Pacific Fishery Management Council was to hold a methodology review meeting to evaluate and review fishery independent visual survey methodologies, using remotely operate vehicles, for nearshore groundfish species off the states of Oregon and California. The meeting has been cancelled.

DATES: The Pacific Council methodology review meeting was to be held Tuesday, February 12 through Thursday, February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2413.

SUPPLEMENTARY INFORMATION: The meeting notice published in the **Federal Register** on February 6, 2018 (84 FR 2171). The meeting will be held at a later date and published in the **Federal Register**.

Dated: February 6, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–01924 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG785

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings of the South Atlantic Fishery Management Council.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of the following: Information and Education Committee; Snapper Grouper Committee; Dolphin Wahoo Committee; Habitat Protection and Ecosystem-Based Management Committee; Mackerel Cobia Committee; Executive Finance Committee; Advisory Panel (AP) Selection Committee (Closed Session); Southeast Data, Assessment, and Review (SEDAR) Committee; Standard Operating, Policy, and Procedure (SOPPs) Committee (Partially Closed Session), and a Committee of the Whole. The Council meeting week will include a formal public comment period, and a meeting of the full Council.

DATES: The Council meeting will be held from 8:30 a.m. on Monday, March 4, 2019 until 12:30 p.m. on Friday, March 8, 2019.

ADDRESSES:

Meeting address: The meeting will be held at the Westin Jekyll Island, 110 Ocean Way, Jekyll Island, GA 31527; phone: (912) 635–4545; fax: (912) 319–2835.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8440 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.* Meeting information is available from the Council's website at: *http://safmc.net/safmc-meetings/council-meetings/.*

SUPPLEMENTARY INFORMATION:

Public comment: Written comments may be directed to Gregg Waugh, Executive Director, South Atlantic Fishery Management Council (see *Council address*) or electronically via the Council's website at *http://safmc.net/safmc-meetings/council-meetings/.* Comments received by close of business the Monday before the meeting (2/25/19) will be compiled, posted to the website as part of the meeting materials, and included in the administrative record; please use the Council's online form available from the website. For written comments received after the Monday before the meeting (after 2/25/19), individuals submitting a comment must use the Council's online form available from the website.

Comments will automatically be posted to the website and available for Council consideration. Comments received prior to noon on Thursday, March 7, 2019 will be a part of the meeting administrative record.

The items of discussion in the individual meeting agendas are as follows:

Information and Education Committee, Monday, March 4, 2019, 8:30 a.m. Until 9 a.m.

The Committee will receive a report from the Information and Education Advisory Panel and provide guidance to staff and take action as necessary.

Snapper Grouper Committee, Monday, March 4, 2019, 9 a.m. Until 12:30 p.m. and Tuesday, March 5, 2019, From 1:30 p.m. Until 5 p.m.

1. The Committee will receive updates from NOAA Fisheries on commercial catches versus quotas for species under annual catch limits (ACLs) and the status of amendments under formal Secretarial review.

2. The Committee will receive an update from NOAA Fisheries on the 2019 red snapper season, discuss and provide guidance.

3. The Committee will review Regulatory Framework Amendment 29 to the Snapper Grouper Fishery Management Plan (FMP) addressing best fishing practices and the use of powerhead gear, and Regulatory Amendment 30 addressing the rebuilding plan for red grouper and provide guidance to staff for the two amendments.

4. The Committee will review Snapper Grouper Amendment 42 addressing sea turtle release gear requirements and Framework modifications, modify as necessary, and consider approval for formal Secretarial review.

5. The Committee will receive an overview of the Wreckfish Individual Transferable Quota (ITQ) Review and provide guidance to staff.

6. The Committee will also receive a presentation from NOAA Fisheries' Southeast Regional Permits Office and review the results of Recreational Workshops, discuss, and take action as needed.

7. The Committee will also review a white paper on spearfishing, provide guidance on agenda items for the Snapper Grouper AP meeting, review outreach materials for the Council's Vision Blueprint for the Snapper Grouper FMP Evaluation, review a Spawning Special Management Report outline, and provide guidance to staff.

Dolphin Wahoo Committee, Monday, March 4, 2019, 2 p.m. Until 5 p.m.

1. The Committee will receive updates from NOAA Fisheries on the status of commercial catches versus quotas.

2. The Committee will review draft Amendment 10 to the Dolphin Wahoo Fishery Management Plan that includes actions to allow bag-limit sales of dolphin by dually-permitted for-hire and commercial permit holders, revising annual catch limits and sector allocations for dolphin and wahoo to accommodate new data from the Marine Recreational Information Program, modifying recreational vessel limits for dolphin and other measures. The Committee will review actions in the draft amendment and consider approving for public scoping.

3. The Committee will review a White Paper on potential Ecosystem Component species and take action as needed.

Habitat Protection and Ecosystem-Based Management Committee, Tuesday, March 5, 2019, 8:30 a.m. Until 12 p.m.

1. The Committee will hold Atlantic Coast-Wide discussions on ways to address species moving northwards along the Atlantic Coast. Discussions will include representatives from the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, and the Atlantic States Marine Fisheries Commission. The Committee will provide guidance to staff and take action as needed.

2. The Committee will receive an update on habitat and ecosystem tools and regional partner coordination, the Council's actions regarding habitat and ecosystems, and provide guidance to staff and take action as needed.

Committee of the Whole, Wednesday, March 6, 2019, 8:30 a.m. Until 12 p.m.

1. The Committee of the Whole will review public scoping comments received for the Acceptable Biological Catch (ABC) Control Rule Amendment, review comments from the Scientific and Statistical Committee (SSC), review the document and approve wording for actions and alternatives.

2. The Committee of the Whole will review public scoping comments received for the Recreational Accountability Measures (AMs) Amendment, review the document and take action as necessary.

3. The Committee of the Whole will review the draft Allocation Review Trigger Policy, provide guidance to staff, and take action as needed.

4. The Committee of the Whole will receive an overview of allocation issues, discuss, and take action as needed.

Mackerel Cobia Committee, Wednesday, March 6, 2019, 1:30 p.m. Until 3:45 p.m.

1. The Committee will receive an update on the status of commercial catches versus ACLs and the status of amendments under review.

2. The Committee will receive an overview of king mackerel commercial trip limits in the Atlantic Southern Zone and Spanish mackerel closures in the Atlantic Northern Zone, discuss management options, and take action as needed.

3. The Committee will review draft Framework Amendment 7 to the Coastal Migratory Pelagic FMP addressing modifications to Gulf of Mexico cobia size limits and take action as needed.

4. The Committee will discuss items for the Mackerel Cobia Advisory Panel to address and provide guidance to staff.

Executive Finance Committee, Wednesday, March 6, 2019, 3:45 p.m. Until 4 p.m. and Thursday, March 7, 2019 From 1:30 p.m. Until 3:45 p.m.

1. The Committee will review the Council's ranking of amendments for its work schedule, receive a status report on the February and May 2019 Council Coordination Committee (CCC) meetings, receive an update on Magnuson-Stevens Act Reauthorization efforts and the CCC Working Paper which includes positions on reauthorization, discuss, and provide guidance to staff.

2. The Committee will review the draft Calendar-Year 2019 Operational Budget and take action as appropriate.

3. The Committee will review the Council's Follow Up Document, Priorities and Tiering List, discuss, and provide guidance to staff.

Formal Public Comment, Wednesday, March 6, 2019, 4 p.m.—Public comment will be accepted on items on the Council meeting agenda scheduled to be approved for Secretarial Review: Snapper Grouper Amendment 42 (sea turtle release gear and Framework procedures) and the Gulf Council's Carry Over Amendment (CMP & Spiny Lobster). Public comment will also be accepted on all agenda items. The Council Chair, based on the number of individuals wishing to comment, will determine the amount of time provided to each commenter.

Advisory Panel Selection Committee (Closed Session), Thursday, March 7, 2019, 8:30 a.m. Until 10 a.m.

1. The Committee will review applicants for open seats on its advisory panels and the System Management Plan Workgroup and provide recommendations for the Council's consideration.

SEDAR Committee, Thursday, March 7, 2019, 10 a.m. Until 11 a.m.

1. The Committee will receive an assessment activities schedule update, an overview of SEDAR Steering Committee guidance, and provide direction to staff and take action as needed.

SOPPs Committee (Partially Closed), Thursday, March 7, 2019, 11 a.m. Until 12 p.m.

1. The Committee will discuss Harassment and Professional Conduct (Closed Session).

2. In open session, the Committee will review and approve proposed changes to the Council Handbook and develop recommendations as appropriate.

Council Session: Thursday, March 7, 2019, 4 p.m. Until 5:30 p.m. and Friday, March 8, 2019, 8:30 a.m. Until 12:30 p.m. (Partially Closed Session if Needed)

The Full Council will begin with the Call to Order, adoption of the agenda, and approval of minutes.

The Council will receive a Legal Briefing on Litigation from NOAA General Counsel (if needed) during Closed Session. The Council will receive staff reports including the Executive Director's Report, updates on the MyFishCount pilot project, Gulf Council Carry Over Amendment, the Council's Citizen Science Program, and a draft letter to NOAA Fisheries Highly Migratory Species stating concerns over the impacts of large coastal sharks on fisheries managed by the Council.

Updates will be provided by NOAA Fisheries including a report on the status of commercial catches versus ACLs for species not covered during an earlier committee meeting, data-related reports, status of Spiny Lobster Amendment 13, protected resources updates, update on the status of the of the Commercial Electronic Logbook Program, and the status of the Marine Recreational Information Program (MRIP) conversions for recreational fishing estimates. The Council will discuss and take action as necessary.

The Council will review any Exempted Fishing Permits received as necessary.

The Council will also receive an update on the Marine Resources Education Program.

The Council will receive committee reports from the Snapper Grouper, Mackerel Cobia, Information and Education, Habitat, SEDAR, AP Selection, Dolphin Wahoo, Committee of the Whole, SOPPs, and Executive Finance Committees, and take action as appropriate.

The Council will receive agency and liaison reports; and discuss other business and upcoming meetings and take action as necessary. Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 7, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02037 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG795

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold a meeting via webinar that is open to the public.

DATES: The webinar will be held Friday, March 1, 2019, from 1 p.m. to 3 p.m., or until business for the day has been completed.

ADDRESSES: The meeting will be held via webinar. A public listening station is available at the Pacific Council office (address below). To attend the webinar, use this link: *https://www.gotomeeting.com/webinar* (click ''Join a Webinar'' in top right corner of page). (1) Enter the Webinar ID: 463–062–003. (2) Enter your name and email address (required). You must use your telephone for the audio portion of the meeting by dialing this TOLL number: 1 (415) 930–5321. (3) Enter the Attendee phone audio access code 221–470–652. (4) Enter your audio phone pin (shown after joining the webinar). *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 10, 8, 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (see *https://www.gotomeeting.com/webinar/ipad-iphone-android-webinar-apps*). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at 503–820–2280, extension 411 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The primary purpose of this webinar is to develop recommendations for consideration by the Pacific Council at its March 2019 meeting. The focus of the webinar will be the review of documents and technical analyses in support of the Pacific Council's proposed March 2019 agenda item, ''Comments on Court Ordered Rulemaking on Harvest Specifications for the Central Subpopulation of Northern Anchovy.'' The CPSMT and the CPSAS may also address assignments relating to coastal pelagic species management and ecosystem and administrative matters on the Pacific Council's March 2019 agenda. A detailed agenda for the webinar will be

available on the Pacific Council's website prior to the meeting. No management actions will be decided by the CPSMT or the CPSAS.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2411) at least 10 days prior to the meeting date.

Dated: February 7, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02042 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Invention Promoters/Promotion Firms Complaints

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on a proposed extension of an existing information collection: 0651–0044 (Invention Promoters/Promotion Firms Complaints).

DATES: Written comments must be submitted on or before April 15, 2019.

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

Email: InformationCollection@uspto.gov. Include ''0651–0044 comment'' in the subject line of the message.

Federal Rulemaking Portal: http://www.regulations.gov.

Mail: NaThanya Ferguson, Supervisory Innovation and Development Program Specialist, Inventor Education and Outreach, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to NaThanya Ferguson, Supervisory Innovation and Development Program Specialist, Inventor Education and Outreach, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–5517; or by email at *Nathanya.Ferguson@uspto.gov* with ''0651–0044 comment'' in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

Pursuant to the Inventors' Rights Act of 1999, 35 U.S.C. 297, and implementing regulations at 37 CFR part 4, the United States Patent and Trademark Office (USPTO) is required to provide a forum for the publication of complaints concerning invention promoters and responses from the invention promoters. Upon receipt of a complaint, the USPTO will forward it to the inventor promoter for a response. The USPTO does not investigate these complaints or participate in any legal proceedings against invention promoters or promotion firms. Under the Act, USPTO is responsible for making complaints and responses available to the public on the USPTO's website.

A complaint submitted to the USPTO must be clearly marked, or otherwise identified, as a complaint. The complaint must include: (1) The name and address of the complaint; (2) the name and address of the invention promoter; (3) the name of the customer; (4) the invention promotion services offered or performed by the invention promoter; (5) the name of the mass media in which the invention promoter advertised providing such services; (6) and example of the relationship between the customer and the invention promoter; and (7) a signature of the complainant. Identifying information is necessary so that the USPTO can both forward the complaint to the invention promoter or promotion firm as well as notify the complainant that the complaint has been forwarded. Complainants should understand that the complaints will be forwarded to the invention promoter for response and that the complaint and response will be made available to the public as required by the Inventors' Rights Act. If the USPTO does not receive a response from the invention promoter, the complaint will be published without a response. The USPTO does not accept under this program complaints that request confidentiality.

This information collection contains one form, Complaint Regarding Invention Promoter (PTO/SB/2048A), which is used by the public to submit a complaint under this program. This form is available for download from the USPTO website. Use of this form is not mandatory, and the complainant may submit his or her complaint without the form via any of the approved methods of collection as long as the complainant includes the necessary information and the submission is clearly marked as a complaint filed under the Inventors' Rights Act. There is no associated form for submitting responses to the complaints.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0044.

IC Instruments and Forms: PTO/SB/2048.

Type of Review: Extension of an existing information collection.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 22 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the pubic approximately between 15 minutes (0.25 hours) and 30 minutes (0.50 hours) to gather the necessary information, prepare either the form or a response to a complaint, and submit the materials to the USPTO.

Estimated Total Annual Hour Burden: 8 hours per year.

Estimated Total Annual Respondent (Hourly) Cost Burden: $2,481.96 per year.

The USPTO expects that paraprofessionals and independent inventors will be filing the complaints. The USPTO estimates that this group has an average hourly rate of $97.32. The professional hourly rate for paraprofessionals is $145 per hour, as listed in the 2016 *National Utilization and Compensation Survey Report* published by the National Association of Legal Assistants. The hourly rates for independent inventors is $49.64, which is the average of the mean rates for Engineers ($47.74) and Scientists ($51.53). The rates for Engineers (BLS 17–2199) and Scientists (BLS 19–2099) are based on the 2017 Bureau of Labor Statistics (BLS) National Occupation

and Employment and Wage Estimates. As a result, the USPTO estimates that the average hourly rate for independent inventors ($49.64) and paraprofessionals ($145) is $97.32.

The USPTO also expects that the responses to the complaints will be prepared by attorneys or invention promoters. The professional hourly rate for intellectual property attorneys in private firms is $438. The rate is established in estimates in the 2017 *Report on the Economic Survey,* published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association.

IC No.	Item	Hours (a)	Responses (b)	Burden (c) = (a) × (b)	Rate (d)	Total cost (e) = (c) × (d)
1	Complaint Regarding Invention Promoter (PTO/SB/2048).	0.25 (15 minutes)	12	3	$97.32	$291.96
2	Responses to the Complaints	0.50 (30 minutes)	10	5	438.00	2,190
Totals			22	8		2,481.96

Estimated Total Annual (Non-Hourly) Cost Burden: $245.50.

There are no capital startup, maintenance, or operating fees associated with this collection, nor are there filing or processing fees. There is a non-hourly cost associated with this collection in the form of postage costs.

For this collection, it is estimated that 12 complaints will be received by mail. The USPTO estimates that the first-class postage cost for a mailed complaint will be $0.50, for a total of $6 for mailed complaints. The USPTO estimates that it will receive 10 responses to complaints. Promotion firms may choose to send responses to complaints using overnight mail service costs at an estimated cost of $23.95 per response, for a total of $239.50 for mailed responses to complaints. The total postage cost associated with this collection will be $245.50. Therefore, the USPTO estimates that the total annual (non-hour) cost burden for this collection, in the forms of postage costs, is $245.50.

IV. Request for Comments

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection. They also will become a matter of public record.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Marcie Lovett,

Records and Information Governance Division Director, OCAO, United States Patent and Trademark Office.

[FR Doc. 2019–01948 Filed 2–11–19; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 February 2019, at 9 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW, Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov*; or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: February 1, 2019, in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2019–01622 Filed 2–11–19; 8:45 am]

BILLING CODE M

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2019–HQ–0006]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Army Corps of Engineers announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions

from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Corps of Engineers, Directorate of Civil Works, Office of Planning and Policy, ATTN: Jeff Strahan, 441 G Street, Washington, DC 20314, or call 202–761–8643.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Corps of Engineers Flood Risk Management Surveys; OMB Control Number 0710–0017.

Needs and Uses: The data obtained from these surveys are used by the Army Corps of Engineers to more effectively provide flood risk management to communities, residents, and businesses at risk of flooding. The data are needed for estimating damage relationships for factors such as depth of flooding for different types of buildings and different occupancies of uses. The data are also used for estimating other costs of flooding. Results of surveys will help communities to better determine and communicate their flood risks. The models are also used for programmatic evaluation of the Corps' National Flood Risk Management Program.

Affected Public: Residents, property owners, business, nongovernmental organizations, Local Governments.

Annual Burden Hours: 1,825 hours.

Number of Respondents: 3,000.

Responses per Respondent: 1.

Annual Responses: 3,000.

Average Burden per Response: 36.5 minutes.

Frequency: On occasion.

Respondents are floodplain residents, business owners and managers, managers of private institutions, and public officials. Most of the respondents live in or manage facilities that have been flooded in recent months.

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02064 Filed 2–11–19; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2019–HQ–0005]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, Army Headquarters Services (OAA–AHS), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Army & Air Force Exchange Service (Exchange) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24 Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Administrative Assistant to the Secretary of the Army, Army Headquarters Services (OAA–AHS), Travel Services Division, 9301 Chapek Road, Fort Belvoir, VA 22060, ATTN: Mr. Anthony Lipanovich, at (703) 545–9148 or via email: *anthony.m.lipanovich.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Authorization to Apply for a ''No-Fee'' Passport and/or request for visa; DD Form 1056; OMB Control Number 0702–0134.

Needs and Uses: The information collection requirement is necessary to obtain and record the personally identifiable information of official passport and/or visa applicants. This information is used to process, track, and verify no-fee passport and visa applications and requests for additional visa pages and Status of Forces Agreement (SOFA) endorsements.

Affected Public: Individuals or Households.

Annual Burden Hours: 175,000.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

Respondents are DoD civilian and military personnel and eligible accompanying family members traveling on official government orders to a country requiring a no-fee passport and/or visa. Authorization to apply for a no-fee passport is granted to those who can verify U.S. citizenship and legitimate official travel needs. Authorization to request a visa may also be granted to non-U.S. citizen family members, whose names are listed on the sponsor's official travel orders. The information collected on this form is shared with the Department of State (DoS) and the designated foreign embassies.

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02049 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: USA–2018–HQ–0024]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Mr. Vlad Dorjets, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pacific Northwest Households Recreation Use Surveys; OMB Control Number 0710–XXXX.

Type of Request: New.

Number of Respondents: 11,500.

Responses per Respondent: 1.

Annual Responses: 11,500.

Average Burden per Response: 8.16 minutes.

Annual Burden Hours: 1,564.

Needs and Uses: The U.S. Army Corps of Engineers, Bonneville Power Administration (BPA), and Bureau of Reclamation (BOR), are jointly developing an environmental impact statement (EIS), referred to as the Columbia River System Operations (CRSO) EIS. As part of the EIS, the Corps is tasked with evaluating changes in the economic value provided by water-based recreation. The purpose of this survey effort is to gather information that will support development of a water-based recreational demand model for the Columbia River Basin in Washington, Oregon, Idaho, and western Montana. The proposed design involves a mail survey for preliminary screening to identify eligible recreators, followed by a telephone survey of eligible recreators to collect data on recreational trips and activities within the region. The model will be used to evaluate recreational impacts associated with alternatives identified within the CRSO EIS.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Vlad Dorjets.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02043 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2018–OS–0089]

Submission for OMB Review; Comment Request

AGENCY: Washington Headquarters Service (WHS), DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Pentagon Reservation Parking Permit Application; DD Form 1199, OMB Control Number 0704–0395.

Type of Request: Extension.

Number of Respondents: 4,200.

Responses per Respondent: 1.

Annual Responses: 4,200.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 350.

Needs and Uses: To administer the Pentagon, Mark Center, and Suffolk Building Vehicle Parking Program where individuals are allocated parking spaces and to ensure that unless authorized to do so, parking permit applicants do not also receive the DoD National Capital Region Public Transportation fare subsidy benefit.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02048 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0086]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the

following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: End-Use Certificate; DLA Form 1822; OMB Control Number 0704–0382.

Type of Request: Reinstatement with Change.

Number of Respondents: 42,000.

Responses per Respondent: 1.

Annual Responses: 42,000.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 14,000.

Needs and Uses: The End-Use Certificate (DLA Form 1822) is submitted by individuals prior to releasing export-controlled personal property out of Department of Defense (DoD) control. Export-controlled personal property are items listed on the United States Munitions Lists (USML) or Commerce Control List (CCL), and includes articles, items, technical data, technology or software. Transfers of export-controlled personal property out of DoD control may be in tangible and intangible forms. The information collected is for the purpose of determining bidder or transferee eligibility to receive export-controlled personal property, and to ensure that transferees comply with the terms of sale or Military Critical Technical Data Agreement regarding end-use of the property. This form is to be used by the DoD Components, other Federal agencies who have acquired DoD export-controlled personal property, and or their contractors prior to releasing export-controlled personal property out DoD or Federal agency control. End-use checks are required by the following: DoD Instruction 2030.08, ''Implementation of Trade Security Controls (TSCs) for Transfers of DoD U.S. Munitions List (USML) and Commerce Control List (CCL) Personal Property to Parties Outside DoD Control;'' DoDM 4160.28, ''DoD Demilitarization (DEMIL) Manual, Vol. 1, 2, 3;'' and the DoDM 4160.21, Vol 1–4, Defense Materiel Disposition Manual.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02045 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–OS–0011]

Proposed Collection; Comment Request

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

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of Defense Education Activity announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Department of Defense Education Activity (DoDEA), Research, Accountability, & Evaluation Division, ATTN: Research Requests, 4800 Mark Center Drive, Alexandria, VA 22350–1400, or call the DoDEA Research, Accountability, and Evaluation Division at (571) 372–6011.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Education Activity (DoDEA) Research Approval Process; DoDEA Form 1304.01–F1; OMB Control Number 0704–0457.

Needs and Uses: The Department of Defense Education Activity (DoDEA) receives requests from researchers to conduct non-DoDEA sponsored research studies in DoDEA schools, districts, and/or areas. To review the proposed research requests, DoDEA is seeking renewal for the DoDEA ''Research Study Request'' Form 1. The DoDEA ''Research Study Request'' collects information about the researcher, the research project, audience, timeline, and the statistical analyses that will be conducted during the proposed research study. This information is needed to

ensure that the proposed non-DoDEA sponsored research does not unduly interfere with the classroom instructional process or the regular operations of the school, district, and/or areas.

Affected Public: Individuals and households.

Annual Burden Hours: 50.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 1 hour.

Frequency: On occasion.

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02063 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2018–OS–0043]

Submission for OMB Review; Comment Request

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

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Police Records Check; DD Form 369; OMB Control Number 0704–0007.

Type of Request: Reinstatement with Change.

Number of Respondents: 175,000.

Responses per Respondent: 1.

Annual Responses: 175,000.

Average Burden per Response: 27 minutes.

Annual Burden Hours: 78,750.

Needs and Uses: The information collection requirement is necessary, per Sections 504, 505 Title 10 U.S.C., to identify persons who may be undesirable for military service. Applicants for enlistment must be screened to identify any discreditable involvement with police or other law enforcement agencies. The DD Form 369, ''Police Records Check,'' is forwarded to law enforcement agencies to identify if an applicant has a record.

Affected Public: State, Local, or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02039 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2018–OS–0085]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Research Progress Production Report (RPPR); OMB Control Number 0704–0527.

Type of Request: Reinstatement.

Number of Respondents: 2,000.

Responses per Respondent: 2.

Annual Responses: 4,000.

Average Burden per Response: 6 hours.

Annual Burden Hours: 24,000.

Needs and Uses: The information collection requirement is necessary to: (a) Monitor Federal awards and ensure compliance with applicable terms and conditions of award regulations, policies, and procedures; (b) evaluate progress/completion in accordance with goals, aims, and objectives set forth in competing applications and to determine if the grantee satisfactorily met the objectives of the program; (c) evaluate grantee plans for the next budget period and any significant changes; (d) manage scientific programs; (e) plan future scientific initiatives; (f) determine funding for the next budget segment; (g) identify any publications, inventions, property disposition, and other required elements to close out the grant in a timely manner; and (f) complete reports to Congress, the public, and other Federal agencies.

Affected Public: Business or other for-profit; not-for-profit institutions; and state, local, or tribal government.

Frequency: Semi-annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket

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

DOD Clearance Officer: Mr. Frederick Licari

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02041 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2018–OS–0090]

Submission for OMB Review; Comment Request

AGENCY: Office of the General Counsel/Defense Legal Services Agency, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Office of the Secretary of Defense Confidential Conflict-of-Interest Statement for Office of the Secretary of Defense Advisory Committee Members; SD Form 830; OMB Control Number 0704–0551.

Type of Request: Extension.

Number of Respondents: 125.

Responses per Respondent: 1.

Annual Responses: 125.

Average Burden per Response: 1 hour.

Annual Burden Hours: 125.

Needs and Uses: The information requested on this form is required by Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674, and 5 CFR part 2634, subpart I, of the Office of Government Ethics regulations. The requested information is necessary to prevent conflicts of interest and to identify potential conflicts of individuals serving on certain Office of the Secretary of Defense (OSD) Advisory Committees.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: February 7, 2019.

Shelly E. Finke,

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

[FR Doc. 2019–02046 Filed 2–11–19; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 2:30 p.m.–3:30 p.m., February 26, 2019.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: February 8, 2019.

Bruce Hamilton,

Chairman.

[FR Doc. 2019–02183 Filed 2–8–19; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0114]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FY 2018 Child Care Access Means Parents in School Annual Performance Report Package 84.335A

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before March 14, 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–0114. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the 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 Harold Wells, 202–453–6131.

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: FY 2018 Child Care Access Means Parents in School Annual Performance Report Package 84.335A.

OMB Control Number: 1840–0763.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 9,800.

Abstract: The Child Care Access Means Parents In School (CCAMPIS) annual performance reports are used to collect programmatic data for purposes of annual reporting; budget submissions to OMB; Congressional hearings and testimonials; Congressional inquiries; and responding to inquiries from higher education interest groups and the general public.

Dated: February 7, 2019.

Kate Mullan,

Acting Director, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–01989 Filed 2–11–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0131]

Agency Information Collection Activities; Comment Request; Progress in International Reading Literacy Study (PIRLS 2021) Field Test Recruitment

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 15, 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–0131. 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 Kashka Kubzdela, 202–502–7411 or email *NCES.Information.Collections@ed.gov.*

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: Progress in International Reading Literacy Study (PIRLS 2021) Field Test Recruitment.

OMB Control Number: 1850–0645.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: Individual or Households.

Total Estimated Number of Annual Responses: 1,515.

Total Estimated Number of Annual Burden Hours: 295.

Abstract: The Progress in International Reading Literacy Study (PIRLS) is an international assessment

of fourth-grade students' achievement in reading. PIRLS reports on four benchmarks in reading achievement at grade 4 and on a variety of issues related to the education context for the students in the sample, including instructional practices, school resources, curriculum implementation, and learning supports outside of school. Since its inception in 2001, PIRLS has continued to assess students every 5 years (2001, 2006, 2011, and 2016), with the next PIRLS assessment, PIRLS 2021, being the fifth iteration of the study. Participation in this study by the United States at regular intervals provides data on student achievement and on current and past education policies and a comparison of U.S. education policies and student performance with those of the U.S. international counterparts. In PIRLS 2016, 58 education systems participated. The United States will participate in PIRLS 2021 to continue to monitor the progress of its students compared to that of other nations and to provide data on factors that may influence student achievement. PIRLS is coordinated by the International Association for the Evaluation of Educational Achievement (IEA), an international collective of research organizations and government agencies that create the assessment framework, the assessment instrument, and background questionnaires. The IEA decides and agrees upon a common set of standards and procedures for collecting and reporting PIRLS data, and defines the studies' timeline, all of which must be followed by all participating countries. As a result, PIRLS is able to provide a reliable and comparable measure of student skills in participating countries. In the U.S., the National Center for Education Statistics (NCES) conducts this study. In preparation for the PIRLS 2021 main study, all countries are asked to implement a field test in 2020. The purpose of the PIRLS field test is to evaluate new assessment items and background questions, to ensure practices that promote low exclusion rates, and to ensure that classroom and student sampling procedures proposed for the main study are successful. Data collection for the field test in the U.S. will occur from March through April 2020 and for the main study from March through June 2021. This submission describes the overarching plan for all phases of the data collection, including the 2021 main study and requests approval for all activities, materials, and response burden related to the field test recruitment, scheduled to begin in May 2019.

Dated: February 7, 2019.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2019–01954 Filed 2–11–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0125]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of State Implementation of the Unsafe School Choice Option

AGENCY: Office of Planning, Evaluation and Policy Development (OPEPD), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 14, 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–0125. 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 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Lee, 202–260–1463.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of State Implementation of the Unsafe School Choice Option.

OMB Control Number: 1875–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 70.

Abstract: The purpose of this study is to examine state implementation of federal requirements to provide an Unsafe School Choice Option (USCO) that permits students attending a persistently dangerous public elementary or secondary school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school within the school district, including a public charter school. The U.S. Department of Education (Department) has never conducted such a study. Given ongoing, cross-Federal-agency efforts to help ensure students are safe in school, it is essential for the Department to understand how State Educational Agencies (SEAs) are implementing the USCO requirements.

Dated: February 6, 2019.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2019–01950 Filed 2–11–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–56–000]

Colorado Interstate Gas Company, L.L.C.; Notice of Request Under Blanket Authorization

Take notice that on January 24, 2019, Colorado Interstate Gas Company, L.L.C. (CIG), Post Office (P.O.) Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP19–56–000 a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) to construct and operate its High Plains Kiowa Lateral Expansion Project in Weld County, Colorado in order to allow for transportation service from a new natural gas processing plant located in the Denver-Julesburg (DJ) Basin to an interconnect with CIG's High Plains pipeline system. Specifically, CIG requests to construct, own, and operate: (i) The Kiowa Lateral, an approximately 9.2 mile 24-inch-diameter natural gas pipeline lateral; (ii) the Prairie Hound Meter Station, a new receipt meter on the proposed Kiowa Lateral; (iii) the High Five Lateral, an approximately 0.7 mile 24-inch diameter natural gas pipeline lateral; and (iv) the High Five Meter Station, a new meter station at the terminus of the proposed High Five Lateral. CIG states the proposed new facilities would enable CIG to provide an additional 410,000 dekatherms per day of firm transportation capacity from the DJ Basin to CIG's High Plains and mainline system. CIG states the project would cost approximately $26,600,000, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Francisco Tarin, Director, Regulatory Affairs, Colorado Interstate Gas Company, L.L.C., P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 667–7517, or by facsimile at (719) 520–4697; or Mark A. Minich, Assistant General Counsel, Colorado Interstate Gas Company, L.L.C., P.O. Box 1087, Colorado Springs, Colorado 80944, by telephone at (719) 520–4416, or by facsimile at (719) 520–4898.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: February 4, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02010 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14791–001]

Ochoco Irrigation District; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 14791–001.

c. *Date Filed:* October 29, 2018.

d. *Submitted By:* Ochoco Irrigation District.

e. *Name of Project:* Bowman Dam Hydroelectric Project.

f. *Location:* At the existing Arthur R. Bowman Dam On the Crooked River, in Crook County, Oregon. The project would occupy 5 acres of federal lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Bruce Scanlon, Manager, Ochoco Irrigation District, 1001 NW Deer Street, Prineville, OR 97754; (541) 447–6449; email at *bruceoid@crestviewcable.com.*

i. *FERC Contact:* Matt Cutlip at (503) 552–2762; or email at *matt.cutlip@ferc.gov.*

j. Ochoco Irrigation District filed its request to use the Traditional Licensing Process on October 29, 2018. Ochoco Irrigation Distrct provided public notice of its request on December 21, 2018. In a letter dated February 5, 2019, the Director of the Division of Hydropower Licensing approved Ochoco Irrigation District's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the

joint agency regulations thereunder at 50 CFR part 402. We are also initiating consultation with the Oregon State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Ochoco Irrigation District as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Ochoco Irrigation District filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02085 Filed 2–11–19; 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 Numbers: RP19–592–001.

Applicants: Midwestern Gas Transmission Company.

Description: Tariff Amendment: Negotiated Rate PAL Agreement Amendment—Koch Energy Services, LLC to be effective 2/1/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5220.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19–637–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 020419 Negotiated Rates—Mercuria Energy America, Inc. R–7540–02 to be effective 4/1/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5095.

Comments Due: 5 p.m. ET 2/19/19.

Docket Numbers: RP19–638–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Correction to CCRM 2019 Rates to be effective 2/1/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5193.

Comments Due: 5 p.m. ET 2/19/19.

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: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02009 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4881–028]

Barber Dam Hydroelectric Project; Notice of Intent To File License Application, Filing of Pre-Application Document, Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 4881–028.

c. *Date Filed:* November 29, 2018.

d. *Submitted By:* Fulcrum, LLC and Ada County, Idaho (co-licensees).

e. *Name of Project:* Barber Dam Hydroelectric Project.

f. *Location:* On the Boise River, in Ada County, Idaho. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Kevin Webb, Hydro Licensing Manager, Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; (978) 935–6039; email at *Kevin.Webb@enel.com.*

i. *FERC Contact:* Matt Cutlip at (503) 552–2762; or email at *matt.cutlip@ferc.gov.*

j. The co-licensees filed their request to use the Traditional Licensing Process on November 29, 2018. The co-licensees provided public notice of their request on December 13, 2018. In a letter dated February 5, 2019, the Director of the Division of Hydropower Licensing approved the co-licensees' request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and National Marine Fisheries Service under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Idaho State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the co-licensees as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The co-licensees filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02082 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited		
1. ER18–2068–000	2–1–2019	FERC Staff.[1]
2. ER18–2068–000	2–1–2019	FERC Staff.[2]
3. ER18–2068–000	2–1–2019	FERC Staff.[3]
Exempt		
1. CP18–46–000	1–31–2019	U.S. Congressman Brian Fitzpatrick.
2. CP19–14–000	1–31–2019	U.S. Congressman Denver Riggleman.

[1] Memo dated January 31, 2019 regarding communication with Craig Glazer for PJM Interconnection, L.L.C.
[2] Memo dated January 31, 2019 regarding communication with Craig Glazer for PJM Interconnection, L.L.C.
[3] Memo dated February 1, 2019 regarding communication with Craig Glazer for PJM Interconnection, L.L.C.

Dated: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02008 Filed 2–11–19; 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: PR19–30–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b),(e)/: COH Rates effective 1–31–2019.
Filed Date: 1/30/19.
Accession Number: 201901305064.
Comments/Protests Due: 5 p.m. ET 2/20/19.

Docket Number: PR19–32–000.
Applicants: Southern California Gas Company.
Description: Tariff filing per 284.123(b),(e)+(g): Offshore Delivery Service Rate Revision—January 2019 to be effective 1/1/2019.
Filed Date: 1/30/19.
Accession Number: 201901305218.
Comments Due: 5 p.m. ET 2/20/19.
284.123(g) Protests Due: 5 p.m. ET 4/1/19.

Docket Number: PR19–33–000.
Applicants: NorthWestern Corporation.
Description: Tariff filing per 284.123(b),(e)/: Revised Rate Schedules for Transportation and Storage (Tax Tracker and TCJA) to be effective 1/1/2019.
Filed Date: 1/31/19.
Accession Number: 201901315196.
Comments/Protests Due: 5 p.m. ET 2/21/19.

Docket Numbers: RP19–608–000.

Applicants: Kinder Morgan Illinois Pipeline LLC.
Description: Penalty Revenue Crediting Report of Kinder Morgan Illinois Pipeline LLC.
Filed Date: 1/30/19.
Accession Number: 20190130–5229.
Comments Due: 5 p.m. ET 2/11/19.

Docket Numbers: RP19–609–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Penalty Revenue Crediting Report of Kinder Morgan Louisiana Pipeline LLC.
Filed Date: 1/30/19.
Accession Number: 20190130–5230.
Comments Due: 5 p.m. ET 2/11/19.

Docket Numbers: RP19–427–001.
Applicants: Honeoye Storage Corporation.
Description: Compliance filing 20190131 157 Tariff In Compliance with Order Approving Settlement to be effective 1/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5285.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–610–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Superseding Non-conforming Agmts Filing—Coastal Bend to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5037.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–611–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 1–31–19 to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5040.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–612–000.
Applicants: Millennium Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated & Non-Conforming Svc Agmts—ESU to be effective 3/18/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5041.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–613–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Feb 2019 to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5079.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–614–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Conforming and Nonconforming Negotiated Rate Service Agreements to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5082.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–615–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Feb 19) to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5083.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–616–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Tariff Revisions Applicable to Rate Schedule FT–2 to be effective 3/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5084.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–617–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Coastal Bend Agmt releases eff 2–1–2019) to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5085.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–618–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 to various shippers eff 2–1–2019) to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5086.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–619–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Petrohawk 41455 to BP 50582) to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5088.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–620–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Gulfport 34939, 35446 to Eco-Energy 37770, 37771) to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5089.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–621–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20190131 Negotiated Rate to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5094.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–622–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20190131 Remove Gulf Coast to be effective 3/2/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5095.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–623–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates for releases to UGI contracts eff 2–1–19 to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5128.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–624–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: Contract Adjustments for 2–1–2019 to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5144.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–625–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Chevron 911109 releases eff 2–1–19 to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5187.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–626–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—Columbia to Alpha Gas 960135 to be effective 2/1/2019.
Filed Date: 1/31/19.
Accession Number: 20190131–5191.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–627–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Compliance filing Semi-Annual Transporter's Use Report to be effective N/A.
Filed Date: 1/31/19.
Accession Number: 20190131–5194.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–628–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2019–01–31 E2W (7) to be effective 2/1/2019.

Filed Date: 1/31/19.
Accession Number: 20190131–5228.
Comments Due: 5 p.m. ET 2/12/19.

Docket Numbers: RP19–629–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—February 2019—Newfield 1011022 to be effective 2/1/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5002.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–630–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—2/1/2019 to be effective 2/1/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5007.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–631–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt and Cap Rel Neg Rate Agmt (Aethon37657 to Scona50621) to be effective 2/1/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5027.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–632–000.
Applicants: Midwestern Gas Transmission Company.
Description: § 4(d) Rate Filing: Negotiated Rate PAL Agreement—Exelon & Duke Energy Indiana to be effective 1/31/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5070.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–633–000.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: § 4(d) Rate Filing: Electric Power Costs to be effective 3/1/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5072.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–634–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20190201 Annual PRA to be effective 4/1/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5095.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–635–000.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: § 4(d) Rate Filing: 311(a)(1) Transportation to be effective 3/1/2019.
Filed Date: 2/1/19.
Accession Number: 20190201–5207.
Comments Due: 5 p.m. ET 2/13/19.

Docket Numbers: RP19–636–000.
Applicants: Black Marlin Pipeline Company.
Description: Petition for Waiver from Implementing NAESB version 3.1 standards of Black Marlin Pipeline Company.
Filed Date: 2/1/19.
Accession Number: 20190201–5225.
Comments Due: 5 p.m. ET 2/13/19.

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: February 4, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02003 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10172–041]

Missisquoi River Hydro LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Exemption.

b. *Project No.:* 10172–041.

c. *Date Filed:* September 21, 2018.

d. *Applicant:* Missisquoi River Hydro LLC.

e. *Name of Project:* North Troy Project.

f. *Location:* The project is located on the Missisquoi River, Orleans County, Vermont. The land where the project facilities are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Hilton H. Dier III, Managing Partner, Missisquoi River Hydro LLC, 453 East Hill Road, Middlesex, VT 05602, phone (802) 223–6652.

i. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, (202) 502–6191 or *Anumzziatta.Purchiaroni@ferc.gov.*

j. *Deadline for filing responsive documents:* All comments, motions to intervene, and protests must be filed within 60 days from the issuance date of this notice pursuant to 18 CFR 4.34(b). All reply comments must be filed with the Commission within 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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–10172–041.

The Commission's Rules of Practice and Procedure 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, it must also serve a copy of the document on that resource agency.

k. *Description of proposed amendment:* The exemptee is requesting approval to delete from the exemption a minimum 60 kilowatts (kW) flow turbine that was authorized, but never installed at the powerhouse. The proposed modification would decrease the installed capacity of the project from 460 to 400 kW. The exemptee is not proposing any changes to the powerhouse or existing project operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–6191. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number P–10172, in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE,'' ''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, motions to intervene, or protests 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. If an intervener 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. 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.

Dated: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02083 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utilty Company Status

TG High Prairie, LLC	EG19–16–000
Bridgewater Power Company, L.P	EG19–17–000
Peony Solar LLC	EG19–18–000
Marengo Energy Storage	EG19–19–000
KCE NY 1, LLC	EG19–20–000
DG Whitefield LLC	EG19–21–000
Springfield Power, LLC	EG19–22–000
Antelope DSR 3, LLC	EG19–23–000
San Pablo Raceway, LLC	EG19–24–000
Calpine Gilroy Cogen, L.P	EG19–25–000
Solomon Forks Wind Project, LLC	EG19–26–000
LUZ Solar Partners VIII, Ltd	EG19–27–000
LUZ Solar Partners IX, Ltd	EG19–28–000
Ibereolica Solar Moron, S.L.U	FC19–1–000

Take notice that during the month of January 2019, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2018).

Dated: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02080 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1107–008.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Non-Material Change in Status of Pacific Gas and Electric Company.

Filed Date: 2/1/19.

Accession Number: 20190201–5259.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER14–1818–018.

Applicants: Boston Energy Trading and Marketing LLC.

Description: Triennial Market Power Analysis for the Southwest Power Pool region of Boston Energy Trading and Marketing LLC.

Filed Date: 2/1/19.

Accession Number: 20190201–5244.

Comments Due: 5 p.m. ET 4/2/19.

Docket Numbers: ER15–1883–004; ER10–1836–013; ER10–1841–012; ER10–1843–012; ER10–1844–012; ER10–1845–012; ER10–1846–010; ER10–1849–016; ER10–1851–008; ER10–1852–025; ER10–1855–010; ER10–1857–009; ER10–1887–016; ER10–1890–010; ER10–1897–012; ER10–1899–010; ER10–1905–012; ER10–1907–011; ER10–1915–009; ER10–1918–012; ER10–1920–018;

ER10–1925–012; ER10–1927–012; ER10–1928–018; ER10–1930–008; ER10–1931–009; ER10–1932–009; ER10–1935–009; ER10–1950–012; ER10–1952–016; ER10–1961–016; ER10–1962–010; ER10–1963–009; ER10–1964–012; ER10–1966–009; ER10–2005–012; ER10–2006–013; ER10–2348–009; ER10–2551–011; ER11–2160–010; ER11–26–012; ER11–2642–011; ER11–3635–010; ER12–1228–018; ER12–2225–008; ER12–2226–008; ER12–2227–016; ER12–569–017; ER13–1991–009; ER13–1992–009; ER13–2112–006; ER13–712–018; ER13–752–009; ER14–2138–005; ER15–1418–004; ER15–1925–010; ER15–2101–005; ER15–2477–004; ER15–2582–003; ER15–2601–003; ER15–2676–009; ER16–1354–004; ER16–1672–007; ER16–2190–006; ER16–2191–006; ER16–2275–006; ER16–2276–006; ER16–2453–007; ER16–632–002; ER16–90–004; ER16–91–004; ER17–2152–003; ER17–2340–001; ER17–822–002; ER17–823–002; ER18–1534–002; ER18–1771–002; ER18–1863–001; ER18–1952–004; ER18–1978–001; ER18–2003–002; ER18–2118–002; ER18–2246–001; ER18–241–001; ER18–882–002.

Applicants: Adelanto Solar, LLC, Adelanto Solar II, LLC, Armadillo Flats Wind Project, LLC, Ashtabula Wind, LLC, Ashtabula Wind II, LLC, Ashtabula Wind III, LLC, Baldwin Wind, LLC, Bayswater Peaking Facility, LLC, Blackwell Wind, LLC, Blythe Solar 110, LLC, Blythe Solar II, LLC, Breckinridge Wind Project, LLC, Brady Interconnection, LLC, Brady Wind, LLC, Brady Wind II, LLC, Butler Ridge Wind Energy Center, LLC, Carousel Wind Farm, LLC, Casa Mesa Wind, LLC, Cedar Bluff Wind, LLC, Chaves County Solar, LLC, Cimarron Wind Energy, LLC, Coolidge Solar I, LLC, Cottonwood Wind Project, LLC, Crystal Lake Wind, LLC, Crystal Lake Wind II, LLC, Crystal Lake Wind III, LLC, Day County Wind, LLC, Desert Sunlight 250, LLC, Desert Sunlight 300, LLC, East Hampton Energy Storage Center, LLC, Elk City Renewables II, LLC, Elk City Wind, LLC, Energy Storage Holdings, LLC, Ensign Wind, LLC, ESI Vansycle Partners, L.P., Florida Power & Light Company, FPL Energy Burleigh County Wind, LLC, FPL Energy Cape, LLC, FPL Energy Cowboy Wind, LLC, FPL Energy Green Power Wind, LLC, FPL Energy Hancock County Wind, LLC, FPL Energy Illinois Wind, LLC, FPL Energy Montezuma Wind, LLC, FPL Energy Mower County, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, FPL Energy Oklahoma Wind, LLC, FPL Energy Oliver Wind I, LLC, FPL Energy Oliver Wind II, LLC, FPL Energy Sooner Wind, LLC, FPL Energy South Dakota Wind, LLC, FPL Energy Stateline II, Inc., FPL Energy Vansycle, L.L.C, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, Garden Wind, LLC, Genesis Solar, LLC, Golden Hills Interconnection, LLC, Golden Hills North Wind, LLC, Golden Hills Wind, LLC, Golden West Power Partners, LLC, Gray County Wind Energy, LLC, Green Mountain Storage, LLC, Gulf Power Company, LLC, Hatch Solar Energy Center I, LLC, Hawkeye Power Partners, LLC, Heartland Divide Wind Project, LLC, High Lonesome Mesa, LLC, High Majestic Wind Energy Center, LLC, High Majestic Wind II, LLC, High Winds, LLC, Jamaica Bay Peaking Facility, LLC, Kingman Wind Energy I, LLC, Kingman Wind Energy II, LLC, Lake Benton Power Partners II, LLC, Langdon Renewables, LLC, Limon Wind, LLC, Limon Wind II, LLC, Limon Wind III, LLC, Live Oak Solar, LLC, Logan Wind Energy LLC, Lorenzo Wind, LLC, Luz Solar Partners Ltd., III, Luz Solar Partners Ltd., IV, Luz Solar Partners Ltd., V, Mammoth Plains Wind Project, LLC, Manuta Creek Solar, LLC, Marshall Solar, LLC, McCoy Solar, LLC, Meyersdale Storage, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco IV & V Interconnection, LLC, Minco Wind Interconnection Services, LLC, Montauk Energy Storage Center, LLC, Mountain View Solar, LLC, NEPM II, LLC, New Mexico Wind, LLC, NextEra Blythe Solar Energy Center, LLC, NextEra Energy Bluff Point, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Marketing, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, Ninnescah Wind Energy, LLC, North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Oleander Power Project, Limited Partnership, Oliver Wind III, LLC, Osborn Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Palo Duro Wind Energy, LLC, Palo Duro Wind Interconnection Services, LLC, Peetz Logan Interconnect, LLC, Peetz Table Wind Energy, LLC, Pegasus Wind, LLC, Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Pima Energy Storage System, LLC, Pinal Central Energy Center, LLC, Pratt Wind, LLC, Red Mesa Wind, LLC, River Bend Solar, LLC, Roswell Solar, LLC, Rush Springs Wind Energy, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Sky River LLC, Stanton Clean Energy, LLC, Steele Flats Wind Project, LLC, Story Wind, LLC, Stuttgart Solar, LLC, Titan Solar, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Wessington Wind Energy Center, LLC, Westside Solar, LLC, White Oak Energy LLC, White Oak Solar, LLC, White Pine Solar, LLC, Whitney Point Solar, LLC, Wildcat Ranch Wind Project, LLC, Wilton Wind II, LLC, Windpower Partners 1993, LLC.

Description: Notice of Non-Material Change in Status of the NextEra MBR Sellers (Part 1).

Filed Date: 1/31/19.

Accession Number: 20190131–5383.

Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER18–2440–002.

Applicants: Southern California Edison Company.

Description: Compliance filing: Compliance Filing—Revisions to Transmission Formula Rate ER18–2440 to be effective 11/16/2018.

Filed Date: 2/1/19.

Accession Number: 20190201–5171.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–481–001.

Applicants: LMBE Project Company LLC.

Description: Tariff Amendment: Response to Request for Additional Info and Request for Confidential Treatment to be effective 12/4/2018.

Filed Date: 2/4/19.

Accession Number: 20190204–5204.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–971–000.

Applicants: Midcontinent Independent System Operator, Inc., ALLETE, Inc.

Description: § 205(d) Rate Filing: 2019–02–01_SA 725 MP-Glen Ullin (Bison 6) LGIA to be effective 2/2/2019.

Filed Date: 2/1/19.

Accession Number: 20190201–5208.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–972–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Amendment to PWRPA IA Appendix B and Filing of Del Valle WDT Service Agreement to be effective 2/4/2019.

Filed Date: 2/1/19.

Accession Number: 20190201–5210.

Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER19–973–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits three ECSAs, Service Agreement Nos. 5203, 5204, 5205 to be effective 4/7/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5131.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–974–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Southern Interconnection Agreement (RS No. 292) Concurrence Filing to be effective 1/1/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5156.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–975–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF-Southern Interconnection Agreement (RS No. 111) Concurrence Filing to be effective 1/1/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5157.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–976–000.

Applicants: Avista Corporation.

Description: Tariff Cancellation: Avista Corp Cancellation of Parallel Operation and Construction Agreement to be effective 2/5/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5162.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–977–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–02–04_SA 3230 NSP-Deuel Harvest-NSP MPFCA (J460 J526 Hazel Creek) to be effective 1/18/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5163.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–978–000.

Applicants: The Connecticut Light and Power Company.

Description: Initial rate filing: NRG Preliminary Design and Engineering Agreement to be effective 2/4/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5195.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–979–000.

Applicants: Summer Energy Midwest, LLC.

Description: Compliance filing: Summer Energy Notice of Succession and Tariff Cancellation Request to be effective 10/31/2018.

Filed Date: 2/4/19.

Accession Number: 20190204–5200.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–980–000.

Applicants: The Connecticut Light and Power Company.

Description: Tariff Cancellation: Cancellation of Cricket Valley EPCOM Agreement to be effective 2/17/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5203.

Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–981–000.

Applicants: South Carolina Electric & Gas Company.

Description: § 205(d) Rate Filing: IA Between Southern Companies and SCEG to be effective 1/1/2019.

Filed Date: 2/4/19.

Accession Number: 20190204–5219.

Comments Due: 5 p.m. ET 2/25/19.

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: February 4, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02006 Filed 2–11–19; 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 rate filings:

Docket Numbers: ER18–2406–001.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Compliance filing: Informational Filing re Planned Transfer to be effective N/A.

Filed Date: 2/5/19.

Accession Number: 20190205–5070.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–967–001.

Applicants: Fairless Energy, L.L.C.

Description: Tariff Amendment: Supplement to Notice of Succession to be effective 12/17/2018.

Filed Date: 2/5/19.

Accession Number: 20190205–5059.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–968–001.

Applicants: Manchester Street, L.L.C.

Description: Tariff Amendment: Supplement to Notice of Succession to be effective 12/14/2018.

Filed Date: 2/5/19.

Accession Number: 20190205–5058.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–984–000.

Applicants: Louisville Gas and Electric Company.

Description: § 205(d) Rate Filing: Att. O Note K Revision to be effective 6/1/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5004.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–985–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: LGIA Pastoria Solar Project SA Nos. 228 to be effective 2/6/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5085.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–986–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 5281; Queue No. AD1–044 to be effective 1/9/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5114.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–987–000.

Applicants: Crystal Lake Wind Energy I, LLC.

Description: Baseline eTariff Filing: Crystal Lake Wind Energy I, LLC Application for Market-Based Rates to be effective 4/6/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5115.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–988–000.

Applicants: Fairchild Energy, LLC.

Description: Tariff Cancellation: Cancellation of MBR Tariff to be effective 2/5/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5118.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–989–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 5283; Queue No. AD1–045 to be effective 1/9/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5119.

Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–990–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA, SA No. 5282; Queue No. AD1–046 to be effective 1/9/2019.

Filed Date: 2/5/19.

Accession Number: 20190205–5120.
Comments Due: 5 p.m. ET 2/26/19.

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: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02002 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2137–022; ER14–2798–014; ER18–494–003; ER14–2799–014; ER12–164–021; ER15–1873–011; ER18–1197–003; ER10–2131–022; ER10–2138–022; ER10–2139–002; ER10–2140–022; ER10–2141–022; ER14–2187–016; ER11–4044–022; ER11–4046–021; ER18–491–003; ER18–492–003; ER10–2127–019; ER10–2125–021; ER18–1470–003; ER15–1041–011; ER15–2205–011; ER10–2133–021; ER10–2124–020; ER18–471–005; ER18–472–005; ER11–3872–022; ER10–2764–020; ER10–2132–020; ER10–2128–020.

Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy II Holdings LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy III LLC, Buckeye Wind Energy LLC, Camilla Solar Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Hardin Wind Energy LLC, Hardin Wind Energy Holdings LLC, Invenergy TN LLC, Judith Gap Energy LLC, Pine River Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC, Sheldon Energy LLC, Spring Canyon Energy LLC, States Edge Wind I LLC, States Edge Wind I Holdings LLC, Stony Creek Energy LLC, Vantage Wind Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC.

Description: Notice of Change in Facts Under Market-Based Rate Authority of Beech Ridge Energy LLC, *et al.*

Filed Date: 2/1/19.
Accession Number: 20190201–5264.
Comments Due: 5 p.m. ET 2/22/19.

Docket Numbers: ER14–2707–013; ER14–1630–007; ER16–1872–003; ER15–1375–004; ER15–2602–003; ER10–2720–018; ER11–4428–018; ER12–1880–017; ER18–2182–002; ER12–895–016; ER18–1535–002; ER14–21–005; ER11–4462–032; ER18–772–001; ER16–2443–001; ER17–1774–001; ER10–1970–012; ER11–4677–011; ER10–1972–012; ER17–838–007; ER10–1973–009; ER10–1951–012; ER10–1974–020; ER16–2241–006; ER10–1975–022; ER12–2444–010; ER10–1976–009; ER10–2641–033; ER16–2506–004; ER16–2297–006; ER10–1983–012; ER10–1984–012; ER14–2710–013; ER15–58–011; ER19–11–001; ER10–1985–009; ER18–2224–002; ER12–676–009; ER13–2461–007; ER17–196–001; ER18–1981–002; ER11–2192–012; ER16–1913–003; ER16–1440–007; ER16–2240–007; ER14–2708–014; ER14–2709–013; ER15–30–011; ER15–2243–002; ER15–1016–004; ER10–1989–010; ER19–774–002; ER13–2474–012; ER10–1991–013; ER17–2270–004; ER18–2091–001; ER12–1660–011; ER13–2458–007; ER11–4678–011; ER10–1994–010; ER17–582–002; ER10–2078–013; ER16–1293–004; ER16–1277–005; ER17–583–002; ER18–2032–002; ER10–1995–011; ER12–631–012; ER18–807–001.

Applicants: Mammoth Plains Wind Project, LLC, Manuta Creek Solar, LLC, Marshall Solar, LLC, McCoy Solar, LLC, Meyersdale Storage, LLC, Minco Wind, LLC, Minco Wind II, LLC, Minco Wind III, LLC, Minco IV & V Interconnection, LLC, Minco Wind Interconnection Services, LLC, Montauk Energy Storage Center, LLC, Mountain View Solar, LLC, NEPM II, LLC, New Mexico Wind, LLC, NextEra Blythe Solar Energy Center, LLC, NextEra Energy Bluff Point, LLC, NextEra Energy Duane Arnold, LLC, NextEra Energy Montezuma II Wind, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Marketing, LLC, NextEra Energy Seabrook, LLC, NextEra Energy Services Massachusetts, LLC, Northeast Energy Associates, A Limited Partnership, Ninnescah Wind Energy, LLC, North Jersey Energy Associates, A Limited Partnership, North Sky River Energy, LLC, Northern Colorado Wind Energy, LLC, Oleander Power Project, Limited Partnership, Oliver Wind III, LLC, Osborn Wind Energy, LLC, Osceola Windpower, LLC, Osceola Windpower II, LLC, Palo Duro Wind Energy, LLC, Palo Duro Wind Interconnection Services, LLC, Peetz Logan Interconnect, LLC, Peetz Table Wind Energy, LLC, Pegasus Wind, LLC, Perrin Ranch Wind, LLC, Pheasant Run Wind, LLC, Pima Energy Storage System, LLC, Pinal Central Energy Center, LLC, Pratt Wind, LLC, Red Mesa Wind, LLC, River Bend Solar, LLC, Roswell Solar, LLC, Rush Springs Wind Energy, LLC, Seiling Wind, LLC, Seiling Wind II, LLC, Seiling Wind Interconnection Services, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Sky River LLC, Stanton Clean Energy, LLC, Steele Flats Wind Project, LLC, Story Wind, LLC, Stuttgart Solar, LLC, Titan Solar, LLC, Tuscola Bay Wind, LLC, Tuscola Wind II, LLC, Vasco Winds, LLC, Wessington Wind Energy Center, LLC, Westside Solar, LLC, White Oak Energy LLC, White Oak Solar, LLC, White Pine Solar, LLC, Whitney Point Solar, LLC, Wildcat Ranch Wind Project, LLC, Wilton Wind II, LLC, Windpower Partners 1993, LLC.

Description: Notice of Non-Material Change in Status of the NextEra MBR Sellers (Part 2).

Filed Date: 1/31/19.
Accession Number: 20190131–5384.
Comments Due: 5 p.m. ET 2/21/19.

Docket Numbers: ER19–982–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Revisions to the OATT, section 234.2 re: Incremental Capacity Transfer Rights to be effective 2/5/2019.

Filed Date: 2/4/19.
Accession Number: 20190204–5221.
Comments Due: 5 p.m. ET 2/25/19.

Docket Numbers: ER19–983–000.

Applicants: Ameren Illinois Company.

Description: Request for Period I Waiver, *et al.* of Ameren Illinois Company.

Filed Date: 2/4/19.
Accession Number: 20190204–5233.
Comments Due: 5 p.m. ET 2/15/19.

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: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02005 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2639–027]

Northern States Power Company; Notice of Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2639–027.

c. *Date Filed:* November 29, 2018.

d. *Submitted By:* Northern States Power Company.

e. *Name of Project:* Cornell Hydroelectric Project.

f. *Location:* On the Lower Chippewa River in the City of Cornell, Chippewa County, Wisconsin. The project does not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* William P. Zawacki, Director of Regional Generation, Northern States Power Company—Wisconsin, 1414 W Hamilton Ave., P.O. Box 8, Eau Claire, WI 54702; phone: (800) 895–4999; email: *william.p.zawacki@xcelenergy.com.*

i. *FERC Contact:* Laura Washington at (202) 502–6072; or email at *Laura.Washington@ferc.gov.*

j. Northern States Power Company filed its request to use the Traditional Licensing Process on November 29, 2018. Northern States Power Company provided public notice of its request on November 29, 2018. In a letter dated February 5, 2019, the Director of the Division of Hydropower Licensing approved Northern States Power Company's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402. We are also initiating consultation the Wisconsin State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Northern States Power Company as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Northern States Power Company filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502- 8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2639. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2021.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02007 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1215–003.
Applicants: Radford's Run Wind Farm, LLC.
Description: Report Filing: Refund Report Filing to be effective N/A.
Filed Date: 2/6/19.
Accession Number: 20190206–5022.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–460–001.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Amended Order No. 841 Compliance Filing to be effective 12/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5087.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–517–001.
Applicants: Interstate Power and Light Company.
Description: Tariff Amendment: Amendment Market Based Rate Tariff to be effective 2/5/2019.
Filed Date: 2/5/19.
Accession Number: 20190205–5122.
Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–519–001.
Applicants: Wisconsin Power and Light Company.
Description: Tariff Amendment: Market Based Rate Tariff to be effective 2/5/2019.
Filed Date: 2/5/19.
Accession Number: 20190205–5123.
Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ER19–991–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–02–06_SA 3233 OTP–MDU–Dakota Range III GIA (J488) to be effective 1/23/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5037.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–992–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3391 Municipal Energy Agency of Nebraska PTP Cancellation to be effective 1/1/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5043.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–993–000.
Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5258; Queue No. AC1–085 to be effective 1/7/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5048.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–994–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Glennville Solar LGIA Filing to be effective 1/28/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5050.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–995–000.
Applicants: Public Service Company of Oklahoma.
Description: § 205(d) Rate Filing: PSO–WFEC Bear Creek Delivery Point Agreement Cancellation to be effective 1/31/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5051.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–996–000.
Applicants: Midcontinent Independent System Operator.
Description: § 205(d) Rate Filing: 2019–02–06_SA 3234 Otter Tail Power Company-Dakota Range III, LLC FCA (J488) to be effective 1/23/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5067.
Comments Due: 5 p.m. ET 2/27/19.

Docket Numbers: ER19–997–000.
Applicants: Pinetree Power LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 4/8/2019.
Filed Date: 2/6/19.
Accession Number: 20190206–5086.
Comments Due: 5 p.m. ET 2/27/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES19–16–000.
Applicants: Xcel Energy Southwest Transmission Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Xcel Energy Southwest Transmission Company, LLC.
Filed Date: 2/5/19.
Accession Number: 20190205–5156.
Comments Due: 5 p.m. ET 2/26/19.

Docket Numbers: ES19–17–000.
Applicants: Xcel Energy Transmission Development Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Xcel Energy Transmission Development Company, LLC.
Filed Date: 2/5/19.
Accession Number: 20190205–5158.
Comments Due: 5 p.m. ET 2/26/19.

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: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02078 Filed 2–11–19; 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: PR19–34–000.
Applicants: Washington Gas Light Company.
Description: Tariff filing per 284.123(b),(e)/: New Rate Election for Firm Transportation Service to be effective 2/1/2019.
Filed Date: 2/1/19.
Accession Number: 201902015068.
Comments/Protests Due: 5 p.m. ET 2/22/19.

Docket Number: PR19–35–000.
Applicants: Southcross Mississippi Pipeline, L.P.
Description: Tariff filing per 284.123(b)(2)+(g): Petition for Rate Approval and Amended Statement of Operating Conditions to be effective 2/1/2019.
Filed Date: 2/1/19.
Accession Number: 201902015117.
Comments Due: 5 p.m. ET 2/22/19.
284.123(g) Protests Due: 5 p.m. ET 4/22/19.

Docket Numbers: RP19–289–001.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Compliance filing Offer and Petition for Approval of Settlement—Compliance Filing to be effective 1/1/2019.
Filed Date: 2/5/19.
Accession Number: 20190205–5121.
Comments Due: 5 p.m. ET 2/19/19.

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: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02079 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–132]

Cube Yadkin Generation LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.
b. *Project No:* P–2197–132.
c. *Date Filed:* December 31, 2018.
d. *Applicant:* Cube Yadkin Generation LLC (Cube Yadkin).
e. *Name of Project:* Yadkin Hydroelectric Project.
f. *Location:* The project is located on the Yadkin River, near the City of Charlotte, in Davie, Davidson, Montgomery, Rowan, and Stanly counties, North Carolina.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Mark J. Gross, Cube Hydro Partners, 293 Highway 740,

Badin, North Carolina 28009, (704) 422–5774.

i. *FERC Contact:* Aneela Mousam, (202) 502–8357, *aneela.mousam@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 5, 2019.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations 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–2197–132.

k. *Description of Request:* Cube Yadkin requests Commission approval for an amendment to the license for the Yadkin Hydroelectric Project. The 2016 project license authorized modifications to turbine/generator units at High Rock, Tuckertown, Narrows, and Falls developments. Cube Yadkin initiated unit modifications at High Rock, and conducted further testing at the other three developments. Cube Yadkin determined that the Tuckertown, Narrows, and Falls facilities are in good condition, and modifying these would not provide any benefit. Therefore, Cube Hydro proposes to keep the units at Tuckertown, Narrows, and Falls developments as is and not make any modifications. Cube Yadkin does not anticipate any environmental impacts as a result of the proposed amendment.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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 (P–2197) in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. 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.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (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 commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works that are the subject of the license amendment. 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. If an intervener 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. 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.

Dated: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–01999 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2808–017]

KEI (Maine) Power Management (III) LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for subsequent license for the Barker's Mill Hydroelectric Project, located on the Little Androscoggin River in Androscoggin County, Maine, and has prepared a Final Environmental Assessment (FEA) for the project. The project does not occupy federal land.

The FEA contains Commission staff's analysis of the potential environmental effects of the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA 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 at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

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.

For further information, contact Karen Sughrue at (202) 502–8556.

Dated: February 6, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–02081 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF18–8–000]

Pointe LNG, LLC and Pointe Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Pointe LNG Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Pointe LNG Project (Project) involving construction and operation of facilities by Pointe LNG, LLC and Pointe Pipeline Company, LLC (collectively Pointe LNG) in Plaquemines Parish, Louisiana. The Commission will use this EIS in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of authorization. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 7, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EIS. Commission staff will consider all filed comments during the preparation of the EIS.

If you sent comments on this project to the Commission *before* the opening of this docket on September 14, 2018, you will need to file those comments in Docket No. PF18–8–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.* This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (PF18–8–000) 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 comments, the Commission invites you to attend the public scoping session its staff will conduct in the project area, scheduled as follows:

Date and time	Location
Tuesday, February 19, 2019, 5:00 p.m.–8:00 p.m	Percy Griffin Community Center, 15577 Highway 15, Davant, Louisiana 70040, (504) 934–6285.

The primary goal of the scoping session is to have you identify the specific environmental issues and concerns that should be considered in the 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 scoping session is scheduled from 5:00 p.m. to 8:00 p.m. Central Time. 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 8:00 p.m. 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 at 7:00 p.m. Please see appendix 1 for additional information on the session format and conduct.[1]

Your scoping comments will be recorded by a 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 below 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 commentor.

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided verbally at a scoping session. Although there will not be a formal presentation, Commission staff will be available throughout the scoping session to answer your questions about the environmental review process. Representatives from Pointe LNG will also be present to answer project-specific questions.

Summary of the Planned Project

Pointe LNG plans to construct a liquefied natural gas (LNG) facility on the east bank (left descending bank) of the Mississippi River near river mile 46 in Plaquemines Parish, Louisiana. The site covers an area of approximately 600 acres, with approximately 6,500 feet of frontage on the Mississippi River. Pointe LNG has acquired this property under long-term leases with options to purchase. The Pointe LNG Project would also include two gas supply pipeline laterals for a total of approximately 6.6 miles of supply pipeline. The Project would be developed to liquefy domestic natural gas for export to foreign markets as LNG.

The Project would be sited, constructed and operated pursuant to Section 3 of the Natural Gas Act (15 United States Code 717b). The Project would consist of three liquefaction trains, with each train having a capacity of 2.0 metric tonnes per annum (MTPA). The total annual capacity of the Project would be approximately 6.0 MTPA. The Pointe LNG Project would consist of the following facilities:

- Natural gas pre-treatment systems;
- a liquefaction facility;
- a mixed refrigerant system;
- a boil-off gas recovery system;
- a propane refrigeration compressor;
- a nitrogen system;
- LNG storage;
- LNG storage tank protection systems;
- a marine loading terminal;
- electric power generation; and
- approximately 6.6 miles of 36-inch-diameter natural gas supply laterals (the Northern and Southern Pipelines).

The general location of the project facilities is shown in appendix 2.[2]

Land Requirements for Construction

The LNG export terminal would be constructed on the 600 acre site, of which approximately 195 acres would be developed with terminal facilities and about 1,640 feet of river frontage would be used for marine berth and loading facilities. The planned Northern and Southern Pipelines would be 3.2 and 3.4 miles long, respectively. Pointe LNG currently plans to use a 150-foot-wide or less construction right-of-way to install the pipelines, and would maintain a permanent easement of 50 feet centered on each pipeline. The remaining acreage would be restored and would revert to former usage.

The EIS Process

The EIS will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, Commission staff have already initiated a NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the Commission receives an application. As part of the pre-filing review, Commission staff will contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present Commission staffs' independent analysis of the issues. The draft EIS will be available in electronic format in the public record through eLibrary[3] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the draft EIS is issued. The draft EIS will be issued for an allotted public comment period. After the comment period on the draft EIS, Commission staff will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure Commission staff have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate in the preparation of the EIS.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian

[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 the last page of this notice.

[2] 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 the last page of this notice.

[3] For instructions on connecting to eLibrary, refer to the last page of this notice.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

tribes, and the public on the project's potential effects on historic properties.[5] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes: Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

A *Notice of Availability* of the draft EIS will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). *If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 3).*

Becoming an Intervenor

Once Pointe LNG files its application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Only intervenors have the right to seek rehearing of the Commission's decision and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project, after which the Commission will issue a public notice that establishes an intervention deadline.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* PF18–8). 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. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 5, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02000 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

[5] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD19–12–000]

Security Investments for Energy Infrastructure Technical Conference; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) and the United States Department of Energy (DOE) will co-host a Security Investments for Energy Infrastructure Technical Conference (conference) on Thursday, March 28, 2019, from 10:00 a.m. to 4:00 p.m. This Commissioner- and DOE senior official-led conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The purpose of the conference is to discuss current cyber and physical security practices used to protect energy infrastructure and will explore how federal and state authorities can provide incentives and cost recovery for security investments in energy infrastructure, particularly the electric and natural gas sectors.

The conference will address two high-level topics. The first topic will include discussion of types of current and emerging cyber and physical security threats. Specifically, the conference will explore factors that the private sector considers when evaluating energy infrastructure security threats and vulnerabilities, as well as the availability of resources and challenges associated with evaluating these issues. In addition, the conference will discuss cyber and physical security best practices and mitigation strategies.

The second topic will center on how federal and state authorities can facilitate investments to improve the cyber and physical security of energy infrastructure. The conference will concentrate on federal and state authorities' current cost recovery policies. In addition, this panel will also look at how security investments are presently incentivized and what type of incentives would be most effective to facilitate security investment (*e.g.,* accelerated depreciation, adders to return on equity, etc.).

Further details of this conference will be provided in a supplemental notice.

The conference will be open and free to the public; however, interested attendees are encouraged to preregister online at: *https://www.ferc.gov/whats-new/registration/03-28-19-form.asp.*

Information regarding the conference will be posted on the Calendar of Events on the Commission's website, *http://www.ferc.gov,* prior to the event. The conference will also be webcast and transcribed. Anyone with internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100. Transcripts of the technical conference will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1 (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Carolyn Templeton by phone at (202) 502–8785 or by email at *carolyn.templeton@ferc.gov.* For information related to logistics, please contact Sarah McKinley at (202) 502–8368 or by email at *sarah.mckinley@ferc.gov.*

Dated: February 4, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02013 Filed 2–11–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

2025 Resource Pool—Sierra Nevada Customer Service Region

AGENCY: Western Area Power Administration, DOE.

ACTION: Proposed power allocations from Central Valley and Washoe Projects.

SUMMARY: Western Area Power Administration announces proposed power allocations from the 2025 Resource Pool for the Central Valley and Washoe projects. Under the final 2025 Power Marketing Plan, 2 percent of the existing marketable resource, otherwise known as Base Resource, of the Central Valley and Washoe Projects will be allocated to new and existing eligible preference customers beginning January 1, 2025 and ending December 31, 2054. This notice provides a list of the allottees and seeks comments from the public on the proposed resource pool allocations.

DATES: Send written comments to the Sierra Nevada Regional Office (SNR) at the address below by 4 p.m., Pacific Time, on March 14, 2019. Comments can also be submitted through email or certified mail. Comments sent via U.S. Postal Service first-class mail will be accepted if:

1. Postmarked at least 3 days before March 14, 2019, and
2. Received no later than March 18, 2019.

Comments received after the close of the comment period will not be considered. After considering comments, WAPA will publish the Final 2025 Resource Pool Allocations in the **Federal Register**.

ADDRESSES: Send written comments to: Ms. Sandee Peebles, Public Utilities Specialist, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630. Submit comments by email to *2025RPComments@wapa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sandee Peebles, Public Utilities Specialist, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630, (916) 353–4454, or by email to *peebles@wapa.gov.*

SUPPLEMENTARY INFORMATION:

Background

WAPA published the final 2025 Power Marketing Plan (Marketing Plan) on August 15, 2017, (82 FR 38675) to define how WAPA will market hydropower from the Central Valley and Washoe projects beginning January 1, 2025, and ending December 31, 2054. The current marketing plan and contracts expire on December 31, 2024. As part of the final Marketing Plan, WAPA will withdraw 2 percent of the existing marketable resource from existing customers, also known as Base Resource, to create a resource pool. The 2-percent resource pool will be offered to eligible preference entities that do not currently have an allocation and existing eligible preference customers.

The Call for 2025 Resource Pool Applications was published in the **Federal Register** on March 8, 2018 (83 FR 9851), and applications were due by May 7, 2018. On July 13, 2018, WAPA extended the deadline to file applications to August 13, 2018 (83 FR 32664).

Proposed 2025 Resource Pool Allocations

WAPA received applications for the 2025 Resource Pool from 29 existing customers and 8 applications from new eligible preference entities. WAPA used a two-step process to determine proposed power allocations from the 2025 Resource Pool. First, WAPA determined which applicants met the eligibility criteria. Next, WAPA used its discretion to determine which eligible entities would receive a proposed allocation and the amount of the proposed allocation.

The proposed 2025 Resource Pool allocations are preliminary and may change based on comments received. After reviewing the comments, WAPA will publish a notice of Final 2025 Resource Pool Allocations in the **Federal Register** and respond to comments.

The proposed 2025 Resource Pool allottees, percentage of the Base Resource, and the estimated megawatt-hours (MWh) of each allocation are listed below. The estimated MWh for each allocation assumes an estimated average annual Base Resource of 3,342,000 MWh and is rounded to the nearest MWh. The proposed allocations are as follows:

Allottee	Base resource allocation (%)	Estimated MWh
Army Air Force Exchange	0.03960	1,323
California State University, Sacramento	0.01106	370
Cawelo Water District	0.00373	125
Eastside Power Authority	0.00362	121
Fallon, City of	0.01988	664
Hoopa Valley Tribe	0.00158	53
Kirkwood Meadows Public Utilities District	0.03793	1,268
Lower Tule Irrigation District	0.00197	66
Merced Irrigation District	0.10079	3,368
Modesto Irrigation District	0.30470	10,183
Monterey Bay Community Power	0.35347	11,813
Orange Cove Irrigation District	0.02382	796
Placer County Water Agency	0.00394	132
Reclamation District 108	0.00072	24

Allottee	Base resource allocation (%)	Estimated MWh
Regents of the University of California	0.14688	4,909
Roseville, City of	0.00979	327
Sacramento Municipal Utility District	0.01735	580
Santa Clara Water District	0.00365	122
Silicon Valley Clean Energy Authority	0.32467	10,850
Sonoma County Water Agency	0.00360	120
Stockton, Port of	0.01155	386
Truckee Donner Public Utility District	0.03716	1,242
Turlock Irrigation District	0.32956	11,014
University of California, Davis	0.01949	651
Water Resources, California Department of	0.14398	4,812
Woodland Davis Clean Water Agency	0.04371	1,461
Zone 7, Alameda County Flood Control & Water Conservation District	0.00180	60
	2.00000	66,840

Additional Base Resource

Under the final Marketing Plan, there may be future opportunities for entities to receive a Base Resource allocation from WAPA, for instance:

1. If an allocation is withdrawn because an allottee is unable to execute a contract or secure transmission arrangements for the delivery of power by the prescribed dates.
2. A customer surrenders an allocation.
3. An allottee's or existing customer's Base Resource allocation is greater than its need.

If additional Base Resource is available for reallocation, WAPA, at its discretion and sole determination, reserves the right to reallocate the additional Base Resource through bilateral negotiations. WAPA also reserves the right to offer any additional Base Resource to (1) eligible entities who submitted applications during the 2025 Call for Applications, (2) existing customers, (3) new preference entities, or (4) any entity on a short-term basis.

Contracting Process

SNR will offer existing customers 98 percent of their current Base Resource allocations. The 2025 Resource Pool consists of the remaining 2 percent of the power resources. For existing customers who received a resource pool allocation, the additional allocation will be included with their existing Base Resource allocation.

WAPA solely determines the terms, conditions, rates, or charges of its power contracts and will work with allottees to develop customized products, if requested, to meet their needs when the final 2025 Resource Pool allocations have been published. Each allottee is responsible for obtaining transmission arrangements for delivery of power to its load. Upon request, WAPA may assist an allottee in obtaining transmission arrangements for delivery of power.

Allottees will be required to execute a contract within six months of the contract offer. Electric service contracts will be effective upon WAPA's signature, and service will begin on January 1, 2025.

Authorities

The Marketing Plan, published in the **Federal Register** (82 FR 38675) on August 15, 2017, was established under the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); the Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)); and other acts specifically applicable to the projects involved. Allocating power from the resource pool falls within the Marketing Plan and is covered by this authority.

Regulatory Procedure Requirements

Environmental Compliance

WAPA completed a Categorical Exclusion to comply with the National Environmental Policy Act, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 CFR parts 1500–08), and Department of Energy NEPA implementing regulations (10 CFR part 1021).

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this **Federal Register** notice by the Office of Management and Budget is required.

Dated: January 29, 2019.

Mark A. Gabriel,

Administrator.

[FR Doc. 2019–02016 Filed 2–11–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9989–44–OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2018 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed final calculations for the second round of allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2018 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA has also completed calculations for allocations of the remaining 2018 NUSA allowances to existing units and has posted spreadsheets containing those calculations on EPA's website as well.

DATES: February 12, 2019.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Kenon Smith at (202) 343–9164 or *smith.kenon@epa.gov* or Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where

EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), and 97.811(b) and 97.812 (NO_X Ozone Season Group 2). Each NUSA allowance allocation process involves up to two rounds of allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.

In a notice of data availability (NODA) published in the **Federal Register** on December 6, 2018 (83 FR 62860), EPA provided notice of the preliminary identification of units eligible to receive second-round NUSA allocations for the 2018 control periods and described the process for submitting any objections. EPA received no objections in response to the December 6, 2018 NODA. This NODA provides notice of EPA's calculations of the amounts of the second-round 2018 NUSA allocations to the previously identified eligible new units and the allocations of the remaining allowances to existing units.

The detailed unit-by-unit data and final allowance allocation calculations are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2018_NOx_Annual_2nd_Round_Final_Data_New_Units'', ''CSAPR_NUSA_2018_NOx_OS_2nd_Round_Final_Data_New_Units'', ''CSAPR_NUSA_2018_SO2_2nd_Round_Final_Data_New_Units'', ''CSAPR_NUSA_2018_NOx_Annual_2nd_Round_Final_Data_Existing_Units'', ''CSAPR_NUSA_2018_NOx_OS_2nd_Round_Final_Data_Existing_Units'', ''CSAPR_NUSA_2018_SO2_2nd_Round_Final_Data_Existing_Units'', available on EPA's website at *https://www.epa.gov/csapr/csapr-compliance-year-2018-nusa-nodas.*

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), and 97.811(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), and 97.811(b))

Dated: January 31, 2019.

Reid P. Harvey,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2019–02070 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OAR–2018–0310, EPA–R08–OAR–2018–0311, EPA–R08–OAR–2018–0324, EPA–R08–OAR–2018–0328, EPA–R08–OAR–2018–0329, EPA–R08–OAR–2018–0331; FRL–9988–34—Region 8]

Notice of Final Decision to Issue Federal Minor New Source Review Permits to Six Sources on the Uintah and Ouray Indian Reservation Owned and Operated by Anadarko Uintah Midstream, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final agency action.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) issued final permit decisions for six Clean Air Act Minor New Source Review (MNSR) Permits in Indian country to Anadarko Uintah Midstream, LLC, (Anadarko) for the Archie Bench Compressor Station, the Bitter Creek Compressor Station, the East Bench Compressor Station, the North Compressor Station, the North East Compressor Station and the Sage Grouse Compressor Station. These permits incorporate emissions control requirements originally established in a 2008 federal consent decree into federally enforceable permits, which is a step toward allowing the consent decree to be terminated. Consistent with the federal consent decree, the permits include enforceable carbon monoxide emissions control efficiency requirements for the 4-stroke lean-burn compressor engines using catalytic emissions control systems and enforceable requirements to install and operate only instrument air-driven or low-bleed pneumatic controllers. The permit for the Bitter Creek Compressor Station also includes enforceable requirements for the installation and operation of low-emission tri-ethylene glycol (TEG) dehydration systems for control of volatile organic compound emissions.

DATES: The EPA issued final MNSR permit decisions for the six compressor stations on December 7, 2018. The permits became effective on that date. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this final permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeal for the Tenth Circuit by April 15, 2019.

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

Anyone who wishes to review the EPA Environmental Appeals Board (EAB) decision described below or documents in the EAB's electronic docket for its decision can obtain them at *https://www.epa.gov/eab/.* Key portions of the administrative record for this decision (including the final permits, all public comments, the EPA's responses to the public comments, and additional supporting information) are available through a link at Region 8's website, *https://www.epa.gov/caa-permitting/caa-permits-issued-epa-region-8,* or at *https://www.regulations.gov.* (Docket ID Nos. EPA–R08–OAR–2018–0310, EPA–R08–OAR–2018–0311, EPA–R08–OAR–2018–0324, EPA–R08–OAR–2018–0328, EPA–R08–OAR–2018–0329, and EPA–R08–OAR–2018–0331).

FOR FURTHER INFORMATION CONTACT: Claudia Smith, Air Program, EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6520, *smith.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA initially issued final permits on June 7, 2018, to Anadarko for the Archie Bench Compressor Station (Tribal Minor NSR Permit SMNSR–UO–000817–2016.001), the Bitter Creek Compressor Station (Tribal Minor NSR Permit SMNSR–UO–000818–2016.001), the East Bench Compressor Station (Tribal Minor NSR Permit SMNSR–UO–000824–2016.001), the North Compressor Station (Tribal Minor NSR Permit SMNSR–UO–000071–2016.001), the North East Compressor Station (Tribal Minor NSR Permit SMNSR–UO–001874–2016.001),

and the Sage Grouse Compressor Station (Tribal Minor NSR Permit SMNSR–UO–001875–2016.001). The EPA regulations at 40 CFR 49.159(d) provided an opportunity for administrative review by the EPA's EAB of these initial permit decisions.

The EPA's EAB received one petition for review of the permits, and on November 15, 2018, the EAB issued an Order denying the petition for review. *See In re Anadarko Uintah Midstream, LLC,* NSR Appeal No. 18–01 (EAB, Nov. 15, 2018) (Order Denying Review). Following the EAB's action, pursuant to 40 CFR 49.159(d)(8), the EPA issued final permit decisions on December 7, 2018. All conditions of the Anadarko permits, as initially issued by the EPA on June 7, 2018, are final and effective as of December 7, 2018.

Dated: February 6, 2019.

Douglas Benevento,

Regional Administrator, Region 8.

[FR Doc. 2019–01978 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2018–0402; FRL–9989–35—Region 5]

Notice of Issuance of Grand Casino Mille Lacs PSD and Part 71 Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the Environmental Protection Agency (EPA) issued Federal operating permits to the Mille Lacs Band Corporate Commission for Grand Casino Mille Lacs. The source is in Onamia, Minnesota on lands held in trust for the Mille Lacs Band of Ojibwe Indians. The permits authorize a change in the testing requirements for oxides of nitrogen (NO_X) emissions from three existing diesel-fired internal combustion engines. These engines are used for peak load management as well as for backup power. NO_x performance test requirements are increased in frequency from once in five years to once in three years.

FOR FURTHER INFORMATION CONTACT: Paymon Danesh, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6219, *danesh.paymon@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. How can I get copies of this document and other related information?

Docket. EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0402. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Paymon Danesh, Environmental Engineer, at (312) 886–6219 before visiting the Region 5 office.

A. What is the background information?

Mille Lacs Corporate Commission owns and operates four diesel-fired generators used for peak load management and backup power at the Grand Casino Mille Lacs facility, located in Onamia, Minnesota. Mille Lacs Corporate Commission also owns and operates a fifth diesel-fired generator used for emergency backup power. The facility is located on land that is held in trust for the Mille Lacs Band of Ojibwe. EPA is responsible for issuing and enforcing any air quality permits for the source until such time that the Mille Lacs Band of Ojibwe has EPA approval to do so.

On March 13, 2018, EPA received from Mille Lacs Band Corporate Commission a significant permit modification application requesting a revision to the facility's annual NOx compliance test requirements. The applicant also requested that the frequency of performance tests for the engines be increased from once in every 5 years to once in every 3 years. EPA approved the requested changes. On June 18, 2018, EPA published a draft revised title V permit and draft revised Prevention of Significant Deterioration (PSD) permit for public comment. The public comment period ended on July 23, 2018. EPA did not receive any comments on the permits. EPA issued the final permits for Grand Casino Mille Lacs, title V permit number 2018–71MNML–001, and PSD permit number 2018–52MNML–001, on August 2, 2018. Pursuant to 40 CFR 71.11(i)(2)(iii) and 40 CFR 124.15(b)(3), the permits became effective immediately upon issuance since EPA did not receive any comments on the permits.

B. Appeal of the Permits

Pursuant to 40 CFR 71.11(l), any person who filed comments on the draft permit may petition for administrative review subject to the requirements of 40 CFR 71.11(l). If no one filed comments on the draft permit and the final permit is identical to the permit as proposed, any person may petition for administrative review of the permit only to the extent that grounds for a petition have arisen that were not reasonably foreseeable during the public comment period on the draft permit. For Grand Casino Mille Lacs permit number 2018–71MNML–001, the 30-day period during which a person may seek review under 40 CFR 71.11(l) began on August 7, 2018.

Pursuant to 40 CFR 124.19(a)(2), any person who filed comments on the draft PSD permit may file a petition for review as provided in 40 CFR 124.19. Additionally, any person who failed to file comments may petition for administrative review of any permit conditions set forth in the final permit decision, but only to the extent that those final permit conditions reflect changes from the proposed draft permit. For Grand Casino Mille Lacs permit number 2018–52MNML–001, the 30-day period during which a person may seek review under 40 CFR 124.19 began on August 7, 2018.

C. What is the purpose of this notice?

EPA is notifying the public of the issuance of a revised title V operating permit and revised PSD construction permit to Mille Lacs Band Corporate Commission for Grand Casino Mille Lacs.

EPA issued permit numbers 2018–71MNML–001 and 2018–52MNML–001 on August 2, 2018 to Mille Lacs Band Corporate Commission, which became effective immediately upon issuance.

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

Dated: December 21, 2018.

James O. Payne,

Acting Regional Administrator, Region 5.

[FR Doc. 2019–01923 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9988–96–OAR]

Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2017

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments.

SUMMARY: The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2017 is available for public review. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2019, as well as subsequent inventory reports.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments by March 14, 2019. However, comments received after that date will still be welcomed and considered for the next edition of this report.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0853, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. Do not submit electronically any information you consider to be Confidential Business Information (CBI). Comments can also be submitted in hardcopy to GHG Inventory at: Environmental Protection Agency, Climate Change Division (6207A), 1200 Pennsylvania Ave. NW, Washington, DC 20460, Fax: (202) 343–2342. You are welcome and encouraged to send an email with your comments to *GHGInventory@epa.gov.* EPA may publish any comment received to its public docket, submitted in hardcopy or sent via email. For additional submission methods, the full EPA public comment policy, information about CBI, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ms. Mausami Desai, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Programs, Climate Change Division, (202) 343–9381, *ghginventory@epa.gov@epa.gov.*

SUPPLEMENTARY INFORMATION: Annual U.S. emissions for the period of time from 1990 through 2017 are summarized and presented by sector, including source and sink categories. The inventory contains estimates of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), sulfur hexafluoride (SF_6), and nitrogen trifluoride (NF_3) emissions. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2017 is the latest in a series of annual, policy-neutral U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2019, as well as subsequent inventory reports.

The draft report is available at *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks.*

Sarah Dunham,

Director, Office of Atmospheric Programs.

[FR Doc. 2019–01545 Filed 2–11–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2019.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Ameris Bancorp, Moultrie, Georgia;* to merge with Fidelity Southern Corporation, and thereby indirectly acquire Fidelity Bank, both of Atlanta, Georgia.

Board of Governors of the Federal Reserve System, February 7, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02024 Filed 2–11–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Notice Requirements Associated with Regulation W (FR W; OMB No. 7100–0304).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not

required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision of the Following Information Collection

Report title: Notice Requirements Associated with Regulation W.

Agency form number: FR W.[1]

OMB control number: 7100–0304.

Frequency: On occasion.

Respondents: Depository Institutions.

Estimated number of respondents: 4.

Estimated average hours per response: Section 223.15(b)(4), 2; Section 223.31(d)(4), 6; Section 223.43(b), 10.

Estimated annual burden hours: 24.

General description of report: The information collection associated with the Board's Regulation W (Transactions Between Member Banks and Their Affiliates; 12 CFR part 223) is triggered by specific events, and there are no associated reporting forms. Filings are required from insured depository institutions and uninsured member banks that seek to request certain exemptions from the requirements of sections 23A and 23B of the Federal Reserve Act. This information collection is separate from the quarterly Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y–8; OMB No. 7100–0126), which collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. This collection of information comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is used to demonstrate compliance with sections 23A and 23B of the Federal Reserve Act (FRA), 12 U.S.C. 371c(f) and 371c–1(e), and to request an exemption from the Board.

Legal authorization and confidentiality: Sections 23A and 23B of the FRA authorize the Board to issue these notice requirements (12 U.S.C. 371c(f) and 371c–1(e)). Respondents are required to file one or more of the Regulation W notices in order to obtain the benefits noted above. Information provided on the Loan Participation Renewal notice is confidential under exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4), because the information is typically considered confidential commercial or financial information and is reasonably likely to result in substantial competitive harm if disclosed. However, information provided on the Acquisition notice, the Internal Corporate Reorganization Transaction notice, and the Section 23A Additional Exemption request generally is not considered confidential under exemption 4. Respondents who desire that the information on one of these three submissions be kept confidential pursuant to exemption 4 of the FOIA may request confidential treatment under the Board's rules at 12 CFR 261.15. In addition, any information that is obtained as a part of an examination or supervision of a financial institution is exempt from disclosure under exemption 8 of the FOIA, 5 U.S.C. 552(b)(8).

Current actions: On November 9, 2018, the Board published a notice in the **Federal Register** (83 FR 56080) requesting public comment for 60 days on the extension, without revision, of the Notice Requirements Associated with Regulation W. The comment period for this notice expired on January 8, 2019. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, February 6, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–01953 Filed 2–11–19; 8:45 am]

BILLING CODE 6210–01–P

[1] The internal Agency Tracking Number previously assigned by the Board to this information collection was ''Reg W.'' The Board is changing the internal Agency Tracking Number for the purpose of consistency.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The 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 February 27, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Lindsey Bosshard Irrevocable Trust of 2018 and the Alexandra Bosshard Irrevocable Trust of 2018, both of La Crosse, Wisconsin, with Andrew R. Bosshard serving as trustee;* to join the Bosshard family shareholder group and thereby acquire voting shares of Bosshard Banco, Ltd, La Crosse, Wisconsin and thereby indirectly acquire First National Bank of Bangor, Bangor, Wisconsin, and Intercity State Bank, Schofield, Wisconsin.

Board of Governors of the Federal Reserve System, February 7, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–02023 Filed 2–11–19; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246; Docket No. 2018–0001; Sequence No. 18]

Information Collection; General Services Administration Regulation; Packing List Clause

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for an extension of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the packing list clause.

DATES: Submit comments on or before: April 15, 2019.

ADDRESSES: Submit comments identified by Information Collection 3090–0246 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0246, Packing List Clause''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0246,

Packing List Clause'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 3090–0246, Packing List Clause.

Instructions: Please submit comments only and cite Information Collection 3090–0246, Packing List Clause, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential 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: Mr. Kevin Funk, Program Analyst, at telephone 202–357–5805, or via email at *kevin.funk@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211–77, Packing List, requires a contractor to include a packing list or other suitable document that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term ''Credit Card'' is required.

B. Annual Reporting Burdens

Respondents: 8,561.

Responses per Respondent: 19.

Total Annual Responses: 162,659.

Hours per Response: .05.

Total Burden Hours: 8,133.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, at 202–501–4755. Please cite OMB Control No. 3090–0246, Packing List Clause, in all correspondence.

Jeffrey A. Koses,

Director, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2019–02033 Filed 2–11–19; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Announcement of Requirements and Registration for the 2019 Million Hearts® Hypertension Control Challenge

Authority: 15 U.S.C. 3719.

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

Award Approving Official: Robert R. Redfield, MD, Director, Centers for Disease Control and Prevention, and Administrator, Agency for Toxic Substances and Disease Registry

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces the launch of the 2019 Million Hearts® Hypertension Control Challenge.

Million Hearts® is a national initiative to prevent one million heart attacks and strokes by 2022. In order to prevent one million events, we need to decrease smoking, sodium consumption and physical inactivity by 20%; improve performance on appropriate aspirin use, blood pressure control, cholesterol management, and smoking cessation to 80%; and improve outcomes for priority populations. Over the last five years, we have seen tremendous progress by providers and health care systems that focus on improving their performance in controlling patients' blood pressure. Getting to 80% control would mean that 10 million more Americans with hypertension would have their blood pressure under control, and be at substantially lower risk for strokes, heart attacks and other events. For more information about the initiative, visit *https://millionhearts.hhs.gov/* .

The challenge is an important way to call attention to the need for improved control, provides a powerful motivation and target for clinicians, and will improve understanding of successful implementation strategies at the health system level. It will identify clinicians, clinical practices, and health systems that have exceptional rates of hypertension control and recognize them as 2019 Million Hearts® Hypertension Control Champions. To support improved quality of care delivered to patients with hypertension, Million Hearts® will document the systems, strategies, processes, and staffing that contribute to the exceptional blood pressure control rates achieved by Champions.

DATES: The Challenge will accept applications from February 14, 2019 through April 1, 2019.

FOR FURTHER INFORMATION CONTACT: Mary George, Division for Heart Disease and Stroke Prevention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy. NE, Mailstop F–73, Chamblee, GA 30341, Telephone: 770–488–2424, Email: *millionhearts@cdc.gov;* subject line of email: Million Hearts Hypertension Control Challenge; Attention: Mary George.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

The challenge is authorized by Public Law 111–358, the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act).

Applicants for the 2019 Million Hearts® Hypertension Control Challenge will be asked to provide two hypertension control rates for the practice's or health system's hypertensive population: a current rate for the most recent 12-month reporting period (*e.g.,* 1/1/2018–12/31/2018) and a previous rate for a 12-month period 1 year before the most recent reporting period (*e.g.,* 1/1/2017–12/31/2017). Applicants will also be asked to provide the prevalence of hypertension in their population (more details provided below), describe some population characteristics (such as urban/rural location, percent minority, percent enrolled in Medicaid, percent with no health insurance, and percent whose primary language is not English) and strategies used by the practice or health system that support continued improvements in blood pressure control. A copy of the application form will be available on the Challenge website for the duration of the Challenge.

Eligibility Rules for Participating in the Competition

To be eligible to be recognized as a Million Hearts® Hypertension Control

Champion under this challenge, an individual or entity—

(1) Shall have completed the application form in its entirety to participate in the competition under the rules developed by HHS/CDC;

(2) Shall have complied with all the requirements in this section and satisfy the requirements in one of the following subparts:

a. Be a U.S. licensed clinician, practicing in any U.S. setting, who provides continuing care for adult patients with hypertension. The individual must be a citizen or permanent resident of the U.S.;

b. Be a U.S. incorporated clinical practice, defined as any practice with two or more U.S. licensed clinicians who by formal arrangement share responsibility for a common panel of patients, practice at the same physical location or street address, and provide continuing medical care for adult patients with hypertension;

c. Be a health system, incorporated in and maintaining a primary place of business in the U.S., that provides continuing medical care for adult patients with hypertension. We encourage large health systems (those that are comprised of a large number of geographically dispersed clinics and/or have multiple hospital locations) to consider having one or a few of the highest performing clinics or regional affiliates apply individually instead of the health system applying as a whole;

(3) Must treat all adult patients with hypertension in the practice seeking care, not a selected subgroup of patients;

(4) Must have a data management system (electronic or paper) that allows HHS/CDC or their contractor to verify data submitted;

(5) Must treat a minimum of 500 adult patients annually and have a hypertension control rate of at least 80%;

(6) May not be a Federal entity or Federal employee acting within the scope of their employment;

(7) An HHS employee must not work on their application(s) during assigned duty hours;

(8) Shall not be an employee of or contractor at CDC;

(9) Must agree to participate in a data validation process to be conducted by a reputable independent contractor. Data will be kept confidential by the contractor to the extent applicable law allows and will be shared with the CDC, in aggregate form only (*e.g.,* the hypertension control rate for the practice not individual patients' hypertension values);

(10) Must agree to sign, without revisions, a Business Associate Agreement with the contractor conducting the data validation.

(11) Must have a written policy in place about conducting periodic background checks on all providers and taking appropriate action based on the results of the check. CDC's contractor may also request to review the policy and any supporting information deemed necessary. In addition, a health system background check will be conducted by CDC or a CDC contractor that includes a search for The Joint Commission sanctions and current investigations for serious institutional misconduct (*e.g.,* attorney general investigation). Eligibility status, based upon the above-referenced written policy, appropriate action, and background check, will be determined at the discretion of the CDC consistent with CDC's public health mission.

(12) Must agree to be recognized if selected and agree to participate in an interview to develop a success story that describes the systems and processes that support hypertension control among patients. Champions will be recognized on the Million Hearts® website. Strategies used by Champions that support hypertension control may be written into a success story, placed on the Million Hearts® website, and attributed to Champions.

In addition to meeting the requirements listed in parts 1–12 above, to be eligible to be recognized in the challenge, an individual or entity also must comply with the conditions or requirements set forth in each of the following paragraphs in this section.

Federal funds may not be used to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge.

Individual applicants and individuals in a group practice must be free from convictions for or pending investigations of criminal and health care fraud offenses such as felony health care fraud, patient abuse or neglect; felony convictions for other health care-related fraud, theft, or other financial misconduct; and felony convictions relating to unlawful manufacture, distribution, prescribing, or dispensing of controlled substances as verified through the Office of the Inspector General List of Excluded Individuals and Organizations. *http://oig.hhs.gov/exclusions/background.asp.*

Individual applicants must be free from serious sanctions, such as those for misuse or mis-prescribing of prescription medications. Eligibility status of individual applicants with serious sanctions will be determined at the discretion of CDC. CDC or CDC's contractor may perform background checks on individual clinicians and medical practices.

Champions previously recognized through the 2013, 2014, 2015, 2017, and 2018 Million Hearts® Hypertension Control Challenges retain their designation as a ''Champion'' and are not eligible to be named a Champion in the 2019 challenge.

An individual or organization shall not be disqualified from the 2019 Million Hearts Hypertension Control Challenge for utilizing Federal facilities or consulting with Federal employees during a competition so long as the facilities and Federal employees are made available to all individuals and organizations participating in the competition on an equal basis.

By participating in this challenge, an individual or organization agrees to assume any and all risks related to participating in the challenge. Individuals or organizations also agree to waive claims against the Federal Government and its related entities, except in the case of willful misconduct, when participating in the challenge, including claims for injury; death; damage; or loss of property, money, or profits, and including those risks caused by negligence or other causes.

By participating in this challenge, individuals and organizations agree to protect the Federal Government against third party claims for damages arising from or related to challenge activities.

Individuals or organizations are not required to hold liability insurance related to participation in this challenge.

No cash prize will be awarded. Champions will receive national recognition.

Registration Process for Participants

To participate and submit an application, interested parties should go to *https://millionhearts.hhs.gov* or *https://www.challenge.gov.* On this site, applicants will find the application form and the rules and guidelines for participating. Information required of the applicants on the application form includes:

- The size of the applicant's adult primary care patient population, a summary of known patient demographics (*e.g.,* age distribution), and any noteworthy patient population characteristics (such as urban/rural location, percent minority, percent enrolled in Medicaid, percent with no health insurance, and percent whose primary language is not English).
- The number of the applicant's adult primary care patients, ages 18–85, who were seen during the measurement year

and had a hypertension diagnosis (*i.e.* hypertension prevalence).

• The applicant's current hypertension control rate for their hypertensive population ages 18–85 during the measurement year is required. In determining the hypertension control rate, CDC defines ''hypertension control'' as a blood pressure reading <140 mmHg systolic and <90 mmHg diastolic among patients ages 18–85 with a diagnosis of hypertension.

• The hypertension control rate should be for the provider's or health system's entire adult hypertensive patient population ages 18–85, and not limited to a sample. The provider's or health system's hypertensive population ages 18–85 should include only patients in primary care or in cardiology care in the case of a cardiology clinic. Patients seen only in dental care or behavioral health care should not be included. Examples of ineligible data submissions include hypertension control rates that are limited to treatment cohorts from research studies or pilot studies, patients limited to a specific age range (such as 18–35 only), or patients enrolled in limited scale quality improvement projects.

• Completion of a checklist of sustainable clinic systems or processes that support hypertension control. These may include provider or patient incentives, dashboards, staffing characteristics, electronic record keeping systems, reminder or alert systems, clinician reporting, service modifications, etc. The estimated burden for completing the application form is 30 minutes.

Amount of the Prize

Up to 35 of the highest scoring clinical practices or health systems will be recognized as Million Hearts® Hypertension Control Champions. No cash prize will be awarded. Champions will receive national recognition.

Basis Upon Which Winner Will Be Selected

The application will be scored based on two hypertension control rates: one for your most recent 12-month reporting period ending not earlier than December 31, 2017, and consistency with a previous rate for a 12-month period 1 year before the current rate.

Phase 1 includes verification of the hypertension prevalence and blood pressure control rate data submitted and a background check. For applicants whose Phase 1 data is verified as accurate and who pass the background check without concerns, phase 2 consists of a medical chart review. The medical chart review will verify the diagnosis of hypertension during the reporting year as well as blood pressure being controlled to <140 mmHg systolic and <90 mmHg diastolic.

A CDC-sponsored panel of three to five experts consisting of HHS/CDC staff will review the applications that pass phase 2 to select Champions. Final selection of Champions will take into account all the information from the application form, the background check, and data verification and validation. In the event of tied scores based on the hypertension control rate at any point in the selection process, geographic location may be taken into account to ensure a broad distribution of champions.

Some Champions will participate in a post-challenge telephone interview. The interview will include questions about the strategies employed by the individual practice or organization to achieve high rates of hypertension control, including barriers and facilitators for those strategies. The interview will focus on systems and processes and should not require preparation time by the Champion. The estimated time for the interview is two hours, which includes time to review the interview protocol with the interviewer, respond to the interview questions, and review a summary about the Champion's practices. The summary may be written as a success story and will be posted on the Million Hearts® website.

Additional Information

Information received from applicants will be stored in a password protected file on a secure server. The challenge website will not include confidential or proprietary information about individual applicants, as described further below. The database of information submitted by applicants will not be posted on the website. Information collected from applicants will include general details, such as the business name, address, and contact information of the applicant. This type of information is generally publicly available. The application will collect and store only aggregate clinical data through the application process; no individually identifiable patient data will be collected or stored. Confidential or propriety data, clearly marked as such, will be secured to the full extent allowable by law.

Information for selected Champions, such as the provider, practice, or health system's name, location, hypertension control rate, and clinic practices that support hypertension control will be shared through press releases, the challenge website, and Million Hearts® and HHS/CDC resources.

Summary data on the types of systems and processes that all applicants use to control hypertension may be shared in documents or other communication products that describe generally used practices for successful hypertension control. HHS/CDC will use the summary data only as described.

Compliance With Rules and Contacting Contest Winners

Finalists and the Champions must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email, telephone, or mail after the date of the judging.

Privacy

If Contestants choose to provide HHS/CDC with personal information by registering or filling out the submission form through the Challenge.gov website, that information is used to respond to Contestants in matters regarding their submission, announcements of applicants, finalists, and winners of the Contest.

General Conditions

HHS/CDC reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at HHS/CDC's sole discretion.

Participation in this Contest constitutes a contestants' full and unconditional agreement to abide by the Contest's Official Rules found at *https://www.Challenge.gov* and *https://millionhearts.hhs.gov/.*

Authority: 15 U.S.C. 3719.

Dated: February 6, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–01914 Filed 2–11–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day–19–18AUZ]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the information collection request titled ''Human Health Effects of Drinking Water Exposures to

Per- and Polyfluoroalkyl Substances (PFAS) at Pease International Tradeport, Portsmouth, NH (The Pease Study)'' to the Office of Management and Budget (OMB) for review and approval. ATSDR previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 27, 2018 to obtain comments from the public and affected agencies. ATSDR received 11 comments related to the previous notice, of which two were posted in duplicate. This notice serves to allow an additional 30 days for public and affected agency comments.

ATSDR will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Human Health Effects of Drinking Water Exposures to Per- and Polyfluoroalkyl Substances (PFAS) at Pease International Tradeport, Portsmouth, NH (The Pease Study)—New—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

Per- and polyfluoroalkyl substances (PFAS) are a family of environmentally and biologically persistent chemicals used in industrial applications such as aqueous film-forming foam (AFFF), used to extinguish flammable liquid fires. Since the 1970s, military bases in the U.S. have used AFFF with PFAS constituents for firefighting training as well as to extinguish fires. At some military bases, AFFF use has resulted in the migration of PFAS chemicals through soils to ground water and/or surface water sources of drinking water for bases and/or surrounding communities. In 2016, the U.S. Environmental Protection Agency (USEPA) issued a lifetime health advisory level of 0.07 total micrograms of perfluorooctanoate (PFOA) and perfluorooctane sulfonate (PFOS) combined per liter of drinking water (μg/L). In response to growing awareness of the extent of PFAS contamination across the U.S., Section 8006 of the Consolidated Appropriations Act, 2018, authorized the Agency for Toxic Substances and Disease Registry (ATSDR) to conduct a study on the human health effects of PFAS contamination in drinking water.

In response, ATSDR is requesting a three-year Paperwork Reduction Act (PRA) clearance for the Pease Study, which will serve as a proof-of-concept model for a national multi-site study of PFAS health effects. The existence of a large body of state and local environmental monitoring and population blood testing data makes the Pease community in Portsmouth, NH, particularly suitable as ATSDR's initial PFAS research study site. From approximately 1970 until 1991, the Air Force used AFFF for firefighting and training at Pease Air Force Base. The base closed in 1991, and was converted to a large business and aviation industrial park in 1993, the Pease International Tradeport. In 2014, PFAS drinking water concentrations were detected (0.35 μg/L PFOA and 2.4 μg/L PFOS) at levels well above what was to become the USEPA lifetime health advisory level (0.07 μg/L PFOA/PFOS). In 2015–7, the New Hampshire Department of Health and Human Services (NH DHHS) offered a PFAS blood testing program to the community. The blood testing program showed that the Pease population had concentrations of some types of PFAS that were two to three times higher than national estimates.

The Pease Study will be cross-sectional in design, drawing from a convenience sample of people with and without exposure to PFAS-contaminated drinking water from Pease. The main goals of the study are to: (1) Evaluate the study procedures and methods to identify any issues that need to be addressed before embarking on a national multi-site study; and (2) examine associations between health outcomes and measured and historically reconstructed serum levels of PFAS. ATSDR will examine the association between PFAS compounds and lipids, renal function and kidney disease, thyroid hormones and disease, liver function and disease, glycemic parameters and diabetes, as well as immune response and function in both children and adults. In addition, ATSDR will investigate if PFAS is related to differences in sex hormones and sexual maturation, vaccine response, and neurobehavioral outcomes in children. In adults, additional outcomes of interest include cardiovascular disease, osteoarthritis, osteoporosis, endometriosis, and autoimmune disease. Adults will be 18 years or older, and children will be 4–17 years of age at enrollment.

In total, ATSDR seeks to enroll 1,625 participants (1,100 adults and 525 children and their parents). Annualized estimates are 542 participants (367 adults and 175 children).

For the exposure group (n=1,350), ATSDR will enroll 1,000 adults and 350 children. Annualized estimates are 450 exposed participants (333 adults and 117 children). Eligible participants had to work at, live on, or attend childcare at the former Pease Air Force Base or the Pease International Tradeport, or live in a nearby home that was served by a PFAS-contaminated private well. Drinking water exposures must have occurred at some time between 2004 and May 2014, after which remediation of the public water supply occurred.

For the referent group (n=275), ATSDR will enroll 100 adults and 175 children. Annualized estimates are 92 referent participants (34 adults and 58 children). Eligible participants, never exposed to PFAS-contaminated drinking water from Pease, will come from other areas of Portsmouth, NH. Birth mothers of referent children likewise must never have had PFAS drinking water exposure.

ATSDR will recruit, screen for eligibility, and enroll in three waves. The exposure group will be recruited in Waves One and Two. ATSDR estimates that 89 percent of the exposure group will be enrolled in Wave One (n=1,200, or 400 per year), that is, will be past participants of the 2015–7 NH DHHS PFAS blood testing program. NH DHHS will assist ATSDR by sending out letters

of invitation to its former blood testing program participants. To achieve the desired sample size, the other 11 percent of the exposure group (n=150, or 50 per year) will be recruited in Wave Two. These will be people who were eligible for the PFAS blood testing program but did not take part. The referent group will be recruited in Wave Three (n=275, or 92 per year), which can occur concurrently with Wave One and Wave Two. Wave Two and Wave Three recruits will call to volunteer after ATSDR opens those waves to enrollment.

To restrict this study to drinking water exposures, any adult occupationally exposed to PFAS will not be eligible for the study (*i.e.,* ever firefighters or in chemical manufacture). Likewise, children whose birth mothers were occupationally exposed will not be eligible. This restriction applies to both the exposure and the referent group. ATSDR assumes that five percent of the people who volunteer will not meet eligibility requirements. ATSDR will screen the 1,578 people from the NH DHHS PFAS blood testing program in Wave One (n=526 per year). ATSDR will screen at least 198 exposed people in Wave Two (or 66 per year), and at least 362 unexposed people in Wave Three (or 121 per year). This will require an annual time burden of 134 hours for eligibility screening.

At enrollment, ATSDR will obtain adult consent, parental permission, and child assent before data collection begins. Each child will enroll with a parent, who ideally will be the child's birth mother, as ATSDR will ask details about the child's exposure, pregnancy, and breastfeeding history.

For each participant, ATSDR will take body measures, collect blood and urine samples for chemical and biomarker analysis, and administer a questionnaire on exposures and medical history. For purposes of burden estimation, ATSDR assumes that 20 percent of parents will also enroll as adults; therefore, 420 parents will take the child questionnaire long form (n=140 per year), while 105 parents will take the short form to reduce burden (n=35 per year). Parents and children will also complete assessments of the child's attention and behaviors. After eligibility screening, the annual time burden for participation in the study is 58 hours for adults and 208 hours for children and their parents.

ATSDR will ask for permission to compare adults' and children's medical histories with their medical records. ATSDR will also ask for permission to check children's school records to compare their behavioral assessment results. The annual time burden for medical record abstraction is estimated to be 183 hours. The annual time burden for school record abstraction is estimated to be 60 hours.

The total annualized time burden requested is 1,199 hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Pease Study Participants	Wave One Eligibility Screening Script	526	1	10/60
	Wave Two Eligibility Screening Script	66	1	15/60
	Wave Three Eligibility Screening Script	121	1	15/60
	Appointment Reminder Telephone Script	542	1	5/60
	Update Contact Information Hardcopy Form	542	1	5/60
	Medication List	542	1	3/60
	Body and Blood Pressure Measures Form	542	1	5/60
	Blood Draw and Urine Collection Form	542	1	10/60
	Adult Questionnaire	367	1	30/60
	Child Questionnaire—Long Form	140	1	30/60
	Child Questionnaire—Short Form	35	1	15/60
	Parent Neurobehavioral Test Battery	175	1	15/60
	Child Neurobehavioral Test Battery	175	1	90/60
Education Specialists	Child School Record Abstraction Form	15	12	20/60
Medical Record Specialists	Medical Record Abstraction Form—Adult	25	15	20/60
	Medical Record Abstraction Form—Child	25	7	20/60

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–01992 Filed 2–11–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2019–0008]

Control of Communicable Diseases: Foreign; Requirements Relating to Collection, Storage, and Transmission of Airline and Vessel Passenger, Crew, and Flight and Voyage Information for Public Health Purposes

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

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) announces the opening of a docket to obtain comment on a report as required by agency rules that relate to the transmission of passenger, crew, and flight/voyage information for public health purposes. The report can be found at *https://www.cdc.gov/quarantine/final-rule-communicable-diseases.html*. Interested members of the public may submit comment regarding this report.

DATES: Written comments must be received on or before March 14, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0008 by any of the following methods:

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

• *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–4, Atlanta, Georgia 30329;

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For questions concerning this notice: Ashley C. Altenburger, JD, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H16–4, Atlanta, Georgia 30329; telephone 404–498–1600; email *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data.

Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign.

Additional Background

HHS/CDC published the final rule for the Control of Communicable Diseases on January 19, 2017, which included amendments to the domestic (interstate) and foreign quarantine regulations for the control of communicable diseases. The rule became effective on March 21, 2017. CDC regulations at 42 CFR 71.4 (airlines) and 42 CFR 71.5 (vessels) relate to the transmission of passenger, crew, and flight/voyage information for public health purposes; both contain subsections that state:

No later than February 21, 2019, the Secretary or Director will publish and seek comment on a report evaluating the burden of this section on affected entities and duplication of activities in relation to mandatory passenger data submissions to [U.S. Department of Homeland Security, Customs and Border Patrol] DHS/CBP. The report will specifically recommend actions that streamline and facilitate use and transmission of any duplicate information collected.

On February 12, 2019, CDC published a report to its website evaluating the burdens these regulatory provisions may have generated on the airline and ship industries since they became effective on March 21, 2017. The report can be found at *https://www.cdc.gov/quarantine/final-rule-communicable-diseases.html.* The public comment period will end on March 14, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–02035 Filed 2–11–19; 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 Chief Operating Officer, 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)—DD19–001; Research Approaches to Improve the Care and Outcomes of People Living with Spina Bifida Components A and B.

Dates: April 9–10, 2019.

Times: 10:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@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. 2019–01959 Filed 2–11–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2019–0007]

The National Healthcare Safety Network's Outpatient Procedure Component (OPC) Surveillance Protocol and the Bloodstream Infection (BSI) Surveillance Protocol; Request for Information

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

ACTION: Request for information.

SUMMARY: The Centers for Disease Control and Prevention, in the Department of Health and Human Services, seeks information related to the surveillance protocols for the National Healthcare Safety Network's (NHSN) Outpatient Procedure Component (OPC) and Bloodstream Infection (BSI) Module of the Patient Safety Component. CDC is opening this docket to provide the opportunity to identify issues and areas for potential improvement for consideration as CDC updates and maintains the NHSN surveillance protocols beginning in 2020.

DATES: Written comments will be accepted beginning February 14, 2019 and must be received on or before April 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–xxxx, by either of the following methods:

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

• *Mail:* Katherine Allen-Bridson, National Center for Emerging and

Infectious Zoonotic Disease, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mail Stop H16–3, Atlanta, GA 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Allen-Bridson, RN, BSN, MScPH, CIC, National Center for Emerging and Infectious Zoonotic Disease, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mail Stop H16–3, Atlanta, GA 30329. Phone: 404–639–4000; Email:*nhsn@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Notice: The purpose of this notice is to request input and information from individuals and organizations on issues and areas for potential improvement for consideration as CDC updates and maintains the NHSN surveillance protocols for 2020. CDC will carefully consider all comments with an intent to improve on and maintain the requirements for a successful surveillance program: Acceptable data collection burden, consistency, sensitivity, specificity, representativeness, and timeliness. The CDC reserves the right to respond to time-sensitive issues outside of this RFI as needed to maintain the reliability of the NHSN data.

Scope of Issue: The mission of CDC's Division of Healthcare Quality Promotion (DHQP) is to protect patients and healthcare personnel and promote safety, quality, and value in national and international healthcare delivery systems. In accordance with this mission, DHQP seeks to identify effective prevention methods, foster their implementation, and measure their impact on the incidence of healthcare-associated infections (HAIs). Over 21,000 healthcare facilities report data on HAIs to CDC's NHSN. This includes data that CDC reports to the Centers for Medicare and Medicaid Services (CMS) on behalf of healthcare facilities. CMS uses the data in its public reporting and payment programs.

Approach: CDC seeks information from NHSN users and stakeholders regarding the NHSN surveillance protocols, including comments that describe specific concerns about and recommendations for specific changes regarding the following topics: Protocol scope, definitions, criteria, data collection requirements, and other surveillance specifications for the OPC and BSI module.

Also, CDC is exploring the possibility of adding a new HAI event to its surveillance protocols, hospital onset bacteremia (HOB). The scope of HOB's surveillance would be all bloodstream infections that develop in patients following hospital admission, *i.e.,* those bloodstream infections that are not present on admission. Although this scope would be wider than Central Line-associated Bloodstream Infection (CLABSI) surveillance, CLABSI surveillance could be incorporated as a subset of HOB surveillance. CDC seeks input on NHSN's current CLABSI surveillance protocol and potential work on HOB surveillance.

Potential Areas of Focus: CDC is interested in receiving information on issues and areas for potential improvement for consideration for the following:

1. Outpatient Procedure Component surveillance protocol.
2. Patient Safety Component Bloodstream Infection Module surveillance protocol.
3. Possible addition of hospital onset bacteremia (HOB) to NHSN's surveillance protocols.

Examples of the types of information valuable to CDC include:

1. How could the CLABSI and OPC surveillance protocols and/or surveillance definitions be improved?
2. What challenges are faced when applying these definitions? What could be added to the definitions to address these challenges?
3. What protocol or data analysis changes could make the CLABSI or OPC data more useful?

Dated: February 6, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–01915 Filed 2–11–19; 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 Chief Operating Officer, Centers for Disease Control and Prevention, 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)—SIP19–001; Improving Cognitive Impairment Detection and Referral to Resources among Older Adults: Applying the KAER Model in a Clinical Health Care System.

Dates: April 23, 2019.

Times: 11:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@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. 2019–01960 Filed 2–11–19; 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 Chief Operating Officer, 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)—SIP19–002, Managing Epilepsy Well 2.0 (MEW) Network—Coordinating Center and SIP19–003, Managing Epilepsy Well 2.0 (MEW) Network—Collaborating Center.

Dates: April 25, 2019.

Times: 10:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@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 A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–01961 Filed 2–11–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[30Day–19–0048]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Agency for Toxic Substances and Disease Registry (ATSDR) has submitted the information collection request titled *ATSDR Exposure Investigations (EIs)* to the Office of Management and Budget (OMB) for review and approval. ATSDR previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 6, 2018 to obtain comments from the public and affected agencies. ATSDR did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

ATSDR will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

ATSDR Exposure Investigations (EIs), (OMB Control No. 0923–0048, Expiration Date 3/31/2019)—Extension—Agency for Toxic Substances and Disease Registry (ATSDR).

Background and Brief Description

The Agency for Toxic Substances and Disease Registry (ATSDR) is requesting a three-year Paperwork Reduction Act approval for the extension of the generic clearance titled ATSDR Exposure Investigations (OMB No. 0923–0048; OMB Exp. Date: 3/31/2019) to allow the agency to conduct exposure investigations (EIs), through methods developed by ATSDR.

After a chemical release or suspected release into the environment, EIs are usually requested by officials of a state health agency, county health departments, the Environmental Protection Agency (EPA), the general public, and ATSDR staff.

EI results are used by public health professionals, environmental risk managers, and other decision makers to determine if current conditions warrant intervention strategies to minimize or eliminate human exposure. For example, four of the EIs that ATSDR conducted in the past three years include the Anaconda Smelter (MT—blood lead and urine arsenic), Former United Zinc and Associated Smelters (KS—blood lead), Dimock Private Well Water Sampling (PA) and the Follow-up Arsenic Urine Testing in Hayden, Arizona.

Example 1: Anaconda Smelter Blood Lead and Urine Arsenic Sampling, MT

The site is a former smelter located in Anaconda, Montana. Past smelting activities resulted in high levels of heavy metals, primarily arsenic and lead, in community soil and in the slag piles. ATSDR sampled blood and urine in 191 community members to evaluate lead (blood) and arsenic (urine) in September 2018. Given community concern about contamination, all members of the community were invited to participate in the testing. Given community interest in the testing, an additional round of testing (177 participants) was completed in November 2018 that focused on residents that were not tested in the September event as well as young children and women of childbearing age, since they are the most impacted by lead exposure.

Urine samples were evaluated for total arsenic, speciated arsenic (organic and inorganic), creatinine and specific gravity. If arsenic is detected, speciation of the sample will determined whether the arsenic is organic (probably resulting from eating seafood) or inorganic (likely resulting from exposure to environmental arsenic). The results of the testing are currently being analyzed by the National Center for Environmental Health/Division of Laboratory Sciences (NCEH/DLS). For the initial testing event, participants have been notified of their results by mail; two adult participants with blood lead levels ≥5 μg/dL were also notified of their results by phone by the EI Medical Officer. Results for the follow-up testing will be sent individually to participants when the analysis is completed and a report will be prepared and presented to the community in a community meeting.

Example 2: Former United Zinc and Associated Smelters, Iola, Kansas

The community is located in the vicinity of the Former United Zinc and Associated Smelters in Iola, Kansas. The smelters operated from 1902 to 1925 and operations resulted in heavy metal contamination in community soils. Limited sampling of the community in the past found elevated blood lead levels (BLLs) in young children. The blood testing was completed in two

phases: One in December of 2016 and one in August 2017 and a total of 61 participants were tested: 24 children younger than 6 years, 17 children aged 6–19 years and 20 adult women. One child younger than six years had a BLL greater than five micrograms of lead per deciliter of blood (μg/dL). The child's parents were notified by phone of the results by the ATSDR Medical Officer and follow-up was conducted by the local PEHSU (Pediatric Environmental Health Specialty Unit.

All participants received their results by mail and the EI report was released and presented to the community in a public meeting in August 2018.

Example 3: Private Well Water Sampling in Dimock, PA

Unconventional natural gas drilling activities have been conducted in the Dimock, PA area for approximately 10 years and local residents complain of poor water quality. In 2012, EPA sampled 64 private wells in the area for contaminants that may be present due to natural gas drilling activities. ATSDR assisted in the analysis of the 2012 data set and the following recommendations were made:

○ People with elevated levels of inorganic analytes in their well water should install a home treatment system, and

○ people with high levels of methane in their well water should vent their well and home and treat their water to eliminate potential buildup of explosive gases.

Additional water sampling was recommended and an EI was conducted in August 2017. For the EI, the 64 residents previously sampled were invited to have their private wells retested: 25 residences agreed participate in the EI sampling. Residents were provided the results of their sampling and an EI report is currently being prepared. It will be presented to the community in a public meeting when completed.

Example 4: Follow-Up Arsenic Urine Testing in Hayden, Arizona

ATSDR completed an EI in 2015 at the ASARCO Hayden Smelter Site in Hayden, AZ. The EI included blood lead and urine arsenic testing. Air monitoring determined that the smelter was not operating during the sample collection period and that, given the short half-life of arsenic in the body, the arsenic results may not be valid.

In 2017, ATSDR retested the participants from the 2015 EI to evaluate their urinary arsenic levels. It was determined that all urinary arsenic levels were below the follow-up level and air data indicate that air arsenic levels in the two weeks prior to testing were consistent with usual levels seen in the community. The EI report is being prepared and a community meeting will be held when the document is released.

All of ATSDR's targeted biological assessments (*e.g.,* urine, blood) and some of the environmental investigations (*e.g.,* air, water, soil, or food sampling) involve participants to determine whether they are or have been exposed to unusual levels of pollutants at specific locations (*e.g.,* where people live, spend leisure time, or anywhere they might come into contact with contaminants under investigation).

Questionnaires, appropriate to the specific contaminant, are generally needed in about half of the EIs (at most approximately 12 per year) to assist in interpreting the biological or environmental sampling results. ATSDR collects contact information (*e.g.,* name, address, phone number) to provide the participant with their individual results. ATSDR also collects information on other possible confounding sources of chemical(s) exposure such as medicines taken, foods eaten, hobbies, jobs, etc. In addition, ATSDR asks questions on recreational or occupational activities that could increase a participant's exposure potential. That information represents an individual's exposure history.

The number of questions can vary depending on the number of chemicals being investigated, the route of exposure (*e.g.,* breathing, eating, touching), and number of other sources of the chemical(s) (*e.g.,* products used, jobs). We use approximately 12–20 questions about the pertinent environmental exposures per investigation. Typically, the number of participants in an individual EI ranges from 10 to 100. Participation is completely voluntary, and there are no costs to participants other than their time. Based on a maximum of 12 EIs per year and 100 participants each, the estimated annualized burden hours are 600.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Exposure Investigation Participants	Chemical Exposure Questions	1,200	1	30/60

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–01993 Filed 2–11–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2019–0002]

Advisory Committee on Immunization Practices (ACIP); Correction

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

ACTION: Notice of meeting with comment period; correction.

SUMMARY: On January 28, 2019, the Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) published a notice announcing the next meeting of the Advisory Committee on Immunization Practices on February 27–28, 2019 in Atlanta, GA. The notice did not include the docket number for public comment or instructions for submitting public comment. This notice provides that information for the public.

DATES: The meeting will be held on February 27–28, 2019 at the CDC Tom Harkin Global Communication Center, Centers for Disease Control and

Prevention Headquarters (Building 19), Room 232, 1600 Clifton Road NE, Atlanta, GA 30329. Written comments must be received on or before March 2, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0002 by any of the following methods:

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

• *Mail:* Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, Mailstop A–27, Atlanta, GA 30329–4027.

Instructions: All submissions received must include the agency name and Docket Number.

Instructions: All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Thomas, ACIP Committee Management Specialist, National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, telephone 404–639–8836, email *ACIP@cdc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), announces the following meeting of the Advisory Committee on Immunization Practices (ACIP). This meeting is open to the public, limited only by room seating. The meeting room accommodates 216 for public seating. Rooms 245, 246, and 247, adjacent to the meeting room, will be available once the meeting room reaches capacity, providing up to 120 additional seats. Time will be available for public comment. The meeting will be webcast live via the World Wide Web; for instructions and more information on ACIP please visit the ACIP website: *http://www.cdc.gov/vaccines/acip/index.html.* Written public comments submitted by 72 hours prior to the ACIP meeting will be provided to the ACIP members before the meeting.

Public Participation

Interested persons or organizations are invited to participate by submitting written views, recommendations, and data. Please note that comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Comments will be posted on *https://www.regulations.gov.* Therefore, do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. If you include your name, contact information, or other information that identifies you in the body of your comments, that information will be on public display. CDC will review all submissions and may choose to redact, or withhold, submissions containing private or proprietary information such as Social Security numbers, medical information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. CDC will carefully review and consider all comments submitted to the docket.

Matters To Be Considered

The agenda will include discussions on human papillomavirus vaccines, pneumococcal vaccines, Japanese encephalitis vaccines, influenza vaccines, anthrax vaccine, hepatitis vaccines, Pertussis vaccine, herpes zoster vaccine, and meningococcal vaccines. A recommendation vote is scheduled for anthrax vaccine and Japanese encephalitis vaccines. Agenda items are subject to change as priorities dictate. For more information on the meeting agenda visit *https://www.cdc.gov/vaccines/acip/meetings/meetings-info.html.*

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.

Dated: January 30, 2019.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–01958 Filed 2–11–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2017–E–6728 and FDA–2017–E–6727]

Determination of Regulatory Review Period for Purposes of Patent Extension; XADAGO

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 XADAGO 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 human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 15, 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 August 12, 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 April 15, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 15, 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–6727 and FDA–2017–E–6728 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; XADAGO.'' 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 § 10.20 (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: 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, 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 human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, XADAGO (safinamide mesylate). XADAGO is indicated as adjunctive treatment to levodopa/carbidopa in patients with Parkinson's disease experiencing ''off'' episodes. Subsequent to this approval, the USPTO received patent term restoration applications for XADAGO (U.S. Patent Nos. 8,076,515 and 8,283,380) from Newron Pharmaceuticals S.p.A. and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 9, 2018, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of XADAGO 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 XADAGO is 5,019 days. Of this time, 4,205 days occurred during the testing phase of the regulatory review period, while 814 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* June 26, 2003. The applicant claims June 22, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was on June 26, 2003, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 29, 2014. The applicant claims that the new drug application (NDA) for XADAGO (NDA 207145) was submitted on May 27, 2014. However, FDA records indicate that NDA 207145, submitted May 29, 2014, was incomplete. FDA refused this application and notified the applicant of this fact by letter dated July 28, 2014. The complete NDA was then resubmitted on December 29, 2014, which is considered to be the NDA initially submitted date.

3. *The date the application was approved:* March 21, 2017. FDA has verified the applicant's claim that NDA 207145 was approved on March 21, 2017.

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 831 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: February 7, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02044 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2017–E–5694 and FDA–2017–E–5956]

Determination of Regulatory Review Period for Purposes of Patent Extension; EUCRISA

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 EUCRISA 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 patents which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by April 15, 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 August 12, 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 April 15, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 15, 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–5694 and FDA–2017–E–5956 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; EUCRISA.'' 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 § 10.20 (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: 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, 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 human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product EUCRISA (crisaborole). EUCRISA indicated for topical treatment of mild to moderate atopic dermatitis in patients 2 years of age and older. Subsequent to this approval, the USPTO received patent term restoration applications for EUCRISA (U.S. Patent Nos. 8,039,451 and 8,168,614) from Anacor Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 6, 2017, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of EUCRISA 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 EUCRISA is 3,121 days. Of this time, 2,778 days occurred during the testing phase of the regulatory review period, while 343 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* May 31, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was May 31, 2008.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* January 7, 2016. FDA has verified the applicant's claim that the new drug application (NDA) for EUCRISA (NDA 207695) was initially submitted on January 7, 2016.

3. *The date the application was approved:* December 14, 2016. FDA has verified the applicant's claim that NDA 207695 was approved on December 14, 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 applications for patent extension, this applicant seeks 328 days or 1,114 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: February 6, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01956 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2969]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Assessment of Combination Product Review Practices

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 March 14, 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 ''Assessment of Combination Product Review Practices.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD

20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Assessment of Combination Product Review Practices

OMB Control Number 0910–NEW

In 1991, FDA's Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), and Center for Devices and Radiological Health entered into ''Intercenter Agreements'' to provide guidance on the classification and assignment of medical products and to clarify jurisdiction over combination product reviews. With the enactment of the Medical Device User Fee and Modernization Act of 2002, FDA aimed to achieve prompt assignment of combination products, timely and effective premarket reviews, and consistent and appropriate postmarket regulation through the establishment of the Office of Combination Products (OCP). Since then, OCP has operated to further standardize combination product guidance to FDA and industry and facilitate coordination between FDA's medical product review Centers. As part of the 2017 reauthorization of the Prescription Drug User Fee Act (PDUFA), FDA committed to advance the development of drug-device and biologic-device combination products regulated by CDER and CBER through modernization of the combination product review program. To that end, FDA committed to contracting with an independent third party to assess current practices for combination drug product review, to include interviews with combination product sponsors and applicants. The contractor for the assessment of combination drug product review practices is Eastern Research Group, Inc. (ERG).

Therefore, in accordance with the PDUFA VI Commitment Letter, FDA proposes to have ERG conduct independent interviews of combination product sponsors and applicants during the data collection period as follows:

- Sponsors with a Request For Designation (RFD) or pre-RFD submitted during the data collection period.
- Sponsors with a combination product Investigational New Drug (IND) or pre-IND submitted during the data collection period.
- Applicants with a combination product New Drug Application (NDA) or Biologics License Application (BLA) that receives a first-cycle action from FDA during the data collection period.

The purpose of these interviews is to collect voluntary feedback from combination product sponsors and applicants on their experience with FDA during the development and review of their products, including any challenges or best practices. ERG will anonymize and aggregate sponsor/applicant responses prior to inclusion in the assessment. ERG will use interview responses to complement and supplement data on combination product review parameters obtained through other means, such as extraction of data from FDA corporate databases and interviews with FDA review staff. FDA will publish ERG's assessment (with interview results and findings) on the Agency's public website and a link to the assessment in the **Federal Register** for public comment.

In the **Federal Register** of September 27, 2018 (83 FR 48822), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Sponsors submit approximately 150 to 180 RFDs/pre-RFDs and 200 to 240 combination product original INDs/pre-INDs per year. ERG will interview 1 to 3 sponsor representatives at a time for up to 35 RFDs/pre-RFDs and 48 INDs received by FDA—up to 105 RFD/pre-RFD and 144 IND/pre-IND sponsor representatives per year. FDA typically reviews approximately 25 to 30 combination product original NDAs and original BLAs per year. ERG will interview 1 to 3 applicant representatives at a time for each application that receives a first-cycle action from FDA—up to 90 representatives per year. Thus, FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [1]
Pretest	5	1	5	1.5	7.5
Interviews	339	1	339	1.5	508.5
Total					516

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

ERG will conduct a pretest of the interview protocol with five respondents. FDA estimates that it will take 1 to 1.5 hours to complete the pretest, for a total of a maximum of 7.5 hours. FDA estimates that up to 339 respondents will take part in the interviews each year, with each interview lasting 1 to 1.5 hours, for a total of a maximum of 508.5 hours. Thus, the total estimated annual burden is 516 hours. FDA's burden estimate is based on prior experience with similar interviews with the regulated community.

Dated: February 6, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01979 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4735]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act

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 safety labeling changes and the implementation of a certain section of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the collection of information by April 15, 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 April 15, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 15, 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–4735 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry: Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), 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.

Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0734—Extension

Section 505(o)(4) of the FD&C Act (21 U.S.C. 355(o)(4)) authorizes FDA to require and, if necessary, order labeling changes if FDA becomes aware of new safety information that it believes should be included in the labeling of certain prescription drug and biological products approved under section 505 of the FD&C Act or section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262). Section 505(o)(4) of the FD&C Act applies to prescription drug products with an approved new drug application (NDA) under section 505(b) of the FD&C Act, biological products with an approved biologics license application under section 351 of the PHS Act, or prescription drug products with an approved abbreviated new drug application under section 505(j) of the FD&C Act if the reference listed drug with an approved NDA is not currently marketed. Section 505(o)(4) imposes time frames for application holders to submit, and FDA staff to review, such changes and gives FDA enforcement tools to bring about timely and appropriate labeling changes. To implement these provisions we developed the guidance entitled ''Guidance for Industry: Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act,'' which provides instruction on: (1) A description of the types of safety labeling changes that ordinarily might be required; (2) how FDA plans to determine what constitutes new safety information; (3) the procedures involved in requiring safety labeling changes, and (4) enforcement of the requirements for safety labeling changes. The guidance is available on our website at *https://www.fda.gov/downloads/drugs/guidancecomplianceregulatoryinformation/guidances/ucm250783.pdf.*

FDA requires safety labeling changes by sending a notification letter to the application holder. Under section 505(o)(4)(B) of the FD&C Act, the application holder must respond to FDA's notification by submitting a labeling supplement or notifying FDA that the applicant does not believe the labeling change is warranted and by submitting a statement detailing why the application holder does not believe a change is warranted (a rebuttal statement).

Based on our experience to date with safety labeling changes requirements under section 505(o)(4) of the FD&C Act, we estimate that approximately 36 application holders will elect to submit approximately 1 rebuttal statement each year and that each rebuttal statement will take approximately 6 hours to prepare.

In addition, the guidance explains that labeling prepared in response to a safety labeling change notification should be available on the application holder's website within 10 calendar days of approval. We estimate that approximately 351 application holders will post new labeling one time each year in response to a safety labeling change notification and that the posting of the labeling will take approximately 4 hours to prepare.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Rebuttal statement	36	1	36	6	216

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Type of submission	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Posting approved labeling on application holder's website	351	1	351	4	1,404

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We have adjusted our estimated annual number of respondents downward by 62 since the last OMB approval of the information collection. The decrease reflects that we have issued fewer safety labeling notifications, and thus fewer postings are required and fewer rebuttals are expected.

Dated: February 6, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01918 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1721]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Investigational New Drug Applications

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 March 14, 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 0910–0014. Also include the FDA docket number found

in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *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.

Investigational New Drug Application—21 CFR Part 312

OMB Control Number 0910–0014–Extension

This information collection supports FDA regulations in 21 CFR part 312 covering Investigational New Drugs. Part 312 implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) requiring FDA to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that ensure drug products marketed in the United States are shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the FD&C Act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts.

The investigational new drug application (IND) regulations under part 312 establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. The regulations also include recordkeeping requirements pertaining to the disposition of drugs, records pertaining to individual case histories, and certain other documentation verifying the fulfillment of responsibilities by clinical investigators.

Submissions are reviewed by medical officers and other Agency scientific reviewers assigned responsibility for overseeing a specific study. The details and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can monitor the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products, including the following: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry as required under the IND regulations, FDA cannot authorize or monitor the clinical investigations that must be conducted before authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to ensure the safety of subjects, to ensure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

To assist respondents with certain reporting requirements under part 312, we have developed two forms: Form FDA 1571 entitled, ''Investigational New Drug Application (IND)'' and Form FDA 1572 entitled, ''Statement of Investigator.'' Anyone who intends to conduct a clinical investigation must submit Form FDA 1571 as instructed. The reporting elements include: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance; (5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug. Form FDA 1572 is executed and submitted by the IND sponsor before an investigator may participate in an investigation. It includes background information on the investigator as well as the investigation, and a general outline of the planned investigation and study protocol.

In the **Federal Register** of October 4, 2018 (83 FR 50102) FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment. The comment did not pertain to the regulations or estimates provided in the 60-day notice requesting that OMB extend its approval for the information collection in these regulations. Rather, the comment discussed issues that pertained to Docket No. FDA–2010–D–0503 for the ''Guidance for Clinical Investigators, Sponsors, and Institutional Review Boards (IRBs): Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND.'' Accordingly, we have submitted the comment to Docket No. FDA–2010–D–0503.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS (CDER) [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.2(e); Requests for FDA advice on the applicability of part 312 to a planned clinical investigation	400	1	400	24	9,600
§ 312.8; Requests to charge for an investigational drug	74	1.23	91	48	4,368
§ 312.10; Requests to waive a requirement in part 312	86	1.84	158	24	3,792

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS (CDER) [1]—Continued

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.23(a) through (f); IND content and format (including Form FDA 1571)	2,187	1.7	3,718	1,600	5,948,800
§ 312.30(a) through (e); Protocol amendments	4,418	5.52	24,387	284	6,925,908
§ 312.31(b); Information amendments	6,691	3.32	22,214	100	2,221,400
§ 312.32(c) and (d); IND safety reports	867	15.78	13,681	32	437,792
§ 312.33(a) through (f); IND annual reports	3,376	2.86	9,655	360	3,475,800
§ 312.38(b) and (c); Notifications of withdrawal of an IND	930	1.61	1,497	28	41,916
§ 312.42; Sponsor requests that a clinical hold be removed, including sponsor submission of a complete response to the issues identified in the clinical hold order	198	1.38	273	284	77,532
§ 312.44(c) and (d); Sponsor responses to FDA when IND is terminated	12	1.16	14	16	224
§ 312.45(a) and (b); Sponsor requests for or responses to an inactive status determination of an IND by FDA	231	1.84	425	12	5,100
§ 312.47; Meetings, including ''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings	122	1.51	184	160	29,440
§ 312.54(a); Sponsor submissions to FDA concerning investigations involving an exception from informed consent under § 50.24	15	2.4	36	48	1,728
§ 312.54(b); Sponsor notifications to FDA and others concerning an IRB determination that it cannot approve research because it does not meet the criteria in the exception from informed consent in § 50.24(a)	2	1	2	48	96
§ 312.56(b), (c), and (d); Sponsor notifications to FDA and others resulting from: (1) The sponsor's monitoring of all clinical investigations and determining that an investigator is not in compliance with the investigation agreements; (2) the sponsor's review and evaluation of the evidence relating to the safety and effectiveness of the investigational drug; and (3) the sponsor's determination that the investigational drug presents an unreasonable and significant risk to subjects	6,100	7	42,700	80	3,416,000
§ 312.58(a); Sponsor's submissions of clinical investigation records to FDA on request during FDA inspections	73	1	73	8	584
§ 312.70; During the disqualification process of a clinical investigator by FDA, the number of investigator responses or requests to FDA following FDA's notification to an investigator of its failure to comply with investigation requirements	4	1	4	40	160
§ 312.110(b)(4) and (b)(5); Written certifications and written statements submitted to FDA relating to the export of an investigational drug	11	26.28	289	75	21,675
§ 312.120(b); Submissions to FDA of ''supporting information'' related to the use of foreign clinical studies not conducted under an IND	1,414	8.62	12,189	32	390,048
§ 312.120(c); Waiver requests submitted to FDA related to the use of foreign clinical studies not conducted under an IND	35	2.34	82	24	1,968
§ 312.130; Requests for disclosable information in an IND and for investigations involving an exception from informed consent under § 50.24	3	1	3	8	24
§§ 312.310(b) and 312.305(b); Submissions related to expanded access and treatment of an individual patient	935	2.77	2,590	8	20,720
§ 312.310(d); Submissions related to emergency use of an investigational new drug	480	2.15	1,032	16	16,512
§§ 312.315(c) and 312.305(b); Submissions related to expanded access and treatment of an intermediate-size patient population	118	2.52	297	120	35,640
§ 312.320(b); Submissions related to a treatment IND or treatment protocol	10	12.9	129	300	38,700
Total					23,125,527

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS (CDER) [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 312.52(a); Sponsor records for the transfer of obligations to a contract research organization	1,300	1	1,300	2	2,600
§ 312.57; Sponsor recordkeeping showing the receipt, shipment, or other disposition of the investigational drug and any financial interests	13,000	1	13,000	100	1,300,000
§ 312.62(a); Investigator recordkeeping of the disposition of drugs	13,000	1	13,000	40	520,000
§ 312.62(b); Investigator recordkeeping of case histories of individuals	13,000	1	13,000	40	520,000
§ 312.160(a)(3); Records pertaining to the shipment of drugs for investigational use in laboratory research animals or in vitro tests	547	1.43	782	* 0.50	391
§ 312.160(c); Shipper records of alternative disposition of unused drugs	547	1.43	782	* 0.50	391
Total					2,343,382

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* 30 minutes.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN FOR HUMAN DRUGS (CDER) [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
§ 312.53(c); Investigator reports submitted to the sponsor, including Form FDA 1572, curriculum vitae, clinical protocol, and financial disclosure	1,732	7.94	13,752	80	1,100,160
§ 312.55(a); Investigator brochures submitted by the sponsor to each investigator	995	4	3,980	48	191,040
§ 312.55(b); Sponsor reports to investigators on new observations, especially adverse reactions and safe use	995	4	3,980	48	191,040
§ 312.64; Investigator reports to the sponsor, including progress reports, safety reports, final reports, and financial disclosure reports	13,000	1	13,000	24	312,000
Total					1,794,240

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS (CBER) [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.2(e); Requests for FDA advice on the applicability of part 312 to a planned clinical investigation	217	1.18	256	24	6,144
§ 312.8; Requests to charge for an investigational drug	20	1.50	30	48	1,440
§ 312.10;Requests to waive a requirement in part 312	2	1	2	24	48
§ 312.23(a) through (f); IND content and format	335	1.35	452	1,600	723,200
§ 312.30(a) through (e); Protocol amendments	694	5.84	4,053	284	1,151,052
§ 312.31 (b); Information amendments	77	2.43	187	100	18,700
§ 312.32(c) and (d); IND Safety reports	161	8.83	1,422	32	45,504
§ 312.33(a) through (f); IND Annual reports	745	2.14	1,594	360	573,840
§ 312.38(b) and (c); Notifications of withdrawal of an IND	134	1.69	226	28	6,328
§ 312.42; Sponsor requests that a clinical hold be removed, including sponsor submission of a complete response to the issues identified in the clinical hold order	67	1.30	87	284	24,708
§ 312.44(c) and (d); Sponsor responses to FDA when IND is terminated	34	1.15	39	16	624
§ 312.45(a) and (b); Sponsor requests for or responses to an inactive status determination of an IND by FDA	55	1.38	76	12	912
§ 312.47; Meetings, including ''End-of-Phase 2'' meetings and ''Pre-NDA'' meetings	88	1.75	154	160	24,640
§ 312.53(c); Investigator reports submitted to the sponsor, including Form FDA 1572, curriculum vitae, clinical protocol, and financial disclosure	453	6.33	2,867	80	229,360

TABLE 4—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS (CBER) [1]—Continued

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 312.54(a); Sponsor submissions to FDA concerning investigations involving an exception from informed consent under § 50.24	1	1	1	48	48
§ 312.54(b); Sponsor notifications to FDA and others concerning an IRB determination that it cannot approve research because it does not meet the criteria in the exception from informed consent in § 50.24(a)	1	1	1	48	48
§ 312.55(a); Number of investigator brochures submitted by the sponsor to each investigator	239	1.91	456	48	21,888
§ 312.55(b); Number of sponsor reports to investigators on new observations, especially adverse reactions and safe use	243	4.95	1,203	48	57,744
§ 312.56(b), (c), and (d); Sponsor notifications to FDA and others resulting from: (1) The sponsor's monitoring of all clinical investigations and determining that an investigator is not in compliance with the investigation agreements; (2) the sponsor's review and evaluation of the evidence relating to the safety and effectiveness of the investigational drug; and (3) the sponsor's determination that the investigational drug presents an unreasonable and significant risk to subjects	108	2.21	239	80	19,120
§ 312.58(a); Number of sponsor's submissions of clinical investigation records to FDA on request during FDA inspections	7	1	7	8	56
§ 312.64; Number of investigator reports to the sponsor, including progress reports, safety reports, final reports, and financial disclosure reports	2,728	3.82	10,421	24	250,104
§ 312.70; During the disqualification process of a clinical investigator by FDA, the number of investigator responses or requests to FDA following FDA's notification to an investigator of its failure to comply with investigation requirements	5	1	5	40	200
§ 312.110(b)(4) and (b)(5); Number of written certifications and written statements submitted to FDA relating to the export of an investigational drug	18	1	18	75	1,350
§ 312.120(b); Number of submissions to FDA of "supporting information" related to the use of foreign clinical studies not conducted under an IND	280	9.82	2,750	32	88,000
§ 312.120(c); Number of waiver requests submitted to FDA related to the use of foreign clinical studies not conducted under an IND	7	2.29	16	24	384
§ 312.130; Number of requests for disclosable information in an IND and for investigations involving an exception from informed consent under § 50.24	350	1.34	469	8	3,752
§ 312.310(b) and 312.305(b); Number of submissions related to expanded access and treatment of an individual patient	78	1.08	84	8	672
§ 312.310(d);Number of submissions related to emergency use of an investigational new drug	76	2.76	210	16	3,360
§ 312.315(c) and 312.305(b); Number of submissions related to expanded access and treatment of an intermediate-size patient population	9	1	9	120	1,080
§ 312.320(b); Number of submissions related to a treatment IND or treatment protocol	1	1	1	300	300
Total					3,254,606

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS (CBER) [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 312.52(a); Sponsor records for the transfer of obligations to a contract research organization	75	1.40	105	2	210
§ 312.57; Sponsor recordkeeping showing the receipt, shipment, or other disposition of the investigational drug, and any financial interests	335	2.70	904	100	90,400

TABLE 5—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS (CBER) [1]—Continued

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 312.62(a); Investigator recordkeeping of the disposition of drugs	453	1	453	40	18,120
§ 312.62(b); Investigator recordkeeping of case histories of individuals	453	1	453	40	18,120
§ 312.160(a)(3); Records pertaining to the shipment of drugs for investigational use in laboratory research animals or in vitro tests	111	1.40	155	* 0.5	78
§ 312.160(c); Shipper records of alternative disposition of unused drugs	111	1.40	155	* 0.5	78
Total					127,006

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* 30 minutes.

Because we have received an increased number of IND submissions since the last OMB approval of the information collection, we have increased our estimate of the associated burden accordingly.

Dated: February 6, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01962 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0163]

Hospira, Inc., et al.; Withdrawal of Approval of 12 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 12 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of March 14, 2019.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993–0002, 240–402–7945, *Trang.Tran@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 065343	Epirubicin Hydrochloride (HCl) Injection USP, 10 milligrams (mg)/5 milliliters (mL), 50 mg/25 mL, 150 mg/75 mL, and 200 mg/100 mL.	Hospira, Inc., 275 North Field Dr., Bldg. H1, Lake Forest, IL 60045.
ANDA 070562	Flurazepam HCl Capsules USP, 15 mg	Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223.
ANDA 070563	Flurazepam HCl Capsules USP, 30 mg	Do.
ANDA 071808	Flurazepam HCl Capsules USP, 15 mg	Halsey Drug Co., Inc., 1827 Pacific St., Brooklyn, NY 11233.
ANDA 071809	Flurazepam HCl Capsules USP, 30 mg	Do.
ANDA 076827	Vinorelbine Injection USP, Equivalent to 10 mg base/mL.	Hospira, Inc.
ANDA 077736	Polyethylene Glycol 3350 Powder for Oral Solution, 17 grams/scoopful.	Breckenridge Pharmaceutical, Inc., 6111 Broken Sound Parkway NW, Suite 170, Boca Raton, FL 33487.
ANDA 085763	Glutethimide Tablets, 500 mg	Chelsea Laboratories, Inc., 896 Orlando Ave., West Hampstead, NY 11552.
ANDA 085791	Pentobarbital Sodium Capsules, 100 mg	Do.
ANDA 087297	Glutethimide Tablets, 500 mg	Phoenix Pharmaceuticals, Inc., 111 Leuning St., South Hackensack, NJ 07606.
ANDA 088819	Aristocort A (triamcinolone acetonide) Cream, 0.1%	Astellas Pharma U.S., Inc., Three Parkway North, Deerfield, IL 60015.
ANDA 089459	Glutethimide Tablets, 500 mg	Halsey Drug Co., Inc.

Therefore, approval of the applications listed in the table and all amendments and supplements thereto, are hereby withdrawn as of March 14, 2019. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on March 14, 2019 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: February 7, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02032 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0294]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Contact Substance Notification Program

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 March 14, 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 0910–0495. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *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.

Food Contact Substance Notification Program—21 CFR 170.101, 170.106, and 171.1

OMB Control Number 0910–0495—Extension

This information collection supports FDA regulations regarding Food Contact Substance Notification, as well as associated guidance and accompanying forms. Section 409(h) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the FD&C Act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the FD&C Act requires that the notification process be used for authorizing the marketing of food contact substances except when: (1) We determine that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the FD&C Act is necessary to provide adequate assurance of safety or (2) we and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the FD&C Act requires that a notification include: (1) Information on the identity and the intended use of the food contact substance and (2) the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) specify the information that a notification must contain and require that: (1) A food contact substance notification (FCN) includes Form FDA 3480 and (2) a notification for a food contact substance formulation includes Form FDA 3479. These forms serve to summarize pertinent information in the notification. The forms facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Currently, interested persons transmit an FCN submission to the Office of Food Additive Safety in the Center for Food Safety and Applied Nutrition using Form FDA 3480 whether it is submitted in electronic or paper format. We estimate that the amount of time for respondents to complete Form FDA 3480 will continue to be the same.

In addition to its required use with FCNs, Form FDA 3480 is recommended to be used to organize information within a Pre-notification Consultation or Master File submitted in support of an FCN according to the items listed on the form. Master Files can be used as repositories for information that can be referenced in multiple submissions to FDA, thus minimizing paperwork burden for food contact substance authorizations. We estimate that the amount of time for respondents to complete the Form FDA 3480 for these types of submissions is 0.5 hours.

FDA recommends using Form FDA 3480A for each submission of additional information (*i.e.,* amendment) to an FCN submission currently under Agency review. Form FDA 3480A helps the respondent organize the submission to focus on the information needed for FDA's safety review.

FDA's guidance documents entitled: (1) ''Preparation of Food Contact Notifications: Administrative,'' (2) ''Preparation of Food Contact Notifications and Food Additive Petitions for Food Contact Substances: Chemistry Recommendations,'' and (3) ''Preparation of Food Contact Notifications for Food Contact Substances: Toxicology Recommendations'' provide assistance to industry regarding the preparation of an FCN and a petition for a food contact substances (FCSs). FDA has also developed a draft guidance entitled, ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.'' Once finalized, the guidance will provide our current thinking on how to prepare an FCN for FDA review and evaluation of the safety of FCSs used in contact with infant formula and/or human milk. These guidances are available at *https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocuments RegulatoryInformation/IngredientsAdditivesGRASPackaging/default.htm.*

Section 171.1 of FDA's regulations (21 CFR 171.1) specifies the information that a petitioner must submit in order to: (1) Establish that the proposed use of an indirect food additive is safe and (2) secure the publication of an indirect

food additive regulation in parts 175 through 178 (21 CFR parts 175 through 178). Parts 175 through 178 describe the conditions under which the additive may be safely used.

In addition, the guidance entitled ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' provides assistance to manufacturers of food packaging in evaluating processes for producing packaging from post-consumer recycled plastic. The recommendations in the guidance address the process by which manufacturers certify to us that their plastic products are safe for food contact.

Description of Respondents: The respondents to this information collection are manufacturers of food contact substances sold in the United States. Respondents are from the private sector (for-profit businesses).

In the **Federal Register** of September 13, 2018 (83 FR 46493), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received unrelated to the information collection and therefore is not discussed here.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section; Activity	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
170.106 [2] (Category A)	FDA 3479	10	2	20	2	40
170.101 [3] [7] (Category B)	FDA 3480	6	1	6	25	150
170.101 [4] [7] (Category C)	FDA 3480	6	2	12	120	1,440
170.101 [5] [7] (Category D)	FDA 3480	42	2	84	150	12,600
170.101 [6] [7] (Category E)	FDA 3480	38	1	38	150	5,700
Pre-notification Consultation or Master File (concerning a food contact substance) [8].	FDA 3480	190	1	190	0.5 (30 minutes).	95
Amendment to an existing notification (170.101), amendment to a Pre-notification Consultation, or amendment to a Master File (concerning a food contact substance) [9].	FDA 3480A	100	1	100	0.5 (30 minutes).	50
171.1 Indirect Food Additive Petitions	N/A	1	1	1	10,995	10,995
Use of Recycled Plastics in Food Packaging: Chemistry Considerations.	N/A	10	1	10	25	250
Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.		2	1	2	5	10
Total						31,330

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for food contact substance formulations and food contact articles. These notifications require the submission of Form FDA 3479 (''Notification for a Food Contact Substance Formulation'') only.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5] Notifications for uses that are the subject of moderately complex food additive petitions.
[6] Notifications for uses that are the subject of very complex food additive petitions.
[7] These notifications require the submission of Form FDA 3480.
[8] These notifications recommend the submission of Form FDA 3480.
[9] These notifications recommend the submission of Form FDA 3480A.

The estimates are based on our current experience with the Food Contact Substance Notification Program and informal communication with industry. Our estimated burden for the information collection reflects an overall increase of 10 hours and a corresponding increase of 2 responses from the currently approved burden. We attribute this adjustment to reviewing and submitting FCNs consistent to the draft guidance entitled, ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk.''

Beginning in row 1, we estimate 10 respondents will submit 2 notifications annually for food contact substance formulations (Form FDA 3479), for a total of 20 responses. We calculate a reporting burden of 2 hours per response, for a total of 40 hours. In row 2 we estimate six respondents. We believe the hourly burden for preparing these notifications will primarily consist of the manufacturer or supplier completing Form FDA 3480, verifying that a previous notification is effective and preparing necessary documentation. We estimate one submission for each respondent, for a total of six responses. We calculate a reporting burden of 25 hours per response, for a total of 150 hours.

In rows 3, 4, and 5, we identify three tiers of FCNs that reflect different levels of burden applicable to the respective information collection items (denoted as Categories C, D, and E). We estimate 6 respondents will submit 2 Category C submissions annually, for a total of 12 responses. We calculate a reporting burden of 120 hours per response, for a total burden of 1,440 hours. We estimate 42 respondents will submit 2 Category D submissions annually, for a total of 84 responses. We calculate a reporting burden of 150 hours per response, for a total burden of 12,600 hours. We estimate 38 respondents will submit 1 Category E submission annually, for a total of 38 responses. We calculate a reporting burden of 150 hours per response, for a total burden of 5,700 hours.

In row 6, we estimate 190 respondents will submit information to a pre-notification consultation or a master file in support of FCN submission using Form FDA 3480. We calculate a reporting burden of 0.5 hours per response, for a total burden of 95 hours. In row 7 we estimate 100 respondents will submit an amendment (Form FDA 3480A) to a substantive or non-substantive request of additional

information to an incomplete FCN submission, an amendment to a pre-notification consultation, or an amendment to a master file in support of an FCN. We calculate a reporting burden of 0.5 hours per response, for a total burden of 50 hours.

In row 8, we estimate one respondent will submit one indirect food additive petition under § 171.1, for a total of one response. We calculate a reporting burden of 10,995 hours per response, for a total burden of 10,995 hours.

In row 9, we estimate 10 respondents will utilize the recommendations in the guidance document entitled, ''Use of Recycled Plastics in Food Packaging: Chemistry Considerations,'' to develop the additional information for one such submission annually, for a total of 10 responses. We calculate a reporting burden of 25 hours per response, for a total burden of 250 hours.

Finally, in row 10, we estimate 2 respondents will utilize the recommendations in the draft guidance, once finalized, entitled, ''Preparation of Food Contact Notifications for Food Contact Substances in Contact with Infant Formula and/or Human Milk,'' to develop the additional information for one such submission annually, for a total of 2 responses. We calculate a reporting burden of 5 hours per response, for a total burden of 10 hours.

Dated: February 6, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–01977 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–E–6739]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZEJULA

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 ZEJULA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see the **SUPPLEMENTARY INFORMATION** section) are incorrect may submit either electronic or written comments and ask for a redetermination by April 15, 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 August 12, 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 April 15, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 15, 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–2017–E–6739 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ZEJULA.'' 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 § 10.20 (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: 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 human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, 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 human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ZEJULA (niraparib) indicated for maintenance treatment of adult patients with recurrent epithelial ovarian, fallopian tube, or primary peritoneal cancer who are in a complete or partial response to platinum-based chemotherapy. Subsequent to this approval, the USPTO received a patent term restoration application for ZEJULA (U.S. Patent No. 8,071,623) from MSD Italia S.R.l., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated January 9, 2018, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ZEJULA 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 ZEJULA is 3,234 days. Of this time, 3,086 days occurred during the testing phase of the regulatory review period, while 148 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* May 21, 2008. The applicant claims May 22, 2008, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 21, 2008, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* October 31, 2016. FDA has verified the applicant's claim that the new drug application (NDA) for ZEJULA (NDA 208447) was initially submitted on October 31, 2016.

3. *The date the application was approved:* March 27, 2017. FDA has verified the applicant's claim that NDA 208447 was approved on March 27, 2017.

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 370 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: February 7, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02036 Filed 2–11–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Application Review (2019/05).

Date: March 5–7, 2019.

Time: 6:00 p.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Memphis East, 5069 Sanderlin Avenue, Memphis, TN 38117.

Contact Person: John P. Holden, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, (301) 496–8775 *john.holden@nih.gov.*

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02011 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Genomic Innovator.

Date: March 13, 2019.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, Greider Conference Room No. 3189, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01969 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Communication Disorders Review Committee.

Date: June 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institute of Health, 6001 Executive Blvd., Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: Communication Disorders Review Committee.

Date: October 17–18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institute of Health, 6001 Executive Blvd., Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01973 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, P50 Clinical Trial Review.

Date: March 8, 2019.

Time: 1:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01971 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; International Research Fellowship Award Program of the (National Institute on Drug Abuse)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Steve Gust, Director, NIDA International Program, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Blvd., Bethesda, Maryland 20892–0234, or call non-toll-free number (301) 402–1118 or Email your request, including your address to: *sgust@nida.nih.gov*.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on December 14, 2018, page 64348 (83 FR 64348–FR 64349) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute of Drug Abuse (NIDA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: The International Research Fellowship Award Program, 0925–0733, expiration date 02/28/2019, REVISION, of the National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this information collection is to identify participants for matriculation into the program. The proposed information is necessary to select the best applicants for the fellowship program. An application form to obtain information about the potential fellows for successful training in HIV and drug use research is necessary. The information ensures that fellows applying to these programs meet eligibility requirements for research and indicates their potential as future scientists.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 60.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Applicant Scientists	Applicant Information	45	1	1	45
Scientists	Mentor Information	45	1	20/60	15
Total		90	90		60

Dated: February 4, 2019.

Genevieve deAlmeida,

Project Clearance Liaison, National Institute on Drug Abuse, National Institutes of Health.

[FR Doc. 2019–02028 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Toxicology and Pharmacology.

Date: March 19, 2019.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Terez Shea-Donohue, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, *sheadonohuept@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–727: Molecular Profiles and Biomarkers of Food and Nutrient Intake.

Date: March 19, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gregory S. Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Eukaryotic Parasites and Vectors.

Date: March 20–21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:*Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biomedical Computing and Health Informatics.

Date: March 20, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ping Wu, Ph.D., Scientific Review Officer, HDM IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166,

Bethesda, MD 20892, 301–451–8428, *wup4@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Hepatology.

Date: March 20, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Sciences.

Date: March 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Margaret Chandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *margaret.chandler@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AI18–037 Halting TB Transmission in HIV-Endemic and Other High-Transmission Settings.

Date: March 21, 2019.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01964 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 BTRC Review (2019/05).

Date: March 6–8, 2019.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: TownePlace Suites, 22 Holland Ave., Albany, NY 12084.

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov*.

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02004 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Center for ELSI Resources & Analysis (CERA).

Date: March 21, 2019.

Time: 1:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, Jordan Conf. Room No. 2201, 6700B Rockledge Dr., Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01967 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB Loan Repayment Program Review (2019/08).

Date: April 3, 2019.

Time: 12:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate loan Repayment Program.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3397, *sukharem@mail.nih.gov.*

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02001 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel NIDCD Clinical Trial (U01) Review.

Date: March 6, 2019.

Time: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01974 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel Loan Repayment Program (LRP).

Date: March 22, 2019.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, Greider Conference Room #3189, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01968 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; R21/R33 Review.

Date: March 5, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01970 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: March 1, 2019.

Time: 11:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Room 3185, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01966 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nuclear and Cytoplasmic Structure Function Dynamics.

Date: February 22, 2019.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jessica Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *jessica.smith6@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01965 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, NIDCD Clinical Research Center Review.

Date: March 14, 2019.

Time: 10:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center Building, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Katherine Shim, Ph.D., Scientific Review Officer Division of Extramural Activities, NIH/NIDCD, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *katherine.shim@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 6, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–01972 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information for a Review of the NIH HIV/AIDS Research Priorities and Guidelines for Determining AIDS Funding Document

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: Through this Request for Information (RFI), the Office of AIDS Research (OAR) in the Division of Program Coordination, Planning, and Strategic Initiatives (DPCPSI), Office of the Director (OD), National Institutes of Health (NIH) invites feedback from interested stakeholders on a review of the NIH HIV/AIDS Research Priorities and Guidelines for Determining AIDS Funding (NOT–OD–15–137) now entering year four of implementation. The original Notice was released on August 12, 2015 to inform the scientific community of the overarching HIV/AIDS research priorities and the guidelines used by NIH to determine HIV/AIDS funding beginning in fiscal year 2016 for the next three to five years.

DATES: After the public comment period has closed, all feedback received will be reviewed by the OAR and will be considered in the development of the next iteration of the NIH Research Priorities and Funding Guidance Document that will apply for the period of FY 2021 through FY 2025.

ADDRESSES: Submissions may be electronically entered at (*http://grants.nih.gov/grants/rfi/rfi.cfm?ID=85*).

FOR FURTHER INFORMATION CONTACT: Questions about this request for information should be directed to Dr. Stacy Carrington-Lawrence, Office of AIDS Research, National Institutes of Health, Telephone: 301–496–3677, Email: *OAR_Priorities_RFI@nih.gov,* 5601 Fishers Lane Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: To respond this RFI, go to the following Web address. (*http://grants.nih.gov/grants/rfi/rfi.cfm?ID=85*).

As legislatively mandated, OAR plans and coordinates research through the development of an annual NIH Strategic Plan for HIV and HIV-Related Research that articulates the overarching HIV research priorities and serves as the framework for developing the overall NIH HIV research budget. OAR oversees and coordinates the conduct and support of all HIV research activities

across the NIH Institutes and Centers (ICs). The NIH-sponsored HIV research programs include both extramural and intramural research, buildings and facilities, research training, program evaluation, and supports a comprehensive portfolio of research representing a broad range of basic, clinical, behavioral, social sciences, and translational research on HIV and its associated coinfections and comorbidities.

The Plan provides information about the NIH's HIV research priorities to the scientific community, Congress, community stakeholders, HIV-affected communities, and the broad public at large. The fiscal years 2019–2020 NIH Strategic Plan for HIV-Related Research was recently distributed and is available on the OAR website: (*FY2019-2020 NIH Strategic Plan for HIV and HIV-Related Research*).

The current overarching priorities for HIV/AIDS research are defined in the NIH Director's Statement of August 12, 2015 and Guide Notice NOT–OD–15–137 (*https://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-137.html*).

High Priority topics of research for support include:

(1) Reducing the incidence of HIV/AIDS.

(2) Developing the next generation of HIV therapies.

(3) Identifying strategies towards a cure.

(4) Improving the prevention and treatment of HIV-associated comorbidities, coinfections, and complications.

(5) Cross-cutting areas that includes basic research, behavioral and social sciences research, health disparities, trainings, capacity-building and infrastructure.

This RFI is for planning purposes only and should not be construed as a solicitation for applications or proposals, or as an obligation in any way on the part of the United States federal government. The federal government will not pay for the preparation of any information submitted or for the government's use. Additionally, the government cannot guarantee the confidentiality of the information provided.

Dated: February 4, 2019.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2019–02027 Filed 2–11–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2018–0045]

Announcing Change of Location for Public Meeting: 21st Century Customs Framework

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice of change of location for public meeting.

SUMMARY: U.S. Customs and Border Protection (CBP) is announcing a change in location for ''The 21st Century Customs Framework'' public meeting to be held on Friday, March 1, 2019. The public meeting will be held at the U.S. Department of Commerce, Herbert Hoover Auditorium. CBP is also re-opening the registration links to allow for additional participation. Participants who have previously registered do not need to re-register.

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. Participants who have previously registered do not need to re-register. Registration will remain open until the venue reaches capacity.

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.

ADDRESSES:

Meeting: The meeting will be conducted in-person and via teleconference. The in-person meeting will be held at the U.S. Department of Commerce, Herbert Hoover Auditorium, 1401 Constitution Avenue NW, Washington, DC 20230. 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; 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.*

Participants who have previously registered do not need to re-register. Registration will remain open until the venue reaches capacity. 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.

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.

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:

Change of Meeting Location

On December 21, 2018, CBP published a notice in the **Federal Register** (83 FR 65703) announcing the ''Public Meeting: 21st Century Customs Framework'' initiative and public meeting. This document announces a change in location for the public meeting to be held on March 1, 2019. All other information, including times and topics to be addressed announced in the notice, remain the same. The in-person meeting will be held at the U.S. Department of Commerce, Herbert Hoover Auditorium, 1401 Constitution Avenue NW, Washington, DC 20230. Parking is available at the Ronald Reagan Building. The nearest metro stop is Federal Triangle. No food or drinks are allowed in the auditorium with the exception of bottled water.

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. For brief descriptions of each theme please refer to the December 21, 2018 public meeting announcement in the **Federal Register** (83 FR 65703).

Dated: February 7, 2019.

Brenda B. Smith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2019–01997 Filed 2–11–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0001]

Notice of Adjustment of Statewide per Capita Indicator for Recommending a Cost Share Adjustment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita indicator for recommending cost share adjustments for major disasters declared on or after January 1, 2019, through December 31, 2019, is $146.

DATES: This notice applies to major disasters declared on or after January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Hoyes, Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Pursuant to 44 CFR 206.47, the statewide per capita indicator that is used to recommend an increase of the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and emergency work under section 403 and section 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act is adjusted annually. The adjustment to the indicator is based on the Consumer Price Index for All Urban Consumers published annually by the U.S. Department of Labor. For disasters declared on January 1, 2019, through December 31, 2019, the qualifying indicator is $146 per capita of state or tribal population.

This adjustment is based on an increase of 1.9 percent in the Consumer Price Index for All Urban Consumers for the 12-month period that ended December 2018. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on January 11, 2019.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–01931 Filed 2–11–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4408–DR; Docket ID FEMA–2019–0001]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–4408–DR), dated November 27, 2018, and related determinations.

DATES: This amendment was issued February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 27, 2018.

Northampton County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–01933 Filed 2–11–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4411–DR: Docket ID FEMA–2019–0001]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4411–DR), dated December 18, 2018, and related determinations.

DATES: The declaration was issued December 18, 2018.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 18, 2018, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from Tropical Storm Michael during the period of October 9–16, 2018, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

Amelia, Appomattox, Brunswick, Campbell, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Floyd, Fluvanna, Franklin, Halifax, King and Queen, Lunenburg, Montgomery, New Kent, Northumberland, Nottoway, Pittsylvania, Powhatan, Prince Edward, Rappahannock, Richmond, and Roanoke Counties and the independent cities of Danville and Galax for Public Assistance.

All areas within the Commonwealth of Virginia are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–02017 Filed 2–11–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4411–DR; Docket ID FEMA–2019–0001]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4411–DR), dated December 18, 2018, and related determinations.

DATES: This amendment was issued February 1, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of December 18, 2018.

The counties of Grayson, James City, King William, Lancaster, Mecklenburg, Middlesex, Northampton, and Westmoreland and the independent city of Martinsville for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Brock Long,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–02018 Filed 2–11–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1901]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report

in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
California:						
Placer	Unincorporated Areas of Placer County (18–09–2198P).	The Honorable Jim Holmes, Chairman, Board of Supervisors, Placer County, 175 Fulweiler Avenue, Auburn, CA 95603.	Placer County Department of Public Works, 3091 County Center Drive, Suite 220, Auburn, CA 95603.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 8, 2019	060239
Sacramento	City of Sacramento (17–09–2500P).	The Honorable Darrell Steinberg, Mayor, City of Sacramento, City Hall, 915 I Street, 5th Floor, Sacramento, CA 95814.	Department of Utilities Stormwater Program Management, 1395 35th Avenue, Sacramento, CA 95822.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 25, 2019	060266
Sacramento	Unincorporated Areas of Sacramento County (17–09–2500P).	The Honorable Susan Peters, Chair, Board of Supervisors, Sacramento County, 700 H Street, Suite 2450, Sacramento, CA 95814.	Sacramento County Department of Water Resources, 827 7th Street, Suite 301, Sacramento, CA 95814.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 25, 2019	060262
Michigan:						
Macomb	City of Sterling Heights (18–05–4204P).	The Honorable Michael C. Taylor, Mayor, City of Sterling Heights, P.O. Box 8009, Sterling Heights, MI 48311.	City Hall, 40555 Utica Road, Sterling Heights, MI 48311.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 21, 2019	260128
Ottawa	City of Hudsonville (18–05–4330P).	The Honorable Mark Northrup, Mayor, City of Hudsonville, 3275 Central Boulevard, Hudsonville, MI 49426.	City Hall, 3275 Central Boulevard, Hudsonville, MI 49426.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2019	260493
Oregon: Benton	Unincorporated Areas of Benton County (18–10–0715P).	The Honorable Xanthippe Augerot, Chair, Benton County, Board of Commissioners, P.O. Box 3020, Corvallis, OR 97339.	Benton County Sheriff's Office, 180 Northwest 5th Street, Corvallis, OR 97333.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 28, 2019	410008
Texas:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Hays	City of San Marcos (18–06–1845P).	The Honorable John Thomaides, Mayor, City of San Marcos, San Marcos City Hall, 630 East Hopkins Street, San Marcos, TX 78666.	Engineering Department City Hall, 630 East Hopkins Street, San Marcos, TX 78666.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2019	485505
Hays	Unincorporated Areas of Hays County (18–06–1845P).	The Honorable Bert Cobb, M.D., County Judge, Hays County, Hays County Courthouse, 111 East San Antonio Street, Suite 300, San Marcos, TX 78666.	Hays County, Development Services Department, 2171 Yarrington Road, San Marcos, TX 78666.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2019	480321
Virginia: Fairfax	Unincorporated Areas of Fairfax County (18–03–1394P).	The Honorable David L. Meyer, Mayor, Fairfax County, 10455 Armstrong Street, Fairfax, VA 22030.	Fairfax County, Stormwater Planning, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 9, 2019	515525
Washington:						
Pierce	City of Puyallup (18–10–0841P).	The Honorable John Palmer, Mayor, City of Puyallup, Puyallup City Hall, 333 South Meridian, Puyallup, WA 98371.	City Hall, 333 South Meridian, Puyallup, WA 98371.	*https://msc.fema.gov/portal/advanceSearch.*	Apr. 4, 2019	530144
Pierce	Unincorporated Areas of Pierce County (18–10–0476P).	Mr. Bruce Dammeier, County Executive, Pierce County, 930 Tacoma Avenue South, Room 737, Tacoma, WA 98402.	Pierce County Annex Building, 2401 South 35th Street, Tacoma, WA 98409.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2019	530138
Wisconsin:						
Winnebago	City of Oshkosh (18–05–2015P).	The Honorable Steve Cummings, Mayor, City of Oshkosh, City Hall, P.O. Box 1130, Oshkosh, WI 54903.	City Hall, 215 Church Avenue, Oshkosh, WI 54903.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2019	550511
Winnebago	Unincorporated Areas of Winnebago County (18–05–2015P).	Mr. Mark Harris, Executive, Winnebago County, County Courthouse, 415 Jackson Street, Oshkosh, WI 54901.	Winnebago County Zoning Department, 448 Algoma Boulevard, Oshkosh, WI 54901.	*https://msc.fema.gov/portal/advanceSearch.*	Mar. 27, 2019	550537

[FR Doc. 2019–01934 Filed 2–11–19; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2018–0001]

Request for Applicants for Appointment to the Surface Transportation Security Advisory Committee

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; request for applicants.

SUMMARY: The Transportation Security Administration (TSA) is soliciting statements of interest from qualified individuals to serve on the Surface Transportation Security Advisory Committee (STSAC). The purpose of the STSAC is to advise, consult with, report to, and make recommendations to the Administrator of TSA on surface transportation security matters, including the development, refinement, and implementation of policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security.

DATES: Applications for membership must be submitted to TSA using one of the methods in the **ADDRESSES** section below on or before March 14, 2019.

ADDRESSES: Applications must be submitted by one of the following means:

- *Email: STSAC@tsa.dhs.gov.*
- *Mail:* Henry Budhram, Jr., STSAC Coordinator, Transportation Security Administration (TSA–28), 601 12th St. South, Arlington, VA 20598–4028.

See **SUPPLEMENTARY INFORMATION** for application requirements.

FOR FURTHER INFORMATION CONTACT: Henry Budhram, Jr., STSAC Designated Federal Official, Transportation Security Administration (TSA–28), 601 12th St. South, Arlington, VA 20598–4028, *STSAC@tsa.dhs.gov,* 571–227–4268.

SUPPLEMENTARY INFORMATION: The STSAC is an advisory committee established pursuant to section 1969, Division K, TSA Modernization Act, of the FAA Reauthorization Act of 2018 (Pub. L. 115–254, 132 Stat. 3186, Oct. 5, 2018). The statute exempts the Committee, and any subcommittees, from the Federal Advisory Committee Act (5 U.S.C. App.).

Membership

The STSAC will be composed of no more than 40 voting members from among stakeholders representing each mode of surface transportation, such as passenger rail, freight rail, mass transit, pipelines, highways, over-the-road bus, school bus industry, and trucking; and may include representatives from—

1. Associations representing such modes of surface transportation;
2. Labor organizations representing such modes of surface transportation;
3. Groups representing the users of such modes of surface transportation, including asset manufacturers, as appropriate;
4. Relevant law enforcement, first responders, and security experts; and
5. Such other groups as the Administrator considers appropriate.

The STSAC will also include nonvoting members, serving in an

advisory capacity, who will be designated by TSA; the Department of Transportation; the Coast Guard; and such other Federal department or agency as the Administrator considers appropriate.

The STSAC does not have a specific number of members allocated to any membership category and the number of members in a category may change to fit the needs of the Committee, but each organization will be represented by one individual. Members will serve as representatives and speak on behalf of their respective constituency group. Membership on the Committee is personal to the appointee and a member may not send an alternate to a Committee meeting.

Committee members are appointed by and serve at the pleasure of the Administrator of TSA for a term of two years. The members of the Committee will not receive any compensation from the Government by reason of their service on the Committee.

Committee Meetings

The Committee will typically convene two times per year; additional meetings may be held with the approval of the Committee Chairman and Designated Federal Official. Due to the sensitive nature of the material discussed, meetings are typically closed to the public. At least one meeting will be open to the public each year. In addition, STSAC members will be expected to participate on STSAC subcommittees that may meet more frequently for deliberation and to discuss specific surface transportation matters.

Application for Advisory Committee Appointment

Any person wishing to be considered for appointment to STSAC must provide the following:

- Complete professional resume.
- Statement of interest and reasons for application, including the membership category and how you represent a significant portion of that constituency.
- Home and work addresses, telephone number, and email address.

Please submit your application to the Designated Federal Official in **ADDRESSES** noted above by March 14, 2019. TSA may need to request additional information necessary for review of the application and completion of background check(s).

Dated: February 6, 2019.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2019–01935 Filed 2–11–19; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14400000.BJ0000 19X]

Notice of Filing of Plats of Survey, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of Land Management (BLM), Colorado State Office, Lakewood, Colorado, 30 calendar days from the date of this publication. This survey, required by Public Law 115–252, October 3, 2018, ''Elkhorn Ranch and White River National Forest Conveyance Act of 2017,'' was executed at the request of the U.S. Forest Service and is necessary for the management of these lands.

DATES: Unless there are protests of this action, the plat described in this notice will be filed on March 14, 2019.

ADDRESSES: You may submit written protests to the BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856; *rbloom@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The supplemental plat of section 19 in Township 7 South, Range 93 West, Sixth Principal Meridian, Colorado, was accepted on February 5, 2019.

A person or party who wishes to protest the above survey must file a written notice of protest within 30 calendar days from the date of this publication at the address listed in the **ADDRESSES** section of this notice. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your protest, please be aware that your entire protest, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Randy A. Bloom,

Chief Cadastral Surveyor.

[FR Doc. 2019–02030 Filed 2–11–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–PIRO–26192; PS.SMWLA0088.00.1]

Minor Boundary Revision at Pictured Rocks National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: The boundary of Pictured Rocks National Lakeshore is modified to include approximately 0.14 acres of land situated in the City of Munising, Alger County, Michigan, immediately adjacent to the boundary of the national lakeshore. The property will be donated to the United States by NPT Range Light Acquisition LLC.

DATES: The applicable date of this boundary revision is February 12, 2019.

ADDRESSES: The map depicting this boundary revision is available for inspection at the following locations: National Park Service, Land Resources Program Center, Midwest Region, 601 Riverfront Drive, Omaha, Nebraska 68102 and National Park Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: National Park Service, Daniel L. Betts, Realty Officer, Midwest Region Land Resources Program Center, 601 Riverfront Drive, Omaha, Nebraska 68102, telephone (402) 661–1780.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 54 U.S.C.

100506(c), the boundary of Pictured Rocks National Lakeshore is modified to include 0.14 acres of land. The boundary revision is depicted on the Pictured Rocks National Lakeshore Proposed Minor Boundary Addition map numbered 625/142825 and dated March 2018.

Specifically, 54 U.S.C. 100506(c) provides that, after consultation with the governing body of the county, city, town, or other jurisdiction or jurisdictions having taxing authority over the land or interest to be acquired as to the impact of the proposed action, and subsequent notification of the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The relevant governing bodies have been consulted and the Committees have been notified of this boundary revision. This boundary revision and subsequent donation will ensure preservation and protection of one of the Park's historic resources.

Once this property is included within the park boundary and acquired by the United States, it is the intention of the National Park Service to manage the property for public purposes.

Dated: November 20, 2018.

Craig Kenkel,

Acting Regional Director, Midwest Region.

[FR Doc. 2019–02022 Filed 2–11–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-27274; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before February 2, 2019, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 27, 2019.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 2, 2019. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

GEORGIA

Clarke County

Chi Omega House, 324 S. Milledge Ave., Athens, SG100003491.

Dade County

Lookout Mountain Hotel, 14049 Scenic Hwy., Lookout Mountain, SG100003423.

INDIANA

Allen County

Colman-Doctor Farm, 5910 Maples Rd., Fort Wayne vicinity, SG100003499.

Brown County

Story Historic District, Elkinsville Rd. at IN 135, Story, SG100003500.

Clark County

Indiana State Prison South-Indiana Reformatory- Colgate-Palmolive Historic District, 1410 S. Clark Blvd., Clarksville, SG100003501.

Hamilton County

Plum Prairie Residential Historic District, Roughly bounded by Vine, Walnut, 7th, South, & 5th Sts. including blk. W. to 4th between Walnut & Pleasant Sts., Noblesville, SG100003502.

Marion County

Architects and Builders Building, 333 N. Pennsylvania St., Indianapolis, SG100003503.

Noble County

Brimfield School No. 2, (Indiana's Public Common and High Schools MPS), N 140 E, 1 blk. N. of E. 3rd St., Brimfield vicinity, MP100003504.

Parke County

Turkey Run State Park, (New Deal Resources on Indiana State Lands MPS), Roughly bounded by IN 47, Narrows, Coxford & the E–W leg of Smedley Rds., Marshall, MP100003505.

Putnam County

Bainbridge Historic District, Generally E. side of Washington St. from 123 S. to 405 N. & Main St. from 312 W. to 421 E., Bainbridge, SG100003506.

Russellville Historic District

Roughly bounded by Jesse Ave., Fordice, High & McCaw Sts., Russellville, SG100003508.

Ripley County

Busching Covered Bridge, E. Perry St./E Cty. Rd. 25 S at Laughery Cr., Versailles vicinity, SG100003509.

Friendship Stone Arch Bridge, Olean Rd./Cty Rd. 525 E over Raccoon Cr., Friendship vicinity, SG100003510.

Otter Creek Covered Bridge, N. Cty. Rd. 850 W at Otter Cr., Holton vicinity, SG100003511.

Sullivan County

Merom-Gill Township Carnegie Library, 8554 Market St., Merom, SG100003512.

Vigo County

Miller-Parrott Baking Company Building, 1450 Wabash Ave., Terre Haute, SG100003516.

IOWA

Allamakee County

West Paint Creek Synod Evangelical Lutheran Church and Cemetery, 1351 Elon Dr., Waterville, SG100003422.

KANSAS

Douglas County

Chewning House, (Lawrence, Kansas MPS), 1510 Stratford Rd., Lawrence, MP100003443.

Johnson Block Historic District, (Lawrence, Kansas MPS), E. side of 800 blk. Arkansas St. and W. side of 800 blk. of Missouri St., Lawrence, MP100003445.

First Methodist Episcopal Church, 946 Vermont St., Lawrence, SG100003446.

Jefferson County

Christy, Lyman, Farmstead, (Agriculture-Related Resources of Kansas MPS), 9001 Christy Rd., Meriden vicinity, MP100003426.

Miami County

Martin Farm, (Agriculture-Related Resources of Kansas MPS), 31943 and 31860 W 247th St., Paola vicinity, MP100003428.

Riley County

Wolf House Historic District, (Late 19th Century Vernacular Stone Houses in Manhattan, Kansas MPS), 630 Freemont, Manhattan, MP100003425.

Sedgwick County

Eastwood Plaza Apartments, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957 MPS), 4802–4850 & 4850–4835 E. Eastwood. 616–626 S Oliver Ave., Wichita, MP100003429.

Shawnee County

St. Joseph's School-St. Joseph's Convent, 304–308 SW Van Buren St., Topeka, SG100003441.

Wichita County

Municipal Auditorium and City Hall, (New Deal-Era Resources of Kansas MPS), 201 N 4th St., Leoti, MP100003427.

KENTUCKY

Boyle County

McGrorty Avenue-Old Wilderness Road Historic District, Wilderness Rd. between E. Broadway and Fitzpatrick St., Danville, SG100003476.

Campbell County

Grote Manufacturing Company Building (CP337), 239 Grandview Ave., Bellevue, SG100003473.

Clark County

Wright-Evans House, 3800 Pretty Run Rd., Winchester vicinity, SG100003474.

Jefferson County

Puritan Apartment Hotel, 1244 S. Fourth St., Louisville, SG100003475.

Shafer's Hall, 617 N 27th St., Louisville, SG100003478.

Woodford County

Ready-Twyman House, 220 N. Main St., Versailles vicinity, SG100003477.

LOUISIANA

Rapides Parish

Tyrone Plantation, 6576 Bayou Rapides Rd., Alexandria, SG100003456.

MASSACHUSETTS

Middlesex County

George Close Company Building, 243 Broadway, Cambridge, SG100003472.

Plymouth County

Sever, William, House, 2 Linden St., Kingston, SG100003469.

Suffolk County

Intervale Street-Columbia Road Historic District, 117–121, 123–127, 129–135, 137–143, 145–159, 161, 162 Intervale St. & 282–284, 286–288, Columbia Rd., Boston, SG100003470.

Samuel Edelman Apartments, 97–103 Norfolk St., Boston, SG100003471.

NEW MEXICO

Colfax County

Cimarron Mercantile, 709 S Collison St., Cimarron, SG100003458.

NEW YORK

Erie County

Monarch Knitting Company Factory, 10 Doat St., Buffalo, SG100003432.

Niagara County

Payne Avenue High School, 621 Payne Ave., North Tonawanda, SG100003431.

Buildings at Niagara and Seventh Streets, 610–628 Niagara St., Niagara Falls, SG100003433.

Oneida County

Fort Wood Creek Site, Address Restricted, Rome vicinity, SG100003434.

Onondaga County

St. Anthony of Padua Church Complex, 417–425 W Colvin St. & 1515 Midland Ave., Syracuse, SG100003435.

Queens County

Richmond Hill Historic District, Generally 84th–85th Aves. & 113th to 118th Sts., Queens, SG100003430.

OHIO

Summit County

Case-Barlow Farm, 1931 Barlow Rd., Hudson, SG100003498.

OREGON

Deschutes County

Central Oregon Canal Historic District (Ward Road-Gosney Road Segment), (Carey and Reclamation Acts Irrigation Projects in Oregon, 1901–1978 MPS), Roughly bounded by Somerset Dr., Bear Creek, Gosney & Ward Rds., Bend vicinity, MP100003461.

Multnomah County

Blakely, Charles O. and Carie C., House, (Portland Eastside MPS), 2203 SE Pine St., Portland, MP100003451.

Sigglin, Charles O., Flats, (Portland Eastside MPS), 701–709 SE 16th Ave., Portland, MP100003453.

McDonald, Daniel C. and Katie A., House, 2944 NE Couch St., Portland, SG100003459.

Kiernan House, (Settlement-era Dwellings, Barns and Farm Groups of the Willamette Valley, Oregon MPS), 1020 SW Cheltenham Ct., Portland, MP100003460.

Laurelhurst Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by NE Stark, NE Senate. NE 44th & NE 32nd, Portland, MP100003462.

PENNSYLVANIA

Allegheny County

Frick Park, 1981 Beechwood Blvd., Pittsburgh, SG100003450.

Berks County

Berks County Trust Company, 35 N. 6th St., Reading, SG100003455.

SOUTH DAKOTA

Bon Homme County

Perkins Congregational Church, 31205 409th St., Springfield vicinity, SG100003448.

Brown County

First Presbyterian Church of Groton, 300 N. Main St., Groton, SG100003447.

Butte County

Chambers Dugout, (Rural Butte and Meade Counties MRA), 19003 Rimrock Ranch, Belle Fourche vicinity, MP100003437.

Roosevelt School, (Schools in South Dakota MPS), 1010 State St., Belle Fourche, MP100003438.

Haakon County

Haakon County Courthouse, (County Courthouses of South Dakota MPS), 140 Howard Ave., Philip, MP100003442.

Lawrence County

Jackson Boulevard Historic District, Several blks. around E Jackson Blvd., generally bounded by N 7th, N 10th, E Kansas & E Hudson Sts., Spearfish, SG100003440.

Hann, Solomon and Martha, Homestead, 21732 Hann Pl., Nemo vicinity, SG100003444.

Lincoln County

Dickens Round Barn, (South Dakota's Round and Polygonal Barns and Pavilions MPS), 27882 473rd Ave., Worthing vicinity, MP100003439.

TEXAS

Brazoria County

Alvin Gulf, Colorado and Santa Fe Railway Passenger Depot, (Gulf, Colorado and Santa Fe Railway Depots of Texas MPS), 200 Depot Centre Blvd., Alvin, MP100003467.

Cameron County

Baxter Building, 106 S A St., Harlingen, SG100003420.

De Witt County

DeWitt County Monument, (Monuments and Buildings of the Texas Centennial MPS), US 87 & Courthouse St., Cuero, MP100003421.

Ellis County

Ennis Commercial Historic District (Boundary Increase), (Ennis MRA), 205 N McKinley, 301–303 W Knox & 107 N Sherman Sts., Ennis, BC100003468.

Fayette County

Mier Expedition and Dawson's Men Monument and Tomb, (Monuments and Buildings of the Texas Centennial MPS), 414 TX Loop 92, Monument Hill and Kreische Brewery State Historic Sites., La Grange vicinity, MP100003486.

Gregg County

Petroleum Building, 202 E Whaley St., Longview, SG100003494.

Harris County

Houston Municipal Airport Terminal, 8325 Travelair Rd., Houston, SG100003488.

St. Elizabeth's Hospital, 4514 Lyons Ave., Houston, SG100003489.

500 Jefferson Building, 500 Jefferson St., Houston, SG100003492.

Parmer County

Parmer County Courthouse, 401 3rd St., Farwell, SG100003490.

Potter County

American National Bank of Amarillo and SPS Tower, 600 S Tyler St., Amarillo, SG100003493.

VIRGINIA

Amherst County

Thompson's Mill-Amherst Mill Complex, 138–140 Union Hill Rd., Amherst, SG100003484.

Fredericksburg Independent City, Fredericksburg and Confederate Cemetery, 1000–1100 Washington Ave., Fredericksburg (Independent City), SG100003480.

King And Queen County

Bruington Rural Historic District, Along Rose Mount Rd., Pea Ridge Rd., The Trail, Bruington Rd., and Norwood Rd., Bruington vicinity, SG100003481.

Norfolk Independent City, Norfolk Auto Row Historic District, Roughly bounded by E 14th, Boush & Granby Sts., Monticello & W Brambleton Aves., Norfolk (Independent City), BC100003483.

Wise County

Big Stone Gap Downtown Historic District, 200–500 Wood Ave. E, Shawnee Ave., E 3rd St., E 4th St., E 5th St., Big Stone Gap, SG100003482.

WISCONSIN

Dane County

Main Street Historic District, 100–225 E Main St., 102 & 200–205 W Main St., 103–105 S 2nd St., and 102 S 3rd St., Mount Horeb, SG100003457.

In the interest of preservation, a SHORTENED comment period has been requested for the following resources:

OHIO

Champaign County

North Ward District School, 626 N Russell, Urbana, SG100003495.
Comment period: 3 days.

South Ward District School, 725 S Main St., Urbana, SG100003496.
Comment period: 3 days.

Coshocton County

Coshocton Main Street Historic District, Roughly bounded by Main, Chestnut & Walnut Sts. between 3rd & 7th Sts., Coshocton, SG100003497.
Comment period: 3 days.

A request for removal has been made for the following resources:

INDIANA

Vigo County

House at 209–211 S Ninth Street, (Downtown Terre Haute MRA), 209–211 S 9th St., Terre Haute, OT83000109.

Chamber of Commerce Building, (Downtown Terre Haute MRA), 329–333 Walnut St., Terre Haute, OT83000155.

Foley Hall, St. Mary of the Woods College Campus, Off US 150, St. Mary-of-the-Woods, OT85000595.

IOWA

Polk County

Burnstein—Malin Grocery, (Towards a Greater Des Moines MPS), 1241 6th Ave., Des Moines, OT98001277.

Scott County

Sainte Genevieve (dredge), (Davenport MRA), Antoine LeClaire Park, off US 67, Davenport, OT86002232.

Eldridge Turn—Halle, 102 W LeClaire St., Eldridge, OT87000032.

Wapello County

Benson Building, (Ottumwa MPS), 214 E Second St., Ottumwa, OT95000969.

Woodbury County

Midland Packing Company, 2001 Leech Ave., Sioux City, OT79000952.

Additional documentation has been received for the following resources:

INDIANA

Putnam County

McKim Observatory, DePauw University, DePauw and Highbridge Aves., Greencastle, AD78000051.

SOUTH DAKOTA

Pennington County

Rapid City Historic Commercial District, Roughly Main & St. Joseph Sts., primarily between Mt. Rushmore Rd. & 5th St., including, Aby Complex, Rapid City, AD74001897.

TEXAS

Galveston County

Strand Historic District, The, Roughly bounded by Ave. A, 20th St., alley between Aves. C and D, and railroad depot, Galveston, AD70000748.

Nomination submitted by Federal Preservation Officers: The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the properties in the National Register of Historic Places.

KANSAS

Shawnee County

Topeka Veterans Administration Hospital, (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 2200 SW Gage Blvd., Topeka, MP100003485.

Authority: Section 60.13 of 36 CFR part 60.

Dated: February 4, 2019.

Paul Lusignan,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2019–01987 Filed 2–11–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–602 and 731–TA–1412 (Final)]

Steel Wheels From China; Revised Schedule for the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 6, 2019.

FOR FURTHER INFORMATION CONTACT: Jordan Harriman (202–205–2610), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 23, 2018, the Commission established a schedule for the conduct of the final phase investigations (83 FR 61672, November 30, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: Deadline for filing prehearing briefs is February 25, 2019; requests to appear at the hearing should be filed on or before March 7, 2019; a prehearing conference will be held on March 12, 2019, if deemed necessary; the hearing is on Thursday, March 14, 2019 beginning at 9:30 a.m.; the deadline for filing posthearing briefs and for written statements from any person who has not entered an appearance as a party is March 26, 2019; final release of information is on April 16, 2019; and final party comments are due on April 19, 2019.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02076 Filed 2–11–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–601 and 731–TA–1411 (Final)]

Laminated Woven Sacks from Vietnam; Revised Schedule of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 6, 2019.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (202–205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 17, 2018, the Commission established a schedule for the conduct of the final phase of countervailing duty and antidumping duty investigations (83 FR 54373, October 29, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: The prehearing staff report will be placed in the nonpublic record on March 20, 2019; the deadline for filing prehearing briefs is March 27, 2019; requests to appear at the hearing should be filed on or before March 28, 2019; a prehearing conference will be held on March 29, 2019, if deemed necessary; the hearing is on Thursday, April 4, 2019 beginning at 9:30 a.m.; the deadline for filing posthearing briefs and for written statements from any person who has not entered an appearance as a party is April 11, 2019; final release of information is on April 25, 2019; and final party comments are due on April 29, 2019.

For further information concerning these investigations, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–01986 Filed 2–11–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–603–605 and 731–TA–1413–1415 (Final)]

Glycine From China, India, Japan, and Thailand; Revised Schedule for Final Phase of Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATE: February 6, 2019.

FOR FURTHER INFORMATION CONTACT: Celia Feldpausch (202–205–2387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On October 31, 2018, the Commission established a schedule for the conduct of the final phase of these investigations (83 FR 62345, December 3, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: The deadline for filing prehearing briefs is April 23, 2019; requests to appear at the hearing should be filed on or before April 25, 2019; a prehearing conference will be held on April 25, 2019, if deemed necessary; the hearing is on April 30, 2019 beginning at 9:30 a.m.; the deadline for filing posthearing briefs and for written statements from any person who has not entered an appearance as a party is May 7, 2019; final release of information is on May 22, 2019; and final party comments are due on May 24, 2019.

For further information concerning these investigations, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02012 Filed 2–11–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1142]

Certain Pocket Lighters; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 6, 2018, under section 337 of the Tariff Act of 1930, as amended, on behalf of BIC Corporation of Shelton, Connecticut. Supplements were filed on December 18, 2018 and February 1, 2019. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pocket lighters by reason of infringement of U.S. Trademark Registration No. 1,761,622 (''the '622 mark'') and U.S. Trademark Registration No. 2,278,917 (''the '917 mark''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

therein, is 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, Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server 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.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2018).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 6, 2019, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement the '622 mark or the '917 mark; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''pocket lighters that include an oblong body which is elliptical in cross-section, a fork which is generally parabolic in cross-section, and/or a hood which is generally parabolic in cross-section'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: BIC Corporation, 1 BIC Way, Shelton, CT 06484.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Arrow Lighter, Inc. d/b/a MK Lighter, Inc., and MK Lighter Company, 13942 E Valley Boulevard, City of Industry, CA 91746

Benxi Fenghe Lighter Co., Ltd., Huanxi Ling Village, Wolong Town, Mingshan District, Benxi, Liaoning Province, China 117000

Excel Wholesale Distributors Inc., 15–13 132nd Street, College Point, NY 11356

Milan Import Export Company, LLC, Camino Del Rio S Suite 120, San Diego, CA 92108

Wellpine Company Limited, Unit 701, Grand City Plaza, No. 1–17 Sai Lau Kok Road, Tsuen Wan, N.T., Hong Kong 999077

Zhuoye Lighter Manufacturing Co., Ltd., No. 2, 3rd, New Technological Industrial Zone, Foshan City, Guangdong,, China 528000

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–01982 Filed 2–11–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–606 and 731–TA–1416 (Final)]

Quartz Surface Products From China; Revised Schedule of the Final Phase of Countervailing Duty and Anti-Dumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: February 6, 2019.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On November 20, 2018, the Commission established a schedule for the conduct of the final phase of countervailing duty and antidumping duty investigations (83 FR 64597, December 17, 2018). Due to the lapse in appropriations and ensuing cessation of Commission operations, the Commission is revising its schedule.

The Commission's revised dates in the schedule are as follows: The prehearing staff report will be placed in the nonpublic record on April 25, 2019; the deadline for filing prehearing briefs is May 2, 2019; a prehearing conference, if deemed necessary, and requests to appear at the hearing should be filed on or before May 6, 2019; the hearing is on Thursday, May 9, 2019 at 9:30 a.m.; the deadline for filing posthearing briefs

and for written statements from any person who has not entered an appearance as a party is May 16, 2019; final release of information is on June 5, 2019; and final party comments are due on June 7, 2019.

For further information concerning these investigations, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 7, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02075 Filed 2–11–19; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice.

SUMMARY: Pursuant to section 104 of Title 11, United States Code, certain dollar amounts in title 11 and title 28, United States Code, are increased.

FOR FURTHER INFORMATION CONTACT: Michele Reed, Chief, Judicial Services Office, Administrative Office of the United States Courts, Washington, DC 20544, Telephone (202) 502–1800, or by email at *Judicial_Services_Office@ao.uscourts.gov*.

SUPPLEMENTARY INFORMATION: Section 104(a) of title 11, United States Code, provides the mechanism for an automatic three-year adjustment of dollar amounts in certain sections of titles 11 and 28. Public Law 95–598 (1978); Public Law 103–394 (1994); Public Law 109–8 (2005); and Public Law 110–406 (2008). The provision states:

(a) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28 immediately before such April 1 shall be adjusted—

(1) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(2) to round to the nearest $25 the dollar amount that represents such change.

(b) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the **Federal Register** the dollar amounts that will become effective on such April 1 under sections 101(3), 101(18), 101(19A), 101(51D), 109(e), 303(b), 507(a), 522(d), 522(f)(3) and 522(f)(4), 522(n), 522(p), 522(q), 523(a)(2)(C), 541(b), 547(c)(9), 707(b), 1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28.

(c) Adjustments made in accordance with subsection (a) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11 and title 28, United States Code, as set out in the following chart. These increases do not apply to cases commenced before the effective date of the adjustments, April 1, 2019. Seven Official Bankruptcy Forms (106C, 107, 122A–2, 122C–2, 201, 207, and 410) and two Director's Forms (2000 and 2830), also will be amended to reflect these adjusted dollar amounts.

Dated: February 5, 2019.

Michele Reed,

Chief, Judicial Services Office.

Affected sections of Title 28 U.S.C. and the bankruptcy code	Dollar amount to be adjusted	New (adjusted) dollar amount [1]
28 U.S.C.		
Section 1409(b)—a trustee may commence a proceeding arising in or related to a case to recover.		
(1)—money judgment of or property worth less than	$1,300	$1,375
(2)—a consumer debt less than	19,250	20,450
(3)—a non consumer debt against a non insider less than	12,850	13,650
11 U.S.C.		
Section 101(3)—definition of assisted person	192,450	204,425
Section 101(18)—definition of family farmer	(*) 4,153,150	(*) 4,411,400
Section 101(19A)—definition of family fisherman	(*) 1,924,550	(*) 2,044,225
Section 101(51D)—definition of small business debtor	(*) 2,566,050	(*) 2,725,625
Section 109(e)—debt limits for individual filing bankruptcy under chapter 13	(*) 394,725	(*) 419,275
	(*) 1,184,200	1,257,850
Section 303(b)—minimum aggregate claims needed for the commencement of an involuntary chapter 7 or 11 petition.		
(1)—in paragraph (1)	15,775	16,750
(2)—in paragraph (2)	15,775	16,750
Section 507(a)—priority expenses and claims.		
(1)—in paragraph (4)	12,850	13,650
(2)—in paragraph (5)(B)(i)	12,850	13,650
(3)—in paragraph (6)(B)	6,325	6,725
(4)—in paragraph (7)	2,850	3,025
Section 522(d)—value of property exemptions allowed to the debtor.		
(1)—in paragraph (1)	23,675	25,150
(2)—in paragraph (2)	3,775	4,000

Affected sections of Title 28 U.S.C. and the bankruptcy code	Dollar amount to be adjusted	New (adjusted) dollar amount [1]
(3)—in paragraph (3)	600	625
	12,625	13,400
(4)—in paragraph (4)	1,600	1,700
(5)—in paragraph (5)	1,250	1,325
	11,850	12,575
(6)—in paragraph (6)	2,375	2,525
(7)—in paragraph (8)	12,625	13,400
(8)—in paragraph (11)(D)	23,675	25,150
Section 522(f)(3)—exception to lien avoidance under certain state laws	6,425	6,825
Section 522(f)(4)—items excluded from definition of household goods for lien avoidance purposes	(*) 675	(*) 725
Section 522(n)—maximum aggregate value of assets in individual retirement accounts exempted	1,283,025	1,362,800
Section 522(p)—qualified homestead exemption	160,375	170,350
Section 522(q)—state homestead exemption	160,375	170,350
Section 523(a)(2)(C)—exceptions to discharge.		
(1)—in paragraph (i)(I)—consumer debts for luxury goods or services incurred < 90 days before filing owed to a single creditor in the aggregate	675	725
(2)—in paragraph (i)(II)—cash advances incurred < 70 days before filing in the aggregate	950	1,000
Section 541(b)—property of the estate exclusions.		
(1)—in paragraph (5)(C)—education IRA funds in the aggregate	6,425	6,825
(2)—in paragraph (6)(C)—pre-purchased tuition credits in the aggregate	6,425	6,825
(3)—in paragraph (10)(C)—qualified ABLE program funds in the aggregate	6,425	6,825
Section 547(c)(9)—preferences, trustee may not avoid a transfer if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of property is less than	6,425	6,825
Section 707(b)—dismissal of a chapter 7 case or conversion to chapter 11 or 13 (means test).		
(1)—in paragraph (2)(A)(i)(I)	7,700	8,175
(2)—in paragraph (2)(A)(i)(II)	12,850	13,650
(3)—in paragraph (2)(A)(ii)(IV)	1,925	2,050
(4)—in paragraph (2)(B)(iv)(I)	7,700	8,175
(5)—in paragraph (2)(B)(iv)(II)	12,850	13,650
(6)—in paragraph (5)(B)	1,300	1,375
(7)—in paragraph (6)(C)	700	750
(8)—in paragraph (7)(A)(iii)	700	750
Section 1322(d)—contents of chapter 13 plan, monthly income	(*) 700	(*) 750
Section 1325(b)—chapter 13 confirmation of plan, disposable income	(*) 700	(*) 750
Section 1326(b)(3)—payments to former chapter 7 trustee	25	25

[1] The New (Adjusted) Dollar Amounts reflect a 6.218 percent increase, rounded to the nearest $25.
* Each time it appears.

[FR Doc. 2019–01903 Filed 2–11–19; 8:45 am]
BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0092]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection Voluntary Magazine Questionnaire for Agencies/ Entities Who Store Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until April 15, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, either by mail at 99 New York Ave NE, Washington, DC 20226, or by email at *eipb-informationcollection@atf.gov* or by telephone at 202–648–7158.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosive Materials.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other (if applicable): None.

Abstract: This information collection is used to identify the number and locations of public explosives storage faculties (magazines), which will enable ATF to respond properly to local emergencies such as natural disasters.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,000 respondents will respond to this information collection, and it will take each respondent approximately 15 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 500 hours, which is equal to 1,000 (# of respondents) * 1 (# of responses per respondent) * .5 (30 minutes).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: February 6, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–01919 Filed 2–11–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on January 29, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), TeleManagement Forum (''The Forum'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shelter, London, UNITED KINGDOM; Somos, East Brunswick, NJ; PCCW Solutions Limited, Kowloon, HONG KONG-CHINA; Thunderhead, London, UNITED KINGDOM; CA IT Management Solutions Spain S.L., Barcelona, SPAIN; Corporate Software, Casablanca, MOROCCO; Concentra Consulting Limited, London, UNITED KINGDOM; Sparx Services North America, New Richmond, WI; COGNITY S.A., Marousi, GREECE; Cortex, Brierley Hill, UNITED KINGDOM; Diksha Technologies Pvt Ltd, Sadashivanagar, INDIA; Isoton, Adelaide, AUSTRALIA; EC4U Expert Consulting AG, Karlsruhe, GERMANY; Intrasoft International SA Luxembourg, Luxembourg City, LUXEMBOURG; Blue Prism, London, UNITED KINGDOM; Zen internet Ltd, Rochdale, ENGLAND; LG Uplus Corp, Seoul, SOUTH KOREA; Fair Isaac Corporation, San Diego, CA; Xpertnest, Biggleswade, UNITED KINGDOM; OneWeb, London, UNITED KINGDOM; Clementvale, Dublin, IRELAND; SMATMASS Pty Ltd, Johannesburg, SOUTH AFRICA; Clarity Global Pty Ltd, North Sydney, AUSTRALIA; Balance ICT Limited, Farnborough, UNITED KINGDOM; Unlimit IoT Private Ltd., Mumbai, INDIA; AZR for Informatics & Media Solutions L.L.C., Tripoli, LIBYA; Centernode, Cork, IRELAND; Amborella, Paris, FRANCE; Jenny Huang Sole Trader, Lafayette, CA; Posts and Telecommunications Institute of Technology, Hanoi, VIETNAM; IDC, Framingham, MA; Pforzheim University, Pforzheim, GERMANY; Sasin Graduate Institute of Business Administration, Bangkok, THAILAND; Elaine Haher, TM Forum Distinguished Fellow, Piscataway, NJ; Robert Bratulic, Sole Trader, Toronto, CANADA; Asia Pacific College, Manila, PHILIPPINES; Axiros GmbH, Munich, GERMANY; Digital Cities Initiative, Stanford Global Projects Center, Stanford, CA; Town of Austin, Austin, CANADA; Tel Aviv University, Tel Aviv, ISRAEL; City of Saint-Quentin, Saint-Quentin, FRANCE; Nomensa, Bristol, UNITED KINGDOM; Polaris Technology, Amman, JORDAN; K C Armour & Co., Croydon, AUSTRALIA; Aesopia, Centurion, SOUTH AFRICA; Aarav Solutions, Bangalore, INDIA; Minim, Manchester, NH; Starnet Solutii SRL, Chisinau, MOLDOVA; NHB Management Services SARL, Temara, MOROCCO; Equatorial Telecom, São Luís, BRAZIL; Pinplay, Gangnam-gu, KOREA; Ontix, London, UNITED KINGDOM; Atonomi, Seattle, WA; Jabb Technical Solutions, LLC, Bayonne, NJ; Rain Networks, Bryanston, SOUTH AFRICA; NaviParking, Gliwice, POLAND; Emersion Software, Melbourne, AUSTRALIA; Juvo, San Francisco, CA; Fundação Para Inovações Tecnológicas—FITec, Recife, BRAZIL; Wind Tre S.P.A., Rome, ITALY; Z-Lift, Makati City, PHILIPPINES; Zat Consulting, Lima, PERU; Simple Consulting, Santiago, CHILE; AN10, Chevy Chase, MD; Makedonski Telekomunikacii, Skopje, MACEDONIA; T-Mobile Austria GmbH, Vienna, AUSTRIA; Hrvatski Telekom d.d., Zagreb, CROATIA; T-Mobile Czech & Slovak Telekom, a.s., Prague, CZECH REPUBLIC; Vodafone Turkey, Istanbul, TURKEY; T-Mobile Poland SA, Warsaw, POLAND; T-Systems International Services GmbH, Frankfurt, GERMANY; DIGIGLU Ltd., Hatfield, UNITED KINGDOM; PortaOne, Inc., Coquitlam, CANADA; Latro Services, Chantilly, VA; ATC IP LLC, Marlborough, MA; Synchronoss Technologies, Inc., Bridgewater, NJ; Accruent, LLC, Austin, TX; Swirlds, College Station, TX; Tawhiri Networks, Brewster, NY; PiA-Team Inc., Bellevue, WA; Emeldi Canada Ltd., Toronto, CANADA; University of Surrey, Guildford, UNITED KINGDOM; Greek Mobile Operators Association, Marousi, GREECE; University of Málaga, Málaga, SPAIN; The University of Tokyo, Bunkyo-ku, JAPAN; Telekinetics, London, UNITED KINGDOM; Mahindra Comviva, Sector 34, INDIA; Hyperoptic Ltd, London, UNITED KINGDOM; Skylogic S.p.A., Torino, ITALY; Crystal ASP Services Ltd, Dublin, IRELAND; Jamii Telecommunications Ltd, Nairobi, KENYA; iD Mobile, London, UNITED KINGDOM; Steward Bank, Harare, ZIMBABWE; Zambia Telecommunications Company, Lusaka, ZAMBIA; Splunk, North Sydney, AUSTRALIA; SSE Electricity Ltd, Reading, UNITED KINGDOM; ATM Mobilis, Algiers, ALGERIA; MTN Sudan, Khartoum, SUDAN; MTN South Sudan, Juba, SOUTH SUDAN; MTN Uganda, Kampala, UGANDA; MTN Guinea Bissau, Conakry, GUINEA BISSAU; MTN Côte d'Ivoire, Abidjan, IVORY COAST; MTN Cyprus, Nicosia, CYPRUS; MTN Liberia, Monrovia, LIBERIA; MTN Nigeria, Victoria Island, NIGERIA; MTN South Africa, Randburg, SOUTH AFRICA; MTN Cameroon, Douala, CAMEROON; MTN Benin, Cotonou, BENIN; Mascom Wireless

(MTN Botswana), Gabarone, BOTSWANA; MTN Ghana, Accra, GHANA; MTN Yemen, Sana'a, YEMEN; MTN Congo, Brazzaville, CONGO; Orange Cameroon, Douala, CAMEROON; Claro Enterprise Solutions LLC, Miramar, FL; KCOM Group PLC, London, UNITED KINGDOM; Tigo Tanzania, Dar es Salaam, TANZANIA; Jaks Tech Solutions LLP, Madurai, INDIA; Nuviso Networks Pvt Ltd, Bengaluru, INDIA; BitX Limited, Georgetown, GUYANA; Zeetta Networks, Bristol, UNITED KINGDOM; Shakespeare Advisory Ltd, Foxrock, IRELAND; Smart City College of Beijing Union University, Beijing, PEOPLE'S REPUBLIC OF CHINA; Guangzhou Sunrise Technology Co., Ltd., Guangzhou, PEOPLE'S REPUBLIC OF CHINA; Space Star Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; NTT COMWARE CORPORATION, Tokyo, JAPAN; Deploy Partners Pty Ltd, Newport, AUSTRALIA; A–OSS Consulting GmbH, Wein, AUSTRIA; PJSC Rostelecom, Moscow, RUSSIA; TV–7, Seversk, RUSSIA; JSC ALFASATCOM, Moscow, RUSSIA; Corporación Ecuatoriana para el Desarrollo de la Investigación y la Academia (CEDIA), Cuenca, ECUADOR; Icaro Tech, Campinas, BRAZIL; Internexa, S.A., Bogotá, COLOMBIA; SKY Brasil, São Paulo, BRAZIL; Everis Spain S.L.U., Madrid, SPAIN; and Verbio Inc, Palo Alto, CA, have been added as parties to this venture.

Also, the following members have changed their names: Dubai Roads & Transport Authority (RTA) to Roads and Transport Authority, Dubai, UNITED ARAB EMIRATES; T-Slovak Telekom, a.s., to T-Mobile Czech & Slovak Telekom, a.s., Prague, CZECH REPUBLIC; Starnet SRL to Starnet Solutii SRL, Chisinau, MOLDOVA; Jordan Telecom to Orange Jordan, Amaan, JORDAN; Inteligencija to Poslovna Inteligencija d.o.o., Zagreb, CROATIA; IKB Consulting to NHB Management Services SARL, Temara, MOROCCO; SalesAgility to Minim, Manchester, NJ; Jisc Collections and Janet Limited to Jisc Services Limited, Didcot, UNITED KINGDOM; WSO2.Telco to Apigate, Kuala Lumpur Sentral, MALAYSIA; ZTEsoft Technology Co., Ltd, to Whale Cloud Technology Co., Ltd, Nanjing, PEOPLE'S REPUBLIC OF CHINA; Croatian Telecom—HT to Hrvatski Telekom d.d., Zagreb, CROATIA; Netka System to Netka System Co., Ltd., Minburi Minburi Bangkok, THAILAND; SSE Energy Supply Ltd to SSE Electricity Ltd, Reading, UNITED KINGDOM; Intrasoft International SA to Intrasoft International SA Luxembourg, Luxembourg City, LUXEMBOURG; FICO United Kingdom to Fair Isaac Corporation, San Diego, CA; My Republic to MyRepublic Pte Ltd, Singapore, SINGAPORE; everis & NTT data to Everis Spain S.L.U., Madrid, SPAIN; Crystal ASP to Crystal ASP Services Ltd, Dublin, IRELAND; Botswana Fibre Networks (Pty) Ltd to Bofinet, Gaborone, BOTSWANA; AZR L.L.C. to AZR for Informatics & Media Solutions L.L.C., Tripoli, LIBYA; Icaro Technologies to Icaro Tech, Campinas, BRAZIL; Dave Calder to Vital Process Consulting, Pleasant Hill, CA; KBZ Gateway Company Limited to KBZ Gateway SI Company Limited, Yangon, MYANMAR; GEANT Ltd to GEANT Vereniging, Cambridge, UNITED KINGDOM; PETER-SERVICE to Nexign, St.Petersburg, RUSSIA; Unlimit IoT Pvt. Ltd. to Unlimit IoT Private Ltd., Mumbai, INDIA; American Tower to ATC IP LLC, Marlborough, MA; Thunderhead.com to Thunderhead, London, UNITED KINGDOM; CEDIA to Corporación Ecuatoriana para el Desarrollo de la Investigación y la Academia (CEDIA), Cuenca, ECUADOR; LG Uplus Corp. (LGU+) to LG Uplus Corp, Seoul, SOUTH KOREA; Synchronoss to Synchronoss Technologies, Inc., Bridgewater, NJ; Antarctic Palmtrees Limited to LABCITIES, Watford, UNITED KINGDOM; Master Merchant Systems to Maplewave, Dartmouth, CANADA; TEAM COTE D'AZUR (Nice) to Nice Cote d'Azur Metropolis, Nice, FRANCE; CA Technologies Spain to CA IT Management Solutions Spain S.L., Barcelona, SPAIN; MTN Sudan to MTN Liberia, Monrovia, LIBERIA; MTN SA (Pty) ltd. to MTN South Africa, Randburg, SOUTH AFRICA; and MobileAware, Inc. to AwareX, Boston, MA.

In addition, the following parties have withdrawn as parties to this venture: 100 Celsius AI, Frick, SWITZERLAND; Active Ticketing PLC, London, UNITED KINGDOM; AGGAROS, Barcelona, SPAIN; Agile Fractal Grid, Inc., Medway, MA; Airtel Africa, Nairobi, KENYA; Algorithmic Intuition Inc, Millbrae, CA; AMKB Cloud, Denver, CO; Andorra Telecom, Santa Coloma, ANDORRA; APIVERSITY, Madrid, SPAIN; Araxxe, Lyon, FRANCE; ARGELA Yazilim ve Bilisim Teknolojileri Sanayi ve Ticaret A.S., Istanbul, TURKEY; AsiaCell Communications LLC, Sulaymaniyah, IRAQ; Atilze Digital, Petaling Jaya, MALAYSIA; Axiros GmbH, Munich Hoehenkirchen, GERMANY; BaseN, Helsinki, FINLAND; Basildon Borough Council, Basildon, UNITED KINGDOM; Beyond Verbal, Tel Aviv, ISRAEL; Bharat Broadband Network Limited, Chhattarpur, INDIA; BOC, Dublin, IRELAND; BPS Service Consulting and Development SAS, Bogotá DC, COLOMBIA; BridgeWorx Ltd, Brighton, UNITED KINGDOM; Bring Labs, Lisbon, PORTUGAL; Bristol is Open, Bristol, UNITED KINGDOM; CableVision, SA, Buenos Aires, ARGENTINA; CallVU, Tel Aviv, ISRAEL; Carphone Warehouse Ltd, London, UNITED KINGDOM; Celebrus Technologies, Sunbury-on-Thames, UNITED KINGDOM; Cepheid, Sunnyvale, CA; ChikPea, San Francisco, CA; City of Belfast, Belfast, IRELAND; City of Miami, Miami, FL; City of Tampere, Tampere, FINLAND; City Strategies, LLC, New York, NY; Clarkson University Office of Information Technology, Potsdam, NY; Cloud Best Practices Network, London, UNITED KINGDOM; Cloudsoft Corporation, Edinburgh, SCOTLAND; Cmind Inc, Gatineau, CANADA; CODIX USA, Atlanta, GA; Cognitro Analytics, Toledo, Ohio; CommTel Network Solutions Pty Ltd., Keilor Park, AUSTRALIA; Comporium Communications, Rock Hill, SC; Comptel, Kuopio, NORWAY; Corporate Solutions Co., Riyadh, SAUDI ARABIA; Cosmote, Athens, GREECE; Datalynx AG, Basel-Stadt, SWITZERLAND; DataMi, Chelmsford, MA; Deutsche Telekom (UK) Ltd, Hatfield, UNITED KINGDOM; DonRiver, Toronto, CANADA; Elephant Talk Communications, New York, NY; Entel Chile PCS Telecomunicaciones SA, Santiago, CHILE; Enterprise Architecture as a Service (EAaaS) B.V., Eindhoven, NETHERLANDS; Envision&Company Ltd, London, UNITED KINGDOM; Ernst & Young CIS B.V., Moscow Branch, Moscow, RUSSIA; ESRI, Redlands, CA; Far EasTone Telecommunications Co., Ltd. (FarEasTone), Taipei, TAIWAN; Gaia Smart Cities Solutions Pvt Ltd, Parel, INDIA; Gn0man, Glen Ellyn, IL; Icertis, Inc., Bellevue, WA; IMImobile Ltd, London, UNITED KINGDOM; Indosat Ooredoo, Jakarta Pusat, INDONESIA; Inmarsat, St. John's, CANADA; Institute for Telecommunication Sciences, Boulder, CO; internet Solutions, Bryanston, SOUTH AFRICA; Invercloud, Cork, IRELAND; IPgallery, Raanana, ISRAEL; ItsOn Inc, Redwood City, CA; Join Wireless s.a., Luxembourg City, LUXEMBOURG; Kurrant, Parkview Square, SINGAPORE; Liberated Cloud Limited, Frome, UNITED KINGDOM; Linkem Spa, Roma, ITALY; Lisbon City Council, Lisbon, PORTUGAL; LocalSearch Web Pty Ltd, Robina,

AUSTRALIA; Lucerne University of Applied Sciences and Arts, Horw, SWITZERLAND; Managed OutTasking Int'l, Tung Chung, HONG KONG–CHINA; Metasite Data Insights, Vilnius, LITHUANIA; Metaswitch Networks, Enfield, UNITED KINGDOM; Millicom Cable El Salvador, S.A. de C.V., Luxembourg City, LUXEMBOURG; MindShift Ltd, Bangalore, INDIA; N-able (Pvt) Ltd, Colombo, SRI LANKA; NeoNetpoint, Dublin, IRELAND; Neos d.o.o., Zagreb, CROATIA; NF CSB d.o.o., Ljubljana, SLOVENIA; NGOSS Lab of Lanzhou University, Lanzhou, PEOPLE'S REPUBLIC OF CHINA; Northpower Fibre, Whangarei, NEW ZEALAND; Ooredoo Algeria, Alger, ALGERIA; Ooredoo Group, Doha, QATAR; Ooredoo Kuwait, Sharq Area, KUWAIT; Ooredoo Maldives Pvt. Ltd., Hulhumale, MALDIVES; Ooredoo Myanmar, Jakarta, INDONESIA; Ooredoo Oman, Muscat, OMAN; Ooredoo Palestine, Al Bireh, PALESTINE; Ooredoo Qatar, Doha, QATAR; Ooredoo Tunisia, Tunis, TUNISIA; Open University—Milton Keynes, Milton Keynes, UNITED KINGDOM; ParkPlus System, Calgary, CANADA; Persistent Systems Ltd, Pune, INDIA; Plintron Global Technology Solutions Pvt Ltd., Chennai, INDIA; POSITIVE MOMENTUM LIMITED, London, ENGLAND; Prefeitura Municipal de Porto Alegre, Rio Grande do Sul, BRAZIL; ProArchCon GmbH, Meerbusch, GERMANY; PT RSM Indonesia Konsultan (RSM Indonesia), Jakarta, INDONESIA; Riverbed Technology, Inc., San Francisco, CA; RMC Consulting COM TR, Istanbul, TURKEY; Salzburg AG, Salzburg, AUSTRIA; Sarpal Consultancy, Chigwell, UNITED KINGDOM; Sauerborn Management Consulting GmbH, Ueken AG, SWITZERLAND; SevOne, Inc., Wilmington, DE; SKY Brasil, São Paulo, BRAZIL; SLA Digital, Belfast, UNITED KINGDOM; Smart Dublin, Dublin, IRELAND; SmartLiverpool Limited, Liverpool, UNITED KINGDOM; Smartpipe Solutions, London, UNITED KINGDOM; SmartTel Plus OÜ, Tallinn, ESTONIA; Soliel, Reston, VA; Sunnur Network, Santa Clara, CA; Swazi Mobile Limited, Mbabane, SWAZILAND; Swirlds, College Station, TX; Swisscom AG, Bern, SWITZERLAND; Symsoft AB, Stockholm, SWEDEN; Systems Mechanics, Whitstable, UNITED KINGDOM; TEAVARO, London, UNITED KINGDOM; Telecom Business Transformers Holding BV, Dordrecht, NETHERLANDS; Telecom Personal Argentina, Buenos Aires, ARGENTINA; Telekom Albania Sh.A., Tirana, ALBANIA; Telenor Bulgaria EAD, Sofia, BULGARIA; Telenor d.o.o. Serbia, Beograd, SERBIA; Telenor Hungary, Törökbálint, HUNGARY; Telenor Montenegro, Podgorica, MONTENEGRO; Tessarine, Paris, FRANCE; TMNS b.v., Den Haag, NETHERLANDS; Transtelecom JSC, Astana, KAZAKHSTAN; Trisotech, Montreal, CANADA; twim GmbH, Zug, SWITZERLAND; Two Degrees Mobile Ltd, Auckland, NEW ZEALAND; TXM Global Services S.A. de C.V., Saltillo, MEXICO; University of Erlangen-Nuremberg, Chair Information Systems II, Nuremburg, GERMANY; University of Southern California—Annenberg School for Communication & Journalism, Los Angeles, CA; University of Versailles Prism Lab, Versailles, FRANCE; Vecta Strategy, Dubai, UNITED ARAB EMIRATES; Vertical Telecoms Pty Ltd, Alexandria, AUSTRALIA; VMware, Inc., Palo Alto, CA; Vocus Communications, Melbourne, AUSTRALIA; Vodafone India Limited, Mumbai, INDIA; Xavient Digital LLC, Simi Valley, CA; ZDSL.com, Kuala Lumpur, MALAYSIA; ServiceMax from GE Digital, London, UNITED KINGDOM; and ZhongXing (Yinchuan) Intellectual Industry Co Ltd, Jinfeng District, PEOPLE'S REPUBLIC OF CHINA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on January 11, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 6, 2018 (83 FR 9545).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–01984 Filed 2–11–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on January 28, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since September 4, 2018, ASME has published five new standards, added one consensus committee charter, initiated two new standards activities, and withdrawn one proposed standard from consideration within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification with the Department was filed on September 6, 2018. A notice was filed in the **Federal Register** on October 11, 2018 (83 FR 51503).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–02031 Filed 2–11–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program

Notice is hereby given that, on January 28, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Shipbuilding Research

Program (''NSRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bollinger Shipyards Lockport L.L.C., Lockport, LA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NSRP intends to file additional written notifications disclosing all changes in membership.

On March 13, 1998, NSRP filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on March 2, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 4, 2017 (82 FR 16418).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–01980 Filed 2–11–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on January 30, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Altus, LLC, Darlington, MD; Anduril Industries, Inc., Costa Mesa, CA; Armaments Research Company, Inc., Bethesda, MD; Atlantic Diving Supply, Inc. Dba ADS, Inc., Virginia Beach, VA; Averatek Corp, Santa Clara, CA; Avineon, Inc., McLean, VA; AZT Technology, LLC, Naples, FL; CogniTech Corporation, Salt Lake City, UT; CohesionForce, Inc., Huntsville, AL; Davidson Technologies, Inc., Huntsville, AL; deciBel Research, Inc., Huntsville, AL; Florida International University, Miami, FL; GaN Corporation, Huntsville, AL; GATR Technologies, Huntsville, AL; Grand Valley Manufacturing, Titusville, PA; Jankel Tactical Systems, LLC, Duncan, SC; L3 Technologies, Inc. Advanced Laser Systems Technology Division, Orlando, FL; MAC, LLC, Bay St. Louis, MS; Maxim Defense Industries, LLC, St. Cloud, MN; McQ, Inc., Fredericksburg, VA; Mobile Virtual Player, Lebanon, NH; Mountain Horse, LLC, Colorado Springs, CO; Optical Coating Laboratory, LLC aka Viavi Solutions, Santa Rosa, CA; PS2, LLC, Waretown, NJ; Ronin-International, Huntsville, AL; Ronin Staffing, LLC, Glendale, CA; Rubix Strategies LLC, Lawrence, MA; Signalink, Inc., Madison, AL; Silvus Technologies, Inc., Los Angeles, CA; Steelhead Composites, LLC, Golden, CO; The Columbia Group Inc. (TCG), Washington, DC; Trident Rifles, LLC, Odenton, MD; Virtual Sandtable LLC (vST), Las Vegas, NV; and Wyvern Security LLC, Orlando, FL, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on November 5, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 6, 2018 (83 FR 62900).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–01981 Filed 2–11–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

[Attorney General Order No. 4381–2019]

Judicial Redress Act of 2015; Attorney General Designations

AGENCY: Office of the Attorney General; United States Department of Justice.

ACTION: Notice of designation by the Attorney General of a ''covered country.''

SUMMARY: In accordance with the Judicial Redress Act of 2015, relating to the extension of certain Privacy Act remedies to citizens of designated countries, notice is given that the Attorney General has designated the United Kingdom as a ''covered country.''

DATES: The designation herein is effective on April 1, 2018, the date the U.S.-EU Data Protection and Privacy Agreement becomes applicable to the United Kingdom.

FOR FURTHER INFORMATION CONTACT: Thomas Burrows, Associate Director, Office of International Affairs, Criminal Division, United States Department of Justice, 1301 New York Avenue, Suite 900, Washington, DC 20005, 202–514–0080.

SUPPLEMENTARY INFORMATION: On February 1, 2017, an executive agreement entered into force between the United States (''U.S.'') and the European Union (''EU'') (collectively, ''Parties'') for the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses. The agreement, commonly known in the United States as the Data Protection and Privacy Agreement (''DPPA''), establishes a set of protections that the Parties are to apply to personal information exchanged for the purpose of preventing, detecting, investigating, or prosecuting criminal offenses. Article 19 of the DPPA establishes an obligation for the Parties to provide, in their domestic law, specific judicial redress rights to each other's citizens. The Judicial Redress Act, Public Law 114–126, 130 Stat. 282 (5 U.S.C. 552a note), is implementing legislation for Article 19.

Under Article 27 of the DPPA, Denmark, Ireland, and the United Kingdom (''UK'') are excluded from the Agreement unless the European Commission (''EC'') notifies the U.S. that those countries have decided that the Agreement shall apply to them. Such notice was provided for Ireland in January 2017, and it was designated at the same time as 25 other EU members.

On March 9, 2018, the EC notified the U.S. that the DPPA shall apply to the UK as of April 1, 2018. The U.S., under the terms of the DPPA, is therefore required to provide certain judicial redress rights to citizens of the UK as of April 1, 2018.

Determinations and Designations Pursuant to Section 2(d)(1)

For purposes of implementing section 2(d)(1) of the Judicial Redress Act:

(1) The Attorney General has determined that the UK has entered into an agreement with the U.S. that provides for appropriate privacy protections for information shared for the purpose of preventing, investigating, detecting, or prosecuting criminal offenses; to wit, the DPPA;

(2) The Attorney General has determined that the UK permits the transfer of personal data for commercial purposes between its territory and the territory of the U.S., through an agreement with the U.S. or otherwise;

(3) The Attorney General has certified that the policies regarding the transfer of personal data for commercial purposes and related actions of the UK do not materially impede the national security interests of the U.S.; and

(4) The Attorney General has obtained the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security to designate the UK as a ''covered country.''

(5) The UK has been designated as a ''covered county,'' effective on April 1, 2018, the date of the DPPA's entry into force with respect to the UK.

Determinations and Designations Pursuant to Section 2(e)(1)

For purposes of implementing section 2(e)(1) of the Judicial Redress Act:

(1) The Attorney General has determined that information exchanged by the Federal agencies and components specified in 82 FR 7860 (Jan. 23, 2017) with the UK is within the scope of the DPPA; and

(2) The Attorney General has obtained the concurrence of the head of the relevant agency, or of the head of the agency to which the component belongs, as needed, for the ''designated Federal agency or component'' designations specified in 82 FR 7860 (Jan. 23, 2017).

Non-Retroactivity

No cause of action shall be afforded by the Judicial Redress Act retroactively with respect to any record transferred from the UK prior to the date of the DPPA's entry into force with respect to the UK, on April 1, 2018.

Non-Reviewable Determination

In accordance with section 2(f) of the Judicial Redress Act, the determinations by the Attorney General described in this notice shall not be subject to judicial or administrative review.

Dated: February 6, 2019.

Matthew G. Whitaker,

Acting Attorney General.

[FR Doc. 2019–01990 Filed 2–11–19; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Proposed Revision of a Currently Approved Collection; Request for Comments; Form ETA–9141, Application for Prevailing Wage Determination (OMB Control Number 1205–0508)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice and Request for Comment.

SUMMARY: The United States Department of Labor (Department), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight of the labor certification programs, conducts a preclearance consultation program to provide the public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This program helps 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.

In accordance with the PRA, ETA, within the Department, is providing the public notice and opportunity to comment on proposed revisions to the Form ETA–9141, *Application for Prevailing Wage Determination,* information collection.

The information collection for the existing form was approved on May 11, 2016, and expires on May 31, 2019.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 15, 2019.

ADDRESSES: Requests for copies of this information collection request (ICR) and written comments on this proposed revision may be submitted to ETA's Office of Foreign Labor Certification by the following methods:

- *Email (encouraged): ETA.OFLC.Forms@dol.gov.*
- *Mail:* Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Box PPII 12–200, Washington, DC 20210.
- *Fax:* 202–513–7395.

Instructions: Comments should identify the form or form instructions using the form number, ETA–9141, and should identify the particular area of the form or instructions for comment. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget (OMB) approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (*e.g.,* confidential business information or personally identifiable information such as a social security number). A copy of the proposed ICR can be obtained by contacting the Office of Foreign Labor Certification as listed above.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Box PPII 12–200, Washington, DC 20210, 202–513–7350 (this is not a toll-free number), or for individuals with hearing or speech impairments, 1–877–889–5627 (this is the TTY toll-free Federal Information Relay Service number).

SUPPLEMENTARY INFORMATION:

I. Background

This information collection is required by the Immigration and Nationality Act (INA), sections 103(a)(6); 203(b)(3); 212(a)(5)(A); 212(n), (p), (t); and 214(c) [8 U.S.C. 1103(a)(6); 1153(b)(3); 1182(a)(5)(A); 1182(n), (p), (t); and 1184(c)]; 8 CFR 214.2(h) and 20 CFR 655.10, 655.731, and 656.40.

This ICR, OMB Control No. 1205–0508, includes the collection of information required for ETA to determine the prevailing wages for job opportunities under the H–1B, H–1B1, E–3, H–2B, and permanent foreign labor certification programs. Prior to submitting foreign labor certification applications to the Department for the H–2B and permanent foreign labor certification programs, employers must obtain from ETA a prevailing wage for their job opportunities based on the occupation and location of intended employment. Employers may also request a prevailing wage for H–1B, H–1B1, and E–3 labor condition applications. The information ETA collects from employers on the Form ETA–9141, *Application for Prevailing Wage Determination,* serves as the basis by which the Secretary determines the prevailing wages employers must pay foreign workers under the above foreign labor certification programs to ensure employment of the foreign workers will

not adversely affect the wages of similarly employed U.S. workers.

The proposed form changes include the reorganization of the form to better correspond with related forms for the temporary and permanent employment certification programs and the revision of the form to collect attorney or agent information and to collect alternative requirements in a standardized format. The proposed revisions will better align information collection requirements with the Department's current regulatory framework, provide greater clarity to employers on regulatory and procedural requirements, standardize and streamline information collection to reduce the employer's time and burden when preparing applications, and promote greater efficiency and transparency in prevailing wages determinations. The proposed changes to the instructions accompanying the form also provide more precise explanations of terminology to ensure the form is properly completed.

ETA is seeking comments on proposed revisions to Form ETA–9141 and the instructions accompanying this form. Also, ETA is seeking comments on its proposed implementation of a new appendix to the Form ETA–9141. The proposed *Appendix A, Request for Additional Worksite(s),* will provide employers with a standardized format to request prevailing wage determinations for additional worksites. *Appendix A* will enable ETA to more efficiently determine prevailing wages for job opportunities with additional worksites.

For details regarding the proposed revisions to this ICR, contact the office listed in the **ADDRESSES** section above.

II. Review Focus

The Department 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, and the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- 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 submissions of responses.

III. Current Actions

This revision request will allow ETA to meet its responsibilities under the INA pertaining to prevailing wages for job opportunities for which employers seek to hire and bring foreign workers into the United States to work under the H–1B, H–1B1, E–3, H–2B, and PERM programs.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. *See* 5 CFR 1320.5(a) and 1320.6. The Department obtains OMB approval for this information collection under control number 1205–0508.

Title of Collection: Application for Prevailing Wage Determination.

Type of Review: Revision of a Currently Approved Information Collection.

OMB Control Number: 1205–0508.

Affected Public: Individuals or Households, Private Sector (businesses or other for-profit institutions), Not-for-profit Institutions, Federal Government, and State, Local, and Tribal governments.

Form(s): ETA–9141, *Application for Prevailing Wage Determination;* ETA–9141—*Appendix A, Request for Additional Worksite(s).*

Total Estimated Number of Annual Respondents: 88,599.

Annual Frequency: On Occasion.

Total Estimated Number of Annual Responses: 320,850.

Estimated Time per Response: Various.

Total Estimated Annual Time Burden: 143,194 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: February 4, 2019.

Molly E. Conway,

Acting Assistant Secretary, Employment and Training Administration.

[FR Doc. 2019–01941 Filed 2–11–19; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bureau of Labor Statistics Data Sharing Agreement Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics sponsored information collection request (ICR) revision titled, ''Bureau of Labor Statistics Data Sharing Agreement Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before March 14, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201805-1220-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for

revisions to the Bureau of Labor Statistics (BLS) Data Sharing Agreement Program. Disseminating the maximum amount of information possible to the public is an important aspect of the BLS mission; however, not all data are publicly available, because of the importance of maintaining BLS data confidential. The BLS has opportunities available, on a limited basis, for eligible researchers to access confidential data for purposes of conducting valid statistical analyses that further the mission of the BLS, as permitted by the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

In order to provide access to confidential data, the BLS must determine that the researcher's project will be exclusively statistical in nature and that the researcher is eligible based on guidelines set out in the CIPSEA, OMB implementation guidance on the CIPSEA, and BLS policy. This information collection provides the vehicle through which the BLS will obtain the necessary details to ensure all researchers and projects comply with appropriate laws and policies.

This information collection has been classified as a revision, because of minor changes to the form. The BLS Authorizing Statute authorizes this information collection. *See* 29 U.S.C. 1, 2.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0180. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 17, 2018 (83 FR 41112).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0180. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: Bureau of Labor Statistics Data Sharing Agreement Program.

OMB Control Number: 1220–0180.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 161.

Total Estimated Number of Responses: 161.

Total Estimated Annual Time Burden: 81 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2019–01947 Filed 2–11–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. 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. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''National Longitudinal Survey of Youth 1997.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before April 15, 2019.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7268 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1997 (NLSY97) is a nationally representative sample of persons who were born in the years 1980 to 1984. These respondents were ages 12–17 when the first round of annual interviews began in 1997; starting with round sixteen, the NLSY97 is conducted on a biennial basis. Round nineteen interviews will occur from September 2019 to June 2020. The Bureau of Labor Statistics (BLS) contracts with a vendor to conduct the NLSY97. The primary objective of the survey is to study the transition from schooling to the establishment of careers and families. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and

disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, work experience, fertility, income, and program participation. In addition to the reports that the BLS produces based on data from the NLSY97, members of the academic community publish articles and reports based on NLSY97 data for the DOL and other funding agencies. To date, approximately 655 articles examining NLSY97 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only dataset that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal dataset could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks Office of Management and Budget approval to conduct round 19 of biennial interviews of the NLSY97. Respondents of the NLSY97 will undergo an interview of approximately 70 minutes during which they will answer questions about schooling and labor market experiences, family relationships, and community background.

During the fielding period for the main round 19 interviews, no more than 2 percent of respondents will be asked to participate in a brief validation interview a few weeks after the initial interview. The purpose of the validation interview is to verify that the initial interview took place as the interviewer reported and to assess the data quality of selected questionnaire items.

The BLS plans to record randomly selected segments of the main interviews during round 19. Recording interviews helps the BLS and its contractors to ensure that the interviews actually took place and interviewers are reading the questions exactly as worded and entering the responses properly. Recording also helps to identify parts of the interview that might be causing problems or misunderstanding for interviewers or respondents. Each respondent will be informed that the interview may be recorded for quality control, testing, and training purposes. If the respondent objects to the recording of the interview, the interviewer will confirm to the respondent that the interview will not be recorded and then proceed with the interview.

Round 19 will be a predominantly telephone survey. We anticipate that approximately 85 percent of interviews will be completed by telephone, with the remaining interviews being conducted in person.

The round 19 questionnaire will resemble the round 18 questionnaire with few modifications. New questions for the round 19 questionnaire include questions on expectations of working in the future, on tax filing, on chronic pain, on the use of painkillers, and on device ownership. In addition, we have made attempts to streamline the questionnaire so that it will be shorter and less burdensome for respondents. To this end, fewer questions will be asked about household members, college attendance and experience, and financial insecurity. Questions on wage bargaining and using the internet for job search will be dropped from Round 19. Questions used to classify jobs as regular, self-employed, or non-traditional have been streamlined.

III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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 submissions of responses.

Title of Collection: National Longitudinal Survey of Youth 1997.

OMB Number: 1220–0157.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Main NLSY97: September 2017—May 2018	6520	One-time	6520	70	7606.7
Validation interview: October 2017—June 2018	130	One-time	130	4	8.7
Totals *	6520		6650		7616

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of February 2019.

Mark Staniorski,

Division Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2019–01939 Filed 2–11–19; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0046]

QPS Evaluation Services, Inc.: Applications for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the applications of QPS Evaluation Services, Inc., for expansion of its scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the applications.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 27, 2019.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Regular or express mail, hand delivery, or messenger (courier) service: Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2010–0046, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 10:00 a.m.–2:30 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0046). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before February 27, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that QPS Evaluation Services, Inc., (QPS) is applying for expansion of its current recognition as a NRTL. QPS requests the addition of two test standards to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including QPS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: *https://www.osha.gov/dts/otpca/nrtl/qps.html.*

QPS currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: QPS Evaluation Services, Inc. 81 Kelfield Street, Unit 8 Toronto, Ontario M9W 5A3 Canada. A complete list of QPS sites recognized by OSHA is available at *https://www.osha.gov/dts/otpca/nrtl/qps.html.*

II. General Background on the Application

QPS submitted two applications, one dated January 16, 2017 (OSHA–2010–0046–0010), and another date June 23, 2017 (OSHA–2010–0046–0011), to expand its recognition to include two additional test standards. OSHA staff performed detailed analyses of the application packets and other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

Table 1, below, lists the appropriate test standards found in QPS's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QPS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 471	Standard for Commercial Refrigerators and Freezers.
UL 62368–1	Standard for Audio/Video Information and Communication Technology Equipment—Part 1 Safety Requirements.

III. Preliminary Findings on the Application

QPS submitted acceptable applications for expansion of its scope of recognition. OSHA's review of the application files and related material indicate that QPS can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these two test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of QPS's applications.

OSHA welcomes public comment as to whether QPS meets the requirements of 29 CFR 1910.7 for expansion of its recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in ''ADDRESSES.'' These materials also are available online at *https://www.regulations.gov* under Docket No. OSHA–2010–0046.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, make a recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant QPS's applications for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the applications. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register.**

Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 5, 2019.

Loren Sweatt,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–01940 Filed 2–11–19; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0042]

CSA Group Testing & Certification Inc.: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of CSA Group Testing & Certification Inc. (CSA) for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before February 27, 2019.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2006–0042, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3508, 200 Constitution Avenue NW, Washington, DC 20210. Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2006–0042). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before February 27, 2019 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone (202) 693–1999 or email *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor by phone (202) 693–2110 or email *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that CSA is applying for expansion of current recognition as a NRTL. CSA requests the addition of one test standard to NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

CSA currently has six facilities (sites) recognized by OSHA for product testing and certification. Canadian Standards Association is located at, 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3, Canada. A complete list of CSA's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/csa.html.*

II. General Background on the Application

CSA submitted an application, dated May 23, 2017 (OSHA–2006–0042–0012), to expand recognition to include seven additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application. OSHA published a **Federal Register** notice (82 FR 60051) announcing this application, but referenced one incorrect standard in the listing of appropriate test standards (UL 498A). OSHA further published a **Federal Register** notice (83 FR 22289) granting recognition for the six additional standards requested in the application. This notice revises the previous **Federal Register** notice for the one remaining standard (UL 498A). UL 498A is already included in the list of appropriate test standards and in CSA's scope of recognition.

Table 1 lists the appropriate test standard found in CSA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARD FOR INCLUSION IN CSA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 489A *	Standard for Circuit Breakers for Use in Communications Equipment.

* Represents the standard that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

III. Proposal To Add New Test Standard to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL List of Appropriate Test Standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications).

In this notice, OSHA proposes to add one new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2 lists the test standard that is new to the NRTL Program. OSHA preliminarily determined that this test standard is an appropriate test standard and proposes to include it in the NRTL Program's List of Appropriate Test Standards. OSHA seeks public comment on this preliminary determination.

TABLE 2—TEST STANDARD OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 489A	Standard for Circuit Breakers for Use in Communications Equipment.

IV. Preliminary Findings on the Application

CSA submitted an acceptable application for expansion of scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that CSA can meet the requirements prescribed by 29 CFR 1910.7 for expanding recognition to include the addition of this one test standard for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of CSA's application.

OSHA welcomes public comment as to whether CSA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written

documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0042.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health whether to grant CSA's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 6, 2019.

Loren Sweatt,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–02026 Filed 2–11–19; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (19–003)]

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 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Laurette L. Brown, National Aeronautics and Space Administration, Mail Code IT–C2, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Laurette L. Brown, KSC Paperwork Reduction Act Clearance Coordinator, John F. Kennedy Space Center, Mail Code IT–C2, Kennedy Space Center, FL 32899 or email *Laurette.L.Brown@NASA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Business Opportunities Expo is an annual event sponsored by the NASA KSC Prime Contractor Board, U.S. Air Force 45th Space Wing and Canaveral Port Authority. Attendees include small businesses who want to meet and network with NASA and KSC prime contractors, large contractors seeking teaming opportunities with small businesses, and construction companies interested in learning more about NASA contract opportunities.

Exhibitors include businesses offering a variety of products and services, representatives from each NASA center, the Patrick Air Force Base 45th Space Wing, prime contractors, and other government agencies.

Attendee information collected is name, company, address, email, telephone.

Exhibitors are asked to provide the same information, plus company information that is published in the event program: Commercial and Government Entity (CAGE) Code, Primary North American Industry Classification System (NAICS) Code Business Categories, Core company capabilities and Past or current work/contracts with NASA.

II. Methods of Collection

This information will be collected via an electronic process.

III. Data

Title: NASA Business Opportunities Expo.

OMB Number: 2700–xxxx.

Type of review: New.

Affected Public: Individuals.

Average Expected Annual Number of activities: 1.

Average number of Respondents per Activity: 2,300.

Annual Responses: 2,300 (Attendees: 2,100; Exhibitors: 200).

Frequency of Responses: Annually.

Average minutes per Response: Attendees: 1 minute; Exhibitors: 5 minutes.

Burden Hours: Attendees: 35; Exhibitors: 16.6.

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 collected has practical utility;

(2) The accuracy of NASA'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 to be 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.

Laurette L. Brown,

NASA/KSC PRA Clearance Coordinator.

[FR Doc. 2019–02087 Filed 2–11–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (19–002)]

Notice of Intent To Grant Partially Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant a partially exclusive patent license in the United States to practice the inventions described and claimed in U.S. Patent Application entitled, ''Fluid-Filled Frequency-Tunable Vibration Damper'', MFS–33613–1–CIP, and Patent entitled ''Variable-Aperture Reciprocating Reed Valve'', U.S. Patent Number 8,939,178 to Hummingbird Kinetics, having its

principal place of business in New York, NY. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective partially exclusive license may be granted unless NASA receives written objections, including evidence and argument no later than February 27, 2019 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than February 27, 2019 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

ADDRESSES: Objections relating to the prospective license may be submitted to James J. McGroary, Chief Patent Counsel/LS01, NASA Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013. Email *james.j.mcgroary@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Branch/ST22, NASA Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Email *sammy.nabors@nasa.gov.*

SUPPLEMENTARY INFORMATION: This notice of intent to grant a partially exclusive patent license is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Mark Dvorscak,

Agency Counsel for Intellectual Property.

[FR Doc. 2019–02060 Filed 2–11–19; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2019–010]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that we have submitted to OMB for approval the information collections described in this notice. We invite comments on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: You must submit any comments to OMB in writing at the address below on or before March 14, 2019.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA; Office of Management and Budget; New Executive Office Building; Washington, DC 20503, by fax to 202–395–5167, or by email to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tamee Fechhelm, by telephone at 301–837–1694 or by fax at 301–837–0319, to request additional information or copies of the proposed information collection and supporting statement.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the general public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for these information collections on November 1, 2018 (83 FR 54945) and received no comments. As a result, we have now submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of NARA's functions; (b) the accuracy of our estimate of the proposed information collections' burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden on respondents of the collection of information, including the use of information technology; and (e) whether small businesses are affected by these collections. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Forms Relating to Civilian Service Records.

OMB number: 3095–0037.

Agency form number: NA Forms 13022, 13064, 13068.

Type of review: Regular.

Affected public: Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 32,060.

Estimated time per response: 5 minutes.

Frequency of response: On occasion, when individuals desire to acquire information from Federal civilian employee personnel or medical records.

Estimated total annual burden hours: 2,671 hours.

Abstract: In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. When former Federal civilian employees and other authorized individuals request information from or copies of documents in OPF or EMF, they must provide in forms or in letters certain information about the employee and the nature of the request. The NA Form 13022, Returned Request Form, is used to request additional information about the former Federal employee. The NA Form 13064, Reply to Request Involving Relief Agencies, is used to request additional information about the former relief agency employee. The NA Form 13068, Walk-In Request for OPM Records or Information, is used by members of the public, with proper authorization, to request a copy of a Personnel or Medical record.

2. *Title:* Volunteer Service Application.

OMB number: 3095–0060.

Agency form number: NA Forms 6045, 6045a, 6045b, and 6045c.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 500.

Estimated time per response: 25 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 208 hours.

Abstract: NARA uses volunteer resources to enhance its services to the public and to further its mission of providing ready access to essential evidence. Volunteers assist in outreach and public programs and provide technical and research support for administrative, archival, library, and curatorial staff. NARA uses a standard

way to recruit volunteers and assess the qualifications of potential volunteers. The NA Form 6045, Volunteer Service Application, is used by members of the public to signal their interest in being a NARA volunteer and to identify their qualifications for this work. Once the applicant has been selected, the NA Form 6045a, Standards of Conduct for Volunteers, NA Form 6045b, Volunteer or Intern Emergency and Medical Consent, NA Form 6045c, Volunteer or Intern Confidentiality Statement, are filled out.

Swarnali Haldar,

Executive for Information Services/CIO.

[FR Doc. 2019–02077 Filed 2–11–19; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before March 14, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 5080, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Mackie Malaka at (703) 548–2704, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0141.

Type of Review: Extension of a currently approved collection.

Title: Organization and Operations of Federal Credit Unions—Loan Participation, 12 CFR 701.22.

Abstract: NCUA rules and regulations, §§ 701.22 and 741.225, outline the requirements for a loan participation program. Federally Insured Credit Unions (FICU) are required to execute a written loan participation agreement with the lead lender. Additionally, the rule requires all FICUs to maintain a loan participation policy that establishes underwriting standards and maximum concentration limits. Credit unions may apply for waivers on certain key provisions of the rule.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 3,010.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on February 7, 2019.

Dated: February 7, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–02091 Filed 2–11–19; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of National Council on the Humanities

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the National Council on the Humanities will meet to advise the Chairman of the National Endowment for the Humanities (NEH) with respect to policies, programs and procedures for carrying out his functions; to review applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 and make recommendations thereon to the Chairman; and to consider gifts offered to NEH and make recommendations thereon to the Chairman.

DATES: The meeting will be held on Thursday, March 7, 2019, from 9:00 a.m. until 12:00 p.m., and Friday, March 8, 2019, from 9:00 a.m. until adjourned.

ADDRESSES: The meeting will be held at Constitution Center, 400 7th Street SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, 4th Floor, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The National Council on the Humanities is meeting pursuant to the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended). The Committee meetings of the National Council on the Humanities will be held on March 7, 2019, as follows: The policy discussion session (open to the public) will convene at 9:00 a.m. until approximately 10:30 a.m., followed by the discussion of specific grant applications and programs before the Council (closed to the public) from 10:30 a.m. until 12:00 p.m. The following Committees will meet in the NEH offices:

Digital Humanities;
Education Programs;
Federal/State Partnership;
Preservation and Access/Challenge Grants;
Public Programs; and
Research Programs.

The plenary session of the National Council on the Humanities will convene on March 8, 2019, at 9:00 a.m. in the Conference Center at Constitution Center. The agenda for the morning session (open to the public) will be as follows:

A. Minutes of the Previous Meeting
B. Reports
  1. Chairman's Remarks
  2. Senior Deputy Chairman's Remarks
  3. Presentation by guest speaker Janine Pease, Little Big Horn College
  4. Reports on Policy and General Matters
  a. Digital Humanities
  b. Education Programs
  c. Federal/State Partnership
  d. Preservation and Access
  e. Challenge Grants
  f. Public Programs
  g. Research Programs

The remainder of the plenary session will be for consideration of specific applications and therefore will be closed to the public.

As identified above, portions of the meeting of the National Council on the Humanities will be closed to the public pursuant to sections 552b(c)(4), 552b(c)(6), and 552b(c)(9)(B) of Title 5 U.S.C., as amended. The closed sessions will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, and discussion of certain information, the premature disclosure of which could significantly frustrate implementation of proposed agency action. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close

Advisory Committee Meetings dated April 15, 2016.

Please note that individuals planning to attend the public sessions of the meeting are subject to security screening procedures. If you wish to attend any of the public sessions, please inform NEH as soon as possible by contacting Melanie Gaylord at (202) 606–8322 or *gencounsel@neh.gov.* Please also provide advance notice of any special needs or accommodations, including for a sign language interpreter.

Dated: February 6, 2019.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2019–01932 Filed 2–11–19; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0040]

Biweekly Notice: Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from January 15, 2019 to January 28, 2019. The last biweekly notice was published on January 31, 2019.

DATES: Comments must be filed by March 14, 2019. A request for a hearing must be filed by April 15, 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 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–2019–0040. 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:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0040, facility name, unit number(s), plant docket number, application date, and subject 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–2019–0040.
- *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 ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *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–2019–0040, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or

different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any

prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing).

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (PVNGS), Maricopa County, Arizona

Date of amendment request: December 27, 2018. A publicly-available version is in ADAMS under Accession No. ML18361A845.

Description of amendment request: The amendments would modify the Technical Specification (TS) requirements in Section 1.3 and Section

3.0 regarding limiting condition for operation (LCO) and surveillance requirement (SR) usage for PVNGS. These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules,'' Revision 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Section 1.3 and LCO 3.0.4 have no effect on the requirement for systems to be Operable and have no effect on the application of TS actions. The proposed change to SR 3.0.3 states that the allowance may only be used when there is a reasonable expectation the surveillance will be met when performed. Since the proposed change does not significantly affect system Operability, the proposed change, will have no significant effect on the initiating events for accidents previously evaluated and will have no significant effect on the ability of the systems to mitigate accidents previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the TS usage rules do not affect the design or function of any plant systems. The proposed change does not change the Operability requirements for plant systems or the actions taken when plant systems are not operable.

Therefore, it is concluded that this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the application of Section 1.3 and LCO 3.0.4 and does not result in changes in plant operation. SR 3.0.3 is revised to allow application of SR 3.0.3 when an SR has not been previously performed and there is reasonable expectation that the SR will be met when performed. This expands the use of SR 3.0.3 while ensuring the affected system is capable of performing its safety function. As a result, plant safety is either improved or unaffected.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Associate General Counsel, Nuclear and Environmental, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 7602, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Florida, LLC (DEF), Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant (CR–3), Citrus County, Florida

Date of amendment request: January 16, 2019. A publicly-available version is in ADAMS under Accession No. ML19016A496.

Description of amendment request: The amendment would revise the CR–3 Independent Spent Fuel Storage Installation (ISFSI)-Only Emergency Plan (IOEP). The amendment would make several editorial changes and revise the IOEP to replace the Emergency Response Coordinator position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would modify the CR–3 facility operating license by revising the emergency plan. CR–3 has permanently ceased operation and is permanently defueled.

Occurrence of postulated accidents associated with spent fuel stored in a spent fuel pool is no longer credible in a spent fuel pool devoid of such fuel. The UFSAR [Updated Final Safety Analysis Report] for NUHOMS Certificate of Compliance (CoC) 1004 states most accidents are not credible and the accident analysis demonstrates that none of the hypothetical accidents analyzed has any consequential effect on the public. Many of the analyzed events, like a fire at the ISFSI, have no radiological release. The proposed amendment has no effect on the capability of any plant or ISFSI System, Structure, or Components (SSC) to perform its design function. The proposed amendment would not increase the likelihood of the malfunction of any ISFSI SSC as there are no hardware or software modifications associated with this change. The proposed amendment would have no effect on any of the previously evaluated accidents in the ISFSI UFSAR for CoC 1004.

The specific non-editorial changes of the emergency plan revision only reassign the medical and fire response responsibilities from one individual title, the Emergency Response Coordinator, to plant specific personnel.

A medical emergency may be the result of some event within the plant or ISFSI protected area. However, the qualification or response time of the individuals providing basic first aid or contacting offsite responders for additional medical assistance would have no impact on any accident or event scenario and will not change the bounding accident or event consequences to the onsite personnel or the general public.

Likewise, a fire emergency may be the result of an onsite event, but a calculation performed by DEF demonstrates that the design basis fire analyzed in the UFSAR for CoC 1004 is bounding and would not create a release. The CR–3 Fire Protection Program allows for plant personnel to attempt to put out small fires with fire extinguishers but requires offsite fire response organization to be called for assistance. The person who makes the call for this assistance does not need to be highly trained in firefighting techniques, and being able to make the call more rapidly can only be considered a beneficial change.

The proposed amendment would not increase the likelihood of the malfunction of any ISFSI SSC. The proposed amendment would have no effect on any of the previously evaluated accidents in the UFSAR for CoC 1004.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment constitutes a revision of the emergency planning function commensurate with the ongoing and anticipated reduction in staff at CR–3.

The proposed amendment does not involve a physical alteration of the ISFSI. No new or different types of equipment will be installed and there are no physical modifications to existing equipment as a result of the proposed amendment. Similarly, the proposed amendment would not physically change any SSC utilized in the mitigation of any postulated accidents (such as fire protection equipment). Thus, no new initiators or precursors of a new or different kind of accident are created. Furthermore, the proposed amendment does not create the possibility of a new failure mode associated with any equipment or personnel failures. The credible events for the ISFSI remain unchanged and the resultant consequences are unchanged.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Because the 10 CFR part 50 license for CR–3 no longer authorizes operation of the

reactor or emplacement or retention of fuel into the reactor vessel, as specified in 10 CFR 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. With all spent nuclear fuel transferred out of wet storage from the spent fuel pools and placed in dry storage within the ISFSI, a fuel handling accident is no longer credible. The accident analyses presented in the ISFSI UFSAR for CoC 1004 demonstrates that there are no accidents or events that will result in any type of significant release, with most accidents having no radiological release.

The proposed amendment does not involve a change in the ISFSI's design, configuration, or operation. The proposed amendment does not affect either the way in which the ISFSI structures, systems, and components perform their safety function or their design margins.

Because there is no change to the physical design of the ISFSI, there is no change to these margins. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, 550 South Tryon Street, Charlotte, North Carolina 28202.

NRC Branch Chief: Bruce A. Watson.

Duke Energy Progress, LLC, Docket No. 50–400, Shearon Harris Nuclear Power Plant (HNP), Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 30, 2018, as supplemented by letters dated September 24, 2018, and December 27, 2018. Publicly-available versions are in ADAMS under Accession Nos. ML18211A546, ML18267A102, and ML18362A415, respectively.

Description of amendment request: The amendment would revise Technical Specification (TS) Table 2.2–1, ''Reactor Trip System Instrumentation Trip Setpoints,'' and TS Table 3.3–4, ''Engineered Safety Features Actuation System Instrumentation Trip Setpoints,'' to optimize safety analysis margin in the Final Safety Analysis Report (FSAR) Chapter 15 transient analyses. It would also remove the high power range high negative neutron flux rate trip from the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) provide plant protection and are part of the accident mitigation response. The RTS and ESFAS functions do not themselves act as a precursor or an initiator for any transient or design basis accident. Therefore, the proposed change does not significantly increase the probability of any accident previously evaluated.

The proposed change does not alter the design assumptions, conditions, or configuration of the facility. The structural and functional integrity of the RTS and ESFAS, or any other plant system, is unaffected. The proposed change does not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences. The methods used to calculate the parameter uncertainties and the setpoints remain unchanged. Changes to the setpoints are primarily due to updated component uncertainty values and harvesting excess calculational margin (CM) in the setpoint total allowance (TA).

The removal of the high power range negative neutron flux rate trip function from the HNP Technical Specifications does not involve a significant increase in the probability or consequences of accidents resulting from dropped RCCA [rod cluster control assembly] events analyzed utilizing the NRC-approved Duke Energy methodology for FSAR Chapter 15 transient analyses, DPC–NE–3009, ''FSAR/UFSAR Chapter 15 Transient Analysis Methodology.'' As demonstrated in the response to SRXB RAI #2, the results of the dropped rod analysis without crediting the high power range negative neutron flux rate trip meet the applicable Chapter 15 accident analysis acceptance criteria. The safety functions of other safety-related systems and components, which are related to mitigation of these events, have not been altered by this change. All other reactor trip system protection functions are not impacted by the deletion of the trip function. The dropped RCCA accident analysis does not rely on the high power range negative neutron flux rate trip to safely shut down the plant. The safety analysis of the plant is unaffected by the proposed change. Since the safety analysis is unaffected, the calculated radiological releases associated with the analysis are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function. The proposed changes do not alter assumptions made in the safety analysis but ensures that the instruments behave as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions. The methods used to calculate the parameter uncertainties and the setpoints remain unchanged. Changes to the setpoints are primarily due to updated component uncertainty values and harvesting excess CM in the setpoint TA.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

The proposed change does not adversely alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of deleting the high power range negative neutron flux rate trip function. The proposed change does not challenge the performance or integrity of any safety-related systems or components.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not negatively impacted by these changes. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident

analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The methods used to calculate the parameter uncertainties and the setpoints remain unchanged. Changes to the setpoints are primarily due to updated component uncertainty values and harvesting excess CM in the setpoint TA.

The margin of safety associated with the acceptance criteria of any accident is unchanged. It has been demonstrated that the high power range negative neutron flux rate trip function can be deleted by the NRC-approved methodology described in WCAP–11394–P–A. In utilizing the NRC-approved Duke Energy methodology for FSAR Chapter 15 transient analyses, DPC–NE–3009, it has been demonstrated that the removal of the high power range negative neutron flux rate trip function does not result in exceeding the limits on DNB [departure from nucleate boiling] for dropped RCCA events. The proposed change will have no effect on the availability, operability, or performance of safety-related systems and components.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David Cummings, Associate General Counsel, Duke Energy Corporation, 550 South Tryon St., M/C DEC45A, Charlotte, NC 28202.

NRC Branch Chief: Undine Shoop.

Southern Nuclear Operating Company, Inc. (SNC), Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: December 13, 2018. A publicly-available version is in ADAMS under Accession No. ML18347B484.

Description of amendment request: The requested amendment proposes changes to Updated Final Safety Analysis Report (UFSAR) Tier 2 information and involves related changes to plant-specific Tier 1 information with corresponding changes to the associated combined license (COL) Appendix C information. Specifically, the amendment proposes changes that revise the COL and licensing basis documents to identify passive residual heat removal (PRHR) heat exchanger (HX) inlet isolation valve status and PRHR HX control valve status as requiring main control room (MCR) and remote shutdown workstation (RSW) display and alert indications. Additionally, a change is proposed to remove duplicate Tier 2 information from a document that is incorporated by reference into the UFSAR. The licensee is submitting technical specification base changes to reflect the changes in the license amendment request.

SNC has also requested an exemption from the provisions of 10 CFR part 52, Appendix D, Section III.B, ''Design Certification Rule for the AP1000 Design, Scope and Contents,'' to allow a departure from the elements of the certification information in Tier 1 of the generic Design Control Document.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise the Updated Final Safety Analysis Report (UFSAR) Tier 2 information, which involves a change to the COL Appendix C and corresponding plant-specific Tier 1 information in Tables 2.5.2–5 and 2.5.4–1 to identify passive residual heat removal (PRHR) heat exchanger (HX) inlet isolation valve status and PRHR HX control valve status as requiring main control room (MCR) and remote shutdown workstation (RSW) display and alert indications. Corresponding changes are made to remove reliance upon the use of PRHR HX outlet temperature (RCS–TE161) as the diverse measurement to PRHR HX flow, and to make other changes to consistently describe the post-accident monitoring system (PAMS) ''PRHR Outlet Temperature'' and ''PRHR HX Outlet Temperature'' variables to be consistent with the description provided in UFSAR Table 7.5–1. Additionally, a change is proposed to remove duplicate Tier 2 information from a document that is incorporated by reference (IBR) into the UFSAR.

The proposed changes to the post-accident monitoring system (PAMS) PRHR heat removal function, including changes to the classification of the PRHR HX outlet temperature variable, and the Minimum Inventory Tables for PRHR HX Valve Status do not constitute a modification, addition to, or removal of a structure, system, or component (SSC) such that a PXS or PAMS design function as described in the UFSAR is adversely affected. The instrumentation affected by this activity is not an initiator of an accident condition or of any accident analyzed in Chapter 15 of the UFSAR. The changes do not involve an interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. The proposed changes do not involve a change to any mitigation sequence or the predicted radiological releases due to postulated accident conditions, thus, the consequences of the accidents evaluated in the UFSAR are not affected. The deletion of IBR information from the UFSAR is an administrative change that removes unnecessary duplicate information from the licensing basis.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will continue to maintain required functional capability of the safety systems for previously evaluated accidents, including those involving a loss of the normal core decay heat removal path. The instrumentation affected by this activity is not an initiator of an accident condition or of any accident analyzed in Chapter 15 of the UFSAR. The changes do not involve an interface with any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the UFSAR are not affected. The changes do not introduce a new interface with any SSC accident initiator or initiating sequence of events, and thus, the possibility of a new accident is not created. The proposed changes do not change the function of the related systems, and thus, the changes do not introduce a new failure mode, malfunction or sequence of events that could adversely affect safety or safety-related equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the PAMS PRHR heat removal function and Minimum Inventory Tables for PRHR HX Valve Status continue to comply with the applicable design criteria addressing instrumentation and controls, protection system functions, and protection system independence. The addition of these variables under the same type/category as the current PRHR outlet temperature variable will ensure the heat sink maintenance function will be satisfied. The proposed changes do not change the function of the related systems or affect the margins provided by the systems, and thus, the changes do not affect any safety-related design code, function, design analysis, safety analysis input or result, or existing design/safety margin. No safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the requested changes.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Jennifer Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama,

Date of amendment request: December 14, 2018. A publicly-available version is in ADAMS under Accession No. ML18348A733.

Description of amendment request: The proposed amendments would modify the plant operating licenses to allow, as a performance-based method, use of thermal insulation materials in limited applications subject to appropriate engineering reviews and controls, as a deviation from National Fire Protection Association (NFPA) Standard 805 Chapter 3, Section 3.3, Prevention.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not affect accident initiators or precursors, nor alter the design assumptions, conditions and configuration of the facility or the manner in which the plant is operated and maintained.

The proposed change is administrative in nature and does not affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed amendment does not involve a physical change to the containment or spent fuel area systems, nor does it change the safety function of the containment, containment purge and exhaust ventilation system, penetration room filtration system, or associated instrumentation.

Therefore, it is concluded that these proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There is no risk impact to Core Damage Frequency (CDF) or Large Early Release Frequency (LERF) because this is an administrative change. Plant secondary combustibles, including insulating materials, are considered in the fire modeling input to the Fire PRA [Probabilistic Risk Assessment].

With respect to a new or different kind of accident, there are no proposed design changes to the safety related plant SSCs nor are there any changes in the method by which safety related plant SSCs perform their safety functions. The proposed change does not result in any new or different kinds of accidents from those previously evaluated because it does not change any precursors or equipment that is previously credited for accident mitigation.

The proposed amendment will not affect the normal method of plant operation or revise any operating parameters. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this proposed change and the failure modes and effects analyses of SSCs important to safety are not altered as a result of this proposed change. The proposed amendment does not alter the design or performance of the related SSCs, and, therefore, does not constitute a new type of test.

No changes are being proposed to the procedures that operate the plant equipment and the change does not have a detrimental impact on the manner in which plant equipment operates or responds to an actuation signal.

Therefore, the proposed change will not create the possibility of a new or different accident than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is related to the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment.

Instrumentation safety margin is established by ensuring the limiting safety system settings (LSSSs) automatically actuate the applicable design function to correct an abnormal situation before a safety limit is exceeded. Safety analysis limits are established for reactor trip system and ESF [engineered safety feature] actuation system instrumentation functions related to those variables having significant safety functions. The proposed change does not alter the design of these protection systems; nor are there any changes in the method by which safety related plant SSCs perform their specified safety functions.

The limited installations of the insulation materials do not compromise post-fire safe shutdown capability as previously designed, reviewed and considered. Essential fire protection safety functions are maintained and are capable of being performed. Because the insulation materials do not compromise post-fire safe shutdown capability as previously designed, reviewed and considered, it is concluded that this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Company, Inc., P.O. Box 1295, Bin 038, Birmingham, AL 35201–1295.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket Nos. 50–390 and 50–391, Watts Bar Nuclear Plant, Units 1 and 2, Rhea County, Tennessee

Date of amendment request: August 1, 2018. A publicly-available version is in ADAMS under Accession No. ML18213A120.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) to adopt, with minor administrative variation, Technical Specification Task Force (TSTF) Traveler 266–A, Revision 3, ''Eliminate the Remote Shutdown System Table of Instrumentation and Controls.'' TSTF–266–A relocates TS Table 3.3.4–1, ''Remote Shutdown System Instrumentation and Controls,'' to the TS Bases, where changes can be administered under the provisions of TS 5.6, ''TS Bases Control Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

The proposed change removes the list of Remote Shutdown System (RSS) instrumentation and controls from the TS and places them in the TS Bases. The TS continue to require that the instrumentation and controls be operable. The location of the list of Remote Shutdown System instrumentation and controls is not an initiator to any accident previously evaluated. The proposed change will have no effect on the mitigation of any accident previously evaluated because the instrumentation and controls continue to be required to be operable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the methods governing normal plant operation. The changes do not alter the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change removes the list of RSS instrumentation and controls from the TS and places it in the TS Bases. The review performed by the Nuclear Regulatory Commission when the list of RSS instrumentation and controls is revised will no longer be needed unless the criteria of 10 CFR 50.59 are not met such that prior Nuclear Regulatory Commission (NRC) review is required. The TS requirement that the RSS be operable, the definition of operability, the requirements of 10 CFR 50.59, and the TS Bases Control Program are sufficient to ensure that revision of the list without prior NRC review and approval does not introduce a significant safety risk.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine Shoop.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 26, 2018, as supplemented by letter dated September 13, 2018.

Brief description of amendments: The amendments modified Technical Specification (TS) 3.4.11, ''Pressurizer Power Operated Relief Valves (PORVs),'' to resolve non-conservative Required Actions. TS 3.4.11, Condition B, for one or two PORVs inoperable and not capable of being manually cycled is revised and split into three separate Conditions: (1) One Train B PORV inoperable and not capable of being manually cycled, (2) one Train A PORV inoperable and not capable of being manually cycled, and (3) two Train B PORVs inoperable and not capable of being manually cycled. TS 3.4.11, Condition C, for one block valve inoperable is revised and split into two separate Conditions: (1) One Train B block valve inoperable and (2) one Train A block valve inoperable. TS 3.4.11, Condition F for two block valves inoperable is revised to be new Condition I for two Train B block valves inoperable. A new condition, Condition J, is added for one Train B PORV and the other Train B block valve inoperable. Current Condition G for three block valves inoperable is revised to be new Condition K. Current Condition D is revised and renamed as Condition E, current Condition E is revised and renamed as Condition F, and current Condition H is revised and renamed as new Condition L. The Surveillance Requirement (SR) 3.4.11.1 note is revised to include additional Conditions C and D, when performing this SR is not required for inoperable block valves in these conditions.

Date of issuance: January 16, 2019.

Effective date: These amendments are effective as of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 311 (Unit 1) and 290 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18318A358; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: The amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* July 31, 2018 (83 FR 36974). The supplemental letter dated September 13, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 2019.

No significant hazards consideration comments received: No.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 8, 2017, as supplemented by letters dated July 3 and November 1, 2018.

Brief description of amendments: The amendments modified McGuire Nuclear Station's, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR) to describe the methodology and results of the analyses performed to evaluate the protection of the plant's structures, systems, and components from tornado-generated missiles.

Date of issuance: January 25, 2019.

Effective date: These license amendments are effective as of its date of issuance and shall be implemented within 120 days of issuance.

Amendment Nos.: 312 (Unit 1) and 291 (Unit 2). A publicly-available version is in ADAMS under Accession

No. ML18355A610; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the UFSAR.

*Date of initial notice in **Federal Register**:* June 5, 2018 (83 FR 26100). The supplemental letters dated July 3 and November 1, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

No significant hazards consideration comments received: Yes. One comment from a member of the public was received; however, it was not related to the proposed no significant hazards consideration determination or to the proposed license amendment request.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 25, 2019.

Entergy Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1 (River Bend), West Feliciana Parish, Louisiana

Date of amendment request: April 2, 2018, as supplemented by letter dated October 4, 2018.

Brief description of amendment: The amendment revised the River Bend Technical Specification Figure 3.4.11–1, ''Minimum Temperature Required vs. RCS [Reactor Coolant System] Pressure,'' for reactor heatup, cooldown, and critical operations as well as for inservice leak tests and hydrostatic tests. The change also replaced the non-conservative curve, which is for 32 Effective Full Power Years (EFPY), with a new curve that is for 54 EFPY.

Date of issuance: January 17, 2019.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 195. A publicly-available version is in ADAMS under Accession No. ML18360A025; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF–47: The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* June 5, 2018 (83 FR 26115). The supplemental letter dated October 4, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 17, 2019.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One (ANO), Units 1 and 2, Pope County, Arkansas

Date of amendment request: March 29, 2018, as supplemented by letter dated September 17, 2018.

Brief description of amendment: The amendments revised the ANO Emergency Plan by changing the emergency action level scheme to one based on the Nuclear Energy Institute's (NEI's) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' dated November 2012, which was endorsed by the NRC by letter dated March 28, 2013.

Date of issuance: January 17, 2019.

Effective date: As of the date of issuance and shall be implemented on or before October 30, 2019.

Amendment Nos.: Unit 1—263; Unit 2—314. A publicly-available version is in ADAMS under Accession No. ML18337A247; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–51 and NPF–6: The amendments revised the ANO Emergency Plan.

*Date of initial notice in **Federal Register**:* May 22, 2018 (83 FR 23733). The supplemental letter dated September 17, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 17, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC and Exelon FitzPatrick, LLC, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and No. 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–220 and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 15, 2018.

Brief description of amendments: The amendments revised the technical specification requirements associated with the average power range monitors.

Date of issuance: January 16, 2019.

Effective date: As of the date of issuance and shall be implemented within 150 days from the date of issuance.

Amendment Nos.: Clinton Unit 1 (222); Dresden Units 1 (260) and 2 (253); FitzPatrick (324); LaSalle Units 1 (234) and 2 (220); Limerick Units 1 (233) and 2 (196); Nine Mile Point Units 1 (235) and 2 (175); Peach Bottom Units 1 (322) and 2 (325); and Quad Cities Units 1 (272) and 2 (267). A publicly-available version is in ADAMS under Accession No. ML18304A365; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF–62, DPR–19, DPR–25, DPR–59, NPF–11, NPF–18, NPF–39, NPF–85, DPR–63, NPF–69, DPR–44, DPR–56, DPR–29, and DPR–30: Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* August 14, 2018 (83 FR 40348).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated January 16, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: February 26, 2018, as supplemented by letter dated September 27, 2018.

Brief description of amendments: The amendments added, deleted, modified, and replaced numerous technical specification requirements related to operations with a potential for draining the reactor vessel with new requirements for reactor pressure vessel water inventory control to protect Safety Limit 2.1.1.3.

Date of issuance: January 28, 2019.

Effective date: As of the date of issuance and shall be implemented prior to initial entry into Mode 4 for Quad Cities Nuclear Power Station, Unit 1 refueling outage, Q1R25.

Amendment Nos.: Unit 1—273; Unit 2—268. A publicly-available version is in ADAMS under Accession No. ML18353A229; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–29 and DPR–30: Amendments revised the Technical Specifications and Licenses.

*Date of initial notice in **Federal Register**:* April 24, 2018 (83 FR 17861). The supplemental letter dated September 27, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station (Nine Mile Point), Unit 1, Oswego County, New York

Date of amendment request: December 15, 2017, as supplemented by letters dated October 1 and November 2, 2018.

Brief description of amendment: The amendment revised the Nine Mile Point, Unit 1, Technical Specifications by replacing requirements related to ''operations with a potential for draining the reactor vessel'' with new requirements on reactor pressure vessel water inventory control. The changes are based on Technical Specifications Task Force Improved Standard Technical Specifications Change Traveler TSTF–542, Revision 2, ''Reactor Pressure Vessel Water Inventory Control'' (ADAMS Accession No. ML16074A448).

Date of issuance: January 22, 2019.

Effective date: As of the date of issuance and shall be implemented no later than the start of the Nine Mile Point, Unit 1, Spring 2019 refueling outage.

Amendment No.: 236. A publicly-available version is in ADAMS under Accession No. ML19008A454; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–63: The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* February 13, 2018 (83 FR 6224). The supplemental letters dated October 1 and November 2, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 2019.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (Calvert Cliffs), Calvert County, Maryland

Date of amendment request: August 23, 2018, as supplemented by letters dated November 12 and November 30, 2018.

Brief description of amendments: The amendments revised the Calvert Cliffs Technical Specifications to permit one-time extensions to the completion times for a required action in Technical Specification 3.8.1, ''AC [Alternating Current] Sources – Operating.'' The one-time extension up to 14 days would apply to Required Action D.3.

Date of issuance: January 22, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 328 (Unit 1) and 306 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18365A373; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* October 23, 2018 (83 FR 53513). The supplemental letters dated November 12 and November 30, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The letter dated November 30, 2018, reduced the scope of the application.

The Commission's related evaluation of the amendments is contained in a safety evaluation dated January 22, 2019.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket No. 50–263, Monticello Nuclear Generating Plant (MNGP), Wright County, Minnesota

Date of amendment request: December 19, 2017, as supplemented by letters dated April 24, October 23, and November 20, 2018.

Brief description of amendment: The amendment revised the MNGP technical specification to adopt Technical Specification Task Force (TSTF) Travel 425, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5B.''

Date of issuance: January 28, 2019.

Effective date: As of the date of issuance and shall be implemented prior to the next refueling outage.

Amendment No.: 200. A publicly-available version is in ADAMS under Accession No. ML19007A090; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR–22. Amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register**:* February 27, 2018 (83 FR 8518). The supplemental letters dated April 24, 2018, October 23, 2018 and November 20, 2018, provided additional

information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 2019.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 16, 2018, as supplemented by letters dated June 14, 2018; October 18, 2018; October 20, 2018; and October 30, 2018.

Brief description of amendments: The amendments revised Technical Specification 3.8.2.1, ''A.C. [Alternating Current] Distribution—Operating,'' to increase the vital instrument bus inverters allowed outage time from 24 hours for the A, B, and C inverters to 7 days, and from 72 hours for the D inverter to 7 days. The extended allowed outage time is based on application of the Salem Nuclear Generating Station probabilistic risk assessment in support of a risk-informed extension, and on additional considerations and compensatory actions.

Date of issuance: January 25, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 326 (Unit No. 1) and 307 (Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML19009A477; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* July 3, 2018 (83 FR 31186). The supplemental letters dated June 14, October 18, October 20, and October 30, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 25, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 9, 2018. A publicly-available version is in ADAMS under Accession No. ML18071A363.

Brief description of amendments: The amendments revised the Unit No. 1 and Unit No. 2 Technical Specifications (TS) requirements of TS 3.3.8.1, ''Loss of Power (LOP) Instrumentation,'' by modifying the instrument allowable values for the 4.16 kilovolt (kV) emergency bus degraded voltage instrumentation and by deleting the annunciation requirements for the 4.16 kV emergency bus undervoltage instrumentation for Unit No. 2. The amendment for Unit No. 2 also revises License Condition 2.C(3)(i) to clarify its intent.

Date of issuance: January 28, 2019.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—293, Unit 2—238. A publicly-available version is in ADAMS under Accession No. ML19010A009; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* September 11, 2018 (83 FR 45987).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2019.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant (Vogtle), Units 1 and 2, Burke County, Georgia

Date of amendment request: October 11, 2017, as supplemented by letters dated July 26 and September 14, 2018.

Brief description of amendments: The amendments revised the Renewed Facility Operating Licenses to authorize revision of the Vogtle Units 1 and 2 Updated Final Safety Analysis Report to incorporate the process based on the Tornado Missile Risk Evaluator Methodology described in its application, as supplemented. This methodology will only be applied to discovered conditions where tornado missile protection is not currently provided, and cannot be used to avoid providing tornado missile protection in the plant modification process.

Date of issuance: January 11, 2019.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Vogtle Unit 1—198; Unit 2—181. A publicly-available version is in ADAMS under Accession No. ML18304A394; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Renewed Facility Operating Licenses.

*Date of initial notice in **Federal Register**:* March 27, 2018 (83 FR 13150). The supplemental letters dated July 26 and September 14, 2018, provided additional information that clarified the application, and taken together, did not expand the scope of the application as originally noticed and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2019.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of February, 2019.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–01215 Filed 2–11–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 11, 18, 25, March 4, 11, 18, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 11, 2019

There are no meetings scheduled for the week of February 11, 2019.

Week of February 18, 2019—Tentative

There are no meetings scheduled for the week of February 18, 2019.

Week of February 25, 2019—Tentative

There are no meetings scheduled for the week of February 25, 2019.

Week of March 4, 2019—Tentative

Tuesday, March 5, 2019

10:00 a.m. Briefing on NRC International Activities (Closed—Ex. 1 & 9)

Week of March 11, 2019—Tentative

There are no meetings scheduled for the week of March 11, 2019.

Week of March 18, 2019—Tentative

There are no meetings scheduled for the week of March 18, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Diane.Garvin@nrc.gov.*

Dated at Rockville, Maryland, this 7th day of February, 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–02112 Filed 2–8–19; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2018–0190]

Protective Order Templates for Hearings on Conformance With the Acceptance Criteria in Combined Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final protective order templates.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff is announcing the availability of final protective order templates to be used in hearings associated with closure of inspections, tests, analyses, and acceptance criteria (ITAAC). The templates have the purpose of facilitating quick development of case-specific protective orders to support the accelerated ITAAC hearing schedule. Participants in ITAAC hearings may, but are not required to, use the templates as the basis for proposed protective orders.

DATES: The final templates are available on February 12, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0190 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0190. Address questions about NRC Docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For other questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael A. Spencer, Office of the General Counsel, U.S. Nuclear Regulatory Commission; telephone: 301–287–9115, email: *Michael.Spencer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 2016 (81 FR 43266), the NRC published final procedures for hearings on conformance with the acceptance criteria in combined licenses (COLs) issued under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR) (ITAAC Hearing Procedures). The acceptance criteria are part of the ITAAC included in the COL. In accordance with 10 CFR 52.103(g), the NRC must find that the acceptance criteria are met before facility operation may begin. Section 189a.(1)(B) of the Atomic Energy Act of 1954, as amended (AEA), provides members of the public an opportunity to request a hearing on the facility's compliance with the acceptance criteria. The ITAAC Hearing Procedures describe the requirements for such hearing requests and the procedures to be used throughout the hearing process. The procedures for a particular ITAAC proceeding will be imposed by case-specific orders, and the ITAAC Hearing Procedures reference templates to be used for such orders.

Some NRC proceedings involve sensitive information. For ITAAC proceedings in particular, the NRC determined that a potential party may deem it necessary to obtain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI) for the purpose of meeting Commission requirements for intervention. Therefore, the ITAAC Hearing Procedures include templates for orders governing requests for access to SUNSI and SGI. If a hearing participant qualifies for access to sensitive information, then a protective order and non-disclosure declaration would be needed to ensure that the information is protected appropriately. The presiding officer for a proceeding would issue the protective order, and recipients of the sensitive information would sign a non-disclosure declaration agreeing to protect the information in accordance with the protective order. Typically, the presiding officer issues a protective order in response to a motion

from the hearing participants proposing a draft protective order and non-disclosure declaration for the presiding officer's consideration.

The NRC received comments on the proposed ITAAC Hearing Procedures suggesting that model templates would facilitate quick development of protective orders. In response, the NRC stated that protective order templates would be developed in a separate process allowing for stakeholder input.

To fulfill this commitment, the NRC staff published a **Federal Register** notice on September 4, 2018 (83 FR 44925) seeking comment on two draft protective order templates, one for SUNSI and one for SGI. The comment period closed on October 19, 2018. The NRC received one comment submission (ADAMS Accession No. ML18298A267), which came from Southern Nuclear Operating Company. The NRC staff responded to comments and described any resulting changes to the templates in a document available at ADAMS Accession Number ML19036A732. In addition to changes made in response to comments, the NRC staff revised the templates as follows:

- Consistent with the signature requirements in 10 CFR 2.304(d), the NRC staff added spaces for the signer's address, phone number, and email address to the non-disclosure declarations and termination of possession declarations in both templates.
- The NRC staff added a requirement for the petitioner to preserve evidence of an infraction in cases where the petitioner has reason to believe that SGI may have become lost or misplaced, or that SGI has otherwise become available to unauthorized persons. This requirement is in addition to the existing notification requirements in the SGI template.
- The NRC staff made editorial corrections and minor clarifications to both templates.

Participants in ITAAC hearings may, but are not required to, rely on the final protective order templates as the basis for proposed protective orders.

II. Discussion

The NRC staff has developed two final protective order templates for ITAAC hearings, one for SUNSI (ADAMS Accession No. ML19036A727) and one for SGI (ADAMS Accession No. ML19036A718). Although the templates were developed for use in ITAAC hearings, the vast majority of the content is not specific to ITAAC proceedings. The final SUNSI and SGI templates have the following ITAAC-specific provisions:

- The templates reflect the possibility that the presiding officer might be a single legal judge assisted as appropriate by technical advisors.
- Consistent with the accelerated ITAAC hearing schedule, petitioners are given less time to execute non-disclosure declarations, and licensees and the NRC staff are given less time to provide SUNSI or SGI to the petitioners, than is ordinarily the case.

The final SGI template has two additional ITAAC-specific provisions:

- Consistent with the ITAAC Hearing Procedures, the final template provides that SGI must be filed by overnight mail. Filings with SGI will not be made on the E-Filing system because the E-Filing system does not comply with SGI security requirements. This provision does not appear in the SUNSI template because SUNSI filings will be made through the E-Filing system.
- The final template quotes the ITAAC Hearing Procedures as stating that the NRC will not delay its actions in completing the hearing or making the 10 CFR 52.103(g) finding because of delays from background checks for persons seeking access to SGI.

Both templates are based on current requirements and policies, and would, if appropriate, be updated as those requirements and policies change. For example, NRC policies will change in response to the National Archives and Records Administration's final rule, ''Controlled Unclassified Information,'' (81 FR 63324; September 14, 2016) (CUI Rule). The CUI Rule establishes government-wide requirements for protecting sensitive unclassified information. The CUI Rule applies both to the Federal government and to non-Federal entities receiving CUI from the Federal government. The NRC has not yet implemented the CUI Rule and does not expect to achieve implementation before the ITAAC hearings for Vogtle Units 3 and 4. But any future updating of the templates for subsequent ITAAC proceedings would reflect consideration of the CUI Rule and associated guidance.

A. Final SUNSI Protective Order Template

The NRC uses the term SUNSI to refer to a broad spectrum of sensitive information that is neither classified nor SGI. While there are many types of SUNSI, the final SUNSI protective order template is directed at protection of proprietary and security-related information, as discussed in SECY–15–0010 (January 20, 2015) (ADAMS Accession No. ML14343A747). The NRC staff focused on these types of SUNSI because of the NRC's experience with hearings involving reactors and its knowledge of the matters subject to ITAAC. If an ITAAC hearing involves another type of SUNSI with different protection requirements, the template can be adjusted accordingly.

In developing the final SUNSI template, the NRC staff considered protective orders for proprietary and security-related information issued after 2006. The NRC staff also considered guidance in NRC Regulatory Issue Summary (RIS) 2005–26, ''Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors'' (ADAMS Accession No. ML051430228), dated November 7, 2005. RIS 2005–26 is specifically directed at protection of security-related information for reactors and states that such information is protected in much the same way as commercial or financial information.

Finally, the NRC staff considered the CUI Rule. Although the CUI Rule has not yet been implemented at the NRC, many CUI requirements are consistent with the existing protective provisions for SUNSI that provided the basis for the final template. By aligning the provisions and terminology in the SUNSI template with the corresponding elements of the CUI Rule, the NRC staff hopes to facilitate any future update of the template to comply with the CUI Rule. The introductory discussion in the template identifies those CUI provisions that were excluded because they differ from, or go beyond, existing protective provisions for proprietary and security-related SUNSI for external stakeholders.

B. Final SGI Protective Order Template

Safeguards Information is a special category of sensitive unclassified information defined in 10 CFR 73.2 and protected from unauthorized disclosure under AEA Section 147. Although SGI is unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (*e.g.,* privacy and proprietary information). Requirements for access to SGI and requirements for SGI handling, storage, and processing are in 10 CFR part 73.

The SGI protective order template does not rely on prior SGI protective orders because they predate significant changes to the NRC's regulations on SGI and adjudicatory filings. Instead, the NRC staff combined general provisions from the SUNSI template with the SGI protection requirements in 10 CFR part 73 and the adjudicatory filing requirements in 10 CFR part 2. Also, while the NRC staff considered the CUI Rule when developing the SGI template,

the template does not reflect any specific CUI provisions. The NRC has not yet implemented the CUI Rule, and in accordance with 32 CFR 2002.4(r), most CUI requirements do not apply to SGI because the authorizing law and regulations for SGI provide specific handling controls.

III. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./ **Federal Register** citation
Final Template for Protective Orders Governing the Disclosure and Use of Sensitive Unclassified Non-Safeguards Information (SUNSI) in Hearings Related to Conformance with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC).	ML19036A727
Final Template for Protective Orders Governing the Disclosure and Use of Safeguards Information (SGI) in Hearings Related to Conformance with Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC).	ML19036A718
NRC Staff Responses to Public Comments on Draft Protective Order Templates for ITAAC Hearings	ML19036A732
Comment Submission from Southern Nuclear Operating Company, submitted on October 19, 2018	ML18298A267
Protective Order Templates for Hearings on Conformance with the Acceptance Criteria in Combined Licenses, published on September 4, 2018 (draft for comment).	83 FR 44925
Final Procedures for Conducting Hearings on Conformance With the Acceptance Criteria in Combined Licenses, published on July 1, 2016.	81 FR 43266
SECY–15–0010, Final Procedures for Hearings on Conformance With the Acceptance Criteria in Combined Licenses, dated January 20, 2015.	ML14343A747
Final Rule: Controlled Unclassified Information, published on September 14, 2016	81 FR 63324
NRC Regulatory Issue Summary 2005–26, Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors, dated November 7, 2005.	ML051430228

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at *http://www.regulations.gov* under Docket ID NRC–2018–0190. The Federal Rulemaking website allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2018–0190); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

Dated at Rockville, Maryland, this 7th day of February 2019.

For the Nuclear Regulatory Commission.

Susan H. Vrahoretis,

Assistant General, Counsel for New Reactor Programs, Office of the General Counsel.

[FR Doc. 2019–02029 Filed 2–11–19; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

Title and purpose of information collection: Application for Survivor Death Benefits; OMB 3220–0031.

Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow(er)s, children, and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee only if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depends on whether the deceased employee was ''insured'' under the RRA at the time of death. If the deceased employee was not insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The requirements for applying for benefits are prescribed in 20 CFR 217, 219, and 234.

The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for. To collect the information, the RRB uses Forms AA–21, *Application for Lump-Sum Death Payment and Annuities Unpaid at Death;* AA–21cert, *Application Summary and Certification;* G–131, *Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment;* and G–273a, *Funeral Director's Statement of Burial Charges.* One response is requested of each respondent. Completion is required to obtain benefits.

Previous requests for comments: The RRB has already published the initial 60-day notice (83 FR 62390 on December 3, 2018) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Survivor Death Benefits.

OMB Control Number: 3220–0031.

Form(s) submitted: AA–21, AA–21cert, G–131, and G–273a.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the Railroad Retirement Act. Benefits are paid to designated

beneficiaries or to survivors in a priority designated by law.

Changes proposed: The RRB proposes the following changes to Forms AA–21, AA–21cert, and G–273a:

• Forms AA–21 and AA–21cert—Update the fraud language in the Certification statement to make it consistent with other RRB applications;

• Form G–273a—Add clarifying language above Item 10 to inform a funeral home when to file for a lump-sum death benefit.

The RRB proposes no changes to Form G–131.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–21cert with assistance	3,500	20	1,167
AA–21 without assistance	200	40	133
G–131	100	5	8
G–273a	4,000	10	667
Total	7,800		1,975

Additional information or comments: Copies of the forms and supporting documents can be obtained from Brian Foster at (312) 751–4826 or *Brian.Foster@rrb.gov.*

Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Brian Foster,

Clearance Officer.

[FR Doc. 2019–01942 Filed 2–11–19; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85063; File No. SR–FINRA–2019–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Expand Time for Non-Parties To Respond to Arbitration Subpoenas and Orders of Appearance of Witnesses or Production of Documents

February 6, 2019.

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 January 29, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. 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

FINRA is proposing to amend FINRA Rule 12512(d) through (e) and FINRA Rule 12513(d) through (e) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and FINRA Rule 13512(d) through (e) and FINRA Rule 13513(d) through (e) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'' and together, ''Codes''), to expand time for non-parties to respond to arbitration subpoenas and orders of appearance of witnesses or production of documents, and to make related changes to enhance the discovery process for forum users.

The text of the proposed rule change is available at the principal office of FINRA, on FINRA's website at *http://www.finra.org,* 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, FINRA 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. FINRA 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

Introduction

The proposed rule change would amend FINRA Rules 12512, 12513, 13512 and 13513 that govern procedures for non-parties to object to subpoenas and for non-parties to object to arbitrator orders of appearance of witnesses or production of documents. The proposed rule change would help ensure that non-parties wanting to object to an order or subpoena have sufficient time to do so. The proposal will also make related changes to enhance the discovery process for forum users.

Background

In arbitration, the parties exchange documents and information to prepare for the arbitration through the discovery process. The Codes currently provide that parties in FINRA arbitration who seek discovery from a non-party may request the panel to issue: (1) An order of appearance of witnesses or production of documents if the non-party is subject to FINRA's jurisdiction as an associated person or member firm or (2) a subpoena if the non-party is not subject to FINRA's jurisdiction.[3] If the panel decides to issue the order or subpoena, FINRA will transmit the signed order or subpoena to the moving party to serve on the non-party. If a non-party receiving an order or a subpoena objects to the scope or propriety of the order or subpoena, the non-party may, within 10 calendar days of service of the order or subpoena, file written objections through the Director of the Office of Dispute Resolution (Director).

Concerns About Current Subpoena and Order Rules for Non-Parties

Forum users have raised concerns that the amount of time that non-parties have to respond to orders and subpoenas is insufficient.[4] Since non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rules 12512 and 12513. *See also* Rules 13512 and 13513.

[4] *See, e.g.,* Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Jennifer Piorko Mitchell, Vice President and Deputy Corporate Secretary, FINRA, dated June 2, 2017 (responding to FINRA's March 2017 *Special Notice*

parties do not have access to the Dispute Resolution Party Portal (Party Portal),[5] they are currently served using other means (first-class mail, overnight mail service, overnight delivery service, hand delivery, email or facsimile). Recipients of orders and subpoenas reported that the individual at a non-party firm who is responsible for responding to an order or subpoena (*e.g.,* legal staff) may not actually receive a copy of the order or subpoena through internal processes until after the tenth day from service has passed, thereby causing the non-party firm to risk waiving its ability to timely object to the order or subpoena.[6] As a non-party to the arbitration, a firm is not able to anticipate the arrival of an order or subpoena and instruct front line employees (*e.g.,* receptionists or mail room personnel) to route these high priority documents to the appropriate individual responsible for responding to the discovery request. Once the objection to an order or subpoena is waived, the non-party must respond to the order or subpoena or risk incurring sanctions or disciplinary action.[7] Forum users have also raised concerns that the use of first-class mail is not an ideal option in discovery because it is slow. For these reasons, FINRA seeks to offer sufficient time for non-parties to provide the order or subpoena to the appropriate individual who would respond to the discovery request.

Proposed Rule Change

FINRA is proposing three amendments to the Codes to enhance the discovery process for forum users, particularly non-parties. First, FINRA is proposing to amend the Codes to extend the response time for non-parties to object to an order or subpoena from 10 calendar days of service to 15 calendar days of receipt of the order or subpoena. Receipt of overnight mail service, overnight delivery service, hand delivery, email or facsimile is accomplished on the date of delivery. FINRA believes that the proposed rule change would address forum users' concerns because the proposal would help ensure that non-parties wanting to object to an order or subpoena have sufficient time to do so.

Second, FINRA is proposing to amend the Codes to exclude first-class mail as an option to serve documents on the non-party and as an option for the non-party to file the objection to the scope or propriety of the order or subpoena.[8] FINRA believes that by requiring forum users to serve or transmit discovery-related documents through overnight mail service, overnight delivery, hand delivery, email or facsimile, forum users are better able to confirm and facilitate the timing of discovery obligations.

Third, FINRA is proposing to amend the Codes to codify the current practice that the Director sends, at the same time, objections and responses to the panel after the reply date has elapsed, unless otherwise directed by the panel. The Director sends the complete set of motion papers to the panel to ensure that the panel receives the advocacy positions of all parties at the same time. FINRA believes that the proposed rule change will enhance forum users' understanding of existing case administration procedures and will improve transparency concerning forum operations.[9]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would enhance the discovery process for forum users by giving non-parties additional time to respond to subpoenas and orders. Further, the proposed rule change addresses forum users' concerns on delays with first-class mail and would enhance their ability to confirm and facilitate the timing of discovery obligations. FINRA further believes that the proposed amendments would also enhance the user experience at the forum by standardizing certain procedures relating to subpoenas and orders and will improve transparency concerning forum operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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 purposes of the Act. A discussion of the economic impacts of the proposed rule change follows.

Economic Impact Assessment

FINRA staff has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed rule change, its potential economic impacts, including anticipated costs, benefits, and distributional and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how to best meet its regulatory objectives.

(a) Regulatory Need

Under the Codes, non-parties to an arbitration have a limited amount of time to object to an order or subpoena. Parties and non-parties may also use options to transmit or serve documents that are slow, further hindering the ability of non-parties to timely object.[11] This could cause non-parties to inadvertently waive their ability to timely object. Non-parties for whom the objection process would be valuable could incur costs associated with this outcome.

(b) Economic Baseline

The economic baseline for the proposed amendments are the Codes that address the length of time for non-parties to respond to arbitrators' orders and subpoenas. The economic baseline also includes the Codes that address the options for parties and non-parties to serve or transmit documents. The proposal is expected to affect non-parties and parties to an arbitration.

Although FINRA does collect information describing orders and subpoenas, FINRA does not collect information specifically identifying orders or subpoenas to non-parties. The

on FINRA's engagement programs), *www.finra.org/sites/default/files/notice_comment_file_ref/SN-32117_SIFMA-KevinCarroll_comment.pdf.*

[5] The Party Portal provides arbitration forum users with a secure, online location for claim filing and interactions relating to case administration. Parties use the Party Portal to, among other things, file claims, pay filing fees, receive documents from and send documents to FINRA, receive service of claims, submit answers to claims, submit additional case documents, view the status of cases, select arbitrators, schedule hearings and send documents to other Party Portal case participants.

[6] *See supra* note 4.

[7] *See* Rules 12212 and 12511. *See also* Rules 13212 and 13511.

[8] Filing and service by first-class mail is accomplished on the date of mailing, but it can take several days to confirm receipt. For purposes of this rule proposal, service by overnight mail, overnight delivery, hand delivery, facsimile or email is accomplished on the date of delivery.

[9] FINRA notes that the proposed rule change would impact all members, including members that are funding portals or have elected to be treated as capital acquisition brokers (''CABs''), given that the funding portal and CAB rule sets incorporate the impacted FINRA rules by reference.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] *See supra* note 7.

frequency in which parties currently request arbitrators to issue orders or subpoenas to non-parties, and whether non-parties respond or object, is therefore not available. Information is also not available to describe the frequency in which non-parties inadvertently waive their ability to timely object to an order or subpoena.

(c) Economic Impact

The proposed amendments would extend the response time for non-parties to object to an order or subpoena. The proposed amendments would also exclude first-class mail as an option to transmit or serve documents. The benefits and costs of the proposed amendments are discussed below.

The proposed amendments may benefit non-parties when responding to orders and subpoenas. The proposed amendments would increase the amount of time for non-parties to formulate sound objections and file these objections with the Director and requesting party. Further, non-parties that are able to timely object as a result of the proposed amendments, and that receive a ruling in their favor, would not incur the costs associated with the release of proprietary or non-public information.[12]

The proposed amendments, however, may impose costs on requesting parties. Non-parties that are able to timely object as a result of the proposed amendments, and that receive a ruling in their favor, would not appear as a witness or produce documents. Requesting parties that would otherwise receive the information may be less able to present a case in arbitration and receive an award in their favor. This potential cost, however, is dependent on whether the information would have affected the arbitrators' award decision.[13]

The proposed amendments may have countervailing effects on the efficiency of the arbitration forum. The increase in the amount of time for non-parties to respond may lengthen the discovery phase of the arbitration proceedings, and therefore the amount of time until the resolution of the dispute. The exclusion of first-class mail as an option to transmit or serve documents, however, may increase the speed of delivery as well as the ability of parties to determine the sequence and timing of discovery. Whether the forum becomes more or less efficient as a result of the proposed amendments is dependent on the number of additional days non-parties take to file an objection to an order or subpoena, as well as the extent to which parties and non-parties transition to more efficient means of communication.

The proposed amendments may also have additional economic impacts. For example, the exclusion of first-class mail may impose additional costs on parties and non-parties that transition to a different, more-expensive option to transmit or serve documents. The proposed amendments would also codify the current practice whereby FINRA holds all documents from objections and responses to orders or subpoenas before sending them at one time after the reply date has elapsed (unless otherwise directed by the panel). FINRA does not believe, however, that any economic impact from the clarification of procedures would be material.

(d) Alternatives Considered

The alternatives considered to the proposed amendments include not extending the response time for non-parties to object to an order or subpoena, or extending the response time but for a different number of days. Other alternatives considered include not excluding first-class mail as an option for transmitting or serving documents, or excluding different options.

FINRA considered the benefits to non-parties from extending the response time to object to an order or subpoena with the potential increase in the amount of time for discovery. FINRA also considered the benefits from excluding options to transmit or serve documents with the costs of reducing the number of options. FINRA believes that the proposed amendments increase the ability of non-parties to timely object to an order or subpoena, as well as the efficiency of the discovery process, while minimizing the potential costs to parties and non-parties.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2019–004 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–FINRA–2019–004. 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

[12] *See supra* note 4. The letter notes the potential release of ''proprietary, competitively-sensitive, or non-public personal information'' as a result of the inability of non-parties to timely object to an order or subpoena. Non-parties would also not incur the costs to appear as a witness or to produce documents that are in excess of the reasonable amount paid as reimbursement by the requesting party.

[13] If arbitrators rule in favor of non-parties with respect to the scope or propriety of the order or subpoena, then the information would not likely increase the ability of the requesting parties to present a case in arbitration and receive an award in their favor. Requesting parties, however, would not incur the costs of non-parties to appear as a witness or to produce documents.

filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2019–004 and should be submitted on or before March 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–01946 Filed 2–11–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85065; File No. SR–BOX–2018–14]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Withdrawal of Proposed Rule Change To Adopt Rules Governing the Trading of Complex Qualified Contingent Cross Orders and Complex Customer Cross Orders

February 6, 2019.

On May 22, 2018, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the trading of Complex Qualified Contingent Cross Orders and Complex Customer Cross Orders. The proposed rule change was published for comment in the **Federal Register** on June 8, 2018.[3] On July 16, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[5] On September 5, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission received one comment letter from the Exchange responding to the Order Instituting Proceedings.[8] On November 27, 2018, pursuant to Section 19(b)(2) of the Act,[9] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[10] On February 1, 2019, the Exchange withdrew the proposed rule change (SR–BOX–2018–14).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–01944 Filed 2–11–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 83367 (June 4, 2018), 83 FR 26719.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 83647, 83 FR 34635 (July 20, 2018). The Commission designated September 6, 2018 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 84031, 83 FR 46003 (September 11, 2018) (''Order Instituting Proceedings'').

[8] *See* letter to Brent J. Fields, Secretary, Commission, from Alanna Barton, General Counsel, Exchange, dated October 12, 2018.

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 84658, 83 FR 62395 (December 3, 2018). The Commission designated February 3, 2019 as the date by which the Commission shall either approve or disapprove the proposed rule change.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85064; File No. SR–NYSEArca–2019–03)]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31–E Relating to the Minimum Trade Size Modifier

February 6, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 28, 2019, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 self-regulatory organization. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31–E relating to the Minimum Trade Size Modifier. The proposed rule change is available on the Exchange's website at *www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31–E relating to the Minimum Trade Size (''MTS'') Modifier. Specifically, the Exchange proposes to make the MTS Modifier available for Non-Displayed Limit Orders.[4] The Exchange also proposes to provide additional optionality for ETP Holders using the MTS Modifier with Limit IOC Orders, Non-Displayed Limit Orders, Mid-Point Liquidity (''MPL'') Orders, and Tracking Orders. As proposed, ETP Holders could choose how such orders would trade on arrival to trade either with (i) orders that in the aggregate meet the MTS (current functionality), or (ii) individual orders that each meet the MTS (proposed functionality).

The MTS Modifier is currently available for Limit IOC Orders,[5] MPL Orders,[6] and Tracking Orders.[7] As such,

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 7.31–E(d)(2). In sum, A Non-Displayed Limit Order is a Limit Order that is not displayed and does not route. *Id.*

[5] *See* Rule 7.31–E(b)(2)(A). In sum, a Limit Order designated IOC is to be traded in whole or in part on the NYSE Arca Marketplace as soon as such order is received, and the quantity not so traded is cancelled. *Id.*

[6] *See* Rule 7.31–E(d)(3). In sum, an MPL Order is a ''Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO.'' *Id.*

[7] *See* Rule 7.31–E(d)(4). In sum, a Tracking Order is an order to buy (sell) with a limit price that is

Continued

the MTS Modifier is currently available only for orders that are not displayed and do not route. On arrival, both Limit IOC Orders and MPL Orders with an MTS Modifier will trade against contra-side orders in the Exchange Book that in the aggregate, meet the MTS.[8] Once resting, MPL Orders and Tracking Orders with an MTS Modifier function similarly: If a contra-side order does not meet the MTS, the incoming order will not trade with and may trade through the resting order with the MTS Modifier. In addition, both MPL Orders and Tracking Orders with an MTS Modifier will be cancelled if such orders are traded in part or reduced in size and the remaining quantity is less than the MTS.

The Exchange proposes to amend its rules to make MTS Modifier functionality available for an additional non-displayed order that does not route, *i.e.,* Non-Displayed Limit Orders. The Exchange also proposes to add an option that an order with an MTS Modifier would trade on entry only with individual orders that each meet the MTS. This proposed change is based on the rules of its affiliate, NYSE American LLC (''NYSE American''), which offers the option for orders with an MTS to trade on entry only with individual orders that each meet the MTS of the incoming order.[9] Both of these proposed changes are also based on the rules of the Nasdaq Stock Market LLC (''Nasdaq'') and Investors Exchange LLC (''IEX''), which both offer minimum trade size functionality for orders that are not displayed and that do not route.[10] Nasdaq and IEX, as well as Cboe BYX Exchange, Inc. (''BYX''), Cboe BZX Exchange, Inc. (''BZX''), Cboe EDGA Exchange, Inc. (''EDGA''), and Cboe EDGX Exchange, Inc. (''EDGX'', together with BYX, BZX, and EDGA, the ''Cboe Equity Exchanges''), also all offer the option for orders with a minimum trade size to trade on entry only with individual orders that each meet the minimum trade size condition of the incoming order.[11]

Rule 7.31–E(i)(3) currently states that on arrival, an order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the NYSE Arca Book that in the aggregate meet such order's MTS. As amended, Rule 7.31–E(i)(3)(B) would now require an ETP Holder to specify one of the following instructions with respect to how an order with an MTS Modifier would trade on arrival (new text underlined):

(i) An order to buy (sell) with an MTS Modifier will trade with sell (buy) orders in the Exchange Book that in the aggregate meet such order's MTS[.]; or

(ii) An order to buy (sell) with an MTS Modifier will trade with individual sell (buy) order(s) in the Exchange Book that each meets such order's MTS.

Proposed paragraph (i)(3)(B)(ii) is new and reflects the Exchange's proposal to add an alternative to how an order with an MTS Modifier would trade on arrival. An order with an MTS Modifier that is to trade upon entry only with individual orders that each meet the MTS would execute against resting orders in accordance with Rule 7.36–E, Order Ranking and Display, until it reaches an order that does not satisfy the MTS, at which point it would be posted or cancelled in accordance with the terms of the order. This proposed rule text is also based on NYSE American Rule 7.31E(i)(3)(B).[12] Proposed Exchange Rule 7.31–E(i)(3)(B)(i) would describe the existing functionality as one of the instructions that would be available to ETP Holders.

As discussed above, the addition of this instruction for how orders with an MTS Modifier would trade on entry is based on the rules of NYSE American, Nasdaq, IEX, and the Cboe Equity Exchanges.[13]

* * * * *

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date of this proposed rule change by Trader Update. The Exchange anticipates that the implementation date will be in the second quarter of 2019.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and furthers the objectives of Section 6(b)(5),[15] in particular, because 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, 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 that the proposal to expand the availability of the Exchange's existing MTS Modifier to an additional non-displayed, non-routable order, *e.g.,* Non-Displayed Limit Orders, would 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, because the proposed rule change is based on similar minimum trade size functionality on Nasdaq and IEX, which both similarly make minimum trade size functionality available to non-displayed, non-routable orders.[16]

The Exchange also believes that the proposal would 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 because it would provide ETP Holders with the option for orders with a MTS Modifier to trade on entry only with individual orders that each meets the MTS of the incoming order, thereby

not displayed, does not route, must be entered in round lots and designated Day, and will trade only with an order to sell (buy) that is eligible to route.

[8] Tracking Orders, including Tracking Orders with an MTS Modifier, are passive orders that do not trade on arrival.

[9] *See* NYSE American Rule 7.31E(i)(3)(B). *See also* Securities Exchange Act Release No. 81672 (September 21, 2017), 82 FR 45099 (September 27, 2017) (SR–NYSEAMER–2017–17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 7.31E Relating to the Minimum Trade Size Modifier for Additional Order Types and Expanding the Minimum Trade Size Modifier for Existing Order Types). The Exchange understands that NYSE American as well as its other affiliated exchanges, the New York Stock Exchange, Inc. (''NYSE''), and NYSE National, Inc. (''NYSE National'', together with the Exchange and NYSE, the ''Affiliate SROs'') intend to file similar proposed rule changes with the Commission to extend the availability of their respective MTS modifiers to Non-Displayed Limit Orders.

[10] *See* Nasdaq Rule 4703(e) (Nasdaq's ''Minimum Quantity Order'' may not be displayed and will be rejected if it includes an instruction to route) and IEX Rule 11.190(b)(11)(A) (IEX's ''Minimum Quantity Order'' or ''MQTY'' is a non-displayed, non-routable order'').

[11] *See* Nasdaq Rule 4703(e) (Nasdaq's ''Minimum Quantity'' order attribute allows for a Nasdaq participant to specify one of two alternatives to how a Minimum Quantity Order would be processed at the time of entry, one of which is that ''the minimum quantity condition must be satisfied by execution against one or more orders, each of which must have a size that satisfies the minimum quantity condition'') and IEX Rule 11.190(b)(11)(G)(iii)(B) (On arrival, IEX's ''Minimum Execution Size with All-or-None Remaining'' qualifier for IEX's MQTY executes against each willing resting order in priority, provided that each individual execution size meets its effective minimum quantity.) *See also* BYX Rule 11.9(c)(5); BZX Rule 11.9(c)(5); EDGA Rule 11.6(h); *and* EDGX Rule 11.6(h) (The Cboe Equity Exchanges each allow a User to alternatively specify the order not execute against multiple aggregated orders simultaneously and that the minimum quantity condition be satisfied by each individual order resting on the book).

[12] *See supra* note 9.

[13] *See supra* notes 9 and 11.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See supra* note 10.

providing ETP Holders with more control in how such orders could execute. The proposed rule change is based on similar options available for users of minimum trade size functionality on the Exchange's affiliate, NYSE American, as well as Nasdaq, IEX, and the Cboe Equity Exchanges.[17] The Exchange further believes that this proposed option would remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would allow ETP Holders to provide an instruction that an order with an MTS Modifier would not trade with orders that are smaller in size than the MTS for such order, thereby providing ETP Holders with more control over when an order with an MTS Modifier may be executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is designed to increase competition by making available on the Exchange functionality that is already available on Nasdaq, IEX, and the Cboe Equity Exchanges. The Exchange also believes that the proposed rule change would promote competition by providing market participants with an additional venue to which to route non-displayed, non-routable orders with an MTS Modifier.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

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–NYSEArca–2019–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2019–03. 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 filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2019–03, and should be submitted on or before March 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–01945 Filed 2–11–19; 8:45 am]

BILLING CODE 8011–01–P

[17] *See supra* notes 9 and 11.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, February 14, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Roisman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Regulatory matters regarding a financial institution;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: February 7, 2019.

Brent J. Fields,

Secretary.

[FR Doc. 2019–02117 Filed 2–8–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85062; File No. SR–FINRA–2019–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

February 6, 2019.

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 January 29, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 12, 2020. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2011, the SEC issued an Order granting temporary exemptive relief (the ''Temporary Exemptions'') from compliance with certain provisions of the Exchange Act in connection with the revision, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[4] of the Exchange Act definition of ''security'' to encompass security-based swaps.[5] Consistent with the Commission's action, on July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180,[6] which, with certain exceptions, is intended to temporarily limit the application of FINRA rules [7] with respect to security-based swaps, thereby helping to avoid undue market disruptions resulting from the change to the definition of ''security'' under the Act.[8]

The Commission, noting the need to avoid a potential unnecessary disruption to the security-based swap market in the absence of an extension of the Temporary Exemptions, and the need for additional time to consider the potential impact of the revision of the Exchange Act definition of ''security'' in light of ongoing Commission rulemaking efforts under Title VII of the Dodd-Frank Act, issued an Order which extended and refined the applicable expiration dates for the previously granted Temporary Exemptions.[9] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] *See* Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of ''Security'' To Encompass Security-Based Swaps, and Request for Comment) (the ''Exemptive Release''). The term ''security-based swap'' is defined in Section 761 of the Dodd-Frank Act. *See also* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (August 13, 2012) (Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping).

[6] *See* Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–033) (''FINRA Rule 0180 Notice of Filing''). *See also* Securities Exchange Act Release No. 82480 (January 10, 2018), 83 FR 2480 (January 17, 2018) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2018–001) (extending the expiration date of FINRA Rule 0180 to February 12, 2019).

[7] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[8] In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act's antifraud and anti-manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members' activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). *See also* paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

[9] *See* Securities Exchange Act Release No. 71485 (February 5, 2014), 79 FR 7731 (February 10, 2014) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment) (''2014 Extension Release'') stating that, for those expiring Temporary Exemptions ''that are not directly linked to pending security-based swap rulemakings, the Commission is extending the expiration date until the earlier of such time as the Commission issues an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of these Exchange Act provisions or until three years following the effective date of this Order.'' The 2014 Extension Release further stated that for each expiring Temporary Exemption ''that is related to pending security-based swap rulemakings, the Commission is extending the expiration date until the compliance date for the related security-based swap-specific rulemaking.'' The Commission has extended certain Temporary Exemptions that are not directly linked to a security-based swap rulemaking to February 5, 2020. *See* Securities Exchange Act Release No. 84991 (January 25, 2019) (Order Granting a Limited Exemption from the Exchange Act Definition of ''Penny Stock'' for Security-Based Swap Transactions between Eligible Contract Participants; Granting a Limited Exemption from the Exchange Act Definition of ''Municipal Securities'' for Security-Based Swaps; and Extending Certain Temporary Exemptions under the Exchange Act in Connection with the

Commission previously noted that extending the Temporary Exemptions would facilitate a coordinated consideration of these issues with the relief provided pursuant to FINRA Rule 0180.[10] In establishing Rule 0180, and in extending the rule's expiration date, FINRA noted its intent, pending the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities, to align the expiration date of FINRA Rule 0180 with the termination of relevant provisions of the Temporary Exemptions.[11]

The Commission's rulemaking and development of guidance in relation to security-based swap activities is ongoing. As such, FINRA believes it is appropriate and in the public interest, in light of the Commission's goals as set forth in the Exemptive Release, the 2014 Extension Release and the 2019 Extension Release, to extend FINRA Rule 0180 for a limited period, to February 12, 2020, so as to avoid undue market disruptions resulting from the change to the definition of ''security'' under the Act.[12]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on February 12, 2019.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with the goals set forth by the Commission in the Exemptive Release, the 2014 Extension Release and the 2019 Extension Release, the proposed rule change will help to avoid undue market disruption that could result if FINRA Rule 0180 expires before the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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 purposes of the Act. FINRA believes that the proposed rule change would prevent undue market disruption that would otherwise result if security-based swaps were, by virtue of the expansion of the Act's definition of ''security'' to encompass security-based swaps, subject to the application of all FINRA rules before the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[14] and Rule 19b–4(f)(6) thereunder.[15]

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. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay requirement so that the proposal may become operative on February 12, 2019. The Commission hereby grants the request. The proposed rule is consistent with the goals set forth by the Commission when it issued the Exemptive Release, the 2014 Extension Release and the 2019 Extension Release and will help avoid undue market interruption resulting from the change of the definition of ''security'' under the Act and the expiration of FINRA Rule 0180. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay requirement. Therefore the Commission designates the proposal as operative on February 12, 2019.

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–FINRA–2019–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

Revision of the Definition of ''Security'' to Encompass Security-Based Swaps) (''2019 Extension Release'').

[10] *See* Securities Exchange Act Release No. 68864 (February 7, 2013), 78 FR 10218 (February 13, 2013) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment).

[11] *See* note 6 *supra.*

[12] FINRA may amend the expiration date of FINRA Rule 0180 based on any related Commission action.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

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 filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2019–001 and should be submitted on or before March 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo Aleman,

Deputy Secretary.

[FR Doc. 2019–01943 Filed 2–11–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15845 and #15846; Virginia Disaster Number VA–00079]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–4411–DR), dated 12/18/2018.

Incident: Tropical Storm Michael.

Incident Period: 10/09/2018 through 10/16/2018.

DATES: Issued on 02/01/2019.

Physical Loan Application Deadline Date: 02/19/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 09/18/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 12/18/2018, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties/Cities: Grayson, James City, King William, Lancaster, Martinsville City, Mecklenburg, Middlesex, Northampton, Westmoreland.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–02025 Filed 2–11–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15865 and #15866; Minnesota Disaster Number MN–00066]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Minnesota

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–4414–DR), dated 02/01/2019.

Incident: Severe Storms and Flooding.

Incident Period: 10/09/2018 through 10/11/2018.

DATES: Issued on 02/01/2019.

Physical Loan Application Deadline Date: 04/02/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 02/01/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Saint Louis

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 158656 and for economic injury is 158660.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–01963 Filed 2–11–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before April 15, 2019.

ADDRESSES: Send all comments to Mary Frias, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416. *Mary.frias@sba.gov*, 202–401–8234, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Small Business Administration SBA Form 912 is used to collect information needed to make character determinations with respect to applicants for monetary loan assistance or applicants for participation in SBA programs. The information collected is used as the basis for conducting name checks at national Federal Bureau of Investigations (FBI) and local levels.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Statement of Personal History.

Description of Respondents: Applicants participating in SBA programs.

Form Number: SBA Form 912.

Total Estimated Annual Responses: 142,000.

Total Estimated Annual Hour Burden: 35,500.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–02034 Filed 2–11–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15859 and #15860; ALASKA Disaster Number AK–00040]

Presidential Declaration of a Major Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4413–DR), dated 01/31/2019.

Incident: Earthquake.

Incident Period: 11/30/2018.

DATES: Issued on 01/31/2019.

Physical Loan Application Deadline Date: 04/01/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 11/01/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/31/2019, applications for disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Areas (Physical Damage and Economic Injury Loans): Kenai Peninsula Borough, Matanuska-Susitna Borough, Municipality Of Anchorage.

Contiguous Areas (Economic Injury Loans Only): Alaska

Chugach REAA, Copper River REAA, Delta/Greely REAA, Denali Borough, Iditarod Area REAA, Kodiak Island Borough, Lake and Peninsula Borough.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.000
Homeowners without Credit Available Elsewhere	2.000
Businesses with Credit Available Elsewhere	7.480
Businesses without Credit Available Elsewhere	3.740
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.740
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 158592 and for economic injury is 158600.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–01955 Filed 2–11–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15861 and #15862; ALASKA Disaster Number AK–00041]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4413–DR), dated 01/31/2019.

Incident: Earthquake.

Incident Period: 11/30/2018.

DATES: Issued on 01/31/2019.

Physical Loan Application Deadline Date: 04/01/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 10/31/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/31/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas: Kenai Peninsula Borough, Matanuska-Susitna Borough, Municipality Of Anchorage

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 158612 and for economic injury is 158620.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–01957 Filed 2–11–19; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 10646]

Notice of Information Collection Under OMB Emergency Processing; Three Information Collections Related to the United States Munitions List, Categories I, II and III

ACTION: Notice of request for emergency OMB approval and public comment.

SUMMARY: The Department of State has submitted the information collection request described below to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency processing procedures of the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for public comment from all interested individuals and organizations. Emergency processing and approval of this collection has been requested from OMB by April 1, 2019. If granted, the emergency approval is only valid for 90 days.

ADDRESSES: Direct any comments on this emergency request to both the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) and to PM/DDTC. All public comments must be received by February 24, 2019.

You may submit comments to OMB by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

You may submit comments to PM/DDTC by the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0063'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: DDTCPublicComments@state.gov,* You must include *Emergency Submission Comment on ''information collection title''* in the subject line of your message.
- *Regular Mail:* Send written comments to: PM/DDTC 2401 E Street NW, Washington, DC 20037 H1204–3.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to Andrea Battista who may be reached on 202–663–3136 or at *battistaal@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for Temporary Import of Defense Articles.
- *OMB Control Number:* 1405–0013.
- *Type of Request:* Emergency Processing.
- *Originating Office:* PM/DDTC.
- *Form Number:* DSP–61.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 204.
- *Estimated Number of Responses:* 1,103.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 552 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.
- *Title of Information Collection:* Application/License for Temporary Export of Unclassified Defense Articles.
- *OMB Control Number:* 1405–0023.
- *Type of Request:* Emergency Processing.
- *Originating Office:* PM/DDTC.
- *Form Number:* DSP–73.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 470.
- *Estimated Number of Responses:* 3,222.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 3,222 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.
- *Title of Information Collection:* Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data.
- *OMB Control Number:* 1405–0022.
- *Type of Request:* Emergency Processing.
- *Originating Office:* PM/DDTC.
- *Form Number:* DSP–85.
- *Respondents:* Business, Nonprofit Organizations, and Individuals.
- *Estimated Number of Respondents:* 100.
- *Estimated Number of Responses:* 419.
- *Average Time per Response:* 30 minutes.
- *Total Estimated Burden Time:* 210 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required in Order to Obtain or Retain Benefits.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The export, temporary import, and brokering of defense articles, including technical data, and defense services are authorized by The Department of State, Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations (''ITAR,'' 22 CFR parts 120–130) and section 38 of the Arms Export Control Act. Those who manufacture, broker, export, or temporarily import defense articles, including technical data, or defense services must register with the Department of State and obtain a decision from the Department as to whether it is in the interests of U.S. foreign policy and national security to approve covered transactions. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

- *1405–0013, Application/License for Temporary Import of Unclassified Defense Articles:* In accordance with part 123 of the ITAR, any person who intends to temporarily import

unclassified defense articles must obtain DDTC authorization prior to import. ''Application/License for Temporary Import of Unclassified Defense Articles'' (Form DSP–61) is the licensing vehicle typically used to obtain permission for the temporary import of unclassified defense articles covered by USML. This form is an application that, when completed and approved by PM/DDTC, Department of State, constitutes the official record and authorization for the temporary commercial import of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0022, Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data:* In accordance with part 123 of the ITAR, any person who intends to permanently export, temporarily export, or temporarily import classified defense articles, including classified technical data must first obtain DDTC authorization. ''Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Related Classified Technical Data'' (Form DSP–85) is used to obtain permission for the permanent export, temporary export, or temporary import of classified defense articles, including classified technical data, covered by the USML. This form is an application that, when completed and approved by PM/DDTC, Department of State, constitutes the official record and authorization for all classified commercial defense trade transactions, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

• *1405–0023, Application/License for Temporary Export of Unclassified Defense Articles:* In accordance with part 123 of the ITAR, any person who intends to temporarily export unclassified defense articles must DDTC authorization prior to export. ''Application/License for Temporary Export of Unclassified Defense Articles'' (Form DSP–73) is the licensing vehicle typically used to obtain permission for the temporary export of unclassified defense articles covered by the USML. This form is an application that, when completed and approved by PM/DDTC, Department of State, constitutes the official record and authorization for the temporary commercial export of unclassified U.S. Munitions List articles, pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations.

Methodology

This information collection may be sent to the Directorate of Defense Trade Controls via the following methods: Electronically or mail.

Additional Information

The aforementioned collections may be impacted by a proposed rule published in the **Federal Register** on May 24, 2018 (83 FR 24198) (RIN 1400–AE30). If the rule becomes final, changes will be made to the forms' drop down menus to allow for the updated USML subcategories to be selected by an applicant.

Anthony M. Dearth,

Chief of Staff, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2019–01983 Filed 2–11–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 462]

Delegation of Management Authorities of the Secretary of State

By virtue of the authority vested in the Secretary of State by the laws of the United States, including 22 U.S.C. 2651a, I hereby delegate to the Under Secretary and Deputy Under Secretary of State for Management, to the extent authorized by law, all management-related functions now vested or which in the future may be vested in the Secretary of State or in the head of the Department of State, as well as the authority of the Secretary of State to approve submission of reports to the Congress.

This delegation covers the decision to submit to the Congress both one-time reports and recurring reports, including reporting functions vested in the Secretary of State in the future. However, this delegation shall not be construed to authorize the Under Secretary or Deputy Under Secretary to make waivers, certifications, determinations, findings, or other such statutorily required substantive actions that may be called for in connection with the submission of a report. The Under Secretary or Deputy Under Secretary shall be responsible for referring to the Secretary or to the Deputy Secretary any matter on which action would appropriately be taken by such official.

Functions delegated herein may be re-delegated, to the extent authorized by law. The Secretary of State or Deputy Secretary of State may at any time exercise any function delegation herein.

This delegation does not repeal or affect any delegation of authority currently in effect except Delegation of Authority 198, dated September 16, 1992, which is hereby revoked.

This delegation of authority shall be published in the **Federal Register**.

Dated: January 9, 2019.

Michael R. Pompeo,

Secretary of State, Department of State.

[FR Doc. 2019–02090 Filed 2–11–19; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 10660]

30-Day Notice of Proposed Information Collection: Brokering Prior Approval (License)

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 14, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista, who may be reached on 202–663–3136 or at *battistaal@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Brokering Prior Approval.

• *OMB Control Number:* 1405–0142.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Directorate of Defense Trade Controls (DDTC).

• *Form Number:* DS–4294.

• *Respondents:* Respondents are U.S. and foreign persons who wish to engage in International Traffic in Arms Regulations (ITAR)-controlled brokering of defense articles and defense services.

• *Estimated Number of Respondents:* 170.

• *Estimated Number of Responses:* 170.

• *Average Time per Response:* 2 hours.

• *Total Estimated Burden Time:* 340 hours.

• *Frequency:* On Occasion.

• *Obligation to Respond:* Required to Obtain Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In accordance with part 129 of the International Traffic in Arms Regulations (ITAR), U.S. and foreign persons who wish to engage in ITAR-controlled brokering activity of defense articles and defense services must first register with DDTC. Brokers must then submit a written request for approval to DDTC and must receive DDTC's consent prior to engaging in such activities unless exempted. This information is currently used in the review of the brokering request submitted for approval and to ensure compliance with defense trade statutes and regulations. It is also used to monitor and control the transfer of sensitive U.S. technology.

Methodology

Currently submissions are made via hardcopy documentation. Applicants are referred to ITAR part 129 for guidance on information to submit regarding proposed brokering activity. Upon implementation of DDTC's new case management system, the Defense Export Control and Compliance System (DECCS), a DS–4294 may be submitted electronically.

Anthony M. Dearth,

Chief of Staff, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2019–02020 Filed 2–11–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 10629]

30-Day Notice of Proposed Information Collection: Annual Brokering Report

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to March 14, 2019.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Andrea Battista who may be reached on 202–663–3136 or at *battistaal@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Annual Brokering Report.

• *OMB Control Number:* 1405–0141.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Directorate of Defense Trade Controls (DDTC).

• *Form Number:* No Form.

• *Respondents:* Respondents are any person/s who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles.

• *Estimated Number of Respondents:* 1,200.

• *Estimated Number of Responses:* 1,200.

• *Average Time per Response:* 2 hours.

• *Total Estimated Burden Time:* 2,400 hours.

• *Frequency:* Annually.

• *Obligation to Respond:* Required to Obtain or Retain Benefit.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

In accordance with part 129 of the ITAR, U.S. and foreign persons required to register as a broker shall provide annually a report to DDTC enumerating and describing brokering activities by quantity, type, U.S. dollar value, purchaser/recipient, and license number for approved activities and any exemptions utilized for other covered activities. This information is currently used in the review of munitions export and brokering license applications and to ensure compliance with defense trade statutes and regulations. As appropriate, such information may be shared with other U.S. Government entities.

Methodology

Brokering Reports are submitted annually with Statement of Registration renewals.

Anthony M. Dearth,

Chief of Staff, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2019–01998 Filed 2–11–19; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 10463]

60-Day Notice of Proposed Information Collection: Complaint of Discrimination Under Section 504, Section 508, or Title VI

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to April 15, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2018–0030'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: kottmyeram@state.gov.*

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Alice Kottmyer, Attorney-Adviser, who may be reached on 202–647–2318 or at *kottmyeram@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Complaint of Discrimination Under Section 504, Section 508 or Title VI.
- *OMB Control Number:* 1405–0220.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Office of Civil Rights, S/OCR.
- *Form Number:* DS–4282.
- *Respondents:* This information collection is used by any Federal employee or member of the public who wishes to submit a complaint of discrimination under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or Sections 504 or 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 794d).
- *Estimated Number of Respondents:* 10.
- *Estimated Number of Responses:* 10.
- *Average Time per Response:* 1 Hour.
- *Total Estimated Burden Time:* 10 Hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The form created by this information collection (DS–4282) will be used to present complaints of discrimination under Title VI of the Civil Rights Act of 1964; or Sections 504 or 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794 and 794d).

Methodology

The form can be downloaded from *https://eforms.state.gov/Forms/ds4282.PDF.* After completion, the form may be submitted by email, mail, fax, or hand-delivery.

Dated: February 6, 2019.

Gregory B. Smith,

Director, Office of Civil Rights, Department of State.

[FR Doc. 2019–02093 Filed 2–11–19; 8:45 am]

BILLING CODE 4710–10–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

Meeting No. 19–01

The TVA Board of Directors will hold a public meeting on February 14, 2019, in the Missionary Ridge Auditorium of the Chattanooga Office Complex, 1101 Market Street, Chattanooga, Tennessee. The meeting will be called to order at 9:30 a.m. ET to consider the agenda items listed below. TVA will answer questions from the news media following the Board meeting.

On February 13, the public may comment on any agenda item or subject at a board-hosted *listening session* which begins at 3:30 p.m. ET and will last until 5:30 p.m. Preregistration is required to address the Board.

STATUS: Open.

Agenda

Chair's Welcome

Old Business

Approval of minutes of the November 14, 2018, Board Meeting

New Business

1. Report from Chair
   A. Committee Charters
   B. Updated Board Practice on Use of TVA Aircraft
   C. Chair Selection
2. Report from President and CEO
3. Report of the Finance, Rates, and Portfolio Committee
   A. Asset Portfolio Evaluation: Bull Run and Paradise
   B. Research and Renewable Projects to support Distributed Energy Resources
   C. Dual Metering Standard Change and Design Exploration for Green Power Providers
4. Report of the Audit, Risk, and Regulation Committee
5. Report of the Nuclear Oversight Committee
6. Report of the External Relations Committee
7. Report of the People and Performance Committee
   A. Update on CEO Succession Process

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: February 7, 2019.

Sherry A. Quirk,

General Counsel.

[FR Doc. 2019–02137 Filed 2–8–19; 11:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0147]

Qualification of Drivers; Skill Performance Evaluation; Virginia Department of Motor Vehicles Application for Renewal Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew the exemption for the Commonwealth of Virginia, Virginia Department of Motor Vehicles (DMV) from the requirement that the Skill Performance Evaluation (SPE) Certificate be issued to interstate truck and bus drivers by the FMCSA. The exemption enables interstate commercial motor vehicle (CMV) drivers who are licensed in Virginia and are subject to the Federal SPE requirements, *Alternative physical qualification standards for the loss or impairment of limbs,* to continue to fulfill the Federal requirements with a State-issued SPE Certificate, and to operate CMVs in interstate commerce anywhere in the United States.

DATES: This exemption was applicable on July 8, 2018. The exemption expires July 8, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:30 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA 2013–0147, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, 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. Background

On July 30, 2018, FMCSA published a notice announcing its decision to renew the Commonwealth of Virginia Department of Motor Vehicles (DMV) exemption, allowing them to issue SPE Certificates on behalf of FMCSA, and requested comments from the public (83 FR 36666). The public comment period ended on August 29, 2018, and no comments were received.

As stated in the previous notice, FMCSA has completed the evaluation of Virginia DMV's eligibility for exemption renewal and determined that renewing the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation that requires SPE Certificates to be issued by FMCSA.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

In accordance with 49 U.S.C. 31136(e) and 31315, this exemption will be valid for five years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) Virginia does not establish and maintain its own SPE program that is essentially identical to the current FMCSA program; (2) The State does not maintain an application process modeled on the FMCSA process and submit information concerning the application process to FMCSA's Medical Programs Division for review, as required; (3) State personnel who conduct the skill performance test do not complete SPE training identical to that of FMCSA personnel currently administering the Federal SPE program; (4) The skill evaluation and scoring for the SPE is not completed using the same procedures and testing criteria used by FMCSA; (5) Virginia does not maintain records of applications, testing, and certificates issued for periodic review by FMCSA; (6) Virginia does not submit a monthly report to FMCSA listing the names and license number of each driver tested by the State and the result of the test (pass or fail); and (7) Each driver who receives a State-issued SPE does not carry a copy of the certificate when driving for presentation to authorized Federal, State, or local law enforcement officials.

Issued on: February 1, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–01995 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0319]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from four individuals treated with Implantable Cardioverter Defibrillators (ICDs) who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0319 in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, 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. Background

On November 14, 2018, FMCSA published a FR notice (83 FR 56896) announcing receipt of applications from four individuals treated with ICDs and requested comments from the public. These four individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on December 14, 2018, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the November 14, 2018, **Federal Register** notice and will not be repeated in this notice.

In reaching the decision to deny these exemption requests, the Agency considered information from the Cardiovascular Medical Advisory Criteria, an April 2007 Evidence Report titled ''Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, and a December 2014 focused research report titled ''Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.'' Copies of the reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [Appendix A to Part 391—Medical Advisory Criteria, section D, paragraph 4]. The advisory criteria for 49 CFR 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater then, the level that would be achieved absent such an exemption.

The Agency's decision regarding these exemption applications is based on an individualized assessment of each applicant's medical information provided by the applicant, available medical and scientific data concerning ICD's, and public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope (a transient loss of consciousness) or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. See the April 2007 Evidence Report on Cardiovascular Disease and Commercial Motor vehicle Driver Safety, April 2007.[1] A focused research report on Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed completed for the FMCSA in December of 2014 indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety and upholds the findings of the April 2007 report.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following four applicants have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(4):

Herman L. Bolton (LA)
Robert A. Crawley (MD)
Paul J. Hill (SD)
Johnny L. Walls (AL)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. The list published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

Issued on: February 1, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–01991 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] Now available at *http://ntl.bts.gov/lib/30000/30100/30123/Final_CVD_Evidence_Report_v2.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; American Pyrotechnics Assn. (APA); Request To Add New Members to Current APA Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to grant an exemption to three additional member companies of the American Pyrotechnics Association (APA)—Artisan Pyrotechnics Inc., Montana Display Fireworks, Inc., and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc.—from the prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty. During the 2017 Independence Day period 51 APA members held such an exemption, effective during the period June 28 through July 8 each year through 2020. APA advised FMCSA of the

discontinuance of the exemption for one carrier; with the addition of the three new members the total increases to 53. The exemption granted to the three carriers will terminate at the same time as the other 50 exempted carriers. FMCSA has determined that the terms and conditions of the exemption ensure a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: These exemptions from 49 CFR 395.3(a)(2) are effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

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.*

FOR FURTHER INFORMATION CONTACT: Ms. LaTonya Mimms, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Email: *LaTonya.Mimms@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2007–28043'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. APA Application for Exemption

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying CMV from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. During the 2017 Independence Day period 51 APA members held such an exemption, effective during the period June 28 through July 8 each year through 2020. APA has requested additional exemptions for Artisan Pyrotechnics Inc., DOT# 1898096, Montana Display Fireworks, Inc., DOT# 1030231, and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc., DOT# 2149202, and the discontinuance of an exemption for Island Fireworks, DOT# 414583, increasing the total to 53. Like the other 50 member companies, the three new companies would be subject to all the terms and conditions of the multi-year APA exemption that terminates on July 8, 2020. Although this is less than the 5-year exemption period authorized by 49 U.S.C. 31315(b)(2), FMCSA believes that the interests of the APA members and the Agency would best be served by harmonizing, as far as possible, the expiration dates of all such fireworks-related exemptions. On June 21, 2018, FMCSA granted waivers to these three APA members to allow them to participate in the 2018 Independence Day celebration.

The initial APA application for relief from the 14-hour rule was submitted in 2004; a copy is in the docket. That application fully describes the nature of the pyrotechnic operations of CMV drivers during a typical Independence Day period.

As stated in the 2004 request, the CMV drivers employed by APA member companies are trained pyro-technicians who hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and related equipment by CMVs on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the drivers are responsible for set-up and staging of the fireworks shows.

The APA states that it is seeking an additional exemption for the three new member companies because compliance with the current 14-hour rule in 49 CFR 395.3(a)(2) would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies. To meet the demand for fireworks without the exemption, APA states that its member companies would be required to hire a second driver for most trips. The APA advises that the result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of its members' customers—and that many Americans would be denied this important component of the celebration of Independence Day.

On June 21, 2018, FMCSA granted waivers to APA on behalf of Artisan Pyrotechnics Inc., Montana Display Fireworks, Inc., and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc., to allow these carriers to participate in the 2018 Independence Day celebration. The waiver also allowed the Agency time to complete the exemption process.

IV. Method To Ensure an Equivalent or Greater Level of Safety

The APA believes that the exemption would not adversely affect the safety of the fireworks transportation provided by this motor carrier. According to APA, its member-companies have operated under this Independence Day exemption for the past 10 years without a reported motor carrier safety incident. Moreover, it asserts that, without the

extra time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. As a condition of holding the exemption, each motor carrier will be required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the prior APA exemption.

In its exemption request, APA asserts that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before July 4, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

V. Public Comments

On June 8, 2018, FMCSA published notice of this application and requested public comments (83 FR 26742). The only comment submitted was not relevant to this notice.

VI. FMCSA Response

FMCSA has determined that granting an exemption to Artisan Pyrotechnics Inc., Montana Display Fireworks, Inc., and ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc., will achieve a level of safety equivalent to or greater than the level that compliance with the 14-hour rule would ensure. Prior to publishing the **Federal Register** notice announcing the receipt of APA's application to add these three carriers to the current list of carriers operating under the exemption, FMCSA ensured that each motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any ''imminent hazard'' or other out-of-service (OOS) orders. The Agency conducted a comprehensive investigation of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

With regard to safety statistics, none of the carriers, including the 3 new carriers proposed for exemption, was under an imminent hazard or OOS order, had any alerts in the Safety Management System (SMS), or was under investigation by the Pipeline and Hazardous Materials Safety Administration. All had ''satisfactory'' safety ratings based on compliance reviews, and all had valid Hazardous Materials Safety Permits.

VII. Terms and Conditions of the Exemption

Period of the Exemption

The exemption from 49 CFR 395.3(a)(2) is effective from June 28 through July 8, at 11:59 p.m. local time, each year through 2020 for the 53 carriers identified in this notice.

Terms and Conditions of the Exemption

The exemption from 49 CFR 395.3(a)(2) will be limited to drivers employed by the 50 motor carriers already covered by the multi-year exemption, and drivers employed by the three additional carriers identified by an asterisk in the appendix table of this notice. Section 395.3(a)(2) prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty, as extended by any off-duty or sleeper-berth time in accordance with this exception. The exemption is further contingent on each driver having a full 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period. The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

FMCSA Notification

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs while under this exemption. The notification must be by email to *MCPSD@DOT.GOV* and include the following information:

a. Name of the Exemption: ''APA''

b. Date of the accident,

c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

d. Driver's name and driver's license State, number, and class,

e. Co-Driver's name and driver's license State, number, and class,

f. Vehicle company number and power unit license plate State and number,

g. Number of individuals suffering physical injury,

h. Number of fatalities,

i. The police-reported cause of the accident,

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to *MCPSD@DOT.GOV* as soon as available.

Termination

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and drivers would be subject to FMCSA monitoring while operating under this exemption.

Issued on: February 1, 2019.

Raymond P. Martinez,

Administrator.

APPENDIX TO NOTICE OF APPLICATION FOR APPROVAL OF MOTOR CARRIERS TO UTILIZE AMERICAN PYROTECHNICS ASSOCIATION'S (APA) EXEMPTION FROM THE 14-HOUR RULE DURING INDEPENDENCE DAY CELEBRATIONS

[June 28 through July 8, 2020]

Motor carrier	Street address	City, state, zip code	DOT No.
1. American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2. American Fireworks Display, LLC	P.O. Box 980	Oxford, NY 13830	2115608
3. AM Pyrotechnics, LLC	2429 East 535th Rd	Buffalo, MO 65622	1034961
4. Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct	Maineville, OH 45039	2008107
5. Artisan Pyrotechnics, Inc*	82 Grace Road	Wiggins, MS 39577	1898096
6. Atlas PyroVision Entertainment Group, Inc	136 Old Sharon Rd	Jaffrey, NH 03452	789777
7. Central States Fireworks, Inc	18034 Kincaid Street	Athens, IL 62613	1022659
8. East Coast Pyrotechnics, Inc	4652 Catawba River Rd	Catawba, SC 29704	545033
9. Entertainment Fireworks, Inc	13313 Reeder Road SW	Tenino, WA 98589	680942
10. Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
11. Fireworks & Stage FX America	12650 Hwy. 67S, Suite B	Lakeside, CA 92040	908304
12. Fireworks by Grucci, Inc	20 Pinehurst Drive	Bellport, NY 11713	324490
13. Flashing Thunder Fireworks dba Legal Aluminum King Mtg.	700 E Van Buren Street	Mitchell, IA 50461	420413
14. J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
15. Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
16. Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
17. Hamburg Fireworks Display, Inc	2240 Horns Mill Road SE	Lancaster, OH	395079
18. Hawaii Explosives & Pyrotechnics, Inc	17–7850 N Kulani Road	Mountain View, HI 96771	1375918
19. Hollywood Pyrotechnics, Inc	1567 Antler Point	Eagan, MN 55122	1061068
20. Homeland Fireworks, Inc	P.O. Box 7	Jamieson, OR 97909	1377525
21. J&M Displays, Inc	18064 170th Ave	Yarmouth, IA 52660	377461
22. Lantis Fireworks, Inc	130 Sodrac Dr., Box 229	N Sioux City, SD 57049	534052
23. Legion Fireworks Co., Inc	10 Legion Lane	Wappingers Falls, NY 12590	554391
24. Miand Inc. dba Planet Productions (Mad Bomber)	P.O. Box 294, 3999 Hupp Road, R31.	Kingsbury, IN 46345	777176
25. Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics.	P.O. Box 322	Hallowell, ME 04347	734974
26. Melrose Pyrotechnics, Inc	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
27. Montana Display Fireworks, Inc*	9480 Inspiration Road	Missoula, MT 59808	1030231
28. Precocious Pyrotechnics, Inc	4420–278th Ave. NW	Belgrade, MN 56312	435931
29. Pyro Shows, Inc	115 N 1st Street	LaFollette, TN 37766	456818
30. Pyro Shows of Alabama, Inc	3325 Poplar Lane	Adamsville, AL 35005	2859710
31. Pyro Shows of Texas, Inc	6601 9 Mile Azle Rd	Fort Worth, TX 76135	2432196
32. Pyro Engineering Inc., dba/Bay Fireworks	400 Broadhollow Rd., Ste. #3	Farmingdale, NY 11735	530262
33. Pyro Spectaculars, Inc	3196 N Locust Ave	Rialto, CA 92376	029329
34. Pyro Spectaculars North, Inc	5301 Lang Avenue	McClellan, CA 95652	1671438
35. Pyrotechnic Display, Inc	8450 W St. Francis Rd	Frankfort, IL 60423	1929883
36. Pyrotecnico (S. Vitale Pyrotechnic Industries, Inc.)	302 Wilson Rd	New Castle, PA 16105	526749
37. Pyrotecnico FX	6965 Speedway Blvd., Suite 115.	Las Vegas, NV 89115	1610728
38. Rainbow Fireworks, Inc	76 Plum Ave	Inman, KS 67546	1139643
39. RES Specialty Pyrotechnics	21595 286th St	Belle Plaine, MN 56011	523981
40. Rozzi's Famous Fireworks, Inc	11605 North Lebanon Rd	Loveland, OH 45140	0483686
41. Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
42. Skyworks, Ltd	13513 W Carrier Rd	Carrier, OK 73727	1421047
43. Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd	Wales, MI 48027	2475727
44. Spielbauer Fireworks Co., Inc	220 Roselawn Blvd	Green Bay, WI 54301	046479
45. Spirit of 76	6401 West Hwy. 40	Columbia, MO 65202	2138948
46. Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
47. Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
48. Western Display Fireworks, Ltd	10946 S New Era Rd	Canby, OR 97013	498941
49. Western Enterprises, Inc	P.O. Box 160	Carrier, OK 73727	203517
50. Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
51. Young Explosives Corp	P.O. Box 18653	Rochester, NY 14618	450304
52. Zambelli Fireworks MFG, Co., Inc	P.O. Box 1463	New Castle, PA 16103	033167
53. ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc*	1014 Slocum Road	Wapwallopen, PA 18660	1030231

*Not included in 2017–2020 list of approved carriers.

[FR Doc. 2019–01994 Filed 2–11–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Funding Opportunity (NOFO); Solicitation of Project Proposals for the Passenger Ferry Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) announces the opportunity to apply for $30 million in Fiscal Year (FY) 2019 Section 5307 Urbanized Area Formula Program funds (Catalog of Federal Domestic Assistance #20.507) authorized for competitively selected passenger ferry projects. As required by Federal public transportation law and subject to appropriations, funds will be awarded competitively to designated recipients or eligible direct recipients of Section 5307 funds to assist in the financing of capital projects to support existing passenger ferry service, establish new ferry service, and to repair and modernize ferry boats, terminals, and related facilities and equipment. FTA may award additional funding made available to the program prior to the announcement of project selections.

DATES: Complete proposals must be submitted electronically through the *GRANTS.GOV* ''APPLY'' function by 11:59 p.m. EST April 15, 2019. Prospective applicants should initiate the process by promptly registering on the *GRANTS.GOV* website to ensure completion of the application process before the submission deadline. Instructions for applying can be found on FTA's website at *http://transit.dot.gov/howtoapply* and in the ''FIND'' module of *GRANTS.GOV*. The funding opportunity ID is FTA–2019–002–TPM–PF. Mail and fax submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Vanessa Williams, FTA Office of Program Management, (202) 366–4818, or *vanessa.williams@dot.gov.*

SUPPLEMENTARY INFORMATION:

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C. Eligibility Information
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I. Technical Assistance and Other Program Information

A. Program Description

Section 5307(h) of Title 49, United States Code, as amended by the Fixing America's Surface Transportation (FAST Act) (Pub. L. 114–94, Dec. 4, 2015), authorizes FTA to award funds through a competitive process, as described in this notice, for capital projects to improve the condition and quality of existing passenger ferry services, support the establishment of new passenger ferry services, and to repair and modernize ferry boats, terminals, and related facilities and equipment. FTA recognizes that passenger ferries provide critical and cost-effective transportation links in urban areas throughout the United States, but face a critical backlog of state of good repair and safety investments.

B. Federal Award Information

Federal public transportation law and subject to appropriations authorizes $30 million in FY 2019 for passenger ferry grants under 49 U.S.C. 5307(h) (Ferry program). FTA may supplement the total available with future appropriations. FTA will grant pre-award authority to incur costs for selected projects beginning on the date that project selections are announced. Funds are only available for projects that have not already incurred costs and will be available for obligation until September 30, 2024. In FY 2017, the program received 22 eligible project proposals totaling approximately $65.4 million from 12 states. Under this competition, FTA awarded funds to twenty projects for a total of $58.2 million, using a combination of FY 2017 and FY 2018 funding.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants under this program include: Designated recipients and direct recipients (as defined in FTA Circular 9030), as well as public entities engaged in providing public transportation passenger ferry service in urban areas that are eligible to be direct recipients. If the recipient is eligible to receive 5307 funds, but does not currently have an active grant with FTA, upon selection, the recipient will be required to work with the FTA regional office to establish its organization as an active grantee. This process may require additional documentation to support the organization's technical, financial, and legal capacity to receive and administer Federal funds under this program.

2. Cost Sharing or Matching

The maximum Federal share for projects selected under the Passenger Ferry program is 80 percent of the net project cost, unless noted below by one of the exceptions.

i. The maximum Federal share is 85 percent of the net project cost of acquiring vehicles (including clean-fuel or alternative fuel vehicles) that are compliant with the Clean Air Act (CAA) and/or the Americans with Disabilities Act (ADA) of 1990.

ii. The maximum Federal share is 90 percent of the net project cost of acquiring, installing or constructing vehicle-related equipment or facilities (including clean fuel or alternative-fuel vehicle-related equipment or facilities) that are required by the ADA of 1990, or that are necessary to comply with or maintaining compliance with the Clean Air Act. The award recipient must itemize the cost of specific, discrete, vehicle-related equipment associated with compliance with ADA or CAA to be eligible for the maximum 90 percent Federal share for these costs.

Eligible sources of local match include:

i. Cash from non-governmental sources other than revenues from providing public transportation services;

ii. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues;

iii. Monies received under a service agreement with a State or local social service agency or private social service organization;

iv. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital;

v. Amounts appropriated or otherwise made available to a department or agency of the Government (other than the U.S. Department of Transportation), that are eligible to be expended for public transportation;

vi. In-kind contribution such as the market value of in-kind contributions integral to the project may be counted as a contribution toward local share;

vii. Revenue bond proceeds for a capital project, with prior FTA approval; and

viii. Transportation Development Credits (TDC) (formerly referred to as Toll Revenue Credits).

If an applicant proposes a Federal share greater than 80 percent, the application must clearly explain why the project is eligible for the proposed Federal share. *Note:* Please refer to FTA Circular 9030 for more information

regarding the use of TDCs. FTA will not retroactively approve TDCs as match if they are not included in the proposal submitted under this competition.

3. Eligible Projects

Eligible projects are capital projects for the purchase, replacement, or rehabilitation of ferries, terminals, related infrastructure, related equipment (including fare equipment and communication devices) and expansion. Projects are required to support a passenger ferry service that operates within an urbanized area, as defined under Federal public transportation law, but may include services that operate between an urbanized area and non-urbanized areas. Ferry systems that accommodate cars must also accommodate walk-on passengers in order to be eligible for funding.

Recipients are permitted to use up to 0.5 percent of their requested grant award for workforce development activities eligible under 49 U.S.C 5314(b) and an additional 0.5 percent for costs associated with training at the National Transit Institute. Applicants must identify the proposed use of funds for these activities in the project proposal and identify them separately in the project budget.

D. Application and Submission Information

1. Address

Applications must be submitted electronically through *GRANTS.GOV*. General information for submitting applications through *GRANTS.GOV* can be found at *www.fta.dot.gov/howtoapply* along with specific instructions for the forms and attachments required for submission. Mail and fax submissions will not be accepted. A complete proposal submission consists of two forms: The SF424 Application for Federal Assistance (downloaded from *GRANTS.GOV*) and the supplemental form for the FY 2019 Passenger Ferry Grant Program (downloaded from *GRANTS.GOV* or the FTA website at: *https://www.transit.dot.gov/funding/grants/passenger-ferry-grant-program-section-5307*). Applicants may also attach additional supporting information. Failure to submit the information as requested can delay or prevent review of the application.

2. Content and Form of Application Submission

i. Proposal Submission

A complete proposal submission consists of two forms: The SF424 Mandatory Application for Federal Assistance and the FY 2019 Passenger Ferry Grant Program supplemental form. The supplemental form and any supporting documents must be attached to the ''Attachments'' section of the SF424. A complete application must include responses to all sections of the SF424 Application for Federal Assistance and the supplemental form, unless indicated as optional. The information on the supplemental form will be used to determine applicant and project eligibility for the program, and to evaluate the proposal against the selection criteria described in part E of this notice.

FTA will only accept one supplemental form per SF424 submission. FTA encourages States and other applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If a State or other applicant chooses to submit separate proposals for individual consideration by FTA, each proposal must be submitted using a separate SF424 and supplemental form.

Applicants may attach additional supporting information to the SF424 submission, including but not limited to letters of support, project budgets, fleet status reports, or excerpts from relevant planning documents. Supporting documentation must be described and referenced by file name in the appropriate response section of the supplemental form, or it may not be reviewed.

Information such as applicants name, Federal amount requested, local match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF424 form and Supplemental Form. Applicants must fill in all fields unless stated otherwise on the forms. Applicants should not place N/A or ''refer to attachment'' in lieu of typing in responses in the field sections. If information is copied into the supplemental form from another source, applicants should verify that pasted text is fully captured on the supplemental form and has not been truncated by the character limits built into the form. Applicants should use both the ''Check Package for Errors'' and the ''Validate Form'' validation buttons on both forms to check all required fields on the forms, and ensure that the Federal and local amounts specified are consistent.

ii. Application Content

The SF424 Mandatory Form and the Supplemental Form will prompt applicants for the required information, including:

a. Applicant Name
b. Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number
c. Key contact information (including contact name, address, email address, and phone)
d. Congressional district(s) where project will take place
e. Project Information (including title, an executive summary, and type)
f. A detailed description of the need for the project
g. A detailed description on how the project will support the Ferry program objectives
h. Evidence that the project is consistent with local and regional planning objectives
i. Evidence that the applicant can provide the local cost share
j. A description of the technical, legal, and financial capacity of the applicant
k. A detailed project budget
l. An explanation of the scalability of the project
m. Details on the local matching funds
n. A detailed project timeline

3. Unique Entity Identifier and System for Award Management (SAM)

Each applicant is required to: (1) Be registered in SAM before submitting an 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 the applicant has an active Federal award or an application or plan under consideration by FTA. These requirements do not apply if the applicant: (1) Is an individual; (2) is excepted from the requirements under 2 CFR 25.110(b) or (c); or (3) has an exception approved by FTA under 2 CFR 25.110(d). FTA may not make an award until the applicant has complied with all applicable unique entity identifier and SAM requirements. If an applicant has not fully complied with the requirements by the time FTA is ready to make an award, FTA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant. SAM registration takes approximately 3–5 business days, but FTA recommends allowing ample time, up to several weeks, for completion of all steps. For additional information on obtaining a unique entity identifier, please visit *www.sam.gov.*

4. Submission Dates and Times

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. EST on April 15, 2019. Mail and fax submissions will not be accepted.

FTA urges applicants to submit applications at least 72 hours prior to the due date to allow time to correct any problems that may have caused either *GRANTS.GOV* or FTA systems to reject the submission. Proposals submitted after the deadline will only be considered under extraordinary circumstances not under the applicant's control. Deadlines will not be extended due to scheduled website maintenance. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* website.

Within 48 hours after submitting an electronic application, the applicant should receive two email messages from *GRANTS.GOV:* (1) Confirmation of successful transmission to *GRANTS.GOV* and (2) confirmation of successful validation by *GRANTS.GOV.* If confirmations of successful validation are not received or a notice of failed validation or incomplete materials is received, the applicant must address the reason for the failed validation, as described in the email notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated and check the box on the supplemental form indicating this is a resubmission.

Applicants are encouraged to begin the process of registration on the *GRANTS.GOV* site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before an application can be submitted. Registered applicants may still be required to take steps to keep their registration up to date before submissions can be made successfully: (1) Registration in SAM is renewed annually; and, (2) persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

5. Funding Restrictions

Funds made available under the Ferry program may not be used to fund operating expenses, planning, or preventive maintenance.

6. Other Submission Requirements

Applicants are encouraged to identify scaled funding options in case insufficient funding is available to fund a project at the full requested amount. If an applicant indicates that a project is scalable, the applicant must provide an appropriate minimum funding amount that will fund an eligible project that achieves the objectives of the program and meets all relevant program requirements. The applicant must provide a clear explanation of how the project budget would be affected by a reduced award. FTA may award a lesser amount whether or not a scalable option is provided.

E. Application Review

Projects will be evaluated primarily on the responses provided in the supplemental form. Additional information may be provided to support the responses; however, any additional documentation must be directly referenced on the supplemental form, including the file name where the additional information can be found. FTA will evaluate project proposals for competitive passenger ferry grants based on the criteria described in this notice.

1. Demonstration of Need

Applications will be evaluated based on the quality and extent to which they demonstrate how the proposed project will address an unmet need for capital investment in passenger ferry vehicles, equipment, and/or facilities. FTA will also evaluate the project's impact on service delivery and whether the project represents a one-time or periodic need that cannot reasonably be funded from FTA formula program allocations or State and/or local resources. In evaluating applications, FTA will consider, among other factors, certain project-specific criteria as outlined below:

i. For vessel replacement or rehabilitation projects:

- The age of the asset to be replaced or rehabilitated by the proposed project, relative to its useful life.
- Condition and performance of the asset to be replaced by the proposed project, as ascertained through inspections or otherwise, if available.

ii. For infrastructure (facility) improvements or related-equipment acquisitions:

- The age of the facility or equipment to be rehabilitated or replaced relative to its useful life.
- The degree to which the proposed project will enable the agency to improve the maintenance and condition of the agency's fleet and/or other related ferry assets.

iii. For expansion or new service requests (vessel or facility-related):

- The degree to which the proposed project addresses a current capacity constraint that is limiting the ability of the agency to provide reliable service, meet ridership demands, or maintain vessels and related equipment.
- The degree the proposed new service is supported by ridership demand.

iv. Additional consideration will be given to projects in which the beneficiary of the award contributes a greater share of the total project costs.

2. Demonstration of Benefits

Applications will be evaluated based on how the ferry project will improve the safety and state of good repair of the system or provide additional transportation options to potential riders within the service area. FTA will consider potential benefits such as increased reliability of service, improved operations or maintenance capabilities, or expanded mobility options, intermodal connections, and economic benefits to the community. Applicants should address how the ferry service to be supported by the proposed project is integrated with other regional modes of transportation, including but not limited to: Rail, bus, intercity bus, and private transportation providers. Supporting documentation should include data that demonstrates the number of trips (passengers and vehicles), the number of walk-on passengers, and the frequency of transfers to other modes (if applicable).

3. Planning and Local/Regional Prioritization

Applicants must demonstrate how the proposed project is consistent with local and regional planning documents and identified priorities. This will involve assessing whether the project is consistent with the transit priorities identified in the long-range transportation plan and/or the State and Metropolitan Transportation Improvement Program (STIP/TIP). Applicants should note if the project could not be included in the financially constrained STIP or TIP due to lack of funding; however, if selected, the project must be in the federally approved STIP before grant award.

FTA encourages applicants to demonstrate local support by including letters of support from State Departments of Transportation, local transit agencies, and other relevant stakeholders. In an area with both ferry and other public transit operators, FTA will evaluate whether project proposals demonstrate coordination with and support of other related projects within the applicant's Metropolitan Planning Organization (MPO) or the geographic region within which the proposed project will operate.

4. Local Financial Commitment:

Applicants must identify the source of the local cost share and describe whether such funds are currently available for the project or will need to

be secured if the project is selected for funding. FTA will consider the availability of the local cost share as evidence of local financial commitment to the project. Additional consideration will be given to those projects for which local funds have already been made available or reserved. Applicants should submit evidence of the availability of funds for the project, for example by including a board resolution, letter of support from the State, or other documentation of the source of local funds such as a budget document highlighting the line item or section committing funds to the proposed project. Applicants that request a Federal share greater than 80 percent must clearly explain why the project is eligible for the proposed Federal share.

5. Project Implementation Strategy

Projects will be evaluated based on the extent to which the project is ready to implement within a reasonable period of time and whether the applicant's proposed implementation plans are reasonable and complete.

In assessing whether the project is ready to implement within a reasonable period of time, FTA will consider whether the project qualifies for a Categorical Exclusion (CE), or whether the required environmental work has been initiated or completed for projects that require an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under the National Environmental Policy Act of 1969 (NEPA), as amended. The proposal must also state whether grant funds can be obligated within 12 months from time of award, if selected, and indicate the timeframe under which the Metropolitan Transportation Improvement Program (TIP) and/or Statewide Transportation Improvement Program (STIP) can be amended to include the proposed project. Additional consideration will be given to projects for which grant funds can be obligated within 12 months from time of award.

In assessing whether the proposed implementation plans are reasonable and complete, FTA will review the proposed project implementation plan, including all necessary project milestones and the overall project timeline. For projects that will require formal coordination, approvals, or permits from other agencies or project partners, the applicant must demonstrate coordination with these organizations and their support for the project, such as through letters of support.

6.Technical, Legal, and Financial Capacity

Applicants must demonstrate that they have the technical, legal, and financial capacity to undertake the project. FTA will review relevant oversight assessments and records to determine whether there are any outstanding legal, technical, or financial issues with the applicant that would affect the outcome of the proposed project. Applicants with outstanding legal, technical, or financial compliance issues from a FTA compliance review or FTA grant-related Single Audit finding must explain how corrective actions taken will mitigate negative impacts on the project.

F. Review and Selection Process

In addition to other FTA staff that may review the proposals, a technical evaluation committee will evaluate proposals based on the published evaluation criteria. After applying the above preferences, the FTA Administrator will consider the following key Departmental objectives:

- Using innovative approaches to improve safety and expedite project delivery;
- Supporting economic vitality at the national and regional level;
- Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;
- Accounting for the life-cycle costs of the project to promote the state of good repair; and
- Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

Prior to making an award, FTA is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information Systems (FAPIIS) accessible through SAM. An applicant may review and comment on information about itself that a Federal awarding agency previously entered.

The FTA Administrator will determine the final selection of projects for program funding. FTA may consider geographic diversity, diversity in the size of the transit systems receiving funding, and/or the applicant's receipt of other competitive awards in determining the allocation of program funds. In addition, FTA may consider capping the amount a single applicant may receive. Projects that have a higher local match commitment may also be prioritized.

G. Federal Award Administration

1. Federal Award Notices

Final project selections will be posted on the FTA website. Project recipients should contact their FTA Regional Offices for additional information regarding allocations for projects under the Ferry program.

2. Award Administration

Funds under the Ferry program are available to designated recipients or eligible direct recipients of Section 5307 funds. There is no minimum or maximum grant award amount; however, FTA intends to fund as many meritorious projects as possible. Only proposals from eligible recipients for eligible activities will be considered for funding. Due to funding limitations, projects that are selected for funding may receive less than the amount originally requested. In those cases, applicants must be able to demonstrate that the proposed projects are still viable and can be completed with the amount awarded.

3. Administrative and National Policy Requirements

i. Pre-Award Authority

FTA will issue specific guidance to recipients regarding pre-award authority at the time of selection. FTA does not provide pre-award authority for competitive funds until projects are selected and even then, there are Federal requirements that must be met before costs are incurred. For more information about FTA's policy on pre-award authority, please see the FY 2018 Apportionment Notice published on July 16, 2018 that can be accessed at *https://www.gpo.gov/fdsys/pkg/FR-2018-07-16/pdf/2018-14989.pdf.*

ii. Grant Requirements

If selected, awardees will apply for a grant through FTA's Transit Award Management System (TrAMS). All Ferry recipients are subject to the grant requirements of Section 5307 Urbanized Area Formula Grant program, including those of FTA Circular 9030. All recipients must follow the Award Management Requirements Circular 5010.1E, and the labor protections of 49 U.S.C. 5333(b). All competitive grants, regardless of award amount, will be subject to the congressional notification and release process. Technical assistance regarding these requirements is available from each FTA regional office.

iii. Buy America

FTA requires that all capital procurements meet FTA's Buy America

requirements that require all iron, steel, or manufactured products be produced in the United States, to help create and protect manufacturing jobs in the United States. The Ferry program will have a significant economic impact toward meeting the objectives of the Buy America law. The FAST Act amended the Buy America requirements, 49 U.S.C. 5323(j), to provide for a phased increase in the domestic content for rolling stock. For FY 2019, the cost of components and subcomponents produced in the United States must be more than 65 percent of the cost of all components. For FY 2020 and beyond, the cost of components and subcomponents produced in the United States must be more than 70 percent of the cost of all components. There is no change to the requirement that final assembly of rolling stock must occur in the United States. The Buy America requirements can be found in 49 CFR part 661 and additional guidance on the implementation of the phased increase in domestic content can be found at 81 FR 60278 (Sept. 1, 2016). Any proposal that will require a waiver must identify the items for which a waiver will be sought in the application. Applicants should not proceed with the expectation that waivers will be granted.

iv. Disadvantaged Business Enterprise

Projects that include ferry acquisitions are subject to the Disadvantaged Business Enterprise (DBE) program regulations at 49 CFR part 26 and ferry manufacturers must be certified Transit Vehicle Manufacturers (TVMs) to be eligible to bid on an FTA-assisted ferry procurement. The rule requires that, prior to bidding on any FTA-assisted vehicle procurement, entities that manufacture ferries must submit a DBE Program plan and annual goal methodology to FTA. The FTA will then issue a TVM concurrence/certification letter. Grant recipients must verify each entity's compliance before accepting its bid. A list of certified TVMs is posted on FTA's web page at *http://www.fta.dot.gov/civilrights/12891.html.* Recipients should contact FTA before accepting bids from entities not listed on this web-posting. In lieu of using a certified TVM, recipients may also establish project specific DBE goals for ferry purchases. The FTA will provide additional guidance as grants are awarded. For more information on DBE requirements, please contact Janelle Hinton, Office of Civil Rights, 202–366–9259, email: *janelle.hinton@dot.gov.*

v. Planning

FTA encourages applicants to notify the appropriate State Departments of Transportation and MPOs in areas likely to be served by the project funds made available under these initiatives and programs. Selected projects must be incorporated into the long-range plans and transportation improvement programs of States and metropolitan areas before they are eligible for FTA funding.

vi. Standard Assurances

The applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The applicant must submit the Certifications and Assurances before receiving a grant if it does not have current certifications on file.

4. Reporting

Post-award reporting requirements include the electronic submission of Federal Financial Reports and Milestone Progress Reports.

G. Federal Awarding Agency Contact(s)

For further information concerning this notice, please contact the Ferry program manager, Vanessa Williams, by phone at 202–366–4818, or by email at *vanessa.williams@dot.gov.* A TDD is available for individuals who are deaf or hard of hearing at 800–877–8339. In addition, FTA will post answers to questions and requests for clarifications on FTA's website at: *https://www.transit.dot.gov/funding/grants/passenger-ferry-grant-program-section-5307.* To ensure receipt of accurate information about eligibility or the program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties.

H. Technical Assistance and Other Program Information

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' FTA will consider applications for funding only from eligible recipients for eligible projects listed in Section C. Complete applications must be submitted through *GRANTS.GOV* by 11:59 p.m. EST on April 15, 2019. For issues with *GRANTS.GOV,* please contact *GRANTS.GOV* by phone at 1–800–518–4726 or by email at *support@grants.gov.*

Contact information for FTA's regional offices can be found on FTA's website at *www.fta.dot.gov.*

Issued in Washington, DC.

K. Jane Williams,

Acting Administrator.

[FR Doc. 2019–01951 Filed 2–11–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Intent To Prepare an Environmental Impact Statement for the West Seattle and Ballard Link Extensions, King County, Washington

AGENCY: Federal Transit Administration (FTA), DOT

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Central Puget Sound Regional Transit Authority (Sound Transit) intend to prepare an Environmental Impact Statement (EIS) to evaluate the benefits and impacts of the proposed West Seattle and Ballard Link Extensions (WSBLE), a light rail transit extension project. The project would improve public transit service along the WSBLE corridor between and through the West Seattle, Downtown, and Ballard neighborhoods in Seattle, King County, Washington. It would respond to a growing number of transportation and community needs identified in the agency's regional transit system plan, Sound Transit 3 (ST3).

FTA and Sound Transit will prepare the EIS in accordance with the National Environmental Policy Act (NEPA), FTA environmental regulations, Fixing America's Surface Transportation Act (FAST Act), and Washington's State Environmental Policy Act (SEPA). This Notice initiates formal scoping for the EIS, provides information on the nature of the proposed transit project, invites participation in the EIS process, provides information about the purpose and need for the proposed transit project, includes the general set of alternatives being considered for evaluation in the EIS, and identifies

potential environmental effects to be considered. It also invites comments from interested members of the public, tribes, and agencies on the scope of the EIS and announces upcoming public scoping meetings. Alternatives being considered for evaluation include a No-Build alternative and various build alternatives to develop light rail in the WSBLE corridor. The alternatives were developed through a local planning process including a Regional Transit Long-Range Plan, a regional system plan of transit investments (ST3), and a SEPA early scoping and alternatives development process specific to the WSBLE corridor. Results of the SEPA early scoping process, the alternatives development process and findings, and other background technical reports are available at Sound Transit's office located at 401 S Jackson Street, Seattle, WA 98104–2826, on the project website: *www.soundtransit.org/WSBLink,* or by contacting the project line at (206) 903–7229.

DATES: The public scoping period will begin on the date of publication of this Notice and will continue through March 18, 2019 or 30 days from the date of publication, whichever is later. Please send written comments on the scope of the EIS, including the draft purpose and need statement, the alternatives to be considered in the EIS, the environmental and community impacts to be evaluated, and any other project-related issues, to the Sound Transit address listed in **ADDRESSES** below.

Public scoping meetings will be held at the times and locations indicated in **ADDRESSES** below. Sound Transit and FTA will accept written (via mail and online) and verbal comments recorded by a court reporter at those meetings. FTA and Sound Transit have also scheduled a meeting to receive comments from agencies and tribes who have an interest in the proposed project (on March 5, 2019). Invitations to the agency and tribal scoping meeting have been sent to appropriate Federal, tribal, state, and local governmental units.

ADDRESSES: Written comments on the scope of the EIS must be received by March 18, 2019 or 30 days from the publication of this Notice, whichever is later. Please send comments to: WSBLE (c/o Lauren Swift, Central Corridor Environmental Manager) Sound Transit, 401 S. Jackson Street, Seattle, WA 98104–2826, or by email to *WSBscopingcomments@soundtransit.org.* Comments will also be accepted at the public scoping meetings which will be held at:

1. February 27, 2019, 6:00–8:30, Alki Masonic Center, 4736 40th Ave. SW, Seattle, WA 98116.
2. February 28, 2019, 6:00–8:30, Ballard High School, 1418 NW 65th St., Seattle, WA 98117.
3. March 7, 2019, 5:00–7:30, Sound Transit, Union Station, 401 S. Jackson Street, Seattle, WA 98104.

All public meeting locations are accessible to persons with disabilities. To request materials be prepared and supplied in alternate formats or languages, please call the project line, (206) 903–7299/TTY Relay 711 at least 48 hours in advance of the meeting. Persons who are deaf or hard of hearing may call (888) 713–4900/TTY Relay 711.

Information about the proposed project, the alternatives development process, scoping, and the EIS process will be available at the scoping meetings, at Sound Transit offices, on the project website: *http://www.soundtransit.org/WSBLink,* or by contacting the project line at (206) 903–7229.

FOR FURTHER INFORMATION CONTACT: Mark Assam, FTA Environmental Protection Specialist, phone: (206) 220–4465 or Lauren Swift, Sound Transit Central Corridor Environmental Manager, phone: (206) 398–5301.

SUPPLEMENTARY INFORMATION:

Background. NEPA ''scoping'' (40 CFR 1501.7) has specific and fairly limited objectives, one of which is to identify the light rail alignment alternatives' significant issues that will be examined in detail in the EIS, while simultaneously limiting consideration and development of issues that are not truly significant. The NEPA scoping process should identify potentially significant environmental impacts caused by the project and that give rise to the need to prepare an EIS; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement. The EIS must be focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations—''to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives . . . [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses.'' Executive Order 11991, of May 24, 1977. Transit projects may also generate environmental benefits, which should also be highlighted; the EIS process should draw attention to positive impacts, not just negative.

The Proposed Project. Sound Transit is proposing to expand Link light rail transit service from downtown Seattle to West Seattle's Alaska Junction neighborhood, and to Ballard's Market Street area. The project corridor is approximately 11.8 miles long. The project is part of the ST3 Plan of regional transit system investments, approved for funding by voters in the region in 2016. The ST3 Plan is available on Sound Transit's website at: *https://www.soundtransit.org/get-to-know-us/documents-reports/st3-2016-guide.*

Purpose of and Need for the Project. The Purpose and Need statement establishes the basis for developing and evaluating a range of reasonable alternatives for environmental review and assists with the identification of a Preferred Alternative. The purpose of the WSBLE project is to expand the Link light rail system from downtown Seattle to West Seattle and Ballard, to make appropriate community investments to improve mobility, and to increase capacity and connectivity for regional connections in order to:

- Provide high quality rapid, reliable, and efficient light rail transit service to communities in the project corridor as defined through the local planning process and reflected in the ST3 Plan (Sound Transit, 2016).
- Improve regional mobility by increasing connectivity and capacity through downtown Seattle to meet projected transit demand.
- Connect regional centers as described in adopted regional and local land use, transportation, and economic development plans and Sound Transit's Regional Transit Long-Range Plan Update (Sound Transit, 2014).
- Implement a system that is technically and financially feasible to build, operate, and maintain.
- Expand mobility for the corridor and region's residents, which include transit-dependent, low-income, and minority populations.
- Encourage equitable and sustainable urban growth in station areas through support of transit-oriented development and multimodal integration in a manner that is consistent with local land use plans and policies, including Sound Transit's Transit Oriented Development and Sustainability policies.
- Encourage convenient and safe non-motorized access to stations such as bicycle and pedestrian connections

consistent with Sound Transit's System Access Policy.

• Preserve and promote a healthy environment and economy by minimizing adverse impacts on the natural, built, and social environments through sustainable practices.

The project is needed because:

• When measured using national standards, existing transit routes between downtown Seattle, West Seattle and Ballard currently operate with poor reliability. Roadway congestion in the project corridor will continue to degrade transit performance and reliability as the city is expected to add 70,000 residential units and 115,000 jobs by 2035, without any major expansions in roadways.

• Increased ridership from regional population and employment growth will increase operational frequency in the existing downtown Seattle transit tunnel requiring additional tunnel capacity.

• Puget Sound Regional Council (PSRC), the regional metropolitan planning organization, and local plans call for High Capacity Transit (HCT) in the corridor consistent with VISION 2040 (PSRC, 2009) and Sound Transit's Regional Transit Long-Range Plan Update (Sound Transit, 2014).

• The region's citizens and communities, including transit dependent residents and low-income and minority population, need long-term regional mobility and multimodal connectivity as called for in the Washington State Growth Management Act.

• Regional and local plans call for increased residential and/or employment density at and around HCT stations, and increased options for multimodal access.

• Environmental and sustainability goals of the state and region, as established in Washington state law and embodied in PSRC's VISION 2040 and 2018 Regional Transportation Plan, include reducing greenhouse gas emissions by decreasing vehicle miles traveled.

Proposed Alternatives. Three light rail transit (LRT) build alternatives have been identified for the WSBLE project, as well as a no-build alternative, as required under NEPA, that serves as a baseline against which to assess the impacts of the proposed alternatives. The mode and corridor served for the proposed project were identified through the years-long planning process for the Sound Transit Regional Transit Long-Range Plan and ST3 Plan. The three LRT alternatives were developed through an alternatives development process which built off of the Regional Transit Long-Range Plan and ST3 planning work. The planning and alternatives development processes included technical analysis, public engagement, and input from affected local jurisdictions. Sound Transit developed an initial range of alternatives from agency and public input during the SEPA early scoping process (February 2 through March 5, 2018). The project Elected Leadership Group (ELG), a comprehensive group of elected officials that represent the service corridor, and the Stakeholder Advisory Group (SAG), an advisory group consisting of members of the community appointed by the ELG, then recommended how to narrow and refine these alternatives based on additional analysis and community, agency, and tribal input. Consistent with 23 CFR part 450.318, FTA is relying on the results of these local planning processes to inform the mode, corridor, and range of reasonable alternatives to be evaluated during the environmental process.

FTA and Sound Transit invite comments on these alternatives. The input received during the scoping period will help FTA and Sound Transit identify alternatives to evaluate in the Draft EIS. After scoping concludes, the Sound Transit Board is expected to consider the scoping comments received and then act on a motion addressing the purpose and need for the project, the scope of environmental review, and identifying the preferred alternative and other alternatives to be considered in the Draft EIS.

No Build Alternative. The No Build Alternative reflects the existing transportation system plus the transportation improvements included in PSRC's Transportation Improvement Program.

Light Rail Transit Alternatives. Each LRT alternative is approximately 11.8 miles and includes fourteen stations that serve the following areas: Alaska Junction, Avalon, Delridge, SODO, the sports stadiums, International District/Chinatown, Midtown, Westlake, Denny, South Lake Union, Seattle Center, Smith Cove, Interbay, and Ballard. FTA and Sound Transit may also examine several design options and potential minimal operable segments for the proposed alternatives. Information about the proposed project, the alternatives development process, scoping, and the EIS process will be available at the scoping meetings, at Sound Transit offices, on the project website: *http://www.soundtransit.org/WSBLink,* or by contacting the project line at (206) 903–7229. For purposes of the Notice, the proposed alternatives can be generally described as follows:

In West Seattle, the alternatives include several elevated and tunnel station options in the Alaska Junction area in the vicinity of SW Alaska Street on either 41st Avenue SW, 42nd Avenue SW, or 44th Avenue SW. From the Alaska Junction, the alternatives travel east in either an elevated or tunnel configuration with elevated or tunnel station options at Avalon, and continue in an elevated configuration along SW Genesee Street with an elevated station in Delridge along or west of Delridge Way SW. The alternatives then cross the Duwamish River on a high level fixed bridge parallel to the existing West Seattle Bridge on either the north or south side. The alternatives continue east in an elevated configuration before turning north following the alignment of the E3 Busway to a new elevated or at-grade SODO station and an at-grade Stadium station and connect to the existing downtown Seattle transit tunnel.

A new downtown tunnel would begin in the vicinity of the Stadium station, it would head north with alignments under 4th Avenue S or 5th Avenue S through the International District/Chinatown and then travel northwest along 5th Avenue or 6th Avenue through Midtown and Westlake. The alternatives would then continue in a tunnel configuration along Westlake Ave N to South Lake Union with a station near Denny Way before turning northwest with a station near Aurora Ave N between Harrison and Roy streets. The alternatives would continue in tunnel towards Seattle Center with a station on either Republican or Mercer streets. The alternatives then turn north and begin to transition to at-grade or elevated configurations to serve a Smith Cove station along Elliott Avenue W. From the Smith Cove station, the alternatives either continue in an elevated configuration along 15th Avenue W or transition to at-grade along the east side of the Burlington Northern Santa Fe (BNSF) railway tracks to a station in Interbay near W Dravus Street. From the Interbay station, one alternative would continue in an elevated alignment along 15th Avenue W and cross Salmon Bay with a movable bridge. The other alternatives transition to the east of 15th Avenue W and cross Salmon Bay with a high level fixed bridge or tunnel. Station options in Ballard include elevated and tunnel stations near NW Market Street on 15th Avenue NW or 14th Avenue NW.

The build alternatives could also include transit related roadway, bicycle, maritime, and pedestrian projects by

Sound Transit or others. These improvements may be eligible for federal funding and could be part of the transit project or constructed together with it as part of a joint effort with agency partners, thereby meriting joint environmental analysis. This could include access improvements around station areas and over waterway crossings. Sound Transit would identify these improvements and could include them as it works with partner agencies.

Possible Adverse Effects. Consistent with NEPA, FTA and Sound Transit will evaluate, with input from the public, tribes, and agencies, the potential impacts of the alternatives on the natural, built, and social environments. Likely areas of investigation include, transportation (including navigable waterways), land use and consistency with applicable plans, land acquisition and displacements, socioeconomic impacts, park and recreation resources, historic and cultural resources, environmental justice, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species and marine mammals. The EIS will evaluate short-term construction impacts and long-term operational impacts. It will also consider indirect, secondary and cumulative impacts. The EIS will also propose measures to avoid, minimize, or mitigate significant adverse impacts.

In accordance with FTA policy and regulations, FTA and Sound Transit will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process.

Roles of Agencies and the Public. NEPA, and FTA's regulations for implementing NEPA, call for public involvement in the EIS process. FTA and Sound Transit therefore invite Federal and non-Federal agencies to participate in the NEPA process as ''cooperating'' or ''participating'' agencies. FTA will also initiate government-to-government consultation with Indian tribes and will invite them to participate in the process.

Any agency or tribe interested in the project that does not receive such an invitation should promptly notify the Sound Transit Corridor Environmental Manager identified above under **ADDRESSES**.

FTA and Sound Transit will prepare a draft Coordination Plan for agency involvement. Interested parties will be able to review the draft Coordination Plan on the project website. The draft Coordination Plan will identify the project's coordination approach and structure, will provide details on the major schedule milestones for agency and public involvement, and will include an initial list of interested agencies and organizations.

Combined FEIS and Record of Decision. Under 23 U.S.C. 139, FTA should combine the Final EIS and Record of Decision if it is practicable. The EIS will be a joint document under NEPA and SEPA; therefore, FTA and Sound Transit have determined that this is not practicable to combine the Final EIS and Record of Decision.

Paperwork Reduction. The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, FTA limits as much as possible the distribution of complete sets of printed environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received before the document is printed, FTA and Sound Transit will distribute only the executive summary of the environmental document that will include a compact disc of the complete environmental document and a link to the project website where it can be accessed online. A complete printed set of the environmental document will be available for review at the Sound Transit's offices and local libraries; an electronic copy of the complete environmental document will also be available on Sound Transit's project website.

Linda M. Gehrke,

Regional Administrator.

[FR Doc. 2019–01949 Filed 2–11–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0021; Notice 2]

Gillig, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Gillig LLC (Gillig) has determined that certain model year (MY) 1997–2016 Gillig Low Floor buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Gillig filed a noncompliance report dated February 24, 2017. Gillig also petitioned NHTSA on March 24, 2017, and supplemented its petition on May 10, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–5304, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. Overview

Gillig LLC (Gillig) has determined that certain model year (MY) 1997–2016 Gillig Low Floor buses do not fully comply with paragraph S7.1.1.13.1 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). Gillig filed a noncompliance report dated February 24, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* As stated in the noncompliance report, turn signal lights that do not meet the requirements of the standard may not be sufficiently visible to other drivers or pedestrians, potentially increasing the risk of a crash. Gillig also petitioned NHTSA on March 24, 2017, and supplemented its petition on May 10, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556.

Notice of receipt of the petition was published with a 30-day public comment period, on October 4, 2017, in the **Federal Register** (82 FR 46346). No comments were received.

II. Buses Involved

Approximately 17,138 MY 1997–2016 Gillig Low Floor buses, manufactured between December 31, 1997, and February 3, 2017, are potentially involved.

III. Noncompliance

Gillig stated that it installed six different generations of turn signal assemblies in the subject buses; however, after receiving two complaints that their Generation 7 turn signal assemblies were not sufficiently visible, Gillig and the turn signal manufacturer went back and tested the previous generations to see if they met the requirements of FMVSS No. 108. Test

results for generations 1 through 6 of the turn signal assemblies showed that they do not meet all the minimum photometry requirements of paragraph S7.1.1.13.1 of FMVSS No. 108.

IV. Rule Text

Paragraph S7.1.1.13.1 of FMVSS No. 108 includes the requirements relevant to this petition:

- When tested according to the procedure of S14.2.1, each front turn signal lamp must be designed to conform to the base photometry requirements plus any applicable multipliers as shown in Tables VI-a and VI-b for the number of lamp compartments or individual lamps and the type of vehicle it is installed on.

V. Summary of Gillig's Petition

Gillig described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Gillig submitted the following arguments:

1. *Analysis:* For front turn signals, the FMVSS No. 108 photometry requirements provide that ''when tested according to the procedure of S14.2.1, each front turn signal lamp must be designed to conform to the base photometry requirements plus any applicable multipliers [1] for the number of lamp compartments or individual lamps and the type of vehicle it is installed on.'' *See* FMVSS No. 108, S7.1.1.13.1.

A front turn signal lamp meets the photometry requirements of FMVSS No. 108 if it: (1) Meets the minimum photometric intensity (PI) requirement in each of the five test groups, (2) none of the values for the individual test points are less than 60% of its own minimum PI value, and (3) the minimum PI value between test points is not less than the lower specified minimum value of the two closest adjacent test points on a horizontal or vertical line. Stated another way, an individual test point may be up to 40% below its minimum PI value as long as the group in which it is contained achieves the overall group minimum PI value. Based on this approach, even if the turn signal did not meet the minimum photometry requirements at multiple individual test points, the assembly complies with the standard as long as the overall light intensity of all the test points included within the group does not fall below the required minimum value of the group. (*See* 61 FR 1663; January 23, 1996) (''The photometric requirements for turn signal lamps may be met at zones or groups of test points, instead of at individual test points.'')

Gillig, in concert with Hamsar Diversco (Hamsar), its lighting supplier, conducted a series of compliance testing for Generations 1 to 6. In order to accurately execute the tests, Hamsar used CAD drawings of the Gillig Low Floor bus to construct an aluminum test stand fixture. The test stand precisely matched the orientation and angle at which the turn signal would have been installed on a Gillig Low Floor bus. Hamsar then conducted a series of tests measuring the PI output using samples of each of the available generations of turn signals. A summary of test data shows:

(a) For Generations 1 and 2 (the oldest generations), the assemblies meet the minimum photometric intensity (PI) requirements for 3 of 5 test groups and allowable 60% of minimum PI at 13 of 19 individual test points. The turn signal's overall PI output of 1271 candelas is approximately 25% below the combined minimum requirements for all 5 groups (1710 candelas).

(b) For turn signals in Generation 3, the assemblies meet the minimum PI requirements for 3 of 5 test groups and allowable 60% of minimum PI at 13 of 19 individual test points. However, the overall PI output for Generation 3 turn signals of 2506 candelas is 47% greater than the combined minimum requirements for all 5 groups (1710 candelas).[2]

(c) For turn signals in Generation 4, the assemblies meet the minimum PI requirements for 3 of 5 test groups and allowable 60% of minimum PI at 15 of 19 individual test points. However, the overall PI output for Generation 4 turn signals of 2120 candelas is 24% greater than the combined minimum requirements for all 5 groups (1710 candelas).

(d) For turn signals in Generation 5, the assemblies meet the minimum PI requirements for 2 of 5 test groups and allowable 60% of minimum PI at 8 of 19 individual test points. However, the overall PI output for Generation 5 turn signals of 1403 candelas is only 18% below the combined minimum requirements for all 5 groups (1710 candelas).

(e) For turn signal assemblies in Generation 6, the assemblies also meet the minimum photometric intensity for 3 of 5 test groups and allowable 60% of minimum photometric intensity at 12 of 19 individual test points. The overall photometric intensity output for Generation 6 turn signals of 4201 candelas is 146% greater than the combined minimum requirements for all 5 groups (1710 candelas).

Gillig states that for the test groups in each generation that meet the PI requirements, the values for those groups well exceed the minimum values for the group. The PI output for groups exceeding the minimum values in Generations 1 and 2 achieve 119%–242% of minimum values. The PI output for Generation 3 turn signals achieve 105%–575% of minimum values. The PI output for Generation 4 turn signals achieve 109%–386% of minimum values. The PI output for Generation 5 turn signals achieve 224%–267% of minimum values. Finally, the PI output for Generation 6 turn signals achieve 114%–1022% of minimum values.

Gillig further contends that the turn signals are sufficiently bright and visible overall and there is little if any perceptible difference in light output when compared with a compliant turn signal. The comparisons also illustrate how visually similar the performance of the earlier generations of the assemblies are to the FMVSS No. 108 standard, and why their noncompliance garnered no attention, by Gillig or its customers, in over twenty years of production.

2. *NHTSA has Previously Granted Petitions Where Lighting Equipment Did Not Meet the Photometry Requirements:* Gillig contends that from its inception, the Safety Act has included a provision recognizing that some noncompliances pose little or no safety risk. In applying this recognition to particular fact situations, Gillig asserts that the agency considers whether the noncompliance gives rise to ''a significantly greater risk than . . . in a compliant vehicle.'' See 69 FR 19897–19900 (April 14, 2000).

Relying on this same principle, Gillig contends that despite the technical noncompliance with the PI requirements, the light output in Generation 1–6 turn signals is sufficiently bright and does not create a greater risk than turn signal assemblies that fully meet the photometric parameters. Gillig states that NHTSA has considered deviations from these photometric parameters on numerous occasions, frequently finding that there is no need for a recall remedy campaign when there are other factors contributing to the overall brightness of the equipment.

[1] All of the designs of the turn signal assemblies employ a reflector. Since the spacing from the geometric centroid of the turn signal to the lighted edge of the lower beam of the headlamp is greater than 100 mm, a multiplier is not applicable. (FMVSS No. 108, S7.1.1.10.3, S7.1.1.10.4(a)).

[2] In addition, the integrated side markers for Generation 3 turn signals were tested and meet all photometric requirements.

For example, the agency granted a petition by General Motors [3] where its turn signals met the photometry requirements in 3 of 4 test groups and produced, on average, 90% of the required PI output. For the three complying groups of turn signals, the assemblies exceeded the light intensity requirements by at least 20%.

Gillig further states that the agency granted similar petitions for inconsequential noncompliance where the product did not meet the photometric intensity requirements.[4]

Here, Gillig asserts that because the PI output of the compliant test groups within Generations 3, 4 and 6 exceeds the candela requirements by a substantial margin, a range of 24%–146% above, the additional candela offsets the overall performance of the turn signals.[5]

Gillig observes that in some instances, involving reduced photometric output, NHTSA has denied the petition on the basis that the condition created a measurable impact on the driver's ability to see objects on or above the road.[6] In contrast, according to Gillig, the only indication of such an impact involves the Generation 7 assemblies for which Gillig is in the process of conducting a recall remedy campaign. Gillig states that there is no indication that the deviation in performance for Generations 1–6 has led to any difficulty in seeing and responding to the turn signals, and as supported by the field history, the turn signal assemblies have operated successfully for years and in some cases decades.

Gillig states that the agency has long considered changes in light output in the range presented here as being visually imperceptible to vehicle occupants or other drivers.[7] Gillig also states that the agency has noted that turn signals, unlike headlamps, do not affect road illumination so that a reduced amount of light output would not, by itself, create an increased risk to the public.[8]

Finally, according to Gillig, the environment in which the Gillig turn signals are used diminishes any potential risk to safety. Gillig explains that because the buses in which the subject turn signals are installed are predominantly public transit buses, they are managed by fleet operators and undergo regular maintenance and reviews by skilled technicians.[9] Part of that process includes a pre-trip inspection. That protocol requires a review of the bus's operating systems, including a review of the turn signals. Consequently, according to Gillig, if the photometric intensity of the Generations 1–6 lights were inadequate, trained professional service personnel and drivers would have identified this over the years, and in some cases, decades of pre-trip inspections.[10] Gillig states it has never received a complaint, notice or report related to visibility concerns with the Generation 1–6 turn signals, underscoring the overall visibility of the turn signals.

Gillig concludes by stating that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

3. *Supplemental Petition:* In April 2017, and as part of its ongoing quality review process, Gillig contracted with an independent lighting certification laboratory (Calcoast-ITL) to conduct a series of additional compliance tests for the turn signals included in Generations 1–6. In order to accurately execute the testing, CAD drawings of the front of the Gillig Low Floor bus were used to construct an aluminum test stand fixture. The test stand precisely matched the orientation and angles at which the right and left front turn signals would have been installed on the bus. The laboratory then conducted a series of tests measuring the PI output using samples of each of the available generations of turn signals. The testing was certified to have been conducted in accordance with the FMVSS 108 Test Procedure (TP–108–13). A summary of the test data provides:

(a) For Generations 1 and 2 (the oldest generations), the assemblies meet the minimum photometric intensity (PI) requirements for 3 of 5 test groups and allowable 60% of minimum PI at 13 of 19 individual test points. The turn signal's overall PI output of 1364 candelas is approximately 20% below the combined minimum requirements for all 5 groups (1710 candelas).

(b) For turn signals in Generation 3, the assemblies meet the minimum PI requirements for 3 of 5 test groups and allowable 60% of minimum PI at 15 of 19 individual test points. However, the overall PI output for Generation 3 turn signals of 2387 candelas is 40% greater than the combined minimum requirements for all 5 groups (1710 candelas).[11]

(c) For turn signals in Generation 4, the assemblies meet the minimum PI requirements for 4 of 5 test groups and allowable 60% of minimum PI at 15 of 19 individual test points. However, the overall PI output for Generation 4 turn signals of 3307 candelas is 93% greater than the combined minimum requirements for all 5 groups (1710 candelas).

(d) For turn signals in Generation 5, the assemblies meet the minimum PI requirements for 2 of 5 test groups and allowable 60% of minimum PI at 12 of 19 individual test points. However, the overall PI output for Generation 5 turn signals of 2385 candelas is only 39% below the combined minimum requirements for all 5 groups (1710 candelas).

(e) For turn signal assemblies in Generation 6, the assemblies also meet the minimum photometric intensity for 4 of 5 test groups and allowable 60% of minimum photometric intensity at 17 of 19 individual test points. The overall photometric intensity output for Generation 6 turn signals of 5655 candelas is 231% greater than the combined minimum requirements for all 5 groups (1710 candelas).

Thus, the new PI output for groups that exceed the minimum values are:

- Generations 1 and 2 achieve 122%–267% of minimum values.
- Generation 3 achieves 192%–428% of minimum values.
- Generation 4 achieves 125%–598% of minimum values.
- Generation 5 achieves 367%–445% of minimum values.
- Generation 6 achieves 143%–1185% of minimum values.

As a result, according to Gillig, the groups that exceed the minimum values in each lamp compensate for the groups that are below the minimums to the extent that the overall PI outputs of the most recent four generation of lights (Generations 3–6) significantly exceed the overall PI output required for a front turn signal lamp (1710 candelas).

As part of Gillig's supplemental petition, it included a video which shows a side-by-side comparison of

[3] 61 FR 1663–1664 (January 22, 1996).

[4] 78 FR 46000 (July 30, 2013); 55 FR 37602 (September 12, 1990); 61 FR 1663 (January 22, 1996).

[5] 63 FR 70179 (December 18, 1998); 61 FR 1663–1664 (January 22, 1996).

[6] 66 FR 38340 (July 23, 2001).

[7] 59 FR 65428 (December 19, 1994).

[8] 66 FR 38341 (July 23, 2001).

[9] According to Gillig, the typical life cycle for a public transit bus is either 12 years or 500,000 miles, meaning that the majority of the vehicles with Generation 1–6 turn signals may no longer be in service. However, arguments that only a small number of vehicles or items of motor vehicle equipment are affected by a noncompliance do not justify granting an inconsequentiality petition.

[10] 64 FR 44575 (August 16, 1999).

[11] In addition, the integrated side markers for Generation 3 turn signals were tested and meet all photometric requirements.

Generation 1–6 turn signal assemblies with a newer generation of turn signal that exceeds all FMVSS No. 108 minimum requirements for photometry. Gillig says that the comparisons were performed with the lights in their various generations installed on the same bus as it was driven through a turning maneuver (filmed indoors to control ambient lighting throughout the comparisons). Gillig believes that it is evident from the multiple angles in the video that the lights from Generation 1–6 are so bright and large that they are virtually indistinguishable from the newer version.

Gillig's complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and following the online search instructions to locate the docket number listed in the heading of this notice.

VI. NHTSA Analysis

As part of Gillig's petition, Gillig submitted third-party compliance test reports which indicated that the turn signal lamps failed to meet the turn signal lamp photometry requirements in Table VI of FMVSS No. 108 as outlined below:

- Generation 1 and 2 turn signal lamps—
  - Two out of the five groups failed to meet the group minimum photometric intensity.
  - Six out of the nineteen test points fell below 60% of the minimum requirement (the values ranged from 32% to 49% of the minimum requirement).
- Generation 3 turn signal lamps—
  - Two out of the five groups failed to meet the group minimum photometric intensity.
  - Four out of the nineteen test points fell below 60% of the minimum requirement (the values ranged from 40% to 53% of the minimum requirement).
- Generation 4 turn signal lamps—
  - Two out of the five groups failed to meet the group minimum photometric intensity.
  - Four out of the nineteen test points fell below 60% of the minimum requirement (the values ranged from 41% to 50% of the minimum requirement).
- Generation 5 turn signal lamps—
  - Three out of the five groups failed to meet the group minimum photometric intensity.
  - Seven out of the nineteen test points fell below 60% of the minimum requirement (the values ranged from 14% to 55% of the minimum requirement).
- Generation 6 turn signal lamps—
  - Two out of the five groups failed to meet the minimum photometric intensity.
  - Two out of the nineteen test points fell below 60% of the minimum requirement (the values ranged from 30% to 50% of the minimum requirement).

The above summary indicates that the turn signal lamps in these vehicles are noncompliant.

According to Gillig, the assemblies were certified as compliant using an axis of reference that did not correspond to the actual orientation of the lighting as installed on the bus. Gillig's petition concerns the ability of the lamps to meet FMVSS No. 108 for certain test points when tested at their final installation angle.

NHTSA does not find Gillig's arguments persuasive that the noncompliant light output from the installed lamps is inconsequential to safety, as explained below:

Consistent with what was previously stated in 63 FR 1663 (January 23, 1996), NHTSA herein reiterates that the photometric requirements for turn signal lamps may be met at zones or groups of test points, instead of at individual test points as long as each individual test point is at least 60% of the minimum requirement. However, Gillig attempted to justify the noncompliance by pointing to the sum of all group minimums. Overall photometric intensity output, as described in Gillig's petition, is not defined by FMVSS No. 108 as the cumulative value of group minimums. Rather, FMVSS No. 108 per Table VI–a footnote 1 permits a test point in a group to be less than the minimum required value, if and only if it is also not less than 60% of the minimum and the group minimum can be still met when adjacent test points within the group make up the difference. A group failing to meet the group minimum requirements is a noncompliance. In addition, it should also be noted that if a test point in a group has a value that is less than 60% of the minimum required value, then it is also non-compliant. The lamps as installed in Gillig's buses do not meet minimums and therefore will provide insufficient output to signal appropriately to motorists and pedestrians. The need for safety for this requirement is to have a vehicle's turn signal be clearly visible at all zones/groups.

Furthermore, based on NHTSA's review of the submitted test reports, it appears that the turn signal lamps subject to the petition were not tested for visibility in their installed position. Having insufficient visibility would create a potentially unsafe condition if other motorists or pedestrians could not see the turn signal as intended by the standard.

NHTSA reviewed Gillig's referenced inconsequential non-compliance petitions used to support its petition and found them to be unpersuasive. 61 FR 1663–1664 (January 22, 1996) showed failed photometric values of 10% below the minimum and 78 FR 46000 (July 30, 2013) showed photometric values of 4% below the lower limit, both of which are supported by 55 FR 37602 (September 12, 1990) and ''Driver Perception of Just Noticeable Differences of Automotive Signal Lamp Intensities'' (DOT HS 808 209, September 1994) where a reduction of 25% of luminous intensity is required before the human eye can detect the difference between two lamps. 55 FR 37602 (September 12, 1990) and ''Driver Perception of Just Noticeable Differences of Automotive Signal Lamp Intensities'' (DOT HS 808 209, September 1994) does not apply to Gillig's petition since each generation contained a failing group ranging from 41% to 77% below the required group minimum. 63 FR 70179 (December 18, 1998) is unpersuasive as this pertains to stop lamps which have different activation requirements than turn signal lamps and more than one light source will always be illuminated, as opposed to turn signal lamps. 66 FR 38341 (July 23, 2001) is irrelevant because the term ''less critical'' does not necessarily mean it does not impact safety. 64 FR 44575 (August 16, 1999) is irrelevant because replacement of a turn signal bulb will restore optimal performance to the turn signal assembly and a more rigorous maintenance schedule is intended to compensate for an improper turn signal bulb outage indicator.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Gillig has not met its burden of persuasion that the FMVSS No. 108 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Gillig's petition is hereby denied and Gillig is obligated to provide notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 through 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey Mark Giuseppe,

Associate Administrator for Enforcement.

[FR Doc. 2019–01920 Filed 2–11–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Public Meetings

AGENCY: Saint Lawrence Seaway Development Corporation (SLSDC), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the public meeting via conference call of the Saint Lawrence Seaway Development Corporation Advisory Board.

DATES: The public meeting will be held on (all times Eastern):

- Monday, March 25, 2019 from 3:00p.m.–5:00p.m. EST

ADDRESSES: The meeting will be held via conference call at the SLSDC's Headquarters, 55 M Street SE, Suite 930, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Wayne Williams, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590; 202–366–0091.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC). The agenda for this meeting will be as follows:

March 25, 2019 from 3:00 p.m.–5:00 p.m. EST

1. Opening Remarks
2. Consideration of Minutes of Past Meeting
3. Quarterly Report
4. Old and New Business
5. Closing Discussion
6. Adjournment

Public Participation

Attendance at the meeting is open to the interested public. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact the person listed under the heading, **FOR FURTHER INFORMATION CONTACT**, not later than Monday, March 18, 2019. Any member of the public may present a written statement to the Advisory Board at any time.

Carrie Lavigne,

Approving Official, Chief Counsel, Saint Lawrence Seaway Development Corporation.

[FR Doc. 2019–01975 Filed 2–11–19; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning changes in corporate control and capital structure.

DATES: Written comments should be received on or before April 15, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Corporate Control and Capital Structure.

OMB Number: 1545–1814.

Form Number: 1099–CAP.

Abstract: Any corporation that undergoes reorganization under Regulation section 1.6043–4T with stock, cash, and other property over $100 million must file Form 1099–CAP with IRS shareholders.

Current Actions: There are no changes being made to the collection tool at this time. However, the agency is updating the estimated number of responses based on the most recent filing data.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 600.

Estimated Time per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 108 hours.

The following paragraph applies to all of 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 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 4, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–01936 Filed 2–11–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning statement by person(s) receiving gambling winnings.

DATES: Written comments should be received on or before April 15, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Statement by Person(s) Receiving Gambling Winnings.

OMB Number: 1545–0239.

Form Number: 5754.

Abstract: Section 3402(q)(6) of the Internal Revenue Code requires that a statement be given to the payer of certain gambling winnings by the person receiving the winnings when that person is not the winner or is one of a group of winners. It enables the payer to prepare Form W–2G, Certain Gambling Winnings, for each winner to show the wings taxable to each and the amount withheld. IRS uses the information on Form W–2G to ensure that recipients are properly reporting their income.

Current Actions: There are no changes being made to the burden associated with the collection tool at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 204,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40,800.

The following paragraph applies to all of 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 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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–01937 Filed 2–11–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue NW,Washington, DC, on April 30, 2019 at 9:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Public Law 103–202, § 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202,§ 202(c)(1)(B).

Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A).

The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Director for Office of Debt Management (202) 622–1876.

Dated: February 5, 2019.

Fred Pietrangeli,

Director (for Office of Debt Management).

[FR Doc. 2019–01718 Filed 2–11–19; 8:45 am]

BILLING CODE 4810–25–M

FEDERAL REGISTER

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Part II

Library of Congress

Copyright Royalty Board

Distribution of Cable Royalty Funds; Notice

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. CONSOLIDATED 14–CRB–0010–CD (2010–2013)]

Distribution of Cable Royalty Funds

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final allocation determination.

SUMMARY: The Copyright Royalty Judges announce the allocation of shares of cable and satellite royalty funds for the years 2010, 2011, 2012, and 2013 among six claimant groups.

ADDRESSES: The final distribution order is also published in eCRB at *https://app.crb.gov/.*

Docket: For access to the docket to read background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/*and search for CONSOLIDATED docket number 14–CRB–0010–CD (2010–2013). For older documents not yet uploaded to eCRB, go to the agency website at *https://www.crb.gov/*or contact the CRB Program Specialist.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by phone at (202) 707–7658 or by email at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Final Determination of Royalty Allocation

The purpose of this proceeding is to determine the allocation of shares of the 2010–2013 cable royalty funds among six claimant groups: The Joint Sports Claimants, Commercial Television Claimants, Public Television Claimants, Canadian Claimants Group, Settling Devotional Claimants, and Program Suppliers.[1] The parties have agreed to settlements regarding the shares to be allocated to the Music Claimants and National Public Radio (NPR). Public Television Claimants Proposed Findings of Fact and Conclusions of Law (PFFCL) ¶ 1.

Between 2012 and 2015, the Judges ordered partial distributions of the 2010–2013 cable funds to the ''Phase I'' participants (including Music Claimants and NPR) according to allocation percentages agreed upon by the participants. *Order Granting Phase I Claimants' Motion for Partial Distribution of 2010 Cable Royalty* Funds, Docket No. 2012–4 CRB CD 2010 (Sept. 14, 2012), *Order Granting Phase I Claimants' Motion for Partial Distribution of 2011 Cable Royalty Funds,* Docket No. 2012–9 CRB CD 2011 (Mar. 13, 2013), *Order Granting Motion of Phase I Claimants for Partial Distribution,* Docket No. 14–CRB–0007 CD (2010–12) (Dec. 23, 2014); *Order Granting Motion of Phase I Claimants for Partial Distribution,* Docket No. 14–CRB–0010 CD (2013) (May 28, 2015).

In December 2016, the Judges ordered the final distribution of the settled shares from the remaining funds to Music Claimants and National Public Radio. *Amended Order Granting Motion for Final Distribution of 2010–2013 Cable Royalty Funds to Music Claimants* (Aug. 23, 2017); *Order Granting Motion for Final Distribution of 2010–2013 Cable Royalty Funds to National Public Radio* (Aug. 23, 2017). When the Judges ultimately order the final distribution of the remaining 2010–13 cable royalty funds, they will direct the Licensing Division of the Copyright Office to adjust distributions to each participant to account for partial distributions and to apply the allocation percentages determined herein.

Based on the record in this proceeding, the Judges make the following allocation of deposited royalties.[2]

TABLE 1—ROYALTY ALLOCATIONS

	2010 (%)	2011 (%)	2012 (%)	2013 (%)
Basic Fund:				
Canadian Claimants	5.0	5.0	5.0	5.5
Commercial TV	16.8	16.8	16.2	15.3
Devotional Programs	4.0	5.5	5.5	4.3
Program Suppliers	26.5	23.9	21.5	19.3
Public TV	14.8	18.6	17.9	19.5
Sports	32.9	30.2	33.9	36.1
3.75% Fund:				
Canadian Claimants	5.9	6.1	6.1	6.8
Commercial TV	19.7	20.6	19.7	19.0
Devotional Programs	4.7	6.8	6.7	5.3
Program Suppliers	31.1	29.4	26.2	24.0
Public TV	0.0	0.0	0.0	0.0
Sports	38.6	37.1	41.3	44.9
Syndex Fund:				
Program Suppliers	100	100	100	100

[1] The program categories at issue are as follows: Canadian Claimants Group: All programs broadcast on Canadian television stations, except (1) live telecasts of Major League Baseball, National Hockey League, and U.S. college team sports and (2) programs owned by U.S. Copyright owners; Joint Sports Claimants: Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except programming in the Canadian Claimants category; Commercial Television Claimants: Programs produced by or for a U.S. commercial television station and broadcast only by that station during the calendar year in question, except those listed in subpart (3) of the Program Suppliers category; Public Television Claimants: All programs broadcast on U.S. noncommercial educational television stations; Settling Devotional Claimants: Syndicated programs of a primarily religious theme, but not limited to programs produced by or for religious institutions; and Program Suppliers: Syndicated series, specials, and movies, except those included in the Devotional Claimants category. Syndicated series and specials are defined as including (1) programs licensed to and broadcast by at least one U.S. commercial television station during the calendar year in question, (2) programs produced by or for a broadcast station that are broadcast by two or more U.S. television stations during the calendar year in question, and (3) that are comprised predominantly of syndicated elements, such as music videos, cartoons, ''PM Magazine,'' and locally hosted movies. Public TV PFFCL at ¶ 4; Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order, Docket No. 14–CRB–0010–CD, at Ex. A (Nov. 25, 2015). The categories are mutually exclusive and, in aggregate, comprehensive.

[2] In reviewing responses to Program Suppliers' request for rehearing, the Judges became aware of an error in the Initial Determination. The Judges used an incorrect base figure in calculating the royalty shares for 2012 and 2013. The Judges detailed that correction in the Order on Rehearing. The corrected values appear in this Final Determination.

Program Suppliers filed a timely request for rehearing on November 2, 2018 (Rehearing Request). The Judges issued their ruling on the Rehearing Request on December 13, 2018 (Order on Rehearing), denying rehearing on any basis asserted by Program Suppliers in the Rehearing Request. The Initial Determination is, therefore, the Judges' Final Determination in this proceeding.

I. Background

A. Legal Context

In 1976, Congress granted cable television operators a statutory license to enable them to clear the copyrights to over-the-air television and radio broadcast programming which they retransmit to their subscribers. The license requires cable operators to submit semi-annual royalty payments, along with accompanying statements of account, to the Copyright Office for subsequent distribution to copyright owners of the broadcast programming that those cable operators retransmit. *See* 17 U.S.C. 111(d)(1). To determine how the collected royalties are to be distributed among the copyright owners filing claims for them, the Copyright Royalty Judges (Judges) conduct a proceeding in accordance with chapter 8 of the Copyright Act. This determination is the culmination of one of those proceedings.[3] Proceedings for determining the distribution of the cable license royalties historically have been conducted in two phases. In Phase I, the royalties were divided among programming categories. The claimants to the royalties have previously organized themselves into eight categories of programming retransmitted by cable systems: Movies and syndicated television programming; sports programming; commercial broadcast programming; religious broadcast programming; noncommercial television broadcast programming; Canadian broadcast programming; noncommercial radio broadcast programming; and music contained on all broadcast programming. In Phase II, the royalties allotted to each category at Phase I were subdivided among the various copyright holders within that category.[4] In the current proceeding, the Judges broke with past practice by combining Phase I and Phase II into a single proceeding in which the functions of allocating funds between program categories and distributing funds among claimants within those categories would proceed in parallel.[5] This determination addresses the Allocation Phase for royalties collected from cable operators for the years 2010, 2011, 2012 and 2013.

The statutory cable license places cable systems into three classes based upon the fees they receive from their subscribers for the retransmission of over-the-air broadcast signals. Small- and medium-sized systems pay a flat fee. *See* 17 U.S.C. 111(d)(1). Large cable systems (''Form 3'' systems)[6]—whose royalty payments comprise the lion's share of the royalties distributed in this proceeding—pay a percentage of the gross receipts they receive from their subscribers for each distant over-the-air broadcast station signal they retransmit.[7] The amount of royalties that a cable system must pay for each broadcast station signal it retransmits depends upon how the carriage of that signal would have been regulated by the Federal Communications Commission (''FCC'') in 1976, the year in which the current Copyright Act was enacted.

The royalty scheme for large cable systems employs a statutory device known as the distant signal equivalent (DSE), which is defined at 17 U.S.C. 111(f)(5). The cable systems, other than those paying the minimum fee, pay royalties based upon the number of DSEs they retransmit. The greater the number of DSEs a cable system retransmits the larger its total royalty payment. The cable system pays these royalties to the Copyright Office. These fees comprise the ''Basic Fund.'' *See* 17 U.S.C. 111(d)(1)(B). In addition to the Basic Fund, large cable systems also may be required to pay royalties into one of two other funds that the Copyright Office maintains: The Syndex Fund and the 3.75% Fund.

As noted above, the utilization of the cable license is linked with how the FCC regulated the cable industry in 1976.[8] FCC rules at the time restricted the number of distant broadcast signals a cable system was permitted to carry (''the distant signal carriage rules''). *National Cable Television Assoc., Inc.* v. *Copyright Royalty Tribunal,* 724 F.2d 176, 180 (D.C. Cir. 1983). FCC rules also allowed local broadcasters and copyright holders to require cable systems to delete (or blackout) syndicated programming from imported signals if the local station had purchased exclusive rights to the programming (''syndicated exclusivity'' or ''syndex'' rules). *Id.* at 187. In 1980, the FCC repealed both sets of rules. *Id.* at 181.

The Copyright Royalty Tribunal (CRT) initiated a cable rate adjustment proceeding to compensate copyright owners for royalties lost as a result of the FCC's repeal of the rules. Adjustment of the Royalty Rate for Cable Systems; Federal Communications Commission's Deregulation of the Cable Industry, Docket No. CRT 81–2, 47 FR 52146 (Nov. 19, 1982). The CRT adopted two new rates applicable to large cable systems making section 111 royalty

[3] Prior to enactment of the Copyright Royalty and Distribution Reform Act of 2004, which established the Judges program, royalty allocation determinations under the Section 111 license were made by two other bodies. The first was the Copyright Royalty Tribunal, which made distributions beginning with the 1978 royalty year, the first year in which cable royalties were collected under the 1976 Copyright Act. Congress abolished the Tribunal in 1993 and replaced it with the Copyright Arbitration Royalty Panel (''CARP'') system. Under this regime, the Librarian of Congress appointed a CARP, consisting of three arbitrators, which recommended to the Librarian how the royalties should be allocated. Final distribution authority, however, rested with the Librarian. The CARP system ended in 2004. *See* Copyright Royalty Distribution and Reform Act of 2004, Public Law 108–419, 118 Stat. 2341 (Nov. 30, 2004).

[4] The Judges last adjudicated an allocation (Phase I) determination for royalty years 2004–05. *See Distribution of the 2004 and 2005 Cable Royalty Funds,* Distribution Order, 75 FR 57063 (Sept. 17, 2010) (*2004–05 Distribution Order).* In the Phase I cable proceeding relating to royalties deposited between 2000 and 2003, the parties stipulated that the only unresolved issue would be the Phase I share awarded to the Canadian Claimants Group. The remaining balance would be awarded to the Settling Parties. *See Distribution of the 2000–2003 Cable Royalty Funds,* Distribution Order, 75 FR 26798–99 (May 12, 2010) (*2000–03 Distribution Order*). The Judges adopted the stipulation.

[5] Second Reissued Order Granting In Part Allocation Phase Parties' Motion to Dismiss Multigroup Claimants and Denying Multigroup Claimants' Motion For Sanctions Against Allocation Phase Parties, Docket No. 14–CRB–0010–CD (2010–13) (Apr. 25, 2018). The Judges discontinued use of the terms Phase I and Phase II and use the terms Allocation Phase and Distribution Phase instead. *Id.* at n.4. This determination addresses the Allocation Phase of the proceeding.

[6] ''Form 3'' cable systems, so named because they account to the Copyright Office for retransmissions and royalties on ''Form 3.'' The Form 3 filing is required because they have semiannual gross receipts in excess of $527,600. These systems must submit an SA3 Long Form to the U.S. Copyright Office. They are the only systems required to identify which of the stations they carry are distant signals. Royalty payments from Form 3 systems accounted for over 90% of the total royalties that cable systems paid during 2010–2013. Corrected Testimony of Christopher J. Bennett ¶ 10 n.2 (Bennett CWDT).

[7] The cable license is premised on the Congressional judgment that large cable systems should only pay royalties for the distant broadcast station signals that they retransmit to their subscribers and not for the local broadcast station signals they provide. However, cable systems that carry only local stations are still required to submit a statement of account and pay a basic minimum fee. *See 2000–03 Distribution Order,* 75 FR at 26,798 n.2.

[8] FCC regulation of the cable industry was impacted by passage of the 1976 Copyright Act that created the compulsory license for cable retransmissions codified in section 111. *See Report and Order,* Docket Nos. 20988 & 21284, 79 F.C.C. 663 (1980), *aff'd sub nom. Malrite T.V.,* v. *FCC,* 652 F.2d 1140, 1146 (2d Cir. 1981).

payments. The first, to compensate for repeal of the distant signal carriage rules, was a 3.75% surcharge of a large cable system's gross receipts for each distant signal the carriage of which would not have been permitted under the FCC's distant signal carriage rules. Royalties paid at the 3.75% rate—sometimes referred to by the cable industry as the ''penalty fee''—are accounted for by the Copyright Office in the ''3.75% Fund,'' which is separate from royalties kept in the Basic Fund. *See id.; see also* 17 U.S.C. 111(d); 37 CFR, part 387.The second rate the CRT adopted, to compensate for the FCC's repeal of its syndicated exclusivity rules, is known as the ''syndex surcharge.'' Large cable operators were required to pay this additional fee for carrying signals that were or would have been subject to the FCC's syndex rules. Syndex Fund fees are accounted for separately from royalties paid into the Basic Fund.[9]

Royalties in the three funds—Basic, 3.75%, and Syndex—are the royalties to be distributed to copyright owners of non-network broadcast programming in a Section 111 cable license distribution proceeding. *See* 37 CFR, part 387.[10]

Cable system operators are required to file Statements of Account with the Copyright Office detailing subscription revenues and specific television signals they retransmit distantly, and to deposit section 111 royalties calculated according to the reported figures. Ex. 2004, Testimony of Gregory S. Crawford ¶ 74 & n.37. As cable system operators merged they created contiguous cable systems that were required to file consolidated Statements of Account. The consolidated systems were required to pay royalties calculated on the aggregate subscription income of the corporate operator, even though not all the systems under the corporate umbrella, not even the contiguous systems, carried or retransmitted compensable distant signals.

Between the time of the last adjudicated cable royalty allocation proceeding and the present proceeding, Congress passed the Satellite Television and Localism Act of 2010 (STELA).[11] Before STELA, cable operators were required to pay for the carriage of distant signals on a system-wide basis, even though each signal was not made available to every subscriber in the cable system. U.S. Copyright Office, *Frequently Asked Questions on the Satellite Television Extension and Localism Act of 2010.* Distant broadcast signals that subscribers could not receive were called ''phantom signals.'' *Id.* STELA addressed the phantom-signal issue by amending section 111(d)(1) of the Copyright Act, which details the method by which cable operators can calculate royalties on a community-by-community or subscriber-group basis. *Id.* From the 2010/1 accounting period and all periods thereafter, cable operators have been required to pay royalties based upon where a distant broadcast signal is offered rather than on a system-wide basis.[12] *Id.* As discussed below, this statutory change permitted the participants to analyze relative value at the subscriber-group level. *See, e.g.,* Corrected Written Direct Testimony of Gregory Crawford, Ex. 2004 (Crawford CWDT) ¶ 66.

B. Posture of the Current Proceeding

In December 2014, the Copyright Royalty Board (CRB) published notice in the **Federal Register** announcing commencement of proceedings and seeking Petitions to Participate to determine distribution of 2010, 2011, and 2012 royalties under the cable and satellite licenses.[13] On June 5, 2015, the CRB published a notice in the **Federal Register** announcing commencement of a proceeding to determine distribution of 2013 royalties deposited with the Copyright Office under the cable license and the satellite license.[14] The Judges determined that controversies existed with respect to distribution of the cable (and satellite) retransmission royalties deposited for 2013, and directed interested parties to file Petitions to Participate.[15] On September 9, 2015, the Judges consolidated the proceedings regarding the cable license for the years 2010, 2011, 2012, and 2013. *See* Notice of Participants, Notice of Consolidation, and Order for Preliminary Action to Address Categories of Claims.

On November 25, 2015, the Judges issued a Notice of Participant Groups, Commencement of Voluntary Negotiation Period (Allocation), and Scheduling Order, in which the Judges identified eight categories of claimants for the proceeding: (1) Canadian Claimants, (2) Commercial Television Claimants; (3) Devotional Claimants, (4) Joint Sports Claimants, (5) Music Claimants, (6) National Public Radio, (7) Program Suppliers, and (8) Public Television Claimants. National Public Radio and Music Claimants reached settlements with the other claimants groups and received respective final distributions. Order Granting Motion for

[9] In 1989, in response to changes in the cable television industry and passage of the Satellite Home Viewer Act of 1988, the FCC reinstated syndicated exclusivity rules. The reinstated rules differed from the original syndex rules, giving rise to a petition to the CRT for adjustment or elimination of the syndex surcharge. *See* Final Rule, *Adjustment of the Syndicated Exclusivity Surcharge,* Docket No. 89–5–CRA, 55 FR 33604 (Aug. 16, 1990).

The CRT held that the syndicated exclusivity surcharge paid by Form 3 cable systems in the top 100 television markets is eliminated, except for those instances when a cable system is importing a distant commercial VHF station which places a predicted Grade B contour, as defined by FCC rules, over the cable system, and the station is not ''significantly viewed'' or otherwise exempt from the syndicated exclusivity rules in effect as of June 24, 1981. In such cases, the syndicated exclusivity surcharge shall continue to be paid at the same level as before. *Id.*

See Final Rule, 54 FR 12,913 (Mar. 29, 1989), *aff'd sub nom. United Video, Inc.* v. *FCC,* 890 F.2d 1173 (D.C. Cir. 1989); 47 CFR 73.658(m)(2) (1989); 47 CFR 76.156 (1989). The present proceeding deals only with allocation of those royalties among copyright owners in the various program categories.

[10] The CRB last adjusted cable Basic, 3.75%, and Syndex rates in 2016, for the period January 1, 2015, through December 31, 2019. *See* Final Rule, Adjustment of Royalty Fees for Cable Compulsory License, Docket No. 15–CRB–0010–CA, 81 FR 62,812 (Sept. 13, 2016). This adjustment was pursuant to a negotiated agreement.

[11] Public Law 111–175, 124 Stat. 1218 (May 27, 2010), reauthorized by Public Law 113–200, 128 Stat. 2059 (Dec. 4, 2014),

[12] CSOs continue to be liable to pay a ''minimum fee'' for systems that do not retransmit distant signals. *See* 17 U.S.C. 111(d)(1)(B)(i). Calculation of royalties at subscriber group levels segregates minimum fee systems from systems that pay royalties based on retransmission of distant signals in excess of one DSE.

[13] Docket Nos. 14–CRB–0007–CD (2010–12) and 14–CRB–0008–SD (2010–12), 79 FR 76396 (Dec. 22, 2014). The CRB received Petitions to Participate from: ASCAP/BMI (joint), Canadian Claimants, Major League Soccer, PBS for Public Television Claimants, Certain Devotional Claimants aka certain Devotional Claimants or Settling Devotional Claimants (SDC), Joint Sports Claimants, MPAA for Program Suppliers, Multigroup Claimants, NAB for Commercial Television Claimants, NPR, SESAC, and Spanish Language Producers. Major League Soccer subsequently withdrew its petition to participate.

[14] Docket Nos. 14–CRB–0010–CD (2013) and 14–CRB–0011–SD (2013), 80 FR 32182 (June 5, 2015).

[15] The Judges received petitions from: ASCAP/BMI (joint), Canadian Claimants, SDC, Joint Sports Claimants, Major League Soccer, MPAA for Program Suppliers, Multigroup Claimants, NAB for Commercial Television Claimants, NPR, Professional Bull Riders, PBS for Public Television Claimants, SESAC, and Spanish Language Producers. Professional Bull Riders and Major League Soccer subsequently withdrew their Petitions to Participate. Major League Soccer withdrew its Petition to Participate in the Joint Sports Category for 2010–2013 but maintained its 2013 satellite and cable claims in the Program Suppliers category and indicated it would be represented by MPAA. Major League Soccer LLC Withdrawal of Certain Claims Relating to the Distribution of the 2010–2013 Cable and Satellite Royalty Funds (Sept. 21, 2016). Multigroup Claimants, which had sought to participate in the Allocation and Distribution phases of the proceeding failed to file a written direct statement in the Allocation Phase and was dismissed from participating in that phase of the proceeding. [Second Reissued] Order Granting in Part Allocation Phase Parties' Motion to Dismiss Multigroup Claimants and Denying Multigroup Claimants' Motion for Sanctions Against Allocation Phase Parties (April 25, 2018).

Final Distribution of 2010–2013 Cable Royalty Funds to Music Claimants (Aug. 11, 2017) and Order Granting Motion for Final Distribution of 2010–2013 Cable Royalty Funds to National Public Radio (Aug. 23, 2017).

With the settlement of the Music Claimants' share, only the Program Suppliers claimant group has an interest in the royalties in the Syndex Fund. Program Suppliers Proposed Conclusions of Law ¶ 2 & n.3 and references cited therein. Public TV Claimants claim a share only of the Basic Fund. Public TV PFFCL ¶ 43.

The hearing in the present proceeding commenced on February 14, 2018, and concluded on March 19, 2018.[16] During that period, the Judges heard live testimony from 23 witnesses and admitted written and designated testimony from a number of additional witnesses. The Judges admitted into the record more than 200 exhibits. Participants made closing arguments on April 24, 2018, after which time the Judges closed the record.

After reviewing the record, the Judges identified a controversy among the parties relating to the allocation of royalties held in the 3.75% Fund and requested additional briefing from the parties. *Order Soliciting Further Briefing* (June 29, 2018) (3.75% Order). Responding to the Judges' order, the parties submitted additional briefs and responses to address the issue framed by the Judges:

> Whether the interrelationship between and among the Basic Fund, the 3.75% Fund, and the Syndex Fund affects the allocations within the Basic Fund, if at all, and, if so, how that affect should be calculated and quantified.

Id. The Judges' disposition of the 3.75% Fund and Syndex Fund issues is set forth at section VII, *infra.* The allocation described in Table 1 of this Determination incorporates the Judges' resolution of this issue.

C. Allocation Standard

Congress did not establish a statutory standard in section 111 for the Judges (or their predecessors) to apply when allocating royalties among copyright owners or categories of copyright owners. However, through determinations by the Judges and their predecessors (the Copyright Royalty Tribunal, the CARPs, and the Librarian of Congress), the allocation standard has evolved, and the present standard is one of ''relative marketplace value.'' [17] *See* Distribution Order, 75 FR 57063, 57065 (Sept. 17, 2010) (*2004–05 Distribution Order*).

''Relative marketplace values'' in these proceedings have been defined as valuations that ''simulate [relative] market valuations as if no compulsory license existed.'' *1998–99 Librarian Order,* 69 FR at 3608. Because such a market does not exist (having been supplanted by the regulatory structure), the Judges are required to construct a ''hypothetical market'' that generates the relative values that approximate those that would arise in an unregulated market. *2004–05 Distribution Order,* 75 FR at 57065; *see also Program Suppliers* v. *Librarian of Congress,* 409 F.3d 395, 401–02 (D.C. Cir. 2001) (''[I]t makes perfect sense to compensate copyright owners by awarding them what they would have gotten relative to other owners . . . .'').

In the present proceeding, the parties disagree as to the appropriate specification of the sellers in the hypothetical market. Program Suppliers assert that the hypothetical sellers are the owners of the copyrights in the retransmitted programs. *See* Corrected Written Rebuttal Testimony of Jeffrey S. Gray, Trial Ex. 6037, ¶ 11 (Gray CWRT). Other parties assert that the sellers are the local stations offering for licensing the entire bundle of programs on the retransmitted signal. *See* Corrected Written Direct Testimony of Gregory S. Crawford, Trial Ex. 2004, ¶ 45 (Crawford CWDT) and Corrected Written Direct Testimony of Lisa George, Trial Ex. 4005, at 8 (George CWDT). After considering the record and arguments in this proceeding, the Judges find that, from an economic perspective, this is a disagreement without a difference, and therefore, consistent with prior rulings, identify the local stations as the hypothetical sellers. If the hypothetical sellers (licensors) were assumed to be the owners of the individual programs (instead of the local stations), then (as a matter of elementary economics) they, like any sellers, would attempt to maximize the royalties they receive from licensing the retransmission rights to CSOs.[18] Because the CSOs are assumed to be the buyers (licensees), they would each negotiate one-to-one with owners of the program copyrights. The corollary to the assumption that the hypothetical sellers are the individual program copyright owners is the assumption that the CSOs, as buyers, would need to create one or more new channels to bundle these programs for retransmission. That raises the economically important question of whether the transaction costs [19] that a CSO would incur to negotiate separate contracts with individual copyright owners would be so prohibitive as to preclude one-to-one negotiations from going forward. Transaction costs are relatively ubiquitous in the licensing of copyrighted products to licensees, resulting in the creation of a collective to represent the licensees, and in blanket or standardized licenses to reduce transaction costs further. *See Watt, supra* note 19, at 17, 164–67.

But in the present case, a ''collective'' of sorts already exists—the broadcaster who bundles programs for transmission within a single signal. Therefore, it remains reasonable to consider the local stations that have bundled the programs into their respective signals to be the hypothetical sellers.

As noted *supra,* the values of the programs in the several categories that are determined in this proceeding are ''relative values,'' *i.e.,* values relative to each other, from the perspective of the CSOs, when the programs from these different categories are offered for

[16] The Judges also held a hearing on June 15, 2016, to address concerns the parties raised about changes to the historical bifurcation of proceedings into a first and a second phase.

[17] In this proceeding, the Judges distinguish between ''*relative* values'' (to describe the allocation shares), and *absolute* ''fair market values.'' Because the royalties at issue in this proceeding are regulated and not derived from any actual market transactions, they do not correspond with absolute dollar royalties that would be generated in a market and thus would not reflect absolute ''fair market value.''

[18] Because the programs already exist, production costs have been ''sunk,'' and the copyright owners incur no marginal physical cost in the retransmission of their programs. Thus, the copyright owners would seek only to maximize marginal revenue (but would still consider marginal ''opportunity cost'' if applicable, *e.g.,* if retransmission would cannibalize their profits from local broadcasting of the identical program or another program owned by the copyright owner). In a more dynamic long-run model, copyright owners might consider even the costs of production to be variable and would then also seek to recover an appropriate portion of production costs from retransmission royalties, thereby maximizing long-term profits (rather than only shorter-term revenue), with respect to retransmission royalties. However, because retransmissions of local broadcasts are ''only a very small fraction of a typical CSO's programming budget,'' it is unlikely that, in the hypothetical market, owners of copyrights to the retransmitted programs would have the market power to compel CSOs to contribute to the long-run program production costs. *See* Rebuttal Testimony of Sue Ann R. Hamilton, Trial Ex. 6009, at 14 (Hamilton WRT). Thus, the Judges agree with the pronouncement in prior determinations that the royalties that would be paid in the hypothetical market would essentially be a function only of the CSOs' demand and the copyright owners' costs, and their supply curves (if any) would not be important determinants of the market-based royalty. *See, e.g., Distribution of 1998 and 1999 Cable Royalty Funds,* Final Order, 69 FR 3606, 3608 (Jan. 26, 2004) (*1998–99 Librarian Order*).

[19] Transaction costs are ''pure reductions in the total amount of resources to be distributed that are necessary to achieve and maintain any given allocation.'' Richard Watt, *Copyright and Economic Theory* at 15 (2000).

distant retransmission in the form of bundles from local stations. Relative value is based on the *preferences* of the CSOs (derived from those of their subscribers). Because relative preferences are components of market demand, the CSOs' choices represent important elements of a market transaction. *See generally* P. Krugman & R. Wells, *Microeconomics,* 284–85 (2d ed. 2009) (relative ''preferences'' lead to buyers' ''choices'' and an ''optimal consumption bundle''); A. Schotter, *Microeconomics: A Modern Approach* (2009) (revealed ''preferences'' allow for an analysis of how buyers ''behave in markets,'' and those preferences are building blocks for ''individual and market demand''). Thus, any methodology based on the identification of the relative preferences and values of CSOs is indeed a market-based approach to the allocation of royalties in this proceeding.

Because the pricing of the licenses is regulated, however, it is not possible to identify the actual royalties that would be established by these ranked preferences. To identify such royalties would require an application of game theoretic/bargaining power considerations and the extent and allocation of costs attributable to the licensed programs—facts that are not in the record and likely are not reasonably or accurately ascertainable.[20] Nonetheless, the *raison d'être* of this section 111 proceeding is to allocate royalties *that have already been paid* in a manner that reflects relevant market factors. To do so, it is sufficient to relate CSOs' revealed preferences among program categories, whether through a CSO survey or a regression analysis, to the sum of all royalties paid. Prior determinations may have described the allocations that resulted as *the* ''relative market value,'' [21] but there is no doubt that royalties determined in these ways reveal ''relative values'' that are based on the critical market factor of identified preferences.

In the present proceeding, the parties presented five discrete analytical methodologies for the Judges to consider in determining relative market value of the programming types at issue: Regression analyses, CSO survey results, viewership measurements, a changed circumstances analysis, and a cable content analysis.

II. Regression Analyses

Regression analysis, when properly constructed and applied, ''is an accurate and reliable method of determining the relationship between two or more variables, and it can be a valuable tool for resolving factual disputes.'' [22] A particular approach, multiple regression analysis, ''is the technique used in most econometric studies, because it is well suited to the analysis of diverse data necessary to evaluate competing theories about the relationships that may exist among a number of explanatory facts.'' *ABA Econometrics, supra* note 22, at 4.

A regression can take one of several forms. The linear form is the most common form, though not the most appropriate for all analyses. As one court has explained:

> [A] linear regression is an equation for the straight line that provides the best fit for the data being analyzed. The ''best fit'' is the [regression] line that minimizes the sum of the squares of the vertical distance between each data point and the line . . . . The regression equation that generates that line can be written as
> $Y = a + bX + u$
>
> Where Y is the dependent variable, a is the intercept [with the vertical axis], X the independent variable, b the coefficient of the independent variable (that is, the number that indicates how changes in the independent variable produces changes in the dependent variables), and *u* the regression residual—the part of the dependent variable that is not explained or predicted by the independent variable . . . or, in other words, what is ''left over.''

ATA Airlines, Inc. v. *Fed. Express Corp.,* 665 F.3d 882, 890 (7th Cir. 2011) (Posner, J.), *cert. denied,* 568 U.S. 820 (2012).[23] *See* Crawford CWDT ¶¶ 94–95.

An economist testifying in the present proceeding, Professor Lisa George, explained how the regression approach may be useful to test economic theories, describing regression analysis as ''a tool for understanding how variations in an outcome of interest . . . depends on various factors affecting that outcome . . . when the factors of interest are not separately priced or traded.'' George CWDT at 2. Professor George noted a basic difference between regression analysis and survey methodology. Regression analysis, unlike survey methodology, ''infers value for decisions *actually made* in a market.'' *Id.*

Although regression analysis is a powerful tool, it is important to appreciate the subtle distinction between econometric *correlation* identified by a regression, on one hand, and economic *causation* explained by *economic theory,* on the other:

> Econometrics provides a means for determining whether a correlation, which may reflect a . . . causal relationship, may exist between various events that involve complex sets of facts. The principle value of econometrics . . . lies in its use for developing an empirical foundation in order to prove or disprove assertions that are based on a particular economic theory . . . . [E]conometric evidence *coupled with economic theory* [may] show the likelihood of a causally-driven correlation between two events or facts. . . . *[Thus] [c]orrelation is distinct from causation. . . . [T]he correlation is simply circumstantial confirmation of a hypothesized relationship. If the hypothesized relationship does not make theoretical sense, the existence of a correlation between the two variables is irrelevant.*

ABA Econometrics, supra note 22, at 1, 3, 5 (emphasis added).

In the present proceeding, the economic theory that the experts put to the test via regression analysis is whether or not royalties paid are a function of (caused by) the types of program categories bundled in distantly retransmitted local stations.

A. Waldfogel-Type Regressions

Professors Crawford, Israel, and George each used a regression approach based on the regression approach undertaken by Dr. Joel Waldfogel, an economist who appeared in the 2004–05 proceeding on behalf of the joint ''Settling Parties,'' including three of the present parties: The JSC, Commercial Television Claimants (CTV), and PTV. *2004–05 Distribution Order,* 75 FR at 57064. The Judges' findings concerning his regression (Waldfogel regression) are instructive with regard to the Judges' analysis in the present proceeding of the ''Waldfogel-type'' regressions proffered

[20] For example, in a hypothetical market, a copyright owner could refuse to grant distant retransmission rights to a local station unless the local station (and the retransmitting CSO) agreed to pay an additional royalty (to cover a share of sunk costs and/or additional profit). The ability of the copyright owner to obtain such value would be a function of his or her market and bargaining power. (Because the costs are sunk, the copyright owner would not rationally walk away from a retransmission agreement as long as some positive royalty would be paid.) Even at the level of the ''collective,'' a local station in the hypothetical market could use its market/bargaining power to maximize royalty payments, assuming it had the economic incentive to do so.

[21] Actually, in the 2004–05 Determination, the Judges recognized that neither a survey approach nor a regression approach (both of which they nonetheless relied upon) identified all aspects of *actual* market values as opposed to *relative* values based on market forces. *See 2004–05 Distribution Order,* 75 FR at 57066, 57068 (noting that a CSO survey ''is certainly not a fully equilibrating model of supply and demand in the relevant hypothetical market,'' and a regression does not ''necessarily identif[y]'' all of ''the determinants of distant signal prices in a hypothetical free market . . . .'').

[22] American Bar Association, *Econometrics* 1–2 (2005) (*ABA Econometrics*).

[23] In a multiple linear regression, the equation would be expanded, for example as $Y = a + bX + cZ + u$ – with Z an additional independent variable and c its coefficient.

by Professor Crawford, Professor George, and Professor Israel.

Several features characterize a Waldfogel-type regression. Most importantly, such an approach attempts to correlate ''variation in the [program category] composition of distant signal bundles along with royalties paid to estimate the relative marketplace value of programming.'' George CWDT at 6. Specifically, Dr. Waldfogel ''regress[ed] observed royalty payments for the bundle on the numbers of minutes in each programming category. . . . '' Israel WDT ¶ 22. He also employed '' 'control variables' . . . to hold other drivers of CSO payments constant.'' *Id.* Dr. Waldfogel's control variables included the number of subscribers, local median income, and the number of local channels. *Id.*

In the 2004–05 allocation proceeding, the Judges found the Waldfogel regression ''helpful to some degree'' in assisting the Judges ''to more fully delineate all of the boundaries of reasonableness with respect to the relative value of distant signal programming. *2004–05 Distribution Order,* 75 FR at 57068. The Judges described the Waldfogel regression as an ''attempt [ ] to analyze the relationship between the total royalties payed by cable operators for carriage of distant signals . . . and the quantity of programming minutes by programming category . . . .'' *Id.* Conceptually, the Judges found that, ''Dr. Waldfogel's regression coefficients do provide some additional useful, independent information about how cable operators may view the value of adding distant signals based on the programming mix on such signals.'' *Id.* The Judges also found Dr. Waldfogel's methodology ''generally reasonable.'' *Id.* They cautioned, however, that the wide confidence intervals around Dr. Waldfogel's coefficients limited the usefulness of his analysis in corroborating survey-based evidence in that proceeding. *Id.*[24]

The SDC challenge the use of Waldfogel-type regressions in this proceeding, thus raising as a preliminary question whether or not the Judges' past acceptance of this regression approach is binding on the Judges in the present proceeding as a matter of what has been loosely described as ''precedent.''

The Librarian and the Register considered the extent to which a CARP should be bound by prior determinations of acceptable royalty allocation methodologies in the 1998–99 Phase I cable distribution proceeding.[25] The Register acknowledged that ''[t]he concept of 'precedent' . . . plays an important role in [these] proceedings,'' but observed that ''prior decisions are not cast in stone and can be varied from when there are (1) changed circumstances from a prior proceeding or; (2) evidence on the record before it that requires prior conclusions to be modified regardless of whether there are changed circumstances.'' *1998–99 Librarian Order,* 69 FR at 3613–14 (citations omitted). The Register also referred to a prior Librarian's decision in which the Register had stated that a CARP ''may deviate from [a prior decision] if the Panel provides a reasoned explanation of its decision to vary from precedent . . . .'' *Id.*

The Judges understand that they have the authority and, indeed, the duty, to consider all appropriate factual presentations regarding the establishment of value in this proceeding in order to allocate royalties among the several program categories. The Judges consider the loose use of the term ''precedent'' in this context to be unhelpful. The concept of ''precedent'' typically relates to judicial deference to prior *legal* determinations, not *factual* ones.[26]

However, the *1998–99 Librarian Order* clearly indicates that factual challenges to previously-accepted methodologies shall be subject to a particular evidentiary standard. Specifically, the Judges have been directed that they may disregard or modify prior methodologies only in the event of ''changed circumstances'' or because of evidence in the record that ''requires'' such a change. *See Program Suppliers* v. *Librarian of Congress,* 409 F.3d 395, 402 (D.C. Cir. 2005). The Judges understand this instruction to be in the nature of a ''precedent'' setting forth the legal standard for the evaluation of fact evidence.

Accordingly, the Judges consider the challenges in this proceeding to the application of Waldfogel-type regressions by considering whether there have been either ''changed circumstances'' or the presentation of other record evidence that ''requires'' a departure from considering the Waldfogel-type regressions introduced into the record in this proceeding. Absent evidence of relevant ''changed circumstances'' or other new evidence in the record specifically identified as such by any critics of the Waldfogel-type regression approach, the Judges will evaluate the proffered Waldfogel-type regressions consistent with their treatment of Dr. Waldfogel's analysis in the 2004–2005 allocation proceeding.

In the current proceeding, the SDC's economic expert, Dr. Erkan Erdem, leveled broad criticisms at the use of Waldfogel-type regressions by Professor Crawford, Professor George, and Dr. Israel, notwithstanding the Judges' prior contrary conclusions in the 2004–05 Determination. *See* Written Rebuttal Testimony of Erkan Erdem, Trial Ex. 5007, at 5–6 (Erdem WRT).[27] Dr. Erdem opined that, conceptually, ''Waldfogel-type regressions do not measure relative market value'' for two reasons. First, according to Dr. Erdem, CSO royalty payments are uninformative because they are determined by a statutory formula, not through free-market negotiations between CSOs and content owners;[28] and, second, in Dr. Erdem's view, the volume of programming does not necessarily equate to value. *Written Direct Testimony of Erkan Erdem,* Trial Ex. 5002, at 14 (Erdem WDT). Dr. Erdem thus concluded that ''[o]verall, the Waldfogel-type regressions say little about relative market value'' and at most are ''marginally informative'' as corroborative evidence. . . . .'' *Id.* at 18.

The Judges have found previously that Waldfogel-type regressions are relevant in cable distribution proceedings and find nothing in Dr. Erdem's testimony in the current proceeding to support changing that position. Therefore, the Judges reject Dr. Erdem's broad argument that Waldfogel-

[24] The Judges noted that ''Dr. Waldfogel's specification was similar in its choice of independent variables to a regression model utilized by Dr. Gregory Rosston to corroborate the Bortz survey results in the 1998–99 CARP proceeding. *Id. See Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress, Docket No. 2001–8 CARP CD 98–99 (1998–99 CARP Report)* at 46 (Oct. 21, 2003).

[25] The CARPs were governed by a statutory provision regarding precedent that was nearly identical to the current section 803(a)(1). *See* 17 U.S.C. 802(c) (2003) (repealed). Consequently, the *1998–99 Librarian Orde*r remains relevant in spite of the intervening statutory amendments abolishing the CARP system and creating the Judges.

[26] Legal precedents provide *stare decisis* effect to ''legal issues . . . prescribing the norms that apply and consequences that attach to'' facts presented at trial. *See* A. Larsen, *Factual Precedents,* 162 U. Pa. L. Rev. 59, 68 (2013).

[27] Dr. Erdem referred to the Crawford, Israel, and George analyses as ''Waldfogel-type'' regressions because they ''attempted to estimate the marginal effect of each minute of programming for claimant categories using regression analysis in which the dependent variable is the royalty fees paid by a system and independent variables include minutes of programming for each claimant category and other control variables.'' *Id.*

[28] Another SDC witness, Mr. John Sanders (a valuation expert rather than an economic expert), echoed this criticism, as discussed *infra.* A Program Supplier economic expert witness, Dr. Jeffrey Gray, criticized the regression approach to the extent it included minimum fee-paying CSOs in the analysis, as also discussed *infra.*

type regressions are not useful in establishing relative value in this proceeding.[29] Of course, this point does not mean that the Judges therefore necessarily accept all aspects of the *application* of the Waldfogel-type regressions by Professor Crawford, Professor George, and Dr. Israel in this proceeding. Rather, the Judges analyze *infra* the more granular critiques of those regressions leveled by various witnesses, to determine the weight to be accorded to each such regression.

B. Crawford Regression Analysis

1. General Principles

CTV called Professor Gregory Crawford as an economic expert witness. Professor Crawford undertook a Waldfogel-type regression, which he opined was an appropriate approach for estimating relative market value among the six allocation-phase categories. Crawford CWDT ¶ 5. Professor Crawford envisaged a hypothetical market consistent with the actual market for cable channel carriage in general. Crawford CWDT ¶¶ 8, 36. In Professor Crawford's hypothetical market, the owners of the distantly retransmitted stations (*i.e.,* broadcasters) are the sellers of bundles of programming (their respective program lineups), and the CSOs are the buyers. Crawford CWDT ¶ 6.[30] Professor Crawford opined that CSOs are more likely to retransmit ''distant signals that carry more highly-valued programming.'' *Id.* ¶ 7. Although this reasoning appears self-evident (*ceteris paribus,* re-sellers prefer to sell products that are more valuable), according to Professor Crawford, this point also has a subtler meaning in connection with CSO decision-making. *Id.* ¶ 46. Specifically, he opined that, because such stations bundle various types of programming, there can exist across subscribers a ''*negative correlation*'' in their ''Willingness to Pay'' (WTP) (in other words, making the bundle relatively less preferable when a program from one category is added to the bundle, as opposed to one from another category). *Id.* ¶ 6 (emphasis added).

Accordingly, Professor Crawford concluded that when deciding whether to enlarge its channel lineup by distantly retransmitting a television station, a rational CSO would consider the variety, or mix, of programming on that channel in light of the existing programming mix offered by the CSO to subscribers across the channel lineup. According to Professor Crawford, to achieve an optimal programming mix a CSO would recognize that ''niche taste[ ] channels are more likely to increase CSO profitability due to the likelihood that household tastes for such programming are 'negatively correlated' with tastes for other components of cable bundles.'' *Id.* ¶ 7. For example, if a channel lineup were saturated with programming from five of the six program categories, but had little or no programming in the sixth category, *e.g.,* PTV, then a CSO might enhance its profitability through fees from new subscribers, by adding PTV programming, which may have a following among subscribers who have little or no taste for marginal increases in programming in other categories.

Professor Crawford's regression adopted the general concept from the Waldfogel-type regressions. Specifically, Professor Crawford concluded that the ''most suitable'' econometric regression would ''relat[e] existing distant signal royalty payments to the minutes of programming of different types carried on distant signals under the compulsory license . . . .'' *Id.* ¶ 46. He favored a regression model because it is a standard econometric approach utilized to establish the discrete prices of different elements in a bundle of goods, or the value of a bundle of attributes in a single good. *Id.* ¶ 47.[31]

Thus, Professor Crawford inferred the ''average marginal value'' of content type (by program category), based on the decisions CSOs made. 2/28/18 Tr. 1400–02 (Crawford). More precisely, as in any Waldfogel-type regression, he related the relative variation in royalties across categories to the relative variation in minutes of different categories of programming. Crawford CWDT ¶¶ 53–54.

In econometric terms, Professor Crawford related the natural log[32] of royalties: (1) To the minutes of claimed programming by category; and (2) to other ''control'' variables.[33] *Id.* ¶ 91. Professor Crawford's regression looked for a correlation in a subscriber group between changes in the *number* of minutes of programming the subscribers watched by categories and changes in the *percentage* of royalties the subscriber group paid while holding constant other potential explanatory variables (called control variables).[34] The variables Professor Crawford controlled for included the numbers of local and distant stations, the number of activated cable channels, and the size of the CSO. *Id.* ¶ 118 & App. A.

Professor Crawford first estimated the average marginal value per minute of each type of programming by subscriber group. *Id.* ¶ 128.[35] Econometrically, these values are referred to as the coefficients for each program-category parameter.[36] Professor Crawford then summed the marginal value of the compensable minutes each subscriber group retransmitted. *Id.* ¶ 131. Finally, Professor Crawford divided the total

[29] In this determination, when the use of a particular Waldfogel-type regression is challenged on one of these broad bases, the Judges address those specific challenges.

[30] Professor Crawford does not hypothesize that in this ersatz market the CSO could replace advertising that was included in the local broadcast with advertising targeted to the distant market in which it has been retransmitted. Crawford CWDT ¶ 37. The Judges find this approach reasonable because they did not identify any evidence that would sufficiently support the hypothesis that CSOs would insert replacement advertising into distantly retransmitted stations.

[31] Despite his advocacy for a regression approach, and for his particular regression, Professor Crawford acknowledged the possibility ''for economists to apply alternative approaches to this problem.'' *Id.*

[32] The ''natural log'' (shorthand for logarithm) is ''[a] mathematical function defined for a positive argument; its slope is always positive but with a diminishing slope tending to zero,'' and it ''is the inverse of the exponential function X = ln(ex).'' J. Stock & M. Watson, *Introduction to Econometrics* 821 (3d ed. 2015). For purposes of applied econometrics, using the logarithmic functional form, showing percentage changes in the variables, may be more practical.

[33] A ''control variable'' is an independent (explanatory) variable that ''is not the object of interest in the study; rather it is a regressor included to hold constant factors that, if neglected, could lead the estimated . . . effect of interest to suffer from omitted variable bias.'' Stock & Watson, *supra* note 32, at 280.

[34] By investigating the change (effect) in percentage terms on royalties (the dependent variable) from a change in the number of minutes per program category (the independent variable), Professor Crawford adopted what is known as a ''log-level'' (a/k/a ''log-linear'') functional form. *See, e.g.,* J. Wooldridge, *Introductory Economics* 865 (3d ed. 2006). This approach allowed Professor Crawford to compare the effect of a change in the number of program category minutes to the percent increase in subscriber group royalties of different sizes. For example, a 100-minute increase in Program Supplier minutes for a subscriber group in which 10,000 such minutes are retransmitted represents a 1% increase in such minutes, whereas the same 100-minute increase for a subscriber group in which only 1,000 such minutes are retransmitted would represent a 10% increase. *See* Crawford CWDT ¶¶ 113–114.

[35] The royalty data on which Dr. Crawford relied came from the Licensing Division of the Copyright Office via the Cable Data Corporation (CDC), and were provided to Dr. Christopher Bennett, another CTV economic witness, who directed the preparation of the data for Professor Crawford's regression analysis. Crawford CWDT ¶ 73. Dr. Bennett also obtained and compiled the data relating to the minutes of different programming types, using raw data obtained from FYI Television. Crawford CWDT ¶¶ 78–79.

[36] A ''parameter'' is ''[a] numerical characteristic of a population or a model,'' whereas a ''coefficient'' is ''an estimated regression parameter.'' D. Rubinfeld, Reference Guide on Multiple Regression, reprinted in Reference Manual on Scientific Evidence 463, 466 (2011). The ''true'' value of the parameter is ''unknown,'' but can be estimated, and the coefficient is that estimate. *See* Peter Kennedy, A Guide to Econometrics 4 (5th ed. 2003).

value of each given programming category by the total value of all compensated minutes, which produced a percentage reflecting the relative value of each program category as produced by his regression.

The percentage totals estimated by Professor Crawford, and the standard errors [37] associated with those estimates, by year and averaged across all four years, were as follows (with standard errors in parentheses):

TABLE 2—IMPLIED SHARES OF DISTANT MINUTES BY CLAIMANT CATEGORIES

Year	Program suppliers (%)	Sports (%)	Commercial TV (%)	Public TV (%)	Devotional (%)	Canadian (%)
2010	27.66 (1.89)	34.29 (3.78)	17.48 (1.50)	15.44 (1.01)	1.02 (0.27)	4.10 (0.33)
2011	25.44 (1.67)	32.12 (3.65)	17.93 (1.49)	19.77 (1.22)	0.71 (0.19)	4.02 (0.32)
2012	22.84 (1.64)	36.09 (3.86)	17.29 (1.52)	19.03 (1.29)	0.55 (0.15)	4.19 (0.35)
2013	20.31 (1.52)	38.00 (3.94)	16.08 (1.45)	20.51 (1.44)	0.51 (0.14)	4.59 (0.39)
2010–13	23.95 (1.68)	35.19 (3.82)	17.18 (1.49)	18.75 (1.25)	0.69 (0.18)	4.23 (0.35)

Id. ¶ 141 and Fig. 17.

Professor Crawford did not use these values, however, as his only estimates of relative market value across the six programming categories. Rather, he identified an issue with regard to network (and to a lesser extent, non-network) programming that he believed to require a further adjustment. Specifically, Professor Crawford noted that on some distantly retransmitted stations there existed programming that duplicated programming on the local channels in that market. *Id.* at ¶ 87. According to Professor Crawford, ''[n]etwork duplication is a non-trivial issue, accounting for 4.6% of minutes carried on distant broadcast signals . . . .'' *Id.* This issue, he noted, is particularly applicable to Big 3 (ABC, CBS, and NBC) network programming, because a number of local markets to which Big 3 affiliate stations were distantly retransmitted by a CSO already had a local Big 3 network affiliate, rendering the retransmitted network programming duplicative. Professor Crawford understood the relative percentages attributable to the six categories of programming—because they were averaged across all minutes of programming—to be distorted by these duplicative minutes. *Id.* ¶¶ 81, 85–87, 143. Accordingly, even though network programming is not compensable in this proceeding, Professor Crawford made this adjustment as a ''*deaveraging*'' device, stating: ''I am attributing the full value of the positive non-duplicate programming just to the non-duplicate programming (and the zero value of the duplicate programming to the duplicate programming).'' *Id.* ¶ 147.

Assuming a zero value for the duplicative network programming, Professor Crawford instructed his data analysts to remove the duplicate network programming.[38] With those duplications removed, Professor Crawford re-ran his regression and averaged the relative values of the six program categories at issue in this proceeding.

After making this adjustment, Professor Crawford estimated the following percentage allocations (with the associated standard errors set forth below each allocation):

TABLE 3—IMPLIED SHARES OF DISTANT MINUTES BY CLAIMANT CATEGORIES: NON-DUPLICATE MINUTES ANALYSIS

Year	Program suppliers (%)	Sports (%)	Commercial TV (%)	Public TV (%)	Devotional (%)	Canadian (%)
2010	27.06 (1.97)	34.02 (3.96)	19.76 (1.48)	14.01 (1.00)	1.05 (0.25)	4.10 (0.36)
2011	24.67 (1.73)	31.78 (3.82)	20.18 (1.45)	18.64 (1.25)	0.73 (0.18)	4.00 (0.35)
2012	22.50 (1.72)	35.93 (4.06)	19.64 (1.51)	17.17 (1.27)	0.56 (0.14)	4.20 (0.38)
2013	19.74 (1.60)	38.56 (4.17)	18.44 (1.48)	18.09 (1.41)	0.53 (0.13)	4.65 (0.44)
2010–13	23.40 (1.76)	35.13 (4.02)	19.49 (1.48)	17.02 (1.23)	0.71 (0.17)	4.24 (0.38)

Id. ¶ 153 & Fig. 20.

2. The SDC Criticisms of Dr. Crawford's Analysis

a. Alleged Flaw in the Algorithm

Dr. Erkan Erdem, the SDC's economist, claimed to have identified a flaw in the algorithm Professor Crawford used to allocate royalties to minutes of programming across categories. Dr. Erdem testified that, because of this alleged flaw, Professor Crawford's model was highly sensitive to the sequencing in which data was inputted and sorted into his regression model. Erdem WRT at 2, 14.

However, Dr. Erdem acknowledged receiving additional data from CTV that pertained to this issue. When Dr. Erdem re-ran the updated data using Professor Crawford's regression model, Dr. Erdem found only ''slightly different'' results with regard to ''implied shares of distant minute royalties by claimant categories for both the initial and nonduplicated analyses . . . presented by Professor Crawford.'' Erdem WRT at 15 n.13.

Dr. Erdem further testified that he did not review and test Professor Crawford's

[37] The ''standard error is ''[a]n estimate of the standard deviation of the regression error . . . calculated as an average of the squares of the residuals associated with a particular multiple regression analysis.'' Rubinfeld, *supra* note 36, at 467. The standard error measures the probability distribution for the estimates of each parameter in the regression if ''the expert continued to collect more and more samples and generated additional estimates . . . .'' *ABA Econometrics, supra* note 22, at 404.

[38] Professor Crawford assumed that duplicated programming, whether or not it was blacked out upon retransmission, had zero value because the programming was already available on a local station. *Id.* ¶¶ 86, 144–145. The Judges find this assumption reasonable because identical network programs that are broadcast locally and retransmitted distantly into the same local market are essentially perfect substitutes. Why are they essentially perfect and not just perfect substitutes? Because they are on different channels, the search cost might be different for viewers. For example a viewer might find a show on local channel 4, but the same show on a distantly retransmitted station might appear on channel 157, which is not included in the viewer's usual ''channel surfing.''

algorithm fully because it would have taken him a week to do so. *Id.* at 14. Additionally, neither Dr. Erdem nor the SDC pursued this point further, either in Dr. Erdem's further testimony or in post-hearing filings and arguments.

Based on the foregoing, the Judges find this criticism to be insufficient to invalidate or call into question the evidentiary value of Professor Crawford's regression.

b. Economic Principles Allegedly Not Embodied in Crawford Regression Analysis

Dr. Erdem noted approvingly certain general economic points that Professor Crawford made. First, he agreed with Professor Crawford that it is reasonable to posit that a rational CSO would likely tend to select stations for distant retransmission that maximize the difference between anticipated revenue and the cost of acquiring the retransmission rights. Second, Dr. Erdem agreed with Professor Crawford that a ''negative correlation'' rationally should exist among subscribers between different categories of programs, leading CSOs to engage in strategic bundling of program categories. *Id.* at 12.

However, Dr. Erdem faulted Professor Crawford for failing to incorporate these economic observations into the latter's regression model. With regard to the first point—maximizing the spread between revenues and costs—Dr. Erdem noted that the royalty fees are set by statute, so this concept is not applicable in the regulated market. *Id.* at 12.

With regard to the second point—the negative correlation of different programming types between and among subscribers—Dr. Erdem noted that Professor Crawford did not incorporate this principle into his regression analysis. *Id.* Dr. Erdem acknowledged that the program bundling that results from the negative correlation between program types has ''important implications,'' but not implications that support Professor Crawford's regression model. Dr. Erdem asserts that the negative correlation between program types implies ''that subscribers likely do not think of distant broadcasts in terms of total minutes . . . . A *more* natural unit would be the availability of particular programs, regardless of their duration or frequency.'' *Id.* at 13 (emphasis added). Thus, Dr. Erdem suggested that Professor Crawford's reliance (as is the case in all Waldfogel-type regressions) on programming minutes as the independent (explanatory) variable with respect to program type valuation misses the real economic correlation pertinent to a value estimate, which is the correlation between royalties and the number of subscribers. *Id.*

In response to the first point, Professor Crawford noted that his regression analysis implicitly incorporated this revenue maximization principle because it identified, ranked, and estimated the relative value of program categories that maximize economic value for subscribers given the existence of retransmission costs. Written Rebuttal Testimony of Gregory Crawford, Trial Ex. 2005, ¶¶ 70–71 (Crawford WRT). With regard to the second point, Professor Crawford did not expressly state that the negative correlation between programming types applied to his results. Rather, he noted that the negative coefficients he had estimated for duplicated network programming[39] in part represented the fact that, on average, a station bundle containing duplicated network minutes would be less valuable to subscribers than one that did not. 2/28/18 Tr. 1404, 1607–08 (Crawford) (duplicate programming adds no value and might be blacked-out).[40]

The Judges agree with Dr. Erdem that Professor Crawford's regression analysis does not literally demonstrate that CSOs seek to maximize the difference between revenues and costs as they would in an unregulated market. Because royalty costs are determined independently from retransmission decisions (especially with regard to the first DSE, which is retransmitted in exchange for a mandatory minimum fee, as discussed *infra*), CSOs do not and cannot engage in the sort of marginal profit maximization decisions buyers/licensees would undertake in an unregulated market. However, that does not mean that CSOs do not engage in maximizing behavior through marginal analyses that weigh the relative values of adding additional programming from different program categories, –notwithstanding the presence of the regulated royalty rate.

The Judges give no weight, however, to Dr. Erdem's speculation as to how subscribers value programs of varying lengths. Dr. Erdem did not undertake any affirmative analysis and presented no original methodology. Thus, even assuming *arguendo* there might be value in such a subscriber-based value analysis, Dr. Erdem did not present one here.

c. The ''Distant Minutes'' Criticism

Dr. Erdem noted that Professor Crawford's regression, *because* it is a Waldfogel-type regression, ''assigned a predominant role'' to the number of distant minutes retransmitted by each program category. Dr. Erdem thus characterized Dr. Crawford's regression as a ''volume focused'' approach. Erdem WDT at 14. Dr. Erdem questioned whether Professor Crawford's key variable—''distant minutes'' by category—really explained a ''significant share of the variation in royalty fees.'' Erdem WRT at 15. To answer that question, Dr. Erdem ''estimate[ed] a regression model with only total distant minutes for each claimant group as the independent (explanatory) variable.'' *Id.* Dr. Erdem found that the number of distant minutes by claimant group explained ''very little'' of the variation in royalties as measured by adjusted R^2. *Id.* at 15–16.[41]

In response, Professor Crawford noted that his regression, like all Waldfogel-type regressions, ''does *not* measure the relative value of a programming type using *only* the number of minutes of . . . programming type.'' Crawford WRT ¶ 74. Rather, such regressions also ''measure the *average value per minute* to CSOs of each programming type[,] [and then] multiply[ ] the average value per minute by the number of minutes of programming, giv[ing] the total value of each program type.'' *Id.* ¶ 75. Then, the total value of each program type is converted to ''average values per minute of each claimant's programming via Professor Crawford's regression (and,

[39] He estimated no negative coefficients for the six program categories at issue in this proceeding.

[40] Professor Crawford also estimated a negative coefficient for nonduplicated network minutes, but he testified that this was solely an artifact of the regulated rate structure, in which distantly retransmitted networks ''only pay royalties of .25 DSE.'' 2/28/18 Tr. 1605 (Crawford). The Canadian Claimant Group's expert, Professor George, understood the negative coefficients for a program category to reflect that programs in such a category would reduce the value of a station bundle compared with programs from other program categories. 3/5/18 Tr. 2117–18 (George); *see id.* at 2031 (''the negative coefficient here is telling us that this is effectively dragging down the value of the Canadian signals. . . . [I]if we could replace the Program Supplier content on Canadian signals in a sort of hypothetical world . . . with Joint Sports or Canadian Claimant programming, the value of the signal would be higher. And so this coefficient, the negative coefficient, isn't really surprising to me in this context . . . .'').

[41] R^2 in a multiple regression model is ''the proportion of the total sample variation in the dependent variable [royalties-by-category here] that is explained by the independent variable here, [the number of distant minutes by claimant group].'' Wooldridge, *supra* note 34, at 868. In more practical terms, ''R^2 provides a measure of the overall goodness-of-fit of the multiple regression equation [with] value ranges from 0 to 1. An R^2 of 0 means the explanatory variables explain none of the variation of the dependent variable; an R^2 of 1 means that the explanatory variables explain all of the variation.'' *ABA Econometrics, supra* note 22, at 409. ''There is no clear-cut answer [as] to [w]hat level of R^2, if any, should lead to a conclusion that the model is satisfactory.'' *Id.*

indeed, any Waldfogel-type regression). As Professor Crawford opined, it is the ''variation in the royalties paid by CSOs'' across each programming category that allows the regression ''to infer the average value per minute'' of each programming category, and ''[t]hese estimated average values per minute are the estimated coefficients'' in the regression. *Id.* ¶ 76.

The Judges find that Dr. Erdem's analysis, although apparently accurate, is off-point and does not diminish the value of Professor Crawford's regression (or any similarly-constructed Waldfogel-type regression). The Judges recognize that the two elements multiplied in such a regression—the volume of total minutes per program category and the value-per-minute are both functions of volume. The former, volume of minutes per program category, is facially a volume metric. Professor Crawford recognized that if a regression measured only volume, then it would be properly subject to criticism. Crawford WRT ¶ 74. But the latter factor in the product, the value-per-minute, is not subject to the same criticism. The value-per-minute factor is a metric for relative value, estimating the CSOs' *relative demand* for different categories of programming. To criticize the product as related to volume, therefore, misses the mark, because it is *relative value* that the Judges must determine in this proceeding.

With regard to Dr. Erdem's rebuttal critique, in which he found the R^2 calculation to demonstrate little correlation between categorical programming minutes and royalties, Professor Crawford had a persuasive rejoinder. Professor Crawford explained that it would be as uninformative as it would be unsurprising that the number of distant minutes alone—as Dr. Erdem found—would better estimate the royalties paid (via a higher R^2). Professor Crawford explained that the purpose of his regression is to demonstrate the ''effect'' of different programming (by category) on the relative royalties, not simply to find the regressor (independent variable) that best ''predicts'' the level of royalties. Crawford WRT ¶¶ 91–95. Thus, Professor Crawford opined, his regression is relevant to the economic issue at hand: The relative value of program categories.[42]

The Judges do not agree that Dr. Erdem's calculation of a higher R^2 alone for his alternative approach demonstrated a deficiency in Professor Crawford's regression. As one econometric expert has explained:

> [A] low R^2 does not necessarily imply a poor model (or vice versa) . . . What level of R^2, if any, should lead to a conclusion that the model is satisfactory? Unfortunately, there is no clear cut answer to this question, since the magnitude of R^2 depends on the characteristics of the data series being studied . . . . [A] high R^2 does not by itself mean that the variables included in the model are the appropriate ones. . . . As a general rule, courts should be reluctant to rely on a statistic such as R^2 to choose one model over another.

Rubinfeld, *supra* note 36, at 425, 457.

Dr. Rubinfeld's emphasis on identifying the ''appropriate'' variables leads to Professor Crawford's next response to Dr. Erdem's critique. According to Professor Crawford, from the perspective of economic analysis (as opposed to purely econometric analysis), Dr. Erdem's critique failed to address the institutional and economic concerns in this proceeding, *viz.,* how to determine the relative value of the different program categories in an allocation proceeding. Crawford WRT ¶ 95. Professor Crawford maintained that his regression properly identifies the relative relationships at issue in this proceeding.

d. Alleged Failure To Focus on Impact of the ''Number of Distant Subscribers''

Dr. Erdem asserted that a control variable in Professor Crawford's regression—the ''number of distant subscribers''—was statistically significant and accounted for a large share of the variability in the royalties. Erdem WRT at 17. Accordingly, Dr. Erdem concluded that Professor Crawford's regression inaccurately and wrongly emphasized a correlation between program minutes (across categories) and royalty variability, when the more significant correlation was between the number of distant subscribers and the variability of royalties. *Id.*

In response, Professor Crawford explained that Dr. Erdem had failed to use the proper measure of ''distant subscribers,'' which led Dr. Erdem in essence to double-count the number of distant subscribers, thus invalidating his argument. Crawford WRT ¶ 104.[43] Dr. Erdem was compelled to concede at the hearing that his manipulations in his Models numbered 1 through 6 should all be ignored. 3/8/12 Tr. 2779–80 (Erdem).

Accordingly, the Judges do not give any weight to this criticism.[44]

e. The Zero Minutes Issue

Dr. Erdem pointed out that Professor Crawford's two models contained numerous zeros (*i.e.,* instances when there was no distant content being retransmitted for a particular claimant category). More particularly, Dr. Erdem noted that for the duplicated analysis, the Canadian distant programming minutes had about 94 percent zeros, followed by PTV with approximately 59 percent, the JSC with approximately 10 percent, and between 5–8 percent for the remaining categories. (These percentages remain essentially unchanged for the nonduplicated analysis.) Erdem WRT at 17–18.

Dr. Erdem asserted that because zero represented a floor on the number of minutes any programming category could have offered, Professor Crawford's failure to control for the presence of a non-trivial number of zeros has the ''potential'' to skew the coefficients Professor Crawford estimated in his models. In an attempt to address this issue, Dr. Erdem reworked Professor Crawford's regression approach by including ''indicator variables'' for instances in which the distant minute variables were zero. He then re-estimated Professor Crawford's two models, creating what he called ''Model 3.'' Dr. Erdem's Model 3 cumulatively reworked Professor Crawford's duplicated and nonduplicated regressions to incorporate, *inter alia,* the distant subscriber instances and the zero-minutes indicator issue. Erdem WRT at 38, 40.

Dr. Erdem found that, relative to Professor Crawford's regression model, adding the indicators for instances with zero distant minutes increased the PS and PTV shares by approximately 6 percentage points and 1–2 percentage points, respectively. The Devotional share increased by approximately 1 percentage point while the CTV share decreased by approximately 10 percentage points. The JSC share increased by approximately 1

[42] Professor Crawford calculated an R^2 of .247 for his duplicate analysis and an R^2 of.246 for his non-duplicate analysis. Crawford CWDT Appx. B at B–2.

[43] In fact, as discussed *infra,* Dr. Erdem subsequently agreed with Professor Crawford's criticism in this regard, and the SDC moved for leave to correct Dr. Erdem's testimony, but the Judges entered an order denying that motion as out of time.

[44] Dr. Erdem modeled several of his additional critiques, discussed *infra,* by combining the impact of those critiques with the impact of his admittedly erroneous measure of the number of ''distant subscriber minutes.'' The Judges separately consider those further critiques on their own merits, not only in the interest of completeness, but also to consider whether or not these other criticisms have *qualitative* value, notwithstanding that their impact cannot be quantified by resort to Dr. Erdem's modeling that bundled those critiques with the admittedly tainted measure of ''distant subscriber minutes.''

percentage point, and the Canadian share decreased by approximately 0.4–0.5 percentage points. *Id.*

Because these revised percentages also incorporate Dr. Erdem's erroneous adjustment for his ''distant subscriber instances'' variable, his ''Model 3,'' must be ignored. 3/8/18 Tr. 2779–80 (Erdem). Further, as a separate problem with Dr. Erdem's critique, he did not opine that Professor Crawford's treatment of the number of zeros was improper or that it *had* caused a skewing of the coefficients; rather Dr. Erdem testified only that such skewing was a ''*potential*'' problem—one that Dr. Erdem would have elected to address with the use of an indicator variable.[45] The Judges understand this point to indicate that although Dr. Erdem would have undertaken a different approach, he did not opine that Professor Crawford's approach was unreasonable. Accordingly, the Judges are unpersuaded that this criticism served to undermine the usefulness of Professor Crawford's regression analysis.[46]

f. Sensitivity of Nonduplicated Minutes Model

In his nonduplicated model, Professor Crawford included as an additional variable the total number of nonduplicated minutes. Dr. Erdem noted that Professor Crawford explained that ''[t]his new covariate plays the same role in the final econometric model that the number of distant signals plays in the initial econometric model.'' Erdem WRT at 19 (quoting Crawford CWDT ¶ 165 n.57). However, Dr. Erdem discovered that in this nonduplicated model the number of distant signals was still present, together with the new variable, (*i.e.,* the total number of nonduplicated minutes). Dr. Erdem determined that these two variables were almost perfectly correlated (a 0.998 correlation), rendering ''the rationale for including that additional variable . . . less clear.'' Erdem WRT at 19.[47]

To analyze this issue, Dr. Erdem performed a sensitivity analysis, or test[48], rerunning the nonduplicated model without the total nonduplicated minutes variable. Dr. Erdem's ''Model 5'' presented regression results and estimated royalty shares from this analysis. *See* Erdem WRT Ex. R3. Compared to his Model 4, excluding the added variable decreased the Program Supplier share by approximately 0.2 percentage points, the JSC share by about 2 percentage points, the CTV share by about 2 percentage points the PTV share by about 0.3 percentage points. The Devotional and Canadian shares remained approximately the same. *See* Erdem WRT at 19, Ex. R3.

The Judges find that these modest percentage point differences would not diminish the value of Professor Crawford's nonduplicate minute regression, in part because the regression approach is by design an estimate rather than a precise measure.[49] Moreover, Dr. Erdem's modest changes are derived from his alternative models that also incorporate his erroneous distant subscriber minutes approach, which Dr. Erdem acknowledged to invalidate his adjustments to a number of his models, including Models 4 and 5. *See* 3/8/18 Tr. 2779–80 (Erdem).

g. The WGNA Indicator Variable

Dr. Erdem altered Professor Crawford's approach by including a dummy variable to indicate the presence (or absence) of WGNA. This alteration increased the Program Supplier share by approximately 2 percentage points, increased the CTV and PTV shares by approximately 1 percentage point, respectively, and decreased the JSC shares by about 4 percentage points. The shares of the Devotional and Canadian categories increased by 0.1 and 0.3 percentage points, respectively. Erdem WRT at 18–19.

However, Dr. Erdem did not expressly conclude that the absence of this WGNA indicator variable in Professor Crawford's regression analysis demonstrated that the latter's approach was inappropriate or less relevant. Indeed, Dr. Erdem ended this particular analysis by suggesting only that the use of an indicator variable regarding the presence (or absence) of WGNA among the distantly retransmitted stations *could* be suggestive of an outlier effect arising from the presence of WGNA, yet Dr. Erdem conceded that ''Professor Crawford's model does not exhibit sensitivity to outliers.'' Erdem WRT at 19 n.17.[50] Accordingly, Dr. Erdem's criticism in this regard does not diminish the value of Professor Crawford's regression analysis. And, once more, Dr. Erdem's estimate of the impact of this criticism was bundled together with, *inter alia,* his admittedly erroneous adjustment for distant subscriber minutes, thereby tainting the measure of this adjustment.

h. Geographical Effects

The SDC noted that a CTV economic expert witness, Dr. Christopher Bennett, found that ''over 90% of the distant signals imported were within 150 miles of the community served, and over 95% were within 200 miles.'' Corrected Written Direct Testimony of Christopher Bennett, Trial Ex. 2006, ¶ 31 & Fig. 6 (Bennett CWDT).[51] Accordingly, Dr. Erdem asserted that the positive coefficients in Professor Crawford's regression ''could'' have been driven by factors ''like'' geography, emphasizing

[45] An ''indicator variable,'' also known as a ''dummy variable'' is a ''[a]variable that takes on only two values, usually 0 and 1, with one value indicating the presence of a characteristic, attribute or effect and the other value indicating absence.'' Rubinfeld, *supra* note 36, at 464.

[46] The Judges are also unconvinced that the number of zeros is as striking as Dr. Erdem suggested. For example, the high percent of zeros for Canadian claimants would be consistent with the inevitable absence of any retransmissions of Canadian stations outside the Canadian zone.

[47] When two covariates are highly or perfectly correlated with each other, the regression can suffer from a ''multicollinearity'' problem, whereby the model does not reveal the separate effects of each of the two variables. *See Rubinfeld, supra* note 36, at 465 (''Multicollinearity [a]rises in multiple regression analysis when two or more variables are highly correlated.'').

[48] A ''sensitivity analysis'' is ''[t]he process of checking whether the estimated effects and statistical significance of key explanatory variables are sensitive to inclusion of other explanatory variables, functional form, dropping of potential out-lying observations, or different modes of estimating.'' Wooldridge, *supra* note 34, at 869. The issue of robustness is related to the issue of sensitivity: ''The issue of robustness [addresses] whether regression results are sensitive to slight modifications in assumptions.'' Rubinfeld, *supra* note 36, at 43; *see also Peter Kennedy, A Guide to Econometrics* at 11 (5th ed. 2003) (defining the ''robustness'' of an estimator as ''insensitivity to violations of the assumptions under which the estimator has desirable properties . . . .''). Importantly, because ''[e]valuating the robustness of multiple regression results is a complex endeavor . . . there is no agreed-on set of tests for robustness which analysts should apply. In general, it is important to explore the reasons for unusual data points.'' *ABA Econometrics, supra* note 22, at 24; *accord* Rubinfeld, *supra* note 36, at 437.

[49] The Judges also do not find this to be a potential problem with regard to the use of Professor Crawford's regression to identify relative values, because these two covariates (the number of nonduplicated minutes and the number of distant signals) are control variables used to hold all other potential effects fixed while analyzing program category minutes as the independent variables—and the Judges do not identify in Dr. Erdem's testimony any impact of his claimed multicollinearity on the purported explanatory effect of program categories on royalties.

[50] More particularly, Dr. Erdem acknowledged that because Professor Crawford had utilized a ''larger sample,'' Erdem WRT at 20, n.17, Professor Crawford's regression analysis was not subject to an outlier problem. In fact, Professor Crawford's data included programming minutes using the *population* of programs carried on all imported distant broadcast signals, rather than using estimates of programming minutes based on sampling the programs carried on distant broadcast signals. Crawford CWDT ¶ 72.

[51] Dr. Bennett, who compiled data for Professor Crawford's regression analyses, excluded superstations such as ''WGN, WPIX, WSBK, and WWOR, which historically were distributed nationwide by satellite [and] were excluded in distance analyses presented in previous copyright royalty distribution proceedings.'' Bennett CWDT ¶ 30, n.15.

the values and preferences of large urban areas and de-emphasizing the values and preferences of smaller rural areas. 3/8/18 Tr. 2688–91 (Erdem).

In response, CTV pointed out that Professor Crawford's regression contained variables that controlled for geographic effects. In particular, CTV noted that the SDC had in fact acknowledged that Professor Crawford's regression included ''system-level fixed effects [that] introduce a form of geographic control . . . .'' [52] SDC PFF ¶ 101 (citing 3/8/18 Tr. 2709–10 (Erdem)).[53] Moreover, CTV pointed out that Professor Crawford's regression also included as a control variable the number of local signals at the subgroup level, which also helped account for geographical market differences (including market and Designated Market Area (DMA) size) across subgroups within the systems. *See* Crawford CWDT App. B Fig. 22; *see also* Written Rebuttal Testimony of Ceril Shagrin, Trial Ex. 2009, ¶ 20 & Exs. A, B (Shagrin WRT) (number of local stations is prime indicator of market size).

The Judges find that Professor Crawford's regression controlled for geographic effects. Dr. Erdem's criticism to the contrary appears to be based on a difference of opinion as to how to account for the geographic issue rather than any error in Professor Crawford's regression analysis. Additionally, the Judges do not find that a regression that weighs more heavily the value of programs retransmitted to more people is inherently suspect. Indeed, the opposite is the case. To use Dr. Erdem's example, population density is greater in areas adjacent to urban areas where professional sports teams are based and will demand more professional sports. *See* 3/8/18 Tr. 2689 (Erdem). This subscriber demand causes a CSO serving their subscriber group to have a derived demand for the retransmission of stations with more JSC programming. More JSC programming leads to higher JSC royalties relative to whatever other programming is more popular in areas where, as Dr. Erdem testified, there exist ''smaller systems with smaller number of subscribers and smaller fees . . . .'' 3/8/18 Tr. 2690 (Erdem). In short, the Judges see this phenomenon as an attribute of Waldfogel-type regressions, including Professor Crawford's regression analysis.[54]

i. Ignoring Signals That CSOs Chose Not To Carry

The SDC also criticized Professor Crawford for not taking into account in his regression the impact on value of the stations that were ''*not* retransmitted.'' SDC PFF ¶ 81 (citing 2/28/18 Tr. 1494–5 (Crawford)) (emphasis added). The SDC noted that Professor Crawford had written a published article that indicated that an approach accounting for stations that were not retransmitted could have been applied to determine program category value in the present proceeding. SDC PFF ¶ 82 (citing 2/28/18 Tr. 1497–98 (Crawford)). However, nothing in the record suggested that the potential usefulness of such an alternative regression approach called into question the validity, reasonableness, or persuasiveness of the regression approach undertaken by Professor Crawford in the present proceeding, which approached the relative value analysis from a perspective that analyzed the programs and stations that *were* transmitted. Indeed, the SDC do not cite any expert witness in the present proceeding to support their conclusory assertions in proposed findings of fact that Professor Crawford's decision not to analyze non-transmitted stations and programs compromised his analysis in this proceeding. *See* SDC RPFF ¶¶ 81–82. Accordingly, the Judges find that this criticism does not diminish the value of Professor Crawford's regression analysis in this proceeding.

j. Number of Subscribers as Control Variable

The SDC noted that Professor Crawford used the log of fees paid as his dependent variable (expressing changes in fees paid in percentage terms), but he expressed changes in ''the number of subscribers—one of his control variables—in level form (*i.e.,* linear, or non-log). SDC PFF ¶ 102 (citing 2/28/18 Tr. 1541, 1550 (Crawford)). The SDC's expert, Dr. Erdem, testified that Professor Crawford's use of the linear form for this control variable was improper, because it failed to correspond with the actual relationship between royalty fees and subscribers, *i.e.,* a percentage change in the number of subscribers corresponds with an equal change in the percentage of royalty fees). 3/8/18 Tr. 2770–71 (Erdem). As a consequence, Dr. Erdem maintained, Professor Crawford had introduced statistical ''bias'' [55] into his regression. *Id.* at 2716–17 (Erdem).

To address this criticism, Dr. Erdem, undertook a sensitivity test and transformed the control variable for the number of subscribers into log form. 3/8/18 Tr. 2767 (Erdem). He found that this linear-to-log transformation improved the fit of the regression, increasing the R^2 metric from approximately .24 to .97. (A higher R^2 indicates a tighter fit of within the data points, *see supra* note 41).

In response, CTV and Professor Crawford argued that Dr. Erdem misapplied a principle that might be valid in a ''*prediction*'' regression. Professor Crawford maintained though that his own regression on behalf of CTV was an ''*effects*'' regression,

[52] ''Fixed effects'' variables are *potential* effects on the dependent variable (here, categorical royalties) by other factors that are unobserved by the regression. Wooldridge, *supra* note 34, at 461. (To put the ''fixed effects'' variables in context, they differ from the ''error term,'' which reflects ''idiosyncratic error,'' *id.,* and differ from a control variable in that, as noted *supra,* a control variable is one that is known and expected to impact the dependent variable (categorical royalties here), but ''is not the object of interest in the study'' and thus held constant by the econometrician. Stock & Watson, *supra* note 32, at 280.

[53] The SDC argue that this control caused a new geographic effect that Professor Crawford's regression ignored: ''some'' stations ''could'' be local as well as distant within some subscriber groups. SDC PFF ¶ 101 (and record citations therein). However, speculation as to the existence of this possibility and its possible extent are insufficient to invalidate or diminish the evidentiary value of the geographic controls used by Professor Crawford in his regression.

[54] This point regarding geographic effects also relates to what Dr. Erdem asserted is an anomaly in a Waldfogel-type regression such as undertaken by Professor Crawford. Dr. Erdem claims that if a certain type of programming (Devotional, for example) were more popular on lower fee paying cable systems, the lower fee status of that system would cause Devotional programming to have a lower coefficient and a lower royalty share under the regression. However, if that cable system decided ''this category of programming isn't doing it for us'' and thus eliminated Devotional programming, that programming category elimination would anomalously cause the Devotional coefficient to increase, because it would no longer be associated with that lower fee paying cable system. 3/8/18 Tr. 2685–86 (Erdem). The flaw in that argument is two-fold. First, although the Devotional coefficient might increase, there would be fewer minutes of programming to multiply by that coefficient, which would reduce the relative share allocated to Devotional programming under a Waldfogel-type regression. Second, a cable system would distantly retransmit Devotional programming, even if it generated lower royalties *relative to other CSOs in other regions,* because the CSO is incentivized by increasing or retaining subscribers, not by maximizing royalties compared with other CSOs. Again, the Judges emphasize that the hypothetical buyer is the CSO, not the copyright owner, and the relative value of a program category is based on its economic contribution as part of a bundle to the CSO, not the royalty it might generate in any other context. The royalties flow from such carriage decisions and those decisions are made by each CSO with varying receipts (constrained by the WTP of its subscriber base), averaged through a Waldfogel-type regression.

[55] ''Bias'' is ''[a]ny effect . . . tending to produce results that depart systematically (either too high or too low) from the true values. A biased estimator of a parameter [*e.g.,* a regression parameter] differs on average from the true parameter.'' Rubinfeld, *supra* note 36, at 463–64. Somewhat more formally, ''bias'' reflects ''[t]he difference between the expected value of an estimator and the population value that the estimator is supposed to be estimating.'' Wooldridge, *supra* note 34, at 859.

seeking to explain the issue at hand, *i.e.,* how different program categories correlate with the royalties paid. According to Professor Crawford, his regression analysis was not a ''prediction'' regression designed to identify the best predictors of royalties paid. Thus, he argued, it was important to use control variables that keep constant the effects on the dollar amount of royalties paid in order to determine the relative values among program categories, which was the purpose of the regression. 2/28/18 Tr. 1393–94, 1430, 1549–50 (Crawford).

Professor Crawford explained what he understood to be a fundamental mistake made by Dr. Erdem:

> Dr. Erdem misunderstands the purpose of an econometric analysis in this proceeding. . . . For the goal of *prediction,* the focus is on finding the explanatory variables that *best predict the outcome of interest* . . . . [I]f the goal is to predict stock prices and the price of tea in China helps, then . . . include it in the model (and don't worry about the economic interpretation of its coefficient).
>
> *That is not the purpose in this proceeding,* however. In this proceeding, experts are using econometric analyses to help the Judges determine . . . relative marketplace value . . . . The dependent variable in these regressions, the royalties cable operators pay for the carriage of the distant signals, are informative of this relationship . . . . The key explanatory variables in this relationship, the minutes of programming of the various types carried on distant signals, are informative as the impact they have on royalties reveals the *relative* market value of each programming type. Other explanatory variables are included in the model to control for other possible determinants of cable operator royalties. This helps improve the statistical fit of the regression (to ''reduce its noise''), providing more precise estimates of the impact of programming minutes that are the focus of the analysis.
>
> . . .
>
> The goal here is to find the econometric model that can best reveal relative marketplace value. Doing so means crafting the econometric model to reflect *the institutional and economic features* of the environment that is generating the data being used. . . . The econometrician determines which explanatory variables to *include not based exclusively on statistical criteria regarding the overall fit of the model, but also on whether there are good economic and/or institutional justifications for including that variable.*

Crawford WRT ¶¶ 91–94 (footnotes omitted) (emphasis added). Accordingly, Professor Crawford testified that the R^2 measure on which Dr. Erdem relied is not relevant to the task at hand, because that measure does not explain the relative values of the several program categories, but rather shows ''how much of the variation in the dependent variable can be explained by the control or explanatory variables.'' Crawford WRT ¶ 93.

Applying this distinction more particularly to the present dispute, Professor Crawford defended his use of a linear control variable for the number of subscribers as sufficient for its intended purpose—to avoid statistical bias and distortion. He contrasted his approach with Dr. Erdem's claim that a log control variable would be preferable, with Professor Crawford asserting that Dr. Erdem's proposed log transformation did not merely control for the royalty formula, but rather essentially *replicated the formula* for calculating royalties, thereby distorting the regression results. 2/28/18 Tr. 1429–30, 1552 (Crawford). That is, Dr. Erdem's log approach might well have been appropriate to predict a meaningful correlation between the percentage change in royalties and the percentage change in the number of subscribers, but that is not informative (and thus not relevant) as to the effect, if any, of the impact of the different program categories within the distantly retransmitted stations on the dollar amount of royalties that were paid.

The Judges find that Professor Crawford's regression is not compromised by his use of the linear form to express the number of subscribers in this control variable. If the Judges' statutory task were to identify and rank all the causes of a change in total royalties, the change in the number of subscribers apparently might be the chief causal element because the statutory royalty fee is a percent of receipts. Changes in the dollar value of receipts, naturally, are directly related, on a percentage basis, to percentage changes in the number of subscribers. But the Judges' legal, regulatory, and economic task in this proceeding is to determine the relative market value of different categories of programming; thus, any correlation between the number of subscribers and royalties is not in furtherance of that objective. Rather, Professor Crawford's use of a linear form for the number of subscribers served to control for the size of the system without overriding the purpose of the regression, which was to measure the effects (if any) of different program categories on royalties paid.

The Judges not only find Professor Crawford's assertions in this regard persuasive, they note that his opinion has some support in the academic literature.[56] *See* G. Shmueli, *To Explain or to Predict?,* 25 *Statistical Science* 289, 290–91, 297 (2010) (''The criteria for choosing variables differ markedly in explanatory versus predictive contexts.''); *see also* F.M. Fisher, *Multiple Regression in Legal Proceedings,* 80 Colum. L. Rev. 702, 720 (1980) (The R^2 measure ''must be approached with a fair amount of caution, since R^2 can be affected by otherwise trivial changes in the way in which the problem is set up.'').

The Waldfogel-type regression is an example of modeling utilized to *explain the effects* of different program categories on the *relative* payment of royalties—rather than an attempt to *predict* the level of royalties. Thus, as Professor Shmueli wrote, the choice of variables can reasonably be based on the ''underlying theoretical model.'' *Id.; see also* F.M. Fisher, *Econometricians and Adversary Proceedings,* 81 J. Am. Stat. Ass'n 277, 279 (1986) (''There is a natural view that models are supposed to do nothing other than *predict* . . .'' resulting in the ''danger'' of ignoring ''better models that do not fit or *predict* quite so well but are in fact informative about the phenomena being investigated.'') (emphasis added).[57]

Because the Judges find in this proceeding, as in past proceedings, that the theoretical model of a Waldfogel-type regression is reasonable and useful in this context, Dr. Erdem's criticism regarding Professor Crawford's use of a linear control variable for the number of subscribers does not diminish the value of his regression analysis in this proceeding.

k. Purportedly Incorrect Consideration of Network Programming

The SDC asserted that Professor Crawford failed to analyze correctly the impact of the number of distant signals and the total number of minutes in his nonduplicated minutes analysis, which caused his coefficients to be uninterpretable and certain coefficients to turn negative, falsely implying a negative value for such retransmitted distant programming. However, a substantial portion of this assertion grew out of Dr. Erdem's tardy and thus

[56] Professor Crawford did not support his lengthy exposition (quoted in some detail in the text, *supra*), with any references to learned treatises or other authorities, nor did Dr. Erdem support his critique in such a manner. The experts for all parties were guilty of this omission throughout their respective testimonies, a problem the Judges find disturbing particularly in the present context, causing dueling esoteric econometric positions sometimes to devolve into *ipse dixit* disputes.

[57] This econometric point regarding the appropriate use of different models is of a piece with the Judges' statement in *Web IV* that no one economic model is appropriate to explain all market activity. *Determination of Royalty Rates and Terms for Ephemeral Recording and Webcasting Digital Performance of Sound Recordings* (*Web IV*), 81 FR 26 316, 26 334–35 (May 2, 2016).

rejected proposed rebuttal testimony. *See* 3/8/18 Tr. 2704–05 (Erdem). Thus, Dr. Erdem's written testimony and the SDC's affirmative case at the hearing do not support the SDC's criticisms in this regard.

However, the SDC had some success in raising this issue on cross-examination of Professor Crawford, who appeared to acknowledge that nonduplicated network programming had positive value that he had not added back into his analysis. 2/28/18 Tr. 1572 (Crawford). Professor Crawford attempted to discount the import of this factor, asserting that adding in such values would have caused a ''common level shift'' in all the coefficients. 2/28/18 Tr. 1573 (Crawford). However, when confronted on cross-examination with the logarithmic (percentage) impact on the coefficients (and thus the relative values), Professor Crawford became uncertain as to whether he should have considered the logarithmic (percentage) impact of nonduplicated network programming. More particularly, having considered the issue on the witness stand, Professor Crawford was then asked by cross-examining counsel whether he was ready to agree that he ''should have taken into account the value of the . . . coefficient that would be implied for the nonduplicated network programming''—to which he replied: ''So I am not sure that I do [agree] [a]nd I am not sure that I don't.'' 2/28/18 Tr. 1581 (Crawford).

Professor Crawford and CTV further responded to this nonduplicated network minutes argument by noting that the impact of the issue, if any, was indeterminate, because Professor Crawford had lumped nonduplicated network minutes with off-air programming as a single control variable, not as an input to determine the values of the coefficients of interest. 2/28/18 Tr. 1625–29 (Crawford). Additionally, Professor Crawford explained that, in any event, the purpose of the ''total non-duplicate minutes'' variable was to serve the same volume control function as the ''number of distant signals'' variable in the initial regression.

The Judges find that Professor Crawford's admitted uncertainty as to the impact of nonduplicated network programming minutes on the relative values of his coefficients somewhat diminishes the probative value of his non-duplicated model. Further, the fact that Professor Crawford's *purpose* in adding these minutes was to insert a control variable did not address whether this variable did not also *affect* the calculation of coefficients for the program categories at issue.[58] However, the absence of any hard evidence of the extent of this problem on the measurement of the coefficients makes this deficiency difficult to quantify. Accordingly, this criticism leads the Judges to consider the accuracy of the estimates in Professor Crawford's nonduplicated analysis to be less certain, and the Judges thus will look to Professor Crawford's *duplicated*-minutes regression results when incorporating his analysis and conclusions into their determination of the appropriate allocation of shares.

l. Overfitting

The SDC contended that Professor Crawford's regression methodology suffered from a problem known as ''overfitting.'' In econometrics, and in statistics more broadly, overfitting occurs when the regression attempts to ''estimat[e] too large a model with too many parameters.'' C. Brooks, *Introductory Econometrics for Finance* 690 (3d ed. 2014). *See also* T. Powell & P. Lewecki, *Statistics: Methods and Applications* 681 (2006) (''overfitting'' is ''[w]hen [a regression] produc[es] a curve . . . that fits the data points well, but does not model the underlying function well [because] its shape is being distorted by the noise inherent in the data.'').

On the other hand, when an econometrician attempts to avoid overfitting, he or she must be mindful not to eliminate potentially important data from the regression. Otherwise a different problem—underfitting—can arise. *To wit:*

> There is actually a dual problem to overfitting, which is called underfitting. In [an] attempt to reduce overfitting, the [modeler] might actually begin to head to the other extreme and . . . start to *ignore* important features of [the] data set. This happens when [the modeler] choose[s] a model that is not complex enough to capture these important features . . . . [T]his incredibly important problem is known as the bias-variance dilemma[59] [and] *is just as much an art as it is a science.*

D. Geng and S. Shih, *Machine Learning Crash Course: Part 4—The Bias-Variance Dilemma,* ML@B, The Official Blog of Machine Learning @Berkeley (July 13, 2017), available at https://ml.berkeley.edu/blog/2017/07/13/tutorial-4/(last visited May 1, 2018) (emphasis added).

In the present case, the SDC argued that Professor Crawford's regressions suffered from overfitting for several reasons.

First, because he used ''system-accounting period fixed effects [as distinguished from the subscriber group level], Professor Crawford's regression employs more than 7,300 variables [and] approximately 26,000 observations . . . only about 3.55 observations per variable.'' SDC PFF ¶ 109 (citing Crawford CWDT at C–3; 2/28/18 Tr. 1646 (Crawford)). According to the SDC, Professor Crawford acknowledged that ''[a]s a rule of thumb, fewer than ten observations per variable can yield a likelihood of overfitting.'' SDC PFF ¶ 111 (citing 2/28/18 Tr. 1461 (Crawford)). Because Professor Crawford had less than ten observations per variable (3.55), the SDC argued that Professor Crawford's regression suffered from overfitting, calling into question the usefulness of the estimates Professor Crawford produced.

However, Professor Crawford denied that he endorsed this test, and the Judges agree with Professor Crawford, based on the following cross-examination colloquy:

> SDC COUNSEL: [H]ave you ever heard of the One-in-Ten Rule? One-in-Ten?
>
> PROFESSOR CRAWFORD: Not—if you could describe it, perhaps I have.
>
> SDC COUNSEL: A rule of thumb—not saying it is precise—a rule of thumb that you should have at least ten observations per . . . per coefficient.
>
> PROFESSOR CRAWFORD: *I have not heard that specific rule,* but I understand the idea behind it. And generally the idea behind that is if you don't have ten observations per one tends to get imprecise parameter estimates. . . . *I don't subscribe to the One-in-Ten Rule.*

2/28/18 Tr. 1461, 1463 (Crawford) (emphasis added). Nowhere in this testimony did Professor Crawford indicate a familiarity with the supposed ''one-in-ten'' rule in counsel's question, and Professor Crawford instead

[58] The Judges note that although the shares are not drastically different in the two models, the shares for CTV, who engaged Dr. Crawford, increased more substantially under his nonduplicated analysis, *i.e.,* the approach as to which he expressed uncertainty under cross-examination than any other program category. Further, a number of categories saw either a decline or essentially no change in their shares in the nonduplicated model compared to the duplicated model. *Compare* Crawford CWDT Fig. 17 *with* Crawford CWDT Fig. 20 (both reproduced *supra*).

[59] The ''bias-variance dilemma'' refers to the problem that arises when a model that tends to overfitting (too few observations per variable) will have a low bias in the regression coefficient (*i.e.,* a regression line based on the data will tightly fit the data points) but will suffer from a relatively higher variance, (*i.e.,* a relatively higher expected distance from the variable from its true value. *See ABA Econometrics, supra* note 22, at 275–76 nn.13 & 14 (''The higher the variance, the less precise is the estimate [*i.e.,*] the less the data say about the true value of the coefficient. . . . A biased estimate differs systemically from the true value, rather than departing from the true value only because of sampling error.'').

attempted merely to explain his understanding of this heuristic as the SDC's counsel had presented it.[60] Without a more developed record regarding the existence and applicability of this one-in-ten heuristic, the Judges cannot find that Professor Crawford's use of ''only'' 3.55 observations per variable would have a negative impact on his regression methodology. Moreover, because the SDC presented this principle as a heuristic rather than a rule, the underdeveloped nature of the record is of even greater importance. Finally, because the problem of overfitting *versus* underfitting (the bias/variance dilemma discussed *supra*) appears to be a judgment call for the econometric modeler, the Judges are loath to impose this heuristic as an invalidating principle in connection with Professor Crawford's regression.

Relatedly, Professor Crawford only acknowledged that overfitting would be a problem if there were a one-to-one ratio of variables to observations that would perfectly predict the variables, but with very wide confidence intervals. Professor Crawford testified that, in his opinion, his confidence intervals were not so wide as to diminish the value of his regression results. *See* 2/28/18 Tr. 1460–62 (Crawford). The Judges agree that Professor Crawford did not go further than acknowledging that an absolute identity in the number of variables and observations would create an overfitting problem.

As a more theoretical rejoinder, Professor Crawford asserted that concerns with regard to overfitting apply to ''prediction'' regressions—not ''effects'' regressions such as Professor Crawford's regressions and all the Waldfogel-type regressions introduced in this proceeding. *Id.* at 1460, 1463.[61] However, Professor Crawford did not provide a sufficient explanation as to the disparate impacts of overfitting in a ''prediction'' regression and an ''effects'' regression to allow the Judges to find that the relatively low number of observations per variable is less important in his ''effects'' regression.

Second, according to SDC, Professor Crawford's total observations were diminished, and his regressions compromised, because he ''effectively discarded'' approximately 15% of his observations by disregarding observations from systems with a single subscriber group, which totaled ''approximately half of all systems in his data set'', by virtue of his reliance on ''system-accounting period fixed effect.'' SDC PFF ¶ 110 (citing 2/28/18 Tr. 1458 (Crawford); Crawford CWDT at 21, Fig. 10; 3/8/18 Tr. 2710–11 (Erdem)).

The Judges are troubled by CTV's failure to respond expressly to this criticism.[62] Similarly, the Judges are troubled that CTV neither cited nor addressed the SDC's criticism that Professor Crawford did not test his model for overfitting.

The final reason the SDC criticized Professor Crawford's analysis for overfitting was their claim that he essentially selected his regression model out of ''more than one'' model he had previously run. SDC PFF ¶ 118 (citing 3/1/18 Tr. 1888 (Bennett)). More particularly, the SDC contended that Professor Crawford and his team disregarded at least two regressions. First, Professor Crawford allegedly discarded a regression without the top-six multiple-system operator (MSO) interaction variables that were in his final model. 2/28/18 Tr. 1642–44 (Crawford). Second, the SDC asserted that Professor Crawford disregarded ''a model run at the system level instead of the subscriber group level,'' *i.e.,* a model that would not have treated system-accounting period data as a fixed effect. 3/1/18 Tr. 1888 (Bennett). *See* SDC PFF ¶ 113 (relying on Crawford and Bennett testimony).

According to the SDC, Professor Crawford's rejection of several models before deciding on the one he presented in evidence in this proceeding indicated a potential likelihood of overfitting in the regression model in evidence through his consumption of ''phantom degrees of freedom,'' *i.e.,* ''variables that were tried and rejected''—rather than included in the regression model in evidence.[63] SDC PFF ¶ 113 (citing 3/8/18 Tr. 2711 (Erdem)).

The SDC claimed this issue is important in the context of its overfitting criticism because, as Professor Crawford's testimony indicated, it is not generally good econometric practice to ''to try a regression, to reject some variable or to reject a form, and then try another specification and find you get a statistically improved result.'' SDC PFF ¶ 115 (citing 2/28/18 Tr. 2109 (Crawford)). According to Dr. Erdem when such an approach is taken, ''the reliability of the coefficients at the end of that model selection process is questionable.'' 3/8/18 Tr. 2711 (Erdem).

In response, CTV noted that it had addressed the issue of the first supposed ''discarded'' regression without the top-six MSO interaction variables, in its opposition to a Motion to Strike filed by SDC. In that Opposition, CTV made particular note of Professor Crawford's written direct testimony in which he explained why his regression analysis did not originally treat the interaction of these top-six MSOs as a fixed effect. *See* Crawford CWDT ¶ 166 (''Dummy variables for each of the six largest MSOs—Comcast, Time Warner, AT&T, Verizon, Cox, and Charter—are included as covariates to capture potential differences in factors not included in the econometric model that could shift demand for bundles that include imported distant broadcast signals.'').

CTV further referred to the Judges' *Order Denying SDC Motion to Strike*

[60] Moreover, Professor Crawford's testimony was at odds with what the SDC's counsel actually meant by the ''one in ten'' rule as it relates to overfitting. In the immediately subsequent testimony, the SDC's counsel challenged Professor Crawford's opinion that ''the idea behind that is if you don't have ten observations per coefficient, one tends to get imprecise parameter estimates.'' *Id.* The SDC's counsel then disagreed with the expert witness, Professor Crawford, and asserted that ''[a]n overfitted model will be able to estimate the parameters [a]nd you might not be able to project it to other data, but will be able to estimate the parameters with great precision.'' *Id.* As the introductory discussion of overfitting (set forth *supra*) makes clear, the SDC's counsel was correct in his presentation of the overfitting problem, but that is unrelated to the fact that Professor Crawford's testimony demonstrated his unfamiliarity with both the ''one-in- ten'' heuristic and its alleged econometric importance. (The Judges are not suggesting that a ''one-in-ten'' heuristic is not utilized by econometricians, but rather note that the record does not establish its existence and its applicability in this proceeding.).

[61] The Judges discussed the distinction between an ''effects'' regression and a ''prediction'' regression at length, *supra,* section 0.

[62] In its Response to the SDC's PFF, CTV helpfully cited (and reproduced) each numbered paragraph of the SDCPFF, and conspicuously absent from that response is any reference to ¶ 110.

[63] ''Degrees of freedom'' are defined ''[i]n multiple regression analysis, [as] the number of observations minus the number of estimated parameters.'' Wooldridge, *supra* note 34, at 837. Accordingly, statisticians understand ''degrees of freedom'' to be measures of how much can be learned from a regression, with the quality of knowledge improved by increasing the number of observations, reducing the number of estimated parameters, or by some combination of both that serves to widen the difference between the number of observations and parameters. *See What are degrees of freedom?,* https://support.minitab.com/en-us/minitab/18/help-and-how-to/statistics/basic-statistics/supporting-topics/tests-of-means/what-are-degrees-of-freedom/(last visited June 14, 2018). Dr. Erdem does not define a ''*phantom* degree of freedom'' except to describe it as an ''economic concept . . . not a statistic.'' 3/8/18 Tr. 2711 (Erdem). More particularly, a ''phantom degree of freedom'' can be generated when the modeler reduces the number of parameters by his or her rejection of other models that would have added a greater number of parameters—nothing more has really been learned but the explicit number of degrees of freedom appears larger, as an artifact (a ''phantom'') arising from the econometrician's rejection of models containing additional parameters. *See* Minitab Blog Editor, *Beware of Phantom Degrees of Freedom that Haunt Your Regression Models!,* The Minitab Blog (Oct. 29, 2015), http://blog.minitab.com/blog.

Testimony of Gregory S. Crawford (*Crawford Order),* which credited CTV's position that Professor Crawford had not run such an alternative course of action by generating a regression and then discarding it, but rather had decided to add the top-six MSO effects as ''fixed effects'' in the course of developing his regression approach, in order better to isolate the correlation, if any, between the explanatory (independent) variables at issue in this proceeding—the different programming categories—and the dependent variable, *i.e.,* total royalties. As the Judges explained in the *Crawford Order:*

> Dr. Crawford's WDT . . . explained how he first described differences that were observed in the data among the six largest MSOs in terms of their average receipts per subscriber. CTV Opp'n at 10–11 and Ex. 2004, Figure 6. Dr. Crawford's WDT also explained that these differences may suggest other important differences among these large MSOs regarding their signal carriage strategies, pricing, and other relevant dimensions. CTV Opp'n at 11; Ex. 2004 ¶ 61. Dr. Crawford also described a regression without the six MSO Interaction variables. Ex. 2004 ¶ 61 (unobserved differences in average revenue per subscriber could bias estimates of relative value of different programming).

Crawford Order at 5.

The Judges find that the SDC's criticism of Professor Crawford's models for consuming ''phantom degrees of freedom'' is essentially a restatement of Dr. Erdem's general claim of overfitting. Accordingly, this argument does not add a new basis for reducing the weight the Judges place on Professor Crawford's regression analysis.[64]

On balance, the Judges find that there may be some degree of overfitting in Professor Crawford's regression analyses that he did not adequately explain. It further appears that this problem was the result of a tradeoff, arising from Professor Crawford's use of a subscriber group analysis and thus a reliance on system-accounting period fixed effects that, as the SDC noted, reduced the number of observations in Professor Crawford's data set. Although such potential overfitting may exist, there is nothing in the record to demonstrate sufficiently that this problem would support a decision to diminish the judges' reliance on Professor Crawford's regression analysis.[65]

3. Program Suppliers' Criticisms of Dr. Crawford's Analysis

a. Assumption Regarding CSO Behavior

Sue Ann Hamilton, an industry expert, testified that Professor Crawford made a significant error (one that would apply to any Waldfogel-type regression) when he posited that CSOs make decisions regarding distant retransmission based on their intention to maximize profits by selecting those stations with an optimal bundle of programming. Corrected Written Rebuttal Testimony of Sue Ann Hamilton, Trial Ex. 6009, at 13–14 (Hamilton CWRT). Rather, Ms. Hamilton testified, a CSOs' selection of stations for distant retransmission is marked by inertia, not by an affirmative analysis and weighing of alternative stations. *Id.* She identified two reasons for CSO inertia. First, distant retransmission costs represent a non-material expenditure for CSOs compared with their other more expensive programming and carriage decisions. *Id.* at 9. Second, she testified that CSOs are more concerned with losing existing subscribers if they drop certain stations and the associated programs than they are with whether or not any new retransmitted station and its associated programs might entice new subscribers.[66] *Id.* In industry jargon, CSOs are more concerned with ''legacy distant signal carriage'' than with adjusting the roster of distantly retransmitted stations. *Id.* at 15. Thus, Ms. Hamilton implied, any correlation between program categories and royalties is spurious, because it is ''inconsistent with [her] understanding of how CSOs actually make distant signal carriage decisions.'' *Id.*[67]

The Judges find that Ms. Hamilton was a knowledgeable and credible witness, particularly with regard to the *de minimis* impact of distantly retransmitted stations on CSOs and the importance of ''legacy carriage.'' Moreover, the Judges take note that CSO time and effort are themselves finite resources (opportunity costs), and, as Ms. Hamilton implied, it would behoove a rational CSO to expend more of those resources making carriage and programming decisions with a greater financial impact.[68]

However, the Judges do not find that the relative unimportance of distantly retransmitted stations to a CSO deprived the regression by Professor Crawford, or any of the regressions in evidence, of value in this proceeding. If the reasons articulated by Ms. Hamilton caused CSOs to emphasize legacy carriage over potential increases in value from adding or substituting different local stations for distant retransmission, then otherwise well-constructed regressions should capture the relative values of those legacy-based decisions. The Judges are mindful that regression analysis is of benefit because it looks for a correlation between economic actors' choices (the independent explanatory variables) and the dependent variables as potential circumstantial evidence of a causal relationship, but it does not purport to explain what lies behind such a potential causal relation. Thus, Ms. Hamilton has not so much criticized regression analyses as she has provided an answer to a different question.

Indeed, if legacy-based decision-making is prevalent, the Judges would expect to see relatively stable shares over the royalty years encompassed within and across the Allocation/Phase I proceedings. In fact, the record does reflect relative stability. *See, e.g.,* Crawford CWDT ¶¶ 12, 15 (in his two regressions in this proceeding, ''the estimated parameters underlying these marginal values are stable across years . . . .''), ¶ 39, Table V–3. It thus appears that past decision-making has to an extent generally locked in (through an emphasis on legacy carriage) decisions as to the carriage of distantly

[64] Although the Judges denied the SDC's Motion to Strike, they indicated in the *Crawford Order* that they would consider whether the absence of that prior work diminished the weight they might otherwise give to the regression methodology that Professor Crawford presented at the hearing. After considering the entire record, the Judges do not reduce the weight they accord to Dr. Crawford's regression analysis based on this argument.

[65] Also, Professor Crawford's use of data from the entire population of Form 3 CSOs provided him with a wealth of data that mitigated a potential problem with regard to potential overfitting arising from sampling that provided too little data relative to the number of parameters. Crawford CWDT ¶ 123.

[66] Ms. Hamilton's assertion that CSOs are more interested in satisfying niche signal viewers than with attracting and retaining new subscribers is contrary to assumptions underlying much of the survey analysis of CSO attitudes and valuations. Survey analyses are described in Section III, *infra.*

[67] Ms. Hamilton also criticized Professor Crawford for assuming duplicated network minutes had zero value, because: (1) Some people prefer to watch a program at times other than when aired by a local network affiliate and (2) all programming has a value greater than zero to a CSO. *Id.* at 13–14. However, Professor Crawford explained in his oral testimony that: (1) He only dropped duplicated network programming that was aired at the same time as the local network programming and (2) Ms. Hamilton's conclusory assertion that all programming has value to a CSO flies in the face of the economic principle that consumers value only one version of perfectly substitutable goods. 2/28/18 Tr. 1426 (Crawford).

[68] Given the low value of retransmitted stations, a CSO might rationally emphasize the value of ''legacy carriage'' as a heuristic (without further analytical effort), assuming as Ms. Hamilton implies, that eliminating a distantly retransmitted legacy station and its programs is more likely to cause a loss in subscribers than a change in station lineup is likely (without further and costly analytical effort) to increase the number of subscribers.

retransmitted stations for the 2010–2013 period.

In sum, therefore, Ms. Hamilton's testimony, while informative and credible, does not diminish the value of Professor Crawford's regression or, for that matter, any other Waldfogel-type regression.

b. Minimum Fee Issue

Dr. Jeffrey Gray criticized Professor Crawford's regression because the analysis included in the dependent variable royalties that are paid as part of the statutorily mandated minimum fees. Gray CWRT ¶¶ 17–18. Any Form 3 cable system must pay a system-wide minimum fee equal to 1.064% of its gross receipts into the royalty pool for distantly retransmitted stations, *even if it does not retransmit any stations to distant markets,* up to the retransmission of one full DSE. 17 U.S.C. 111(d)(1)(B)(i) and (ii). Dr. Gray asserted that, consequently, the data used by Professor Crawford is not informative, because the minimum fee cost is decoupled from the marginal economic decision regarding the retransmission of the first DSE. Gray CWRT ¶¶ 20–22.

Dr. Gray noted that approximately 50% of CSOs did retransmit more than one DSE, and thus voluntarily paid a royalty greater than the minimum fee. Dr. Gray acknowledged that the data regarding this subgroup of CSOs was informative because these CSOs had made a discretionary choice to incur additional royalty charges in exchange for carriage of additional distantly retransmitted stations and their constituent programs. Accordingly, he ran what he described as Professor Crawford's regression using only the CSOs that paid more than the minimum fee, and his results were different from Professor Crawford's results. However, although Dr. Gray had characterized his work as a rerun of Professor Crawford's regression, at the hearing Dr. Gray confirmed that he had been ''unable to replicate'' Dr. Crawford's regression. 3/14/18 Tr. 3739 (Crawford).[69]

In any event, Dr. Gray's analysis resulted in the allocations among program categories—presented in the table below alongside Professor Crawford's allocations (and Dr. Gray's viewership-based allocations discussed elsewhere in this Determination):

TABLE 4—IMPACT OF ACCOUNTING FOR MINIMUM FEES REQUIREMENT ON CRAWFORD ROYALTY SHARES, 2010–2013

Claimant category	Crawford royalty Shares (1)	Crawford-modified royalty shares (2)	Distant viewing royalty shares (%) (3)
CCG	3.51	5.46	3.70
CTV	16.50	13.54	13.50
Devotionals	0.60	0.75	1.44
Program Suppliers	23.44	61.19	45.43
PTV	17.72	19.06	33.04
JSC	38.23	0.00	2.89

Gray CWRT ¶ 24, Table 3.

In response, Professor Crawford pointed out that, contrary to Dr. Gray's assertions, Dr. Crawford's regression did not ignore the impact of the minimum fee, because he included an indicator variable as a control, subsumed within his fixed effects variables, to reflect whether the minimum fee was paid at the system level. 2/28/18 Tr. 1422 (Crawford). Thus, Professor Crawford maintained that he had already accounted for the minimum fee effect. Accordingly, Professor Crawford argued that Dr. Gray's analysis merely attempted to account for minimum fee systems in a different way—by omitting those systems instead of replicating Professor Crawford's regression that used control variables and fixed effects to account for the minimum fee paying systems.[70]

Dr. Gray is correct with regard to his general principle that a CSO's decision to distantly retransmit any particular station, when that CSO is otherwise obligated to pay the minimum royalty fee, does not indicate a direct correlation between the decision to retransmit and the decision to incur a royalty obligation. By contrast, when a CSO decides to incur an increase in its marginal royalty costs by retransmitting more than one DSE, that decision reveals the CSO's preference to incur the royalty cost in exchange for the perceived value of the distantly retransmitted station and the programs in that station's lineup.

As Dr. Gray noted, the minimum royalty fee is somewhat akin to a ''tax'' that is paid regardless of whether the CSO decided to distantly retransmit a local station. 3/14/18 Tr. 3704 (Gray). Nonetheless, the CSO still has several choices to make, because it will receive something of potential value, *i.e.,* distantly retransmitted stations, in exchange for the ''tax.'' The first choice is binary; should it retransmit any station or no station? As Dr. Gray noted, during the 2010–2013 period, on average 527 out of the 1,004 Form 3 CSOs analyzed (52.5%) chose to retransmit the exact or fewer number of signals than the regulated fees permitted; 83 paid the minimum fee yet elected not to retransmit any local stations. Gray CWRT ¶ 17. Those decisions reveal that the CSO has concluded (whether by analysis or resort to a heuristic) that any of the marginal costs (physical or opportunity) associated with retransmission likely exceed the value to the CSO of such retransmission, even accounting for minimum royalties, which the CSO must pay in any event.

[69] Not only was Dr. Gray unable to replicate Professor Crawford's work, Professor Crawford also challenged Dr. Gray's assertion that he otherwise faithfully reran Professor Crawford's regression. 2/28/18 Tr. 1422 (Crawford) (asserting that Dr. Gray changed a ''key element of my regression analysis . . . the subscriber group variation [by] aggregate[ing] that subscriber group level information up to the level of the systems, which means . . . he cannot do fixed effects anymore . . . and he then adds additional variables.'').

[70] Professor Crawford testified that after reviewing the rebuttal testimony, he did a ''test'' in which he claimed to have ''dropped the minimum fee systems from the regression analysis and re-ran the regression,'' which showed that the implied royalty shares were ''very, very close: to his own original results. . ..'' 2/28/18 Tr. 1424 (Crawford). However, Professor Crawford and CTV did not produce this regression because, as CTV's counsel acknowledged in response to a rebuttal, ''this is not a new analysis [and] [w]e are not presenting any numbers here.'' 2/28/18 Tr. 18 (John Stewart, CTV counsel).

These statistics also reveal that many CSOs decided to retransmit stations when they were obligated to pay only the minimum royalty. Although there is no *marginal royalty cost* associated with this decision, the CSO's decision as to *which* stations to retransmit remains a function of choice, preference, and ranking.[71] Thus, the CSO in this context would still have the incentive to select distant local stations for retransmission that are more likely to maximize CSO profits, through either an increase in subscribership or, as Ms. Hamilton emphasized, by avoiding the loss of subscribers through the preservation of ''legacy carriage'' through the non-analytical heuristic of maintaining the status quo.[72]

There are substantial economic bases for this finding. Because the ''tax'' of the minimum fee is paid regardless of whether distant retransmission occurs, that ''tax'' is also in the nature of a sunk cost. Fundamental economic analysis provides that a seller should ignore sunk costs when making marginal decisions (although they should try to recoup these costs if the buyers' willingness-to-pay allows it). Nonetheless, a CSO that decides to distantly retransmit a station when the *marginal* royalty cost is zero has revealed that the particular station contains programming that would increase marginal value to that CSO, over and above the next best alternative ''retransmittable'' local station and above any other marginal costs (*e.g.,* physical retransmission costs or the opportunity cost of foregoing a different type of cable channel in the CSO's channel lineup).

Finally, Dr. Gray's emphasis on the CSOs that retransmit more than one DSE is misleading. Those other CSOs that pay only the minimum royalty fee and elect to distantly retransmit one station might have elected to pay a positive fee in the absence of the minimum fee. For example, assuming Program Suppliers' programs were more valuable to a CSO than the minimum fee and disproportionately more valuable than any other program category, that CSO would have retransmitted a station that disproportionately included Program Supplier content and willingly paid the minimum fee (or more). Dr. Gray's criticism fails to address this issue.

With regard to Dr. Gray's own regression, run for the first time in rebuttal, the Judges are not surprised that his different regression approach would yield different results. However, the Judges do not rely on methodological approaches proffered for the first time in rebuttal, except to the extent they appropriately demonstrate defects in another party's approach. Because Dr. Gray acknowledged that he could not replicate Professor Crawford's regression and because Dr. Gray therefore utilized a different approach, the Judges do not find that Dr. Gray's critique as it related to the minimum fee issue was sufficient to discredit Professor Crawford's approach.[73]

4. Conclusion Regarding Professor Crawford's Regression Analysis

Not only did Professor Crawford sufficiently respond to the criticisms of his regression analysis, that analysis is based on a number of other factors as to which no criticisms were leveled. First, he used the universe of all programming on all distant signals, rather than a sampling, thus avoiding any problems that may be associated by improper sampling or inadequately sized samples. 2/28/18 Tr. 1186 (Crawford). Second, by using data and royalties at the subscriber group level, his regression analysis related more specifically to programs and signals actually available to subscribers and provided more variation and observations than past regressions. 2/28/18 Tr. 1512, 1517–19, 1661 (Crawford). Third, his use of a fixed effects approach avoided the criticism that he had omitted key variables. Crawford CWDT ¶ 107; 2/28/18 Tr. 1398 (Crawford). Fourth, the confidence intervals for his proposed shares were relatively narrow at the 95% confidence level (*i.e.,* at a .05 significance level). Crawford CWDT ¶¶ 117 and 176, Tables 23 & 24. Fifth, Professor Crawford acknowledged the potential problem that his fixed effects could lead to the ''costs'' of higher standard errors and wider confidence intervals (and, as Professor George noted, with specific reference to the minimum fee issue), but he was able to mitigate that effect with his rich data set, so that his parameters remained relatively precise. Crawford CWDT ¶ 123. Finally, unlike the other regressions, Professor Crawford does not estimate any negative coefficients for the coefficients of interest in this proceeding, which makes his regression analysis (especially his duplicated analysis that also had no negative coefficients for network programming) more of a stand-alone estimate of relative value and less in need of reconciliation with the survey analysis. Thus, on balance, the Judges find Professor Crawford's regression analysis, especially his duplicate-minutes approach, to be highly useful in estimating relative values in this proceeding.

C. Dr. Israel's Regression Analysis

1. Introduction

On behalf of the Joint Sports Claimants, its economic expert, Dr. Mark Israel, conducted a regression also in the general form of a Waldfogel-type regression, but with minor modifications intended to improve the reliability of the methodology. Written Direct Testimony of Mark Israel, Trial Ex. 1003, ¶¶ 23, 25 (Israel WDT). Dr. Israel's primary purpose was to determine whether such a regression would corroborate the results of the 2004–05 and the 2010–13 Bortz Surveys. He concluded that the ''observable marketplace behavior'' he had analyzed did indeed corroborate the results of both Bortz Surveys. *Id.* ¶ 8. Dr. Israel further testified that, if the Judges

[71] In constructing a hypothetical market, the Judges assume CSO rationality or bounded rationality, at the least. ''Bounded rationality'' means that economic actors behave rationally (*e.g.,* preferring potential profits to possible losses), but that rationality is inevitably limited by their lack of full information or the resources and ability to obtain full information necessary to make a completely (''unbounded'') rational decision. *See* C. Sunstein, *Behavioral Law & Economics* 14–15 (2000).

[72] A more homespun analogy is perhaps instructive. Consider a child who has misbehaved and is thus punished by her parents who prohibited her from playing outside, as is her preference. Instead, she is sent by her parents to her room for the evening, where she is permitted to watch television (either the offense is not so great in this example as to warrant a suspension of TV privileges or the child has relatively permissive parents). The child has been compelled to pay a cost (confinement to her room) and precluded from her first choice (no confinement). If watching television is her only (or next best) option given confinement, she will rationally select the programs that provide her with the most utility. The fact that she was compelled to remain in her room would not provide her any incentive to abandon her order of preference as to the programs she would watch, even though she would not watch any of them but for the ''tax'' imposed by her parents (this analogy assumes that she would not refuse to watch television, as ''cutting off her nose to spite her face'' is assumed to be an irrational response). The CSO that is ''confined'' to a market in which the minimum royalty fee is imposed likewise rationally would make the best of a bad situation and retransmit stations based on the capacity of the station to increase CSO utility/profits, that is, assuming marginal non-royalty costs were not prohibitive.

[73] An expert economic witness, Professor George, who otherwise approved of Professor Crawford's analysis, notes that the treatment of minimum fee only systems by Professor Crawford generally resulted in a tradeoff between accuracy and bias. Specifically, Professor George testified that lumping together CSOs paying only the minimum fee with other CSOs (as Professor Crawford did) ''introduces some uncertainty [and] wider confidence intervals,'' but, on the other hand, Dr. Gray introduces ''bias'' because he has ''pull[ed] out systems . . . where their choices are very valid.'' 3/5/18 Tr. 2045 (George). Because the Judges have found Professor Crawford's confidence intervals to be relatively narrow, Professor George's testimony in this regard does not affect the Judges' reliance on Professor Crawford's analysis.

were to find that the 2010–13 Bortz Survey did not support a finding of relative market value, his and Professor Crawford's respective regressions constituted the best alternative evidence of such value. 3/12/18 Tr. 3079 (Israel).[74]

2. Dr. Israel's Regression

Dr. Israel analyzed royalties CSOs paid over a three-year period, 2010–2012, rather than the full four-year period at issue in this proceeding, 2010–2013. *Id.* ¶ 7. Dr. Israel testified that he did not analyze the full 2010–2013 four-year period because he had begun his analysis when the proceeding was limited to the three-year 2010–2012 period. However, he testified that he was able to confirm the accuracy of his regression estimates against the results from the Bortz Survey that covered all four years. He also noted that his results corresponded closely to the results that Professor Crawford obtained in his regression, which spanned the full four-year period. 3/12/18 Tr. 2838–40 (Israel).

Dr. Israel, like Professor Crawford, utilized the royalty data from the ''Form 3'' CSOs, *i.e.,* the larger CSOs, which paid the largest dollar amount of royalties for distantly retransmitted stations by virtue of the large amount of ''gross receipts'' they earned from their cable operations. Israel WDT ¶ 9.

Referring to the regulated nature of the cable market, Dr. Israel noted: ''There is no market price for distant signal programming to use in assessing relative marketplace value.'' *Id.* ¶ 16. Dr. Israel further noted that, applying the principles laid out in prior proceedings, ''relative marketplace value'' must be estimated by consideration of evidence as to what royalties would be paid for different categories of programming in a ''hypothetical free market.'' *Id.* To ascertain that value, and consistent with his understanding of prior determinations, Dr. Israel focused on the relative value of program categories to the buyers, *i.e.,* CSOs. *Id.*[75]

To assemble the specifications of his regression model, Dr. Israel applied the essentials of a Waldfogel-type regression. That is, he tested to find a correlation between: (1) Royalties paid by CSOs (the dependent variable) and (2) minutes of programing in each category of programming as established in this proceeding (the independent/explanatory variable). He utilized control variables to hold constant other potential drivers of CSO royalty payments, itemized *infra. Id.* ¶ 22.

However, he altered his approach from the Waldfogel regression approach in the following important ways:

- To reflect the fact that not all subscriber groups among a CSO's total subscriber base received any given distant signal, Dr. Israel prorated each signal ''based on the fraction of the number of subscribers who received it . . . by using the variable in the CDC data called 'Prorated DSE' as a measure of the prorated distant signal equivalents that each distant signal represents for each CSO—Accounting Period.'' *Id.* ¶ 26.[76]
- To account for the retransmission of non-compensable ''Network Programming'' minutes in the estimates, Dr. Israel included those minutes to ''effectively act'' as a control variable, thus excluding them from the calculation of shares of the royalty fund. That is, he included these minutes in his regression because they are in fact retransmitted and ''therefore are part of the cost-benefit analysis that a [CSO] undertakes when deciding whether or not to carry [a] distant signal . . . [h]ence explaining total royalty payments [even though] they are not compensable minutes in this proceeding.'' *Id.* ¶ 27.
- To improve the quality of his estimates, Dr. Israel utilized a larger sample than employed in the Waldfogel regression. Specifically, Dr. Israel used data from a random sample of 28 days in each six-month accounting period in his 2010–2012 analysis, a 33% increase in the number of sample days (21) utilized in the Waldfogel regression. *Id.* ¶ 30.[77]

Dr. Israel controlled for other independent variables in essentially the same manner as in the Waldfogel regression, by including the following control variables in his regression model:

- Number of CSO subscribers from the previous accounting period
- Number of activated channels for the CSO in the previous accounting period
- Count of broadcast channels for the CSO
- Indicator for whether a CSO pays the special 3.75 percent rate royalty fee
- Indicator for whether or not the CSO pays the minimum statutory payment
- Average household income for the CSO's Designated Market Area (DMA)
- Indicators for the accounting period of each observation

Id. ¶ 33.

Through these specifications, Dr. Israel stated that he was able to answer what he characterized as the fundamental question: ''How much do CSO royalty payments increase with each additional minute of each category of programming content?'' *Id.* ¶ 34.

Applying his regression model, Dr. Israel made the following estimations:

TABLE 5—ISRAEL REGRESSION MODEL RESULTS

Variables	Regression model all categories
Minutes of Sports Programming	** 4.836
	(2.466)
Minutes of Program Suppliers Programming	*** 0.469
	(0.104)
Minutes of Commercial TV Programming	*** 1.010
	(0.355)
Minutes of Public Broadcasting Programming	** 0.660
	(0.306)

[74] In addition to performing a regression analysis, Dr. Israel also reviewed data relating to the economics of a different market—that in which large cable networks generally, and TNT and TBS specifically, bought sports and other programming. The Judges discuss that analysis *infra.*

[75] Dr. Israel did not consider the relative value of program categories from the perspective of the hypothetical sellers, which he identified as the stations retransmitting the programs in a bundled signal. 3/12/18 Tr. 3064 (Israel).

[76] Thus, Dr. Israel's regression differs from Professor Crawford's regression in that Professor Crawford analyzed the relationship between royalties and program categories *at the subscriber group level,* whereas Dr. Israel ran the regression *at the CSO level,* using CDC data that prorated the DSE to reflect the proportion of CSO subscribers who received the distant signal. Israel WDT ¶ 27.

[77] Dr. Israel made note of two other adjustments he made to his regression that caused it to differ from the Waldfogel regression. First, he eliminated a ''Mexican Stations'' category because no such category was identified in this proceeding. Israel WDT ¶ 29. Second, Dr. Israel grouped the programs from ''low power'' stations according to their appropriate program categories, rather than carving out a miscellaneous category for ''low power'' stations, as had been done in the Waldfogel regression. Israel WDT ¶ 31.

TABLE 5—ISRAEL REGRESSION MODEL RESULTS—Continued

Variables	Regression model all categories
Minutes of Canadian Programming	*** −0.973
	(0.212)
Minutes of Devotional Programming	*** −0.701
	(0.246)
Minutes of Network Programming	*** −0.985
	(0.290)
Minutes of Other Programming	** 0.916
	(0.462)
Number of Subscribers (Previous Accounting Period)	*** 1.351
	(0.0601)
Number of Activated Channels (Previous Accounting Period)	*** 141.8
	(18.73)
Median Household Income in Designated Marketing Area	*** 1.339
	(0.286)
Count of Broadcast Channels	−493.5
	(326.5)
Indicator for Special 3.75% Royalty Rate	*** 41,918
	(4,711)
Minimum Payment Indicator	*** −16,501
	(3,689)
Observations	5,465
R-squared	0.692

Source: TMS/Gracenote; Cable Data Corporation; Kantar media/SRDS.
Note: Robust standard errors in parentheses.
*** p<0.01, ** p<0.05, * p<0.1.[78]

Israel WDT ¶ 36 Table V–I (citations omitted).

Although Dr. Israel reported the standard errors generated by his regression (in the parentheticals in the table above, pursuant to conventional regression notation), he did not set forth the confidence intervals that result from these standard errors, either for his coefficients or for the resulting shares. He acknowledged that it would be difficult to calculate meaningful confidence intervals in this exercise because shares of any one category are dependent on the shares in other categories and the econometrician must ''do something more than just a simple linear calculation.'' 3/12/18 Tr. 2975 (Israel).

Nonetheless, Dr. Israel acknowledged that confidence intervals could be calculated from the standard errors in his regression. In cross-examination, and by way of example, he acknowledged that the confidence interval applicable to the JSC programming coefficient in his regression ranged from 0.003 to 9.669. 3/12/18 Tr. 2976 (Israel). Given this range, he agreed that the math would create a range for the value of JSC programming, with a 95% degree of confidence, between ''a fraction of a penny and $9.67 per minute.'' 3/12/18 Tr. 2977 (Israel). Similarly, Dr. Israel acknowledged that, given his standard error for CTV, he could state with 99% confidence that the value for a minute of CTV programming ranged between 31 cents and $1.71. 3/12/18 Tr. 2978 (Israel). In similar fashion, Dr. Israel acknowledged that his regression, and the standard errors he reported, generated the following confidence intervals for each minute of programming: For PTV, between $.06 and $1.26, for Canadian Programming, between −$1.39 and −$0.56, and, for SDC programming, between −$1.18 and −$0.22.

Dr. Israel further acknowledged that the coefficients he estimated in his regression all fell within the confidence intervals of each other, which suggested an overlapping that could undermine the usefulness of his results. However, he denied that such a consequence had statistical meaning detrimental to his opinion because ''confidence intervals tell you something about the precision of those coefficients, but you can't step from a statement about statistical significance to a statement about magnitude of value.'' 3/12/18 Tr. 3014 (Israel).

Nonetheless, Dr. Israel conceded that ''the confidence intervals are . . . important if I have no other information to compare it to, so I am testing a hypothesis based on just the regression.'' 3/12/18 Tr. 2981 (Israel). However, Dr. Israel further testified that he reached the opinion that the regression he ran generated meaningful coefficients because they corroborated the Bortz Survey, which was both the primary purpose of his regression analysis and a corroborative result that mitigated any uncertainty generated by the wide confidence intervals arising out of his regression. 3/12/18 Tr. 2981–82 (Israel).

Dr. Israel described the coefficients derived by his regression analysis as

[78] The ''*p*-value'' provides a measure of statistical significance. It represents ''[t]he smallest significance level at which the null hypothesis can be rejected.'' Wooldridge, *supra* note 34, at 867. A statistical significance level of .01, .05 and .1, as used in the table in the accompanying text is ''often referred to inversely as the . . . confidence level,'' equivalent to 99%, 95% and 90%, respectively. *ABA Econometrics, supra* note 22, at 18. Although ''[s]ignificance levels of five percent and one percent are generally used by statisticians in testing hypotheses . . . this does not mean that only results significant at the five percent level should be presented or considered [because] [l]ess significant results may be suggestive, even if not probative, and suggestive evidence is certainly worth something.'' Fisher, 80 Col. L. Rev., *supra* at 717–718. Thus, ''[in] multiple regressions, one should never eliminate a variable that there is a firm foundation for including, just because its estimated coefficient happens not to be significant in a particular sample.'' *Id.* However, care must be taken not to confuse the ''significance level'' with the ''preponderance of the evidence'' standard, because ''the significance level tells us only the probability of obtaining the measured coefficient if the true value is zero,'' so one cannot ''subtract[] the significance level from one hundred percent'' to determine whether a hypothesis is more or less likely to be correct. *Id. See also* D. Rubinfeld, *Econometrics in the Courtroom,* 85 Col. L. Rev. 1048, 1050 (1985) (''[I]f significance levels are to be used, it is inappropriate to set a fixed statistical standard irrespective of the substantive nature of the litigation.''); D. McCloskey & S. Ziliak, *The Standard Error of Regressions,* 34 J. Econ. Lit. 97, 98, 101 (1996) (''statistically significant'' means neither ''economically significant'' nor ''significant [in] everyday usage [where] 'significant' means 'of practical importance' . . . .'').

representing the ''average value across all cable systems of an additional minute of that category of programming.'' Israel WDT ¶ 37; 3/12/18 Tr. 2831 (Israel). Thus, it became a simple algebraic matter ''to determine the relative value of each type of programming.'' That is, as with any Waldfogel-type regression, Dr. Israel simply took the coefficient estimated by his regression for each program category and multiplied it by the number of minutes applicable to that category, and divided that product by the total value of all such products summed across all categories. He expressed the ratio for any program category X as:

$$\frac{\text{Value Contribution of Program Category}}{\text{Total Value across all Program Categories}}$$

Israel WDT ¶ 38. Applying this ratio to each of the six categories Dr. Israel calculated the following estimated percentage shares per category averaged over the 2010–2012 period for which he had data:

TABLE 6—ISRAEL REGRESSION: ESTIMATED PERCENTAGE SHARES

Category	2010–2012 average share (%)
JSC	37.54
Program Suppliers	26.82
CTV	22.16
PTV	13.48
SDC	0.00

TABLE 6—ISRAEL REGRESSION: ESTIMATED PERCENTAGE SHARES—Continued

Category	2010–2012 average share (%)
CCG	0.00

Id. Table V–2. However, Dr. Israel did not calculate share allocations for specific years, *which is how the Judges are required by statute to make the allocations.*[79]

Dr. Israel further noted that these results were not only consistent with the results of the Waldfogel regression for the 2004–05 years, they were consistent with the results of the regression undertaken by Dr. Rosston, referenced *supra,* in an earlier proceeding covering 1998 and 1999. Specifically, Dr. Israel's regression implied the same rank order for the top four programming categories and a generally similar magnitude of royalty allocations for the top three categories as in Dr. Waldfogel's regression. *Id.* ¶ 39.

Further, with regard to his assigned task, Dr. Israel noted that his rank order for the top four program categories was consistent with—and thus corroborative of—the top four rank order determined by the Bortz Survey. Dr. Israel set forth and also depicted the consistency of his regression and the Bortz Survey as follows:

TABLE 7—COMPARISON OF BORTZ SURVEY RESULTS TO ISRAEL REGRESSION

Programming category	2010 (%)	2011 (%)	2012 (%)	2013 (%)	Bortz Survey average 2010–2013 (%)	Israel regression 2010–2012 (%)
Sports	40.9	36.4	37.9	37.7	38.2	37.5
Program Suppliers	31.9	36.0	28.8	27.3	31.0	26.8
CTV	18.7	18.3	22.8	22.7	20.6	22.2
PTV	4.4	4.7	5.1	6.2	5.1	13.5
Devotional	4.0	4.5	4.8	5.0	4.6	0.0
Canadian	0.1	0.2	0.6	1.2	0.5	0.0

Id. ¶ 40 Table V–4.

[79] Dr. Israel testified that he did run a test to determine whether his regression results changed depending upon the time period evaluated and that he found that his results were stable over time. *Israel WDT* App. C–1. However, he did not link that result with any sufficient assertion explaining how or why the Judges might apply his findings for each year.

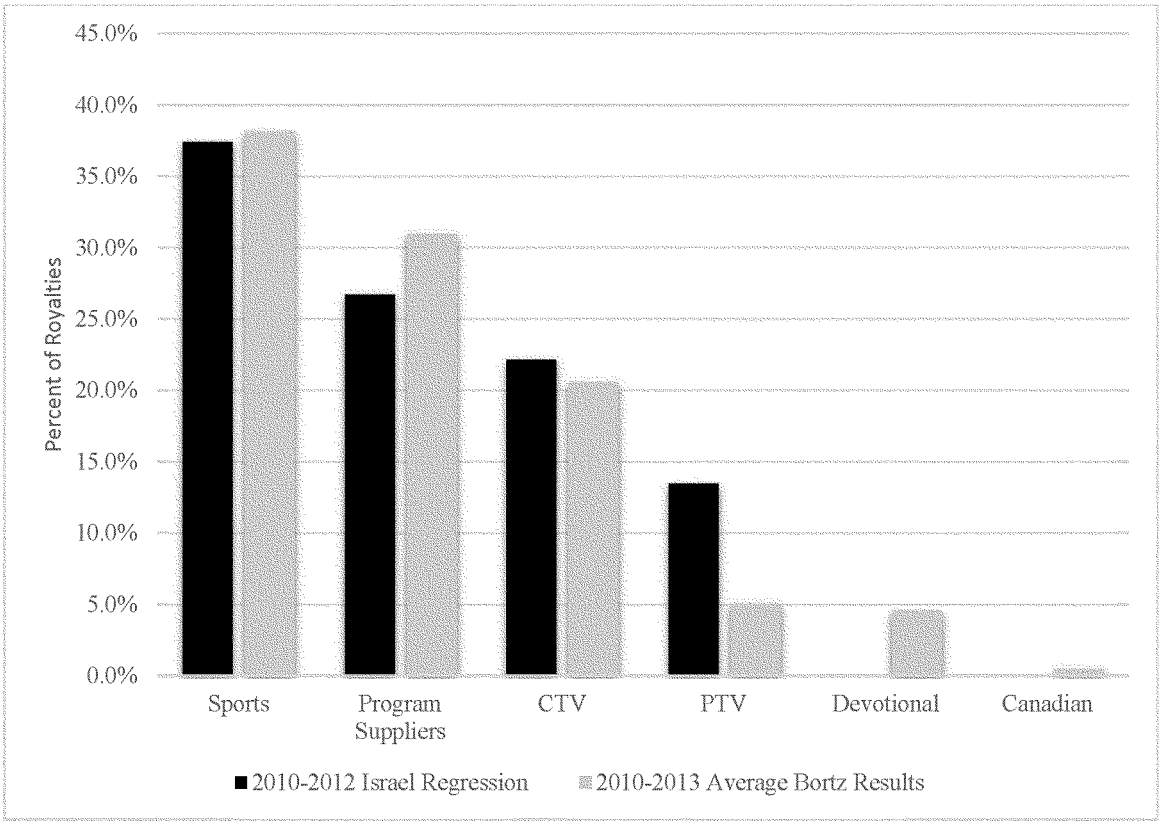

FIGURE 1: COMPARISON OF BORTZ SURVEY RESULTS TO ISRAEL REGRESSION

Id. ¶ 40 Fig. V-1.

Dr. Israel acknowledged that although his ranking of the top four categories (JSC, Program Suppliers, CTV and PTV) was consistent with the Bortz Survey ranking, that consistency did not extend to the bottom tier (PTV, SDC and Canadian programming). *Id.* ¶ 41. Rather, he acknowledged that his regression estimated no value for the SDC and Canadian programming. However, he noted that, when the three low-tier categories are viewed collectively, his regression estimated a total share of value (13.5%) to all three categories (actually just PTV) and the Bortz Survey provided what he understood to be a roughly equivalent relative value range between roughly 9% and 13% in total for Public TV, Devotional, and Canadian programming. 3/12/18 Tr. 2880–81 (Israel).

To test the robustness of his findings, Dr. Israel conducted several sensitivity analyses. He concluded that each of his sensitivity analyses ''confirm[ed] the relative ranking of the various categories, particularly of the top three categories relative to the bottom three.'' Israel WRT ¶ 43. *See also Id.* App. C.

More particularly, Dr. Israel ran three sensitivity analyses to determine whether the following changes in his model would alter his results in any meaningful way. These analyses examined changes that would result from: (1) Isolating JSC minutes and comparing these minutes ''to all other programming minutes *combined* . . . to test whether the value for [JSC] minutes is sensitive to splitting out the individual programming categories'' (as in his regression), (2) controlling for any additional ''market-specific traits of the CSO'' (through application of a DMA ''fixed effect''), and (3) controlling for any royalties ''that [resulted from] the 3.75% fee [rather than] the base rate fee royalties.'' In each sensitivity analysis, Dr. Israel found that the changes had ''no effect on any of [his] conclusions.'' *Id.*

3. Program Suppliers' Criticisms

Dr. Gray expressed a number of specific criticisms of Dr. Israel's regression, in addition to Dr. Gray's criticisms of Waldfogel-type regressions generally.

a. Alleged Sensitivity of Regression

First, Dr. Gray asserted that Dr. Israel's regression exhibits ''remarkable sensitivity'' because of the wide range of proposed relative shares. For example, when Dr. Israel's standard errors are converted into confidence intervals, Dr. Israel's regression indicates a range for the JSC share ''from 0% to 63.29%'', when assumptions are changed ''regarding the choice of explanatory variables or the assumed functional relationship those variables have on royalty fees paid.'' Gray CWRT ¶ 28.

Dr. Gray testified that he replicated Dr. Israel's results exactly and then calculated what Dr. Israel had omitted—95% confidence intervals around the estimates of the value of an additional minute of programming by category type. Gray WDT ¶ 29. Dr. Gray determined that at the 95% confidence level, the JSC share could have been as low as .05%, far less than the 37.5% share derived by Dr. Israel through his point estimate, but consistent with the 0% share for the JSC estimated by the SDC's economic expert, Dr. Erdem. Accordingly, Dr. Gray opined that Dr. Israel's regression is both ''imprecise'' and ''unreliable.'' Gray CWRT ¶ 29.

Dr. Israel rejected Dr. Gray's criticisms in this regard. Specifically, Dr. Israel maintained that it was uninformative that Dr. Gray's sensitivity analysis diminished the statistical significance of the former's estimates because statistical

significance is ''a measure . . . [of] how certain we are that the estimate is different from zero.'' 3/12/18 Tr. 2840 (Israel). Further, when a modeler or critic adds many additional variables, the regression will generate lower statistical significance. Thus, according to Dr. Israel, Dr. Gray's sensitivity analysis necessarily created the loss of statistical significance, by introducing too many new variables that were unrelated to the core variables (program categories) that must be isolated and measured in this proceeding.

Dr. Israel also defended this large interval with what the Judges see as a non sequitur—that he nonetheless still ranked the JSC first. *See id.* at 3011. When confronted with the additional fact that injecting the DMA effect into the regression resulted in a regression with the highest R^2 among his proffered and sensitivity regressions, Dr. Israel testified that when ''you add a bunch of DMA fixed effects, you're going to get a higher R-squared. The notion of choosing a regression to maximize R-squared is given zero credit in economics.'' *Id.* The Judges agree with Dr. Israel on this narrow point because, as discussed *supra* with regard to the Crawford regression analysis, goodness-of-fit as measured by the R^2 calculation is not dispositive when evaluating a regression intended to measure specific *effects* rather than to *predict* a result.

The Judges also agree with Dr. Israel that the replicated model created by Dr. Gray did not necessarily discredit Dr. Israel's analysis, given the addition of several variables in that replication.

However, the Judges agree with Dr. Gray that the large confidence intervals around Dr. Israel's estimated coefficients—and therefore around his shares—are troubling, especially when compared to the narrow confidence intervals and low standard errors in Professor Crawford's regression analysis. The Judges recognize, as in the *2004–05 Determination,* that wide confidence intervals and large standard errors call into doubt the ''precision of the results [and] caution against assigning 'too much weight' to their corroborative value.'' *See also ATA Airlines,* 665 F.3d at 896 (confidence interval can be so wide that ''there can be no reasonable confidence'' sufficient for reliance by fact finder.).[80]

b. Choice of Linear Functional Form and Inclusion of Minimum Fee CSOs

Dr. Gray took issue with Dr. Israel's use of a *linear* relationship between royalties paid and minutes of programming, rather than using a log of royalties paid. Rather, and by comparison, Dr. Gray found that Professor Crawford's use of a log-linear relation was ''a more realistic economic function for the functional form of the relationship,'' particularly as ''between minutes and royalties,'' because the logarithmic calculation revealed the *percentage impact* that retransmitted minutes have on royalties. Gray CWRT ¶ 30.[81]

In response to Dr. Gray's criticism of his use of a linear form, Dr. Israel testified that ''taking the log is kind of a technical thing . . . .'' 3/12/18 Tr. 2856 (Israel). Further, he did not utilize any econometric tests to determine whether the linear form was appropriate, particularly compared to the log-linear form.

Dr. Gray combined his log transformation of Dr. Israel's linear approach with another of Dr. Gray's criticisms—the use of data from CSOs that only pay the minimum fee (as he also discussed in his criticism of Professor Crawford's regression). Adjusting for these two purported defects, Dr. Gray found that Dr. Israel's reworked regression produced the following radically different estimates, compared to Dr. Israel's unadjusted regression:

TABLE 8—IMPACT OF ACCOUNTING FOR MINIMUM FEES REQUIREMENT ON ISRAEL ROYALTY SHARES, 2010–2013

Claimant category	Israel royalty shares (%) (1)	Israel-modified royalty shares (%) (2)	Distant viewing royalty shares (%) (3)
CCG	0.00	4.15	3.70
CTV	22.16	27.20	13.50
Devotionals	0.00	0.64	1.44
Program Suppliers	26.82	44.27	45.43
PTV	13.48	19.55	33.04
JSC	37.54	4.19	2.89

Gray CWRT ¶ 31 Table 4.

In response to Dr. Gray's criticism of Dr. Israel's use of data from CSOs paying only the minimum fee, Dr. Israel stated that such data should not simply be disregarded, because it provides useful information regarding the carriage decisions of those CSOs. He also noted that Dr. Waldfogel's regression, relied upon by the Judges in the most recent Allocation/Phase I proceeding, likewise applied the data from CSOs who paid only the minimum fee. 3/12/18 Tr. 2830 (Israel).

The Judges agree with Dr. Israel that the data regarding the carriage decisions of CSOs who pay only the minimum fee should not be disregarded, and adopt their findings relating to this issue in connection with Professor Crawford's regression. *See* section II.B.3.b, *supra.* To summarize, even when a CSO is obligated to pay the minimum royalty fee, it still has the incentive to select stations for distant retransmission that it believes will maximize the benefits (or, in economic terms, utility) to the CSO.

[80] The Judges emphasize that Dr. Israel's confidence intervals are problematic especially because they are wide relative to those in Professor Crawford's regression. The Judges are not finding that wide confidence intervals, standing alone, automatically serve to discredit a regression analysis. *See generally* Fisher, 80 Colum. L. Rev., at 716 (even when the standard errors are relatively large and the confidence intervals relatively wide, that ''does not mean that the true coefficient is likely to be *any* part of that range,'' but rather ''the estimated coefficient'' remains ''[t]he single most probable figure . . . .'') (emphasis added).

[81] Dr. Gray stated that he used a ''Box-Cox'' test to confirm that a percentage-based relationship was a preferred specification over an assumed linear relation and better fit the data. However, Dr. Gray did not support that statement with a citation to his work or to literature that would be supportive. *Gray WRT* ¶ 30 n. 10. When a rebuttal expert purports to do a deeper dive into a model than the expert whose work he or she is criticizing, support for that deeper analysis should be provided in the written rebuttal testimony. However, Professor Crawford also undertook (and provided a succinct explanation of) a Box-Cox test for his regression analysis and found the results ''strongly favoring the log-linear over the linear model.'' Crawford CWDT ¶ 115.

However, because carriage decisions are not tied even indirectly to a contemporaneous discretionary decision to pay royalties (beyond the mandatory minimum 1.064% for the first DSE), they strike the Judges as potentially less informative than discretionary decisions by CSOs to incur an additional royalty expense in order to distantly retransmit particular stations. Nonetheless, as explained *supra* in the Judges' consideration of this issue in connection with Professor Crawford's regressions, the Judges find no basis in the record by which they could or should make a reasonable ''relative value'' adjustment based on whether a CSO did or did not pay only the minimum fee.

c. Negative Coefficients

Dr. Gray further attacked the usefulness of Dr. Israel's regression by criticizing as ''nonsensical'' the negative coefficients Dr. Israel estimated for Canadian and Devotional programming. According to Dr. Gray, negative coefficients are implausible because a program category cannot have a negative market value. Gray CWRT ¶ 35.

In response, Dr. Israel did not dispute that the coefficients themselves (whether positive or negative) should be understood as the value per minute, or, equivalently, as the ''implied price'' of a minute of programming. 3/12/18 Tr. 2832–36 (Israel). Dr. Israel understood the negative coefficients to indicate that the inclusion of such programming on a station lineup (*i.e.,* a bundle) correlated with a lower station value compared to programming that generated a ''positive coefficient'' in the regression. 3/12/18 Tr. 2832–33 (Israel). However, Dr. Israel conceded that even programming with negative coefficients nonetheless have positive value when retransmitted, and he therefore declined to assign zero value to such categories.

However, the Judges find that Dr. Israel's concession proves too much. If programs could have positive economic value despite the negative value of the coefficient identified by the regression, *then the coefficient does not reflect absolute market value per minute.* Rather, the coefficient must represent something else. Dr. Israel identified that something else as the contribution of a program category to the value of the royalty pool as compared with, that is, *relative to,* the value of other program categories.[82] Of course, this ''something else'' is something that the Judges must determine in this proceeding—the relative value of a program from a given category to a CSO when packaged in a station bundle, *i.e.,* relative to the inclusion of a program in another category.

Accordingly, the Judges do not find the presence of negative coefficients to be ''nonsensical.'' However, because of Dr. Israel's explanation of the negative coefficients, the Judges disagree with his decision to reset those negative coefficients to zero.[83] And, because negative coefficients do not mean that the programs lacked any *absolute* value as contributors to the sum of royalties paid, any negative values for program categories derived from a regression would need to be adjusted to reflect the absolute value of such programming, given that it indeed was retransmitted on some cable systems.[84]

d. Criticisms by Dr. Jeffrey Stec

Dr. Jeffrey Stec, another economic expert witness for Program Suppliers, leveled several criticisms at Dr. Israel's regression. First, he added to the chorus of witnesses who opined that the regulated nature of the market renders inapposite any purported statistical relationship between royalties and program categories. Amended Written Rebuttal Testimony of Jeffrey Stec, Trial Ex. 6016, at 15 (Stec AWRT). Nonetheless, the Judges find regression in such circumstances to be a useful tool to ascertain relative differences in value among program categories, notwithstanding the regulated nature of the marketplace.

Dr. Stec also criticized Dr. Israel's regression because it suggests that two different distantly retransmitted signals could be associated with the same royalty level despite transmitting different combinations of content. Stec AWRT at 25–27. The Judges do not find this to be a valid criticism. Dr. Israel's regression identifies values for each program category and multiplies those values by the number of minutes transmitted for each category. These categorical values certainly could be summed up for any given signal, as Dr. Stec's criticism assumes. However, there is no reason why different signals retransmitted on different cable systems to different subscriber groups (of various sizes) could not generate the same level of royalties notwithstanding that they contain different mixes of program categories. This criticism misapprehends that the purpose of a section 111 allocation proceeding is not to value the signals as a whole, but rather to value the constituent program categories across the signals.

4. The SDC's Criticisms

a. Criticisms by John Sanders

John Sanders, a media valuation expert who testified on behalf of the SDC, criticized Dr. Israel's regression from a non-statistical perspective. First, he opined that the concept of correlating royalty generation with program categories is ''conceptually flawed.'' *Written Rebuttal Testimony of John Sanders,* Trial Ex. 5006, at 6 (Sanders WRT). He opined that marketplace value, or fair market value, is identified by evaluating actual transactions that are ''modulat[ed]'' by price and quantity. Accordingly, he asserted that a higher market value could be associated with programming that represents a relatively small amount of airtime. *Amended Direct Testimony of John Sanders,* Trial Ex. 5001, at 21.

The Judges agree with Mr. Sanders regarding the potential for programming to possess a relative value greater than would be suggested by relatively low total viewership and airtime.[85]

[82] For a simpler example, consider a restaurant patron offered a three-flavor ice cream dessert. Assume for that patron chocolate adds a utility measure (''utils'' in econo-speak) of 5, vanilla adds a util measure of 4, strawberry adds a util measure of 3, and kiwi adds a util measure of 2. A three-flavor combination of chocolate, vanilla and strawberry has a total util value of 12 (5 + 4 + 3). If kiwi is substituted for strawberry, the total util value is now only 11 (5 + 4 + 2). Thus, kiwi, *relative* to strawberry in this combination, has a *value in utils* of −1 (reducing the value of the dessert from 12 to 11)—even though its absolute value in utils is +2. This negative value reflects the opportunity cost or relative value of substituting kiwi for strawberry in the bundle, but not the absolute market value of kiwi as an unbundled ice cream flavor. Applying this example to a market, the coefficient represents the value in a market populated by such bundles, not a value in a market without bundles. Clearly, how the ''hypothetical market'' is understood in terms of bundled programs therefore determines whether the negative coefficients make sense and also affects the extent to which the coefficients are of assistance in allocating the royalties.

[83] Dr. Israel's explanation of the reason for a negative coefficient is substantively similar to Professor George's explanation of negative coefficients, discussed *infra,* as well as to Professor Crawford's explanation of negative coefficients for duplicative network programming, as discussed *supra.*

[84] However, because the Judges find that only Dr. Crawford's regression is sufficiently credible and because it does not contain negative coefficients for the categories of interest, the conundrum of negative coefficients does not affect the Judges' reliance on regression analysis in this determination.

[85] Royalty distribution parties have proposed fee generation valuation methodologies in the past and the Judges and their predecessors have generally discounted them as appropriate for determining overall relative values. *See, e.g., 2000–03 Distribution Order,* 75 FR at 26800–01. In that order, the Judges noted that the CRT had criticized the fee generation approach, but then resorted to fee generation reasoning in excluding PTV from a distribution from the 3.75% Fund. *Id.* at 26803. The Judges later reaffirmed their declination of fee generation valuation in the 2004–05 distribution proceeding, noting that the fees cable systems pay

Continued

that is not a reasonable criticism of the regression by Dr. Israel in particular or of the Waldfogel-type regressions in general. Such regressions, for example, have assigned a relative value to the JSC programming that is greater than its total minutes of airtime would suggest. *See, e.g.,* Gray CWRT ¶ 31 & Table 4 (Israel regression estimated a 37.5% JSC share whereas a viewing analysis provided only a 2.8% JSC share).

Mr. Sanders also found fault with Dr. Israel's regression because other evidence suggested that SDC programming had a positive value not captured by that regression. Specifically, Mr. Sanders noted that when WGNA removed certain programming from its retransmitted feed, it would frequently replace that local programming with SDC programming, suggesting that the latter has significant value. Sanders WRT at 13.[86] While this may be indicative, anecdotally, of the value of SDC programming as ''programming inserts on WGNA,'' it does not suggest to the Judges any defect in Dr. Israel's regression analysis.

Finally, Mr. Sanders noted that CSO program selection cannot be viewed as a voluntary market-related decision in all instances, because the record reflects that WGNA's parent company, Tribune Media Services (Tribune Co. in 2010), had a practice of requiring CSOs to agree to transmit multiple stations that it owned if a CSO wanted to transmit a particular Tribune station. *See* Direct Testimony of Sue Ann R. Hamilton, Trial Ex. 6008, at 7 (Hamilton WDT).[87] Thus, Mr. Sanders argued, Tribune's forced bundling diminished the assumption that a CSO's station-by-station retransmission decision was made by consideration of the programming categories within the station signal. Rather, he opined that in certain instances, CSOs may well have retransmitted WGNA and its mix of categorical programming because those CSOs wanted to include other Tribune stations in the channel lineup.

Dr. Israel did not address this issue in his Written Rebuttal Testimony. However, another JSC witness, Allan Singer, a Charter Communications executive from 2011 through 2016, testified that ''during [2010–2013], an annual average of approximately 86 Charter Form 3 systems made the decision to carry WGNA on a distant basis each year, and on average approximately 69 of those systems did not carry any other Tribune station in addition to WGNA [and] approximately 11 Charter Form 3 systems carried Tribune-owned stations on a local basis, but did not carry WGNA.'' *Written Rebuttal Testimony of Allan Singer,* Trial Ex. 1009, ¶¶ 1, 5. Likewise, another JSC witness, Daniel Hartman, a former satellite television programming executive, testified that industry data showed ''that in 2010–13 . . . 169 Form 3 cable systems carried a Tribune signal other than WGN (on a local or distant basis) while not carrying WGN during the same period . . . and . . . 725 Form 3 cable systems carried WGN as a distant signal while not carrying another Tribune signal during the same period.'' *Written Rebuttal Testimony of Daniel Hartman,* Trial Ex. 1011, ¶ 25 (Hartman WRT).

The Judges find that the record does not support Mr. Sanders' or Ms. Hamilton's claim that there were tying-based reasons for the distant transmission of WGNA that would have diminished the probative value of WGNA data as regression inputs. Additionally, to the extent any tying-based pressures may have existed, they were not quantified and thus this factor could not serve to alter the regression estimates.[88]

b. Criticisms by Dr. Erdem

Dr. Erdem, on behalf of the SDC, leveled several criticisms at Dr. Israel's regression. Dr. Erdem opined that Dr. Israel's regression was especially sensitive to: (1) The inclusion of additional variables, (2) changes in the regression model specifications, and (3) data points that Dr. Erdem identified as ''influential observations'' [89] that, in his opinion, were statistical outliers. Erdem WDT at 14–18.

i. Sensitivity to Additional Variables

Dr. Erdem testified that much of the variation within Dr. Israel's regression could be explained by introducing the number of distant subscribers as an independent (explanatory) variable rather than applying it in the regression as a control variable. When Dr. Erdem applied this subscriber count data in this manner, he claimed that ''all of the implied royalty shares'' in Dr. Israel's regression became zero percent, and that some coefficients turned from positive to negative. Erdem WDT at 15–16. Overall, he found that, with this one sensitivity adjustment, the coefficients for the program categories necessarily were no longer statistically significant. *Id.*

In rebuttal, Dr. Israel focused on a database issue, arguing that Dr. Erdem had misunderstood ''the nature of the CDC data'' he used to calculate distant subscribers, resulting in double-counted subscribers. Israel WRT ¶ 24 n.22. This is the same criticism made of Dr. Erdem's data analysis pertaining to the number of distant subscribers. As noted, Dr. Erdem acknowledged his error, and the Judges denied the SDC's out-of-time motion for leave to correct his testimony.

Accordingly, the Judges find that, given the acknowledged deficiency in Dr. Erdem's application of distant subscriber data, his criticism of Dr. Israel's regression for failure to utilize that data as an independent (explanatory) variable rather than a control variable cannot support Dr. Erdem's claims regarding the lack of statistical significance in Dr. Israel's coefficients.

ii. Specification of the Functional Form of the Regression

With regard to Dr. Erdem's second criticism, he hypothesized that ''royalty payments may not have a linear relationship with several potential variables.'' Erdem WDT at 16. Therefore, he transformed Dr. Israel's regression from linear form to non-linear form to test for further sensitivity. Specifically, Dr. Erdem made log transformations to: (1) The total number of subscribers, (2) the number of distant subscribers, (3) the number of activated channels, and (4) the number of broadcast channels.

are statutorily determined and do not necessarily reflect relative value. *See 2004–05 Distribution Order,* 75 FR at 57072.

[86] Though making a point about relative value, Mr. Sanders acknowledged that substituted programming inserts on the WGNA national feed are not compensable in this proceeding because they do not constitute retransmitted local programming. Sanders WRT at 13.

[87] Ms. Hamilton did not have direct knowledge of the existence of this Tribune Co. policy after 2007 when she left her position with Charter, a CSO. Rather, she opined that such tying would have likely been a factor thereafter ''primarily due to legacy carriage considerations.'' Hamilton WDT at 7.

[88] Of course, Ms. Hamilton's tying-based argument would be equally unavailing as against either the Crawford or George regression analyses.

[89] An ''influential observation,'' also known as an ''influential data point,'' is defined as ''[a] data point whose addition to a regression sample causes one or more estimated regression parameters to change substantially.'' Rubinfeld, *supra* note 36, at 465. An ''outlier,'' by contrast, is ''[a] data point that is more than some *appropriate* distance from a regression line that is estimated using all the other data points in the sample.'' *Id.* at 466 (emphasis added). Although some authorities equate all ''influential observations'' with ''outliers,'' Dr. Rubinfeld's more careful distinction makes it clear that an ''influential'' observation or data point is not to be disregarded unless it is outside an ''appropriate distance'' from the regression line. The experts' dueling positions (with citations to other outside authority) on whether the ''influential observations'' identified by Dr. Erdem in Dr. Israel's regression are ''outliers''—and thus must be ignored in the regression—are discussed *infra.*

Id. These transformations indicated to him that the estimated coefficients for the program categories changed substantially. *Id.* at 17.

In response, Dr. Israel asserted that he found Dr. Erdem's log transformation/exponential versions of the former's level variables to be something he had ''never seen . . . before.'' Israel WRT ¶ 24, n.22. Rather, Dr. Israel characterized this transformation as ''simply 'fishing' for a specification that changes my result—throwing variables into a model until the result changes.'' *Id.* Dr. Israel indicated that such additions to the variables and such transformations are ''not informative'' because they lack ''economic justification.'' *Id.*

At the hearing, Dr. Israel elaborated, flatly rejecting the contention that Dr. Erdem had merely tested for non-linearities. Rather, he testified that Dr. Erdem had ''added an extra set of variables to the regression.'' 3/12/18 Tr. 2993 (Israel). He further elucidated that the proper way for Dr. Erdem to have tested for another functional form, *i.e.,* a non-linear function, would have been to use a log form on the right side (the explanatory variable side) of *Dr. Israel's* regression, not for Dr. Erdem to pile log variables on top of linear variables. *Id.* at 2994.

Finally, Dr. Israel testified that he decided to use a linear function in order to be consistent with the previous Waldfogel regression. *Id.* at 2955–56. As with the Judges' discussion regarding Professor Crawford's regression analysis, the Judges do not find that Dr. Israel's use of a linear relationship between royalties paid and these additional variables diminished the value of his regression analysis. Additionally, as discussed in connection with Professor Crawford's regression, the Judges do not find it was necessary or appropriate for a modeler to treat the number of subscribers, distant or otherwise, as anything other than control variables because, in this proceeding, the economic and regulatory purpose is to estimate the relative values of different program categories on the level of royalties rather than to predict or explain *all* of the causes or correlations between other independent (explanatory) variables and the level of royalties.

iii. ''Influential Observations''

Dr. Erdem identified 200 observations, out of Dr. Israel's 5,465 observations, that he labeled as ''influential observations.'' However, Dr. Erdem did not propose that these influential observations constituted outliers that should have been removed from Dr. Israel's regression analysis. Quite the contrary, Dr. Erdem testified that these influential observations ''shouldn't be excluded'' for any *economic* reason, but rather demonstrate that, from an *econometric* perspective, Dr. Israel's ''regression is sensitive to influential observations and only that there ''*could* be subsets of data . . . that may require additional investigation . . . .'' 3/8/18 Tr. 2708 (Erdem). Dr. Erdem further posited that the influential observations might reflect a ''geographic effect'' that influenced Dr. Israel's coefficients, a problem that, Dr. Erdem further opined, was not present in Professor Crawford's regression analysis because he used ''system accounting period fixed effects'' that have ''indirect geography implications.'' 3/8/18 Tr. 2708–09 (Erdem). In fact, Dr. Erdem further contrasted Professor Crawford's approach with Dr. Israel's approach by noting that ''Dr. Crawford's model does not exhibit sensitivity to outliers.'' Erdem WRT at 20 n.17.

In response, Dr. Israel testified that Dr. Erdem was fundamentally wrong to suggest exclusion of what he characterized as ''influential observations.'' More particularly, Dr. Israel asserted that ''[t]he purpose of this regression analysis is to study the relationship established by the *full set of data,* representing all Form 3 CSOs.'' (emphasis added). Moreover, Dr. Israel pointed out that ''even the authors Dr. Erdem cited for this statistical practice, Israel WRT ¶ 24 n.22, themselves state that ''influential data points, of course, are not necessarily bad data points; they may contain some of the most interesting sample information.'' D. Belsley, D. E. Kuh, and R. E. Welsch, *Regression Diagnostics: Identifying Influential Data and Sources of Collinearity* at 3 (1980). Dr. Israel noted that the data Dr. Erdem characterized as distorting influential observations, *i.e.,* outliers, actually revealed an important influence, *viz.,* the impact of the relatively large size of the CSOs and Prorated DSEs that were associated with these observations. More broadly, Dr. Israel noted that ''every regression that has ever been run is going to be sensitive to the removal of influential observations,'' indicating that the mere presence of such observations begs the question of whether they provide valuable or anomalous data points. 3/12/18 Tr. at 2996 (Israel).

The Judges agree with Dr. Israel that it would be inappropriate on this record to disregard the 200 observations that Dr. Erdem labeled as influential observations/outliers. The Judges find that, from this record, absent any compelling explanation as to why the data from these 200 observations are not relevant, simply ignoring those data would not necessarily paint a more accurate picture of the population as a whole with respect to the relationship between royalties paid and program categories on local stations retransmitted by CSOs. The dueling positions taken by Drs. Israel and Erdem indicate that the difference between *informative* influential observations and *uninformative* outliers is a matter of degree, and deciding where an observation crosses from one type to the other is a matter of expert judgment. Dr. Erdem, who raised this issue, did not provide a sufficient argument to support his criticism that the impact of these data points should preclude or diminish reliance on Dr. Israel's regression analysis. In fact, on the present record, disregarding Dr. Israel's regression analysis because he failed to discard ''influential'' data seems to the Judges to be more likely to risk a cherry-picking of the data rather than an identification of demonstrable anomalies. The Judges note, however, that Professor Crawford's regression analysis is superior to Dr. Israel's in that the former is not subject even to *potential* distortion from influential observations.

c. Limited Impact of Dr. Erdem's Adjustments

The Judges note that, notwithstanding the merits of Dr. Erdem's specific criticisms, there is not a wide gulf between the share values that he identified after reworking Dr. Israel's regression to remove the alleged influential observations, as noted by the following comparison:

TABLE 9—COMPARISON OF ISRAEL REGRESSION AND ERDEM'S ADJUSTED ISRAEL REGRESSION

	Israel regression (%)	Erdem's adjusted Israel regression (%)
Joint Sports Claimants	37.5	45.0
Program Suppliers	26.8	22.6
Commercial TV	22.2	21.6
Public TV	13.5	7.0
Devotional	0.00	3.8
Canadian	0.00	0.0

Israel WDT ¶ 39 & Table V–3.; Erdem WDT at 18, Ex. 13. As for the bottom two ranked program categories, Devotional and Canadian, Dr. Israel was unsurprised that his regression could be less accurate in estimating the shares for these categories. *See* 3/12/18 Tr. 2881, 2960 (Israel) (acknowledging ''negative coefficients for Canadian [and] Devotional,'' explaining that ''in my experience, regressions of this type often struggle to match at the lower end.'').

Dr. Erdem acknowledged as well that his allocations set forth in the above table are ''very broadly comparable to the results from both the Bortz and Horowitz surveys,'' although he hastened to opine that ''there are strong reasons to doubt that comparability of the results is much more than a coincidence . . . .'' *Id.*[90]

5. Dr. Israel's Sensitivity Analyses

Dr. Israel is on shakier ground when it comes to defending the results of *his own* sensitivity analyses of his regression. Specifically, in his sensitivity analysis set forth in his own Model 3 (in which Dr. Israel controlled by geography by including an indicator variable ''by DMA''), Dr. Israel estimated coefficients for Program Suppliers and PTV that were *approximately 50% higher* for each category than in the regression on which he has asked the Judges to rely. 3/12/18 Tr. 3002–04 (Israel). When confronted on cross-examination with this *quantitative* change, Dr. Israel responded by saying that he did not view that quantitative difference ''as changing the overall rankings of the corroboration [of the Bortz Survey].'' 3/12/18 Tr. 3004 (Israel)

The Judges are troubled by Dr. Israel's fixation on ''relative ranks'' over the substantial ''quantitative difference'' in shares. The present proceeding is intended, by statute, precedent, and consensus, to allocate a *dollar quantity* of royalties. The rank ordering of those allocations is not an end in itself. Moreover, the fact that one could rank the claimant categories in that process is obvious—yet legally, economically, and practically of no importance.

A simple example is useful. Assume three program categories, A, B and C, seeking to split a $100 million royalty pool. A CSO *survey* might estimate the following allocation of royalties:

Category A: 60%, *i.e.,* $60 million
Category B: 30%, *i.e.,* $30 million
Category C: 10%, *i.e.,* $10 million

By contrast, a *regression* might estimate the following allocation of this $100 million royalty pool:

Category A: 35%, *i.e.,* $35 million
Category B: 33%, *i.e.,* $33 million
Category C: 32%, *i.e.,* $32 million

The rankings are identical in both the survey and the regression: A, B, and C in descending order. However, copyright owners in Categories C certainly would not agree that the regression results ''corroborate'' the survey result, when the regression produces *$22 million* more in royalties for them than the survey. Similarly, copyright owners in Category A would be unlikely to find their $35 million payout under the regression to be ''corroborative'' of the $60 million payout they would otherwise receive pursuant to the survey. Even copyright owners in Category B would likely chafe at the notion that the survey results would take precedence over the regression results—resulting in a $3 million loss—based on the strained idea that a $33 million regression allocation corroborates a $30 million payout.[91]

In fact, under questioning by Program Suppliers' counsel, Dr. Israel acknowledged that an over-reliance on the *rankings* established by a regression as opposed to the *values* estimated by the regression could be of limited use. *See* 3/12/18 Tr. 3101 (Israel) (''mere ranking'' only ''one indicator generated by his regression''). For the foregoing reasons, the Judges do not place much weight on the relative rankings of the program categories in Dr. Israel's regression as evidence of relative value, or as a basis to find his sensitivity analysis supported his regression results.

6. Conclusion Regarding Dr. Israel's Regression Analysis

The Judges give no weight to Dr. Israel's regression analysis, for a number of reasons. First, he did not break out his proposed allocations on an annual basis, making his average allocations inapplicable in the present proceeding. Second, he did not perform any analysis of data for the final year (2013) of the period at issue. Third, his regression analysis produced large standard errors, making his estimates less reliable than Professor Crawford's estimates and potentially unreliable. Fourth, and relatedly, Dr. Israel failed to produce the confidence intervals around his proposed coefficients which, when calculated, were shown to be extremely wide. Fifth, his regression analysis produced negative coefficients for several program categories, which he arbitrarily reset to zero. Finally, even Dr. Israel did not wholeheartedly advocate for the Judges' adoption of his regression results as independent proof of reasonable royalty shares; rather, he proposed that the Judges accept his results as corroboration of the Bortz survey results. Perhaps no single one of these failings would have been sufficient to justify the Judges' decision to give no weight to Dr. Israel's

[90] The economic expert witness for the CCG, Professor Lisa George, weighed in with a defense of Dr. Israel's regression. She asserted that Dr. Erdem's argument that Dr. Israel's regression technique produced ''unstable'' results reflects a fundamental misunderstanding of the regression process. George WRT at 6–7 (''[V]ariables that do not affect royalty payments are not needed, since they typically will just worsen precision of the estimates. Changes to Dr. Israel's regression advocated by Settling Devotional Claimants run counter to the goals of causal inference, tending to increase bias and reduce precision.'').

[91] Alternately stated, this exercise is not analogous to Olympic competition, where the difference in rankings—gold, silver and bronze medals—makes all the difference. Here, copyright owners in any claimant category would prefer more gold (royalty money) than less. Therefore, any analysis that assumes that value attaches to being ranked more highly would be absurd.

regression analysis. However, in combination, and in comparison to Dr. Crawford's better constructed regression analysis, the Judges find themselves unable to rely on Dr. Israel's regression analysis.

D. Professor George's Regression Analysis

The CCG proffered a valuation estimate based on the regression analysis of their economic expert, Professor Lisa George. As a general matter, Professor George testified that she believed the regression approach was superior to other attempts to measure relative value because it infers value from decisions *actually* made by market participants. George CWDT at 2. She noted further that inferring value from observed market decisions, known as the ''revealed preference'' method, has been an established feature of economic analysis. George CWDT at 3 n.1. Like Drs. Crawford and Israel, she undertook a Waldfogel-type regression. George CWDT at 6. However, she modified that approach in a manner that she understood better focused on Canadian programming. *See id.* at 5.

Professor George understood that her task was to estimate, via her regression approach, the relative value of the several program categories, in a hypothetical market in which no compulsory license existed. *See id.* at 6. She assumed that: (1) The supply side of the market was not relevant, because distant retransmission does not affect local carriage decisions; (2) the cable television market is imperfectly competitive; (3) CSOs focus on incremental revenue and cost, in the form of royalties, transmission costs, and the opportunity costs of transmitting (or retransmitting) any given program or signal rather than any other program or signal; (4) distantly retransmitted programs that are differentiated from other programs transmitted by the CSO will have greater value; and (5) the transactions by which the distant retransmissions would be agreed to would be between the CSO, as buyer, and the station (or groups of stations), as sellers. *Id.* at 7–9.

Professor George testified that in her regression the coefficients for the Canadian program category should be interpreted as a ''value per unit'' or, equivalently, as an ''implicit price.'' *Id.* at 10, 12.[92] With regard to the functional form, Professor George selected a linear model because the coefficient in interest, the value of the programming by category, is itself linear, *i.e.,* it is measured in dollars per minute. *See id.* at 11.

Anticipating that past criticisms of Waldfogel-type regressions would be repeated in this proceeding, Professor George met those points head-on. First, she noted that the presence of price regulation not only does not diminish the usefulness of a regression, but in fact is the type of situation in which a regression approach to the estimation of value is appropriate. *See id.* at 18. She distinguished *market prices* from *market decisions,* noting that the latter are sufficient, standing alone, to estimate values through regression analysis. *See id.* at 13.[93] More particularly, she opined that the CSO must decide whether the revenues to be realized from retransmission are sufficient to warrant incurring the costs associated with retransmission (including royalties, transmission cost, and opportunity costs). With regard to the systems paying only the minimum fee, Professor George noted that their decision to carry any particular signal rather than other potential signal provides useful information regarding relative value. *See id.* at 16. From a technical point of view, Professor George explained that her regression ''accounts for minimum fee systems by specifying a separate average (intercept) term [94] for systems carrying less than one distant signal equivalent and paying minimum fees,'' which she further noted was similar to the procedure followed by Dr. Waldfogel in his 2004–2005 regression. George CWDT at 16.

Professor George explained that, although she followed the basic specifications of the Waldfogel-type regressions, she made two important changes. First, she estimated only the relative market value of Canadian programming compared with the *combined* value of all other program claimant categories. *See id.* at 23. Second, Professor George made her estimates only for the region in which Canadian signals may be retransmitted. *See id.* at 23. According to Professor George, applying these two modifications rendered her regression both more precise and less subject to downward bias. *See id.* at 25.

As in the other Waldfogel-type regressions, Professor George included control variables in her regression, in order ''to isolate the role of the independent variables of interest holding all else equal.'' *Id.* In particular, Professor George's control variables controlled for: (1) Average income, (2) population, (3) the number of local stations, (4) the number of subscribers, and (5) the number of active channels. *See id.* The model also included ''indicator variables for binary system attributes such as for minimum fee systems carrying less than one distant signal equivalent.'' *Id.*

Her regression estimated that, within its regulatory geographic region, Canadian programming's share of the royalties was 24.22%, 24.08%, 25.92% and 27.4% for each year, respectively, from 2010–2013. Corrected Amended Written Direct Statement of Lisa George, Tr. Ex. 4006, at 6–7 (George CAWDT). Professor George then considered the proportion of total U.S. royalties that were generated within this narrow region, in order to estimate the Canadian Claimants' share of the total royalty pool across the 2010–2013 four-year period. When making this calculation, Professor George utilized revised data updating compensable minutes that were contained in Professor Crawford's regression analysis.[95] She estimated the following shares for Canadian programming: 6.55% for 2010, 6.61% for 2011, 7.47% for 2012 and 7.85% for 2013. George CAWDT at 4, 7.

Professor George noted that her regression produced a negative coefficient within the Canadian region for Program Suppliers' and the SDC's programs aired on Canadian signals. As noted *supra,* she explained that a negative coefficient in this context meant that the marginal presence of such programming ''does not allow cable systems to charge higher prices for signal bundles, or to attract and retain subscribers,'' relative to program categories with positive coefficients, such as Canadian programming on the Canadian distant signals. *Id.* at 32.

[92] In her regression, Professor George used signal carriage and royalty data provided by cable systems on Form 3 Statements of Account as provided by CDC. George CWDT at 51–54; *Written Direct Testimony of Jonda Martin,* Trial Ex. 4009, at 23 (Martin WDT). Professor George obtained program categorization information that was assembled by Danielle Boudreau from program content logs filed with the Canadian Radio-television and Telecommunications Commission (CRTC) by Canadian broadcasters. George CWDT at 53; *Corrected Written Direct Testimony of Danielle Boudreau,* Trial Ex. 4001, at 3 (Boudreau CWDT).

[93] And, to state the obvious, if market prices were available, no analysis of any sort would be necessary.

[94] The ''intercept'' is defined as ''the value of the *y* variable when the *x* variable is zero,'' and, accordingly, it is ''the parameter in a multiple linear regression model that gives the expected value of the dependent variable when all the independent variables equal zero.'' Wooldridge, *supra* note 34, at 864. The intercept parameter ''is rarely central'' to a regression analysis. *See id.* at 25.

[95] Professor George had originally made her calculations for the entire 2010–2013 period without breaking down her estimates by year. After she reviewed data contained in Professor Crawford's CWDT, Professor George was able to update her estimates and express them on an annual basis. George CAWDT at 2.

1. The JSC's Criticisms

a. Collapsing Non-Canadian Programming

The JSC's expert, Dr. Israel, took issue with Professor George's unique decision to collapse all other claimant categories into a single catch-all category to compare with the category of interest to her client: Canadian programming on Canadian signals in the Canadian zone. Israel WRT ¶ 12. He explained that when he altered her model to control for the categories individually, her point estimate for Canadian programming fell to 1.48% of the total royalty fund, which was more consistent with the Bortz Survey share of 0.5% for Canadian programming. *See id.* at A–2 to A–3.

Further, Dr. Israel opined that his alteration to control for other program categories individually was necessary because Professor George's collapsing of all other programming into a collective category distorted her results by subjecting her estimation of those collapsed minutes to ''noise'' for which she failed to account. That is, he claimed that Professor George's Canadian share result was ''driven by many important variables on the number of minutes by *each* other category, thus subjecting her regression to omitted variable bias.'' Israel WRT ¶ 75 (emphasis added).[96]

At the hearing, Professor George explained that she chose to collapse all U.S. programming into one category because of the ''limited data'' available to her, precluding her from engaging in a ''detailed breakdown of programming on U.S. distant signals.'' 3/5/18 Tr. 2022 (George). However, she did not adequately respond to Dr. Israel's assertions regarding the impact of this decision on the statistical reliability of her regression. *See* 3/5/18 Tr. 2055 (George) (criticizing Dr. Israel's rerunning of her model for several reasons, but without sufficiently explaining why her collapsing of all U.S. programming into a single category would not be problematic). The Judges are troubled by the absence of an adequate response to this criticism, and find insufficient her testimony as to the limited nature of her data. Accordingly, the Judges find that this criticism serves to diminish the weight they give to Professor George's regression results.

b. Applying Negative Coefficients

Dr. Israel also claimed error in Professor George's treatment of the negative coefficient she estimated in her regression for Program Suppliers and the SDC. Whereas Professor George simply used the negative coefficient as an input for her calculation of relative values per minute, as noted *supra,* when Dr. Israel's own regression estimated negative coefficients, he reset them to zero, on the theory that a coefficient intended to measure the value of programming could not be negative. Thus, he opined that Professor George's application of the negative coefficients ''distort[ed] the royalty shares for categories with positive coefficients.'' Israel WRT ¶ 76.

In response, Professor George testified that her negative coefficient is ''telling us that [Program Suppliers' programming] is effectively dragging down the value of the Canadian signals.'' 3/5/18 Tr. 2031 (George). Alternately stated, she explained that, in her opinion, the negative coefficient indicates that ''if we could replace the Program Supplier content on Canadian signals in a sort of hypothetical world . . . with Joint Sports or Canadian Claimant programming, *the value of the signal* would be higher. . . . So it's not surprising to me that more Program Supplier minutes on a Canadian signal reduces *the value of the signal.*'' *Id.* at 2031–32 (George) (emphasis added). Thus, she opined that the negative coefficient does not reflect a negative monetary value for such programming, but rather reflects the *opportunity cost* arising from the inclusion of programming from such categories in the bundle of programs on the retransmitted signal compared with programs from other categories with positive coefficients. 3/5/18 Tr. 2117 (George).

Accordingly, because Professor George finds valuable information in the negative coefficient, she rejected Dr. Israel's criticism that she should have reset the negative coefficient to zero. *See id.* at 2043 (George) (''[My] . . . negative valuation, which is precisely estimated, so within standard confidence intervals . . . makes sense from theory. [I]t is completely arbitrary to replace a coefficient in a regression model with another . . . number. It is just bad econometric practice.'').

As discussed in connection with Dr. Israel's regression, the Judges find (as Professor George opined) that negative coefficients are reasonably well-explained by the fact that they reflect the relative impact *on the value of the signal*[97] of different categories of programming rather than the absolute value of programming-by-category. Again, though, this explanation of the negative coefficients underscores that the coefficients represent the *relative* value in a market for programs by categories *as inputs to a bundle* (the signal)—economically relevant to the task at hand (allocating the royalty pool by category) but not reflective of *absolute* market prices.

c. Weighting Results by the Number of Subscribers

Dr. Israel asserted that Professor George's regression is inconsistent with the specifications of the Waldfogel-type regression because she weighted her compensable minutes by the number of subscribers of each CSO, whereas Dr. Waldfogel estimated royalty payments per CSO, not royalty payments per subscriber. *See* Israel WRT ¶ 76. Moreover, Dr. Israel asserted that this deviation from Dr. Waldfogel's approach was improper because it was inconsistent with the functional form of her regression, which was otherwise of the Waldfogel-type. *See id.*

In response to Dr. Israel, Professor George acknowledged that her approach was ''quite different,'' yet she did not adequately explain how or why her modification made her results more precise or otherwise improved the quality of her regression. See 3/5/18 Tr. 2055 (George). The Judges find Professor George's vague statement to be an insufficient response to Dr. Israel's criticism.[98]

2. The SDC's Criticisms

a. The Regulated Nature of the Market

Dr. Erdem criticized Professor George's regression approach because, as she acknowledged, it did not reflect the prices that CSOs and stations would negotiate in an unregulated market. However, Dr. Erdem did note that her ''observed data'' revealed that distant retransmission occurred when ''incremental benefits are higher than incremental costs'' for the retransmitting CSOs. Erdem WRT at 20 (citing George

[96] ''Omitted variable bias'' can arise ''when a relevant variable is omitted from the regression.'' Wooldridge, *supra* note 34, at 866. More particularly, omitted variable bias arises ''because a variable that is a determinant of *Y* [the dependent variable] and is correlated with a regressor [independent variable] has been omitted from the regression.'' Stock & Watson, *supra* note 32, at 822. The cumulative effect of any excluded variables ''shows up as a random error term in the regression model. . . . An important assumption in multiple regression analysis is that the error term and each of the explanatory variables are independent of each other.'' *ABA Econometrics, supra* note 22, at 10 n.21. Thus, Dr. Israel's criticism is that the ''noise'' in Professor George's regression reflects a bias arising from her failure to include important data from each programming category. *Id.* at 160.

[97] Indeed, Professor George *twice* referred to the value of the program categories in the context of the ''*value of the signal*'' containing a bundle of programs offered to a CSO. 3/5/18 Tr. 2031–32 (George).

[98] However, this issue was also raised by Dr. Erdem and, in response, Professor George provided a more compelling defense, as discussed *infra.*

CWDT at 8–9, 20). The Judges note that this criticism is a variant of the repeated refrain that the regulated nature of the market precluded the use of a Waldfogel-type regression. In the context of the present criticism as well, the Judges find that the relative preferences of CSOs for different categories of programs are revealed through such a regression and that Professor George's regression analysis is not subject to appropriate criticism in this regard.

b. Compensable Minutes

Dr. Erdem also criticized Professor George's approach for using *actual* compensable minutes for Canadian signals, but *estimated* compensable minutes for U.S. signals in the Canadian zone. Dr. Erdem suggested that such an approach ''is likely less precise.'' Erdem WRT at 21. Moreover, like Dr. Israel, Dr. Erdem criticized Professor George for using Professor Crawford's data, based on *all* U.S. distant signals, as a proxy for compensable minutes in the Canadian zone. Dr. Erdem asserted that there was no basis in the record for Professor George to make this assumption. *See id.*

Professor George did not offer a sufficient response to this criticism. Accordingly, the Judges find Dr. George's regression analysis is compromised by this unexplained criticism. However, there is no sufficient evidence in the record that reflects the dimensions of this assumption or the impact it may have on Professor George's proposed allocations. The Judges find, as noted *supra,* that Professor George's lack of disaggregated data across other program categories is insufficient to justify her less precise approach.

c. The Number of Broadcast Hours

Next, Dr. Erdem asserted that Professor George also assumed without substantiation that ''all stations broadcast the same number of hours throughout the day,'' which, according to Dr. Erdem, ''seems to contradict the actual data . . . used in Professor George's analysis''. Erdem WRT at 21–22.

Once again, Professor George did not offer a sufficient substantive response to this criticism. Thus, the Judges find her assumption to be unsupported by the record and her regression analysis therefore is compromised. However, there is no sufficient evidence in the record that reflects the dimensions of this assumption or the impact it may have on Professor George's proposed allocations.

d. Negative Coefficients

Dr. Erdem (like Dr. Israel) is troubled by the negative coefficient produced by Professor George's regression for Program Suppliers' minutes. However, his concern is not aimed at Professor George's defense of such a negative coefficient. In fact, he agreed with Professor George regarding a ''likely'' reason for the presence of the negative coefficient, *i.e.,* that it ''suggests that on Canadian signals, Program Supplier content is a close substitute for other cable system offerings from the standpoint of viewers [and] the presence of Program Supplier programming on Canadian distant signals does not allow cable systems to charge higher prices for signal bundles, or to attract or retain subscribers.'' Erdem WRT at 22 (approvingly quoting Professor George). Rather, Dr. Erdem contended that the negative coefficient in the context of the Canadian signal ''likely does not factor in the complex decision making process of U.S. cable operators, who are maximizing overall profits across all regions combined.'' *Id.* However, this criticism was speculative, unsupported by a factual basis and otherwise undeveloped, and the Judges do not find it to diminish the value of Professor George's regression analysis.

e. Joinder of the Program Supplier and SDC Categories

Next, Dr. Erdem attempted a sensitivity analysis of Professor George's results. In particular, he separated the Program Supplier and SDC minutes and input this separated data into an updated model. He found meaningful changes in the resulting coefficients, including a ''coefficient for [SDC] distant minutes [that was] positive and statistically significant.'' *Id.* at 22.

In response, Professor George testified that she had combined these two program categories because the amount of SDC programming was so low and therefore the data would not generate enough variation. Further, she asserted that when Dr. Erdem split apart the data for Program Suppliers and the SDC, he created ''multicollinearity problems'' because the variables for each program category are functions of each other. 3/5/18 Tr. 2042 (George). However, Professor George did not point to evidence that would indicate the presence of such multicollinearity. Moreover, she acknowledged she had combined the two categories to obtain sufficient variation in the SDC minutes across CSOs that would be lacking if the SDC category was analyzed separately. That in itself was an artifact, because SDC programming is *not* Program Supplier programming.

Accordingly, the Judges find that the probative value of Professor George's regression analysis is compromised to an extent by her artificial joinder of the Program Supplier and SDC categories.

f. Subscriber-Weighted Compensable Minutes

Dr. Erdem, like Dr. Israel, criticized Professor George's decision to multiply the coefficients by ''the subscriber weighted compensable distant minutes.'' Erdem WRT at 23 (''Conceptually, weighting by subscribers may not be appropriate in Waldfogel-type regressions which model the decisions of cable operators (*i.e.,* decision to carry a signal or signals with minutes of different types of content in return for royalty payments implied by the formula.'')). Dr. Erdem replaced Professor George's weighted compensable distant minutes with unweighted compensable distant minutes and found that Professor George's use of the weighted minutes approach caused ''[t]he share for the Canadian category [to] increase[ ] significantly.'' *Id.*

In response, Professor George explained her reason for using subscriber-weighted compensable minutes: ''[W]e are counting up the subscribers who have access to this programming to give us a better feel, because counting *just systems* doesn't give you really a full picture of how many people are exposed to programming.'' 3/5/18 Tr. 2078 (George) (emphasis added).

The emphasized language above indicates that Dr. George engaged in such weighting for the same reasons that Professor Crawford used minutes at the subscriber group level and Dr. Israel used prorated DSE data—to better identify which subscribers actually received the distantly retransmitted local signal. Accordingly, the Judges find Professor George's weighting to be an acceptable deviation from the Waldfogel approach in the same way as Professor Crawford's subscriber group approach and Dr. Israel's Prorated DSE approach represent appropriate adaptions of the Waldfogel-type regression to available and more granular data.

3. Program Suppliers' Criticisms

a. Negative Coefficients

Dr. Gray criticized Professor George for failing to reset her negative coefficient for her combined Program Supplier/SDC minutes to zero, as did Dr. Israel. Dr. Gray asserted that these

negative coefficients implied that these two program categories would be required *to pay* royalties to CSOs, clearly an absurd result. *See* Gray CWRT ¶ 35. However, as the Judges have explained, *supra,* these negative coefficients do not represent negative values for programs in the categories, but rather represent, on average, reductions in the value of a program bundle (*i.e.,* a station) in comparison with other program categories.

b. The Minimum Fee Issue

Dr. Gray also criticized Professor George's regression for the same reason he criticized all the Waldfogel-type regressions in this proceeding—the failure to distinguish between CSOs paying only the minimum fee and those who intentionally incurred additional incremental costs by paying more than the minimum to distantly retransmit additional local stations. *See id.* ¶ 37. Dr. Gray's reworking of Professor George's regression applying only the subset of CSOs paying greater than the statutory minimum fee found no statistically significant relationship between CCG programming minutes and royalty fees paid in the Canadian region, which would support an estimate of 0% for the Canadian share (presumably because the null hypothesis [99] was not disproven). *See* Gray CWRT App. D.

In response, Professor George testified that even the station retransmission choices by CSOs paying only the minimum fee provide relevant economic information. 3/5/18 Tr. 2038–39 (George). However, she acknowledged that incorporating the minimum-fee-paying CSOs in an integrated analysis does add some ''uncertainty . . . to our estimates [and] we do lose some precision from having some minimum fee systems.'' 3/5/18 Tr. 2039 (George). Further, Professor George did not contest the statistical correctness of Dr. Gray's estimate of a 0% share for Canadian programming regarding the relative value for Canadian programming arising from an analysis of only those CSOs paying more than the minimum fee. 3/5/18 Tr. 2044–45 (George).

The Judges find, as noted *supra,* that an analysis of the CSOs paying only the minimum fee might provide some useful information. However, as also noted *supra,* the record does not provide an adequate basis to incorporate any ''relative value'' differences based on a distinction between CSOs that do and do not pay only the minimum fee.

4. Conclusion Regarding Professor George's Regression Analysis

In sum, the Judges find that Professor George's regression analysis is of limited value. Her collapsing of all non-Canadian programming into a single category was the consequence of the unavailability of data, not a choice intended to enhance the reliability of her estimates. Also, her negative coefficients within the Canadian zone of compensable programming categories rendered her analysis indeterminate and thus in need of adjustment.

III. CSO Surveys

Another analytical approach presented in this proceeding for determining relative value of the program types retransmitted by cable operators is analysis of data from surveys administered to CSOs, the entities that buy the compensable programming (bundled as distant signals). In essence, the surveys ask the CSOs to place a relative value on the types of programming they license for retransmission to their subscribers.

CSO survey results have long played a central role in assisting adjudicators in assessing relative market value of cable programming. The JSC presented the first survey report, designed by the predecessor of Bortz Media & Sports Group, Inc. (Bortz), to establish the relative value of the various categories of programming at issue in 1983. *See* Bortz Survey,[100] Trial Ex. 1001 at A–2. Over the years, Bortz refined its survey design to address issues raised by the triers of fact. The goal of the surveys was to answer the question of relative value of the competing program categories as seen through the eyes of CSOs. *Id.* at A–3—A–4. In the present proceeding, the JSC and the SDC support an analysis based on the work of Bortz for the relevant royalty years. Program Suppliers offer an alternative survey [101] designed by Horowitz Research (Horowitz Survey), which they offered as a critique of the Bortz survey results.[102] In addition, the CCG presented a third survey focused on Canadian signals (Ringold Survey). Other participants offered criticisms of the surveys.

All of the surveys the parties proffered in this proceeding were conducted by telephone and purported to inquire of the individual at the responding CSO who was responsible for signal carriage decisions. Each proponent constructed its survey as a constant sum survey; that is, respondents were asked to value each program category relative to the other categories and as a portion of 100%.

The JSC contended that the Bortz Survey responses are a sound measure of the relative value of programming, by category. *See* Bortz Survey, Trial Ex. 1001 at 7. Program Suppliers contended that CSO survey responses are

> [d]one well, such a survey may illuminate the criterion (*sic.*) by which to allocate royalties. . . . [W]hatever the reasoned judgment of executives . . . , any cable operator survey should not be considered a substitute for behavioral data on viewing.

Corrected Written Direct Testimony of Howard Horowitz, Trial Ex. 6012 at 21–22 (Horowitz CWDT). The Ringold Survey focuses on CCG programming within the Canadian broadcast region. The CCG claimed the Ringold Survey provides a better measure of the relative value of compensable Canadian programs distantly retransmitted in the U.S.

A. Bortz Survey

As in the past, the JSC have engaged Bortz to develop and implement a methodology to ascertain relative market value of categories of distantly retransmitted television programming.[103] *See* Bortz Survey at A–1. Bortz made ''refinements'' to the present survey to address concerns expressed by the CRT, CARP, and more recently, the Judges. Specifically, Bortz refined the way in which it (1) assessed the level of pertinent knowledge of the individual survey respondent (*i.e.,* the person ''most responsible for programming decisions''), (2) conformed program category definitions to those adopted for royalty distribution proceedings, (3) selected cable systems to participate by excluding any that did

[99] ''An expert's expectation or contention that a particular independent variable does not have a correlation with a particular dependent variable is called a *null hypothesis,* because the expected outcome of the analysis would show the absence of a correlation. . . . Often, the *null hypothesis* is stated in terms of a particular regression coefficient *equal to zero.*'' *ABA Econometrics, supra* note 22, at 17 (emphasis added). *See also* Rubinfeld, 85 Colum. L. Rev. at 1054 n.20 (''If the evidence is not sufficiently strong, the null hypothesis is sometimes presumed to be correct, but a more accurate description would simply say that the evidence was not sufficiently strong to allow for its rejection.'').

[100] The full title of the Bortz Survey is ''Cable Operator Valuation of Distant Signal Non-Network Programming: 2010–13.''

[101] Program Suppliers also advocated using viewing statistics as the optimal measure of relative market value of the participating program category groups. *See infra,* section IV.

[102] Notwithstanding his survey results, Mr. Horowitz opined that ''the Horowitz Survey is not a substitute for behavioral data such as viewing.'' Corrected Written Direct Testimony of Howard Horowitz, Trial Ex. 6012, at 3 (Horowitz CWDT).

[103] Bortz retained THA Research to conduct the 2010–13 telephone surveys. *Id.* at 19. Criticisms of the Bortz Survey focused on construct and content; no party criticized the Bortz selection of THA Research.

not distantly retransmit eligible non-network programming, and (4) closed the time gap [104] between the royalty year at issue and the conduct of the survey relating to that year. *Id.* at A–5—A–12.

With regard to the survey contents, Bortz attempted to focus respondents on the actual distant signals at issue using information from the CSOs' Statements of Account filed with the Copyright Office. *Id.* at 12. To address a criticism regarding asking respondents to allocate ''value,'' Bortz asked them to think about relative value of the categories and subsequently to provide estimates for each. The interviewers then went through the list of program categories to give respondents an opportunity to reconsider the relative values the respondent placed on the categories. *Id.* at 13. Bortz also reported other refinements responsive to criticisms of the triers of fact and opposing parties in prior proceedings.[105]

The CARP determination regarding allocation of 1998–99 cable royalties noted that the Bortz Survey focused on the demand side of a typical market, *i.e.,* what CSOs are willing to pay to broadcasters, which it concluded is more likely to reflect relative values of the programming categories. In essence, according to the CARP, in the relevant hypothetical market the supply of programming would be fixed and value would be determined only by the CSOs' demand as reflected in their willingness to pay. *See 1998–99 Librarian Order,* 69 FR at 3613–15. In any event, beginning with its 2009 survey, Bortz included a question asking respondents to rank the relative cost of the programming categories, which it alleged gave respondents a cue to consider the supply side of the valuation. Bortz Survey at A–14—A–15.

Bortz surveyed a stratified, random sample of ''Form 3'' cable systems,[106] but excluded systems that did not carry distant signals and those whose only distant signals were PTV or Canadian signals, or both. *Id.* at 13–14. Bortz made five adjustments for the 2010–13 survey questionnaires to address criticisms of their studies from earlier proceedings. Specifically, Bortz (1) identified compensable programming on WGNA, the most widely carried distant signal; (2) reduced the number of signals about which they inquired; (3) did not offer ''sports'' as a category in the constant sum question for CSOs that did not retransmit programming within the Sports Programming category established in this proceeding; (4) modified the ''warm-up'' questions; and (5) omitted reference to attracting and retaining subscribers to broaden the concept of value to CSOs. *Id.* at 2.

Initially, Bortz confirmed that the respondent self-identified as the individual responsible for signal carriage decisions for the cable system. Then Bortz identified the distant signals at issue and asked each respondent to rank by ''importance'' to the system the non-network programming on those distant signals by categories ''intended to correspond'' to the programming categories adopted in the present proceeding. *Id.* at 15–16. Bortz next asked respondents to estimate the cost to acquire programming within the identified categories if the cable system had been required to purchase the programming in the marketplace. *Id.* at 16. Respondents were then asked to assign relative values to the relevant programming; that is, to assign a share of 100% of value to each category.[107]

The influence of superstation WGN America (WGNA) was a major factor in valuing compensable programming during 2010 to 2013. Bortz concedes that survey respondents might have lacked information detailed enough to distinguish between compensable programming and content WGN substituted for contemporaneous broadcasts and transmitted to WGNA subscribers.[108] Bortz modified its prior survey questions to attempt to address the WGNA content issue. According to Bortz, for cable systems that only retransmit WGNA as a distant signal, survey questions regarding WGNA programming described only compensable programming, by agreed category as nearly as possible.[109] In this way, Bortz sought to address criticism that its prior survey results contained skewed values because Bortz' survey questions failed to distinguish between compensable and non-compensable WGNA retransmissions. *Id.* at 19.

Comparing the 2004–05 survey results (which formed the basis of the 2010–13 survey) to those for the time period relevant to the present proceeding compensable programming retransmitted by WGNA decreased by about half, from approximately 30% of the signal to under 15%. JSC-, CTV-, and SDC-represented programming increased in relative value from the 2004–05 survey to the 2010–13 survey, while Program Suppliers' content declined in relative value. Bortz attributes these changes to a reduction in compensable retransmissions of Program Suppliers' programming. *Id.* at 29.

PTV [110] and the CCG [111] criticized the Bortz results because the survey excluded cable systems for which public television and/or Canadian programming were the systems' only distantly retransmitted signals. Bortz conceded that both PTV and CCG categories are likely undervalued because of the survey's exclusion of PTV-only and CCG-only systems and because of the relatively small number of Form 3 systems that retransmit PTV and CCG signals. Bortz Survey at 46–47. Respondents for multiple signal systems that included PTV and Canadian programming valued public television programming on multiple signal systems at an average of between 7.8% and 10.3% and valued Canadian signals at an average of between 2.4% and 7.9% during the relevant period. *Id.* The Bortz Survey aggregate values for PTV and CCG during the period were substantially lower because of the exclusion of PTV-only and CCG-only systems.[112]

Notwithstanding the refinements Bortz implemented in its survey for 2010–13, Mr. Trautman still professed

[104] To avoid any criticism that there was a delay in conducting an annual survey that could result in ''recall bias,'' Bortz conducted all but the 2010 survey beginning in the summer following the royalty year at issue. Bortz conducted the 2010 survey in December 2011. *See* Bortz Survey at A–11.

[105] Other criticisms noted by the triers of fact and opposing parties included, *e.g.,* breaking up the survey and completing it through multiple callbacks, and asking for critical conclusions in a short survey of approximately ten minutes' length.

[106] Form 3 cable systems are the largest systems by gross receipts and account for over 98% of section 111 royalty deposits. *Id.* at 10.

[107] The relative value question read: ''Assume you [system] spent a fixed dollar amount in [year] to acquire all the non-network programming actually broadcast during [year] by the stations . . . listed. What percentage, if any, of the fixed dollar amount would your system have spent for each category of programming?'' *Id.* at 18.

[108] Only programming that airs simultaneously on WGN-Chicago (the local feed) and WGNA (the satellite feed) is compensable under the section 111 license.

[109] Questioners offered to send respondents a guide to compensable WGNA programming and instructed respondents that they could call back if the respondent needed more time to consider the compensable program list. Bortz Survey at 30.

[110] McLaughlin and Blackburn augmented the 2004–05 Bortz survey results by inserting stations whose only distant signal was PTV, using the same response rates reported by Bortz. *See* 3/7/19 Tr. at 2457–59 (McLaughlin). They concluded that response bias depressed the PTV values claimed in the Bortz Survey. *See* Written Rebuttal Testimony of Linda McLaughlin and David Blackburn, Trial Ex. 3002, at 4 (McLaughlin/Blackburn WRT).

[111] *See, e.g.,* Corrected Written Rebuttal Testimony of Frederick Conrad, Trial Ex. 4003, at 7–8 (Conrad CWRT) (assuming stations with Canadian-only distant signals would assign 100% relative value to CCG programming creates response bias).

[112] The Bortz Survey measured all programming on Canadian signals as one category. *See* Bortz Survey at 46–47. The CCG concedes that some of the programming on Canadian signals is compensable in other categories, such as Devotional or Program Suppliers.

that the Judges should consider the value estimates for the Program Suppliers and Devotional Programming categories as a ''ceiling'' or upper bound for the allocation to those categories. Mr. Trautman reached this conclusion largely because he was not confident that even the modified survey accurately accounts for non-compensable programming on WGNA, most of which he asserted falls within those two program categories. *Id.* at 18.

Further, Mr. Trautman conceded that ''some adjustment'' upward of allocations to the PTV and CCG categories is appropriate. *Id.* 7–8; Trautman WRT ¶ 4.[113] Professors McLaughlin and Blackburn adjusted the 2010–13 Bortz Survey results to increase the share of value allocated to PTV and CCG programming, but Mr. Trautman argued that the McLaughlin/Blackburn adjustments should be considered a ''ceiling'' on the values of those two categories, because they relied in part on Horowitz Survey results. Mr. Trautman contended the Horowitz results were invalid because ''most'' of the respondents with PTV-only or CCG-only distant retransmissions valued the compensable programming at less than 100%. Trautman WRT ¶ 3.

The initial relative valuations from the 2010–13 Bortz Survey results are:

TABLE 10—INITIAL BORTZ SURVEY RESULTS

Category	2010 (%)	2011 (%)	2012 (%)	2013 (%)
CCG	0.10	0.20	0.60	1.20
CTV	18.70	18.30	28.80	22.70
Devotional	4.00	4.50	4.80	5.00
PS	31.90	36.00	28.80	27.30
PTV	4.40	4.70	5.10	6.20
Sports	40.90	36.40	37.90	37.70

(Columns might not add to 100% because of rounding.)

See Bortz Survey at 3. Referring to the calculations performed by Ms. McLaughlin and Dr. Blackburn, Mr. Trautman adjusted the allocations in the Bortz Survey, to increase the relative values of PTV and CCG programming at the expense of the relative values of the remaining categories:

TABLE 11—MCLAUGHLIN/BLACKBURN AUGMENTED BORTZ SURVEY RESULTS

Category	2010 (%)	2011 (%)	2012 (%)	2013 (%)
CCG	1.6	1.8	1.2	2.1
CTV	17.8	17.2	22.3	21.7
Devotional	3.8	4.2	4.6	4.8
PS	30.3	33.8	28.1	26.1
PTV	7.5	8.7	6.9	9.1
Sports	39.0	34.2	37.0	36.1

(Columns might not add to 100% because of rounding.)

See Table A–2, Trautman WRT, App. A at A–3.

After reviewing the McLaughlin/Blackburn analysis, Mr. Trautman adjusted the Bortz Survey results in two ways. First, he adjusted the Bortz Survey results using the McLaughlin/Blackburn augmented results, derived by adding PTV-only and Canadian-only distant signals and assuming CSOs would have set the relative value of the PTV and Canadian signals at 100%. Mr. Trautman then referred to the Horowitz Survey results, opining that it was error for McLaughlin/Blackburn to assume CSOs would assign 100% relative value to PTV programming on PTV-only signals.

B. Horowitz Survey

Program Suppliers retained Horowitz Research, Inc. to evaluate the Bortz Survey and to design a proprietary survey to improve on the Bortz Survey. Horowitz attempted to replicate and improve upon the methods and procedures of the Bortz Survey used in the ''Phase I'' or allocation phase of the 2004–05 cable royalty distribution proceeding.[114] *See* Horowitz WDT at 3. The Horowitz Survey sought to measure the relative value of programming categories in attracting and retaining subscribers. *Id.* In rebuttal, Horowitz evaluated the Bortz Survey covering royalty years 2010–13. *See* Written Rebuttal Testimony of Howard Horowitz, Trial Ex. 6013, at 2 (Horowitz WRT).

Horowitz also conducted its own survey, fashioned on the Bortz Survey, but with amendments Horowitz considered necessary. The Horowitz Survey, among other things, addressed the PTV and CCG programming the Bortz Survey omitted. The Horowitz Survey questionnaire provided category descriptions to assist respondents in allocating relative value, identified examples of programming that might fit the category description, and created a separate ''Other Sports'' category to clarify that the definition of ''sports programming'' for purposes of the valuation survey did not include *all* sports broadcasts, but only included

[113] Mr. Trautman criticized the Horowitz Survey results that valued Program Suppliers and Devotional programming higher than the Bortz Survey. He contended Horowitz failed to account for the amount of non-compensable programming on WGNA, *i.e.,* the substituted syndicated or devotional programs WGNA adds to its lineup when it is not simultaneously retransmitting WGN programming. Trautman WRT ¶ 1. Mr. Trautman argued that Horowitz further inflated Program Suppliers, because it attributed all programming in the allegedly inflated ''Other Sports'' category to Program Suppliers. *Id.* ¶ 2.

[114] Horowitz employed Global Marketing Research Services, Inc. to conduct the telephone surveys. Horowitz WDT at 8.

those live college and professional team sports fitting the category definition operative in CRB royalty distribution proceedings. Horowitz WDT at 5–6. The 2010–13 Bortz Survey eliminated from the valuation questions references made in prior Bortz surveys to attraction and retention of subscribers. *See* Bortz Survey at 15.[115] Horowitz opined that omitting references to subscriber acquisition and retention ''distracted survey respondents from the purpose of allocating a fixed budget . . . by leaving out all references to subscriber value . . . the 'primary consideration' for allocating value.'' Horowitz WRT at 2. According to Horowitz, between 79% and 85% of CSO survey respondents ranked programming popular with and important to current and potential subscribers as the most important factor in their carriage decisions. By contrast, only between 4% and 35% ranked importance to the cable system as the primary factor influencing carriage decisions.[116]

The Horowitz Survey results, weighted by Dr. Martin Frankel, indicate relative market values of the programming categories at issue[117] in this proceeding as:

TABLE 12—HOROWITZ SURVEY RESULTS

Category	2010 (%)	2011 (%)	2012 (%)	2013 (%)
CCG	0.01	1.00	0.87	0.35
CTV	12.38	12.85	15.72	9.54
Devotional	3.78	5.92	5.74	3.48
PS	37.43	28.99	28.11	28.65
PTV	7.69	13.31	15.05	15.39
Sports	31.94	27.13	25.50	35.28
"Other Sports"	6.77	10.80	9.02	7.40

See Horowitz WDT at 16; Written Direct Testimony of Martin R. Frankel, Trial Ex. 6010 at 7 (Frankel WDT).

Mr. Horowitz's decisions to (1) rely on acquisition and retention of subscribers and (2) create a separate ''Other Sports'' category came under criticism, as did his methodological choice to provide examples of shows that might fall within the categories.

C. Ringold Survey

The CCG criticized both the Bortz and the Horowitz studies and presented its own limited survey (Ringold Survey). *See* Report of Gary T. Ford and Debra J. Ringold, Trial Ex. 4010 (Ringold WDT).[118] The Ringold Survey attempted to establish a value for eligible programs distantly retransmitted by cable systems in the United States, segregating Canadian-produced programs comprising the CCG and other programs included in the Devotional, Program Suppliers, and Sports categories.

Valuation of CCG programming is complicated by the legal prohibition on retransmission of Canadian programming outside a geographic zone lying along the U.S. northern border. 17 U.S.C. 111(c)(4). The CCG argued that the relative value of CCG programming inside its retransmission zone is necessarily diluted when measuring the relative value of other claimant groups' programming over the entirety of the United States. *See* Written Rebuttal Testimony of Lisa George, Trial Ex. 4007, p. 8 (George WRT). In addition, the CCG argued that its category is an ''unnatural'' category of programming, because the Canadian signals include programming compensable in other categories, *viz.,* the JSC, Program Suppliers, and Devotional Programming categories.

The CCG commissioned a ''double blind''[119] survey of cable systems sampled from the Form 3 systems that retransmit Canadian signals distantly. To further guard against response bias, Professors Ringold and Ford constructed the survey to include questions regarding the relative values of various categories of programming on retransmitted Canadian signals as well as retransmitted superstation and independent station signals.[120] The Ringold Survey was conducted by telephone and used a constant sum construct.

The Ringold Survey differed from both the Bortz and Horowitz surveys in two significant aspects. Unlike in the Bortz Survey, interviewers in the Ringold Survey asked respondents to assign relative values to program categories that included programming on Canadian signals. Unlike both the Bortz Survey and the Horowitz Survey, Ringold Survey interviewers asked each respondent to rank programming on only one retransmitted signal at a time.

The Ringold Survey measured the average relative value of CCG programming on retransmitted Canadian signals as:

[115] In the 2004–05 Bortz Survey, the warmup questions focused respondents on subscriber acquisition and retention by asking which categories were most ''popular'' with subscribers. *See* Bortz Survey at 39. Responding to a Judges' observation that acquisition and retention of subscribers might be too narrow a notion of value, Bortz replaced the popularity question with one intended to establish distant signals' importance to the respondent's system.

[116] *See* Horowitz WDT at 17. Horowitz surveyed a sample of 300 systems, inquiring about factors influencing carriage decisions. The response categories were (1) programming popular and important to current and potential subscribers, (2) programming important to the cable system, and (3) other. Respondents could choose multiple factors.

[117] The numbers for Program Suppliers (PS) are derived by adding responses for syndicated series and movies. ''Other Sports'' are left as a separately valued type of programming because the Horowitz Survey did not and could not specify whether non-JSC sports programming should be categorized as Program Suppliers or CTV.

[118] The report of results of the Canadian Survey included Emeritus Professor Gary Ford as an author, but only Professor Ringold signed the report; consequently, for simplicity, the Judges refer to the report as Ringold WDT. Professors Ford and Ringold had conducted similar surveys since 1996 and Professor Ringold presented a longitudinal study showing the results from 1996 through 2013. *See* Trial Ex. 4011. A longitudinal study analyzes data collected using the same methodology to ask the same population of respondents the same question(s) over time. Such studies can prove useful in evaluating the stability and/or robustness of an estimate. Ringold WDT at 4–5.

[119] Ford and Ringold referred to their survey, conducted by Target Research Group, as ''double blind'' in that neither the interviewers nor the respondents were aware of the sponsor of the survey. Written Direct Testimony of Gary Ford and Debra Ringold, Trial Ex. 4010 at 7 (Ford/Ringold WDT).

[120] Drs. Ringold and Ford used responses relating to superstations and independent stations both to disguise the survey sponsor and as comparators to substantiate their results.

TABLE 13—RINGOLD SURVEY RESULTS: RELATIVE VALUE OF CCG PROGRAMMING ON CANADIAN SIGNALS

Category	2010 (%)	2011 (%)	2012 (%)	2013 (%)
CCG	61.45	64.17	61.47	56.36
Program Suppliers (U.S.)	11.40	21.11	12.20	21.82
Sports (JSC)	26.67	14.72	24.67	20.91
"Other"	0.48	0.00	1.67	0.91

See Ringold WDT at 15, Table 1.[121] In other words, the Ringold Survey results indicated that Canadian-produced programming accounted for approximately 61%, 64%, 61%, and 56%, respectively, of the value of all programming shown on surveyed systems' Canadian signals for the years 2010–2013. Ringold WDT, at 5, 11; 15, Table 1. Ringold found that live professional and college sports were generally valued higher on independent and superstations than on Canadian signals. Ringold WDT at 12; 16, Table 2; 17, Table 3; *see* Fig. 4. Ringold also found that movies and syndicated series were always valued higher on independent and superstations than on Canadian signals. Ringold WDT at 12, 16, Table 2; 17, Table 3; *see* Fig. 5.

Scaling the relative value of Canadian signals within the Canadian zone, CCG concluded Canadian signals should command the following portions of each annual fund.

TABLE 14—RINGOLD SURVEY RESULTS: RELATIVE VALUE OF CCG PROGRAMMING OVERALL

Year	Base rate fund (%)
2010	5.59
2011	5.36
2012	5.95
2013	6.18

Written Direct Statement of Canadian Claimants Group at 1.[122] CCG does not claim any portion of the overall royalty funds for programming on Canadian signals that is compensable in the Program Suppliers or Joint Sports Claimants groups. *Id.* At the hearing, CCG did not controvert testimony by SDC's witness, Mr. Sanders that some Canadian programming is or should be compensable as Devotional Programming. *See* 3/6/18 Tr. at 2410 (Sanders).

D. Criticisms of the Survey Instruments

1. Survey Construct

The surveys the parties presented in this proceeding had some construct similarities. Each of the surveys was directed to CSO executives who self-identified as the person responsible for carriage decisions for the cable systems about which the surveyor inquired. All of the surveys were conducted by telephone[123] by experienced survey entities. Each survey inquired of a sample of potential respondents drawn from the universe of Form 3 cable systems.

a. Sampling

Professor Martin Frankel, who was retained by Program Suppliers, criticized Bortz for including in its sampling Form 3 cable systems that did not carry a distant signal and not correcting for the overinclusion. *See* Amended Rebuttal Testimony of Martin Frankel, Trial Ex. 6011, at 3 (Frankel AWRT). In fact, Bortz sampled from all Form 3 systems but dropped, *i.e.,* did not interview, systems in the sample with zero distant signals. *See* 2/15/18 Tr. at 247 (Trautman). In live testimony, Professor Frankel submitted that Bortz, while not ''wrong,'' conducted its survey on a ''suboptimal'' sample frame. *See* 3/6/18 Tr. at 2267, 2288 (Frankel). Professor Frankel also criticized the Bortz Survey for disadvantaging cable systems with only PTV, CCG, or PTV and CCG distant signals by excluding them and ''affording them no value when producing . . . weighted results.'' Frankel AWRT at 3.

In his amended rebuttal testimony, Professor Frankel corrected for the suboptimal sampling and for the exclusion of PTV and CCG signals in the Bortz Survey. Even so, Professor Frankel declined to endorse even the corrected Bortz results. *Id.* at 15. Professor Frankel advocated reliance on the Horowitz Survey, which used his improved sample frame and included distantly retransmitted PTV and CCG claimant programming. *Id.* at 16.

Professor Frederick Conrad, testifying on behalf of CCG, criticized both the Bortz Survey and the Horowitz Survey on the basis of their sampling.[124] *See* Written Rebuttal Testimony of Frederick Conrad, Trial Ex. 4003 *passim* (Conrad WRT). Because so few cable systems retransmit Canadian stations, the small sample size caused Professor Conrad to question the validity of the results as they relate to the CCG. *Id.* at 4. Further, Bortz excluded from its survey systems whose only distantly retransmitted signal was Canadian, Public Television, or some combination of those. Bortz then assigned a value of zero to CCG- and PTV-only systems, without accounting for the regulatory constraints limiting retransmission of Canadian signals to a geographic zone in the northern tier of states. Exclusion of the CCG and PTV programming from the Bortz Survey resulted in agreement among the parties that the Bortz results would need an unquantified adjustment to reflect the actual relative value of CCG and PTV programming.

Professor Conrad recognized that the Horowitz Survey corrected for this omission by Bortz. *Id.* at 6. Inclusion of the ''missing'' stations did not, however, address all of the issues troubling Professor Conrad. Notably, when Horowitz asked CSOs whose only distantly retransmitted signal was Canadian, for example, the CSO nevertheless stated the relative value of the Canadian programming at less than 100%. *Id.* at 7. According to Professor Conrad, this purported anomaly suggests a problem with the construct of the survey or a problem of communicating the task to either the

[121] The values for the CCG category are the aggregate of relative values CSOs assigned to Canadian-produced news, public affairs, religious, and documentary programs (both network and station-produced); Canadian-produced sports programming; Canadian-produced series, movies, arts and variety shows, and specials; and Canadian-produced children's programming.

[122] The table recreated here omits the column headed ''3.75% Fund.'' The Judges consider the 3.75% Fund separately.

[123] Professor Steckel criticized telephone questioning, contending that the issues were too complex for the respondents to weigh and analyze over the telephone. *See* Written Direct Testimony of Joel Steckel, Trial Ex. 6014, at 36–37 (Steckel WDT). Telephone surveys have been the norm for allocation proceedings.

[124] Professor Conrad criticized the Bortz and Horowitz Surveys on four bases: Sample size, *i.e.,* the number of participants that actually carry a distant Canadian signal; assigning a value of zero to Canadian programming for systems that do not have the option to carry Canadian signals; incompatibility of programming categories; and flaws in either survey design or execution. *See* Written Rebuttal Testimony of Frederick Conrad, Trial Ex. 4003, *passim* (Conrad WRT).

interviewers or the respondents.[125] Given that Canadian signals include less than 100% Canadian content, the Judges reject this particular criticism.

b. Respondents

All three surveys sought to elicit responses from the individual at each cable system that had primary responsibility for signal carriage decisions. In the Bortz Survey, the questioners asked several questions at the outset to establish that they were speaking with the appropriate individual. *See, e.g.,* Trautman WDT at 14–15.

Testimony at the hearing was in conflict regarding carriage decision-makers. Horowitz Research, Inc. employed a cable system executive to screen respondents to assure that they were the appropriate respondents, *viz.,* the respondents responsible for making carriage decisions at the system level. *See* Horowitz WDT at 8. Fact witnesses disagreed about the level at which carriage decisions are made. *Compare* 2/21/18 Tr. at 930 (Burdick) (carriage decisions at Schurz Communications decentralized to local CSOs) *with* 2/22/18 Tr. (Singer) at 1082–84 (carriage decisions made at system level, not at corporate headquarters), 1144–45 (respondents intimately familiar with categories and signals they carry). Ms. Sue Ann Hamilton testified that cable programming decisions [126] are generally centralized at the corporate level in an increasingly consolidated cable industry. 3/19/18 Tr. at 4295 (Hamilton). She opined that respondents to the Bortz Survey were insufficiently ''sophisticated . . . , programming-focused and experienced'' to understand the categories at issue in this proceeding. *Id.* at 4311.

c. Constant Sum Methodology

All three surveys were structured as ''constant sum'' surveys; that is, respondents were asked to allocate value among the programming categories at issue, with the sum of those values to equal 100%. An increase in valuation of one category must result in a decrease in value in one or more other categories.

Among the many criticisms of the three surveys,[127] Professor Joel Steckel, a witness for Program Suppliers, criticized in general the use of the constant sum survey structure. *See* Written Direct Testimony of Joel Steckel, Trial Ex. 6014, at 34–35 (Steckel WDT). Professor Steckel criticized Professor Mathiowetz's touting of the suitability of a constant sum construct in this context. He noted that she cited prior testimony that relied on academic literature from the 1960s and 1970s. *See* Written Rebuttal Testimony of Joel Steckel, Trial Ex. 6015, at 21 (Steckel WRT). Countering the perceived endorsement of constant sum survey methodology by the CARP,[128] Professor Steckel cited recent academic studies that conclude that a measurement based on paired comparisons, *i.e.,* comparisons across only two categories, out-predict constant sum surveys by 22 percentage points. *Id.* at 36 (citations omitted).

On rebuttal, Professor Steckel reviewed the changes in the Bortz Survey between the 2004–05 proceeding and the present proceedings. While he conceded some improvement, he concluded that the changes were insufficient to bestow construct validity on the Bortz Survey. *See* Steckel WRT at 26. Viewing the Horowitz Survey as an augmented Bortz Survey, Professor Steckel also noted some improvements, but concluded that those improvements in form were insufficient to reorient the Horowitz Survey to the question of interest in this proceeding, *viz.,* relative value of program categories.[129]

Professor Mathiowetz endorsed the constant sum survey method used by Bortz in the present proceeding. Professor Mathiowetz concluded, however, that the Horowitz Survey did not employ a valid constant sum construct because of the differences Horowitz introduced as alleged improvements to the Bortz Survey. *See* Mathiowetz WRT at 16. Professor Mathiowetz opined that the Horowitz changes in fact rendered the Horowitz Survey both unreliable and invalid. *Id.* at 26. For example, Professor Mathiowetz opined that Horowitz's inclusion of program examples and ''such as'' descriptions rendered the questions misleading. *Id.* Similarly, incorrect information in program category descriptions resulted in invalid valuations for the various program categories. *Id.* at 17–18. Professor Mathiowetz criticized Horowitz's creation of an ''Other Sports'' category when no such category is a part of this proceeding. She faulted Horowitz's failure clearly to identify noncompensable programming on WGNA. *Id.* at 19.

In the Bortz Survey, interviewers asked respondents about a maximum of eight distant signals even if their systems carried more. *See* Bortz Survey at 31. Professor Mathiowetz criticized the Horowitz decision to ask a single respondent to answer on behalf of all distantly retransmitted signals for the surveyed system, rather than limiting those to a manageable number. Respondents to the Horowitz Survey were asked to evaluate from one to ''over fifty'' discrete signals. *See* Mathiowetz WRT ¶ 48. According to Professor Mathiowetz, this inclusion of so many signals for valuation rendered the survey burdensome and invalid, as respondents would not or could not make fine distinctions between the distantly retransmitted program lineups at multiple systems. *Id.*

Dr. Jeffery Stec, an economic expert called by Program Suppliers, performed reliability analyses of the Bortz Survey results by comparing responses of CSOs for consistency over time. He concluded that the Bortz Survey responses were not reliable as they were not consistent over time, notwithstanding Mr. Trautman's assertions that the Bortz results were consistent over time. *See* Amended Written Rebuttal Testimony of Jeffery Stec, Trial Ex. 6016, at 30–34 (Stec AWRT).

2. Survey Content

a. Programming Categories

Surveyors inquired about programming on retransmitted distant signals using the category designations adopted in the present proceeding. CSOs, however, do not acquire categories of programs for retransmission; by law they must acquire entire signals which often

[125] Professor Conrad criticized both surveys for lacking independent pre-testing to detect confusion or anomalies. 3/5/18 Tr. at 1969–70 (Conrad).

[126] Ms. Hamilton also testified that distant signal programming was an insignificant consideration in cable systems' programming decisions. 3/19/18 Tr. at 4306.

[127] Professor Steckel asserted two standards to which a survey must conform: Reliability, *i.e.,* the ability to replicate the survey's results, and validity, *i.e.,* the conclusion that the survey measures what it purports to measure. *See* 3/13/18 Tr. at 3269 (Steckel). He opined that neither the Bortz Survey nor Horowitz Survey measures what it purports to measure nor what the statute requires the Judges to determine. He concluded that both, therefore, lack construct validity. *See* Steckel WRT at 21.

[128] Professor Mathiowetz did cite multiple royalty allocation decisions that relied on Bortz surveys. *See* Written Rebuttal Testimony of Nancy Mathiowetz, Trial Ex. 1007, at 5–6 (Mathiowetz WRT). She did not contend those decisions were an endorsement of the constant sum methodology; rather she cited those decisions as support for the conclusion that the Bortz Survey addresses the relevant question of interest in these proceedings. *Id.*

[129] Given the task to choose the lesser of the two evils, Professor Steckel concluded that the Horowitz Survey was a slightly better instrument because, *inter alia,* it included PTV and CCG stations and programming, it broke out ''other sports'' categories from those represented by the JSC, and its interviewers did a better job of reminding respondents of program categories, stations at issue. Steckel WDT at 38.

bundle together multiple categories of programming.[130]

Professor Steckel criticized the Bortz and Horowitz surveys for requiring CSOs, unaided and in the course of a brief telephone survey, to disaggregate signals and reconfigure the programming from each into compensable categories. *See* Steckel WDT at 29–30. Professor Steckel opined that, because of the perceived complexity of the survey construct, respondents were compelled to satisfice[131] with shortcuts and heuristics to create a defensible answer to the overly complicated questions. *Id.* at 31–32; 3/13/18 Tr. at 3298 (Steckel).

More than one witness downplayed Professor Steckel's complexity criticism, asserting that the survey respondents are experienced professionals thoroughly familiar with the programming categories copyright owners utilize in CRB distribution proceedings. *See, e.g.,* 3/13/18 Tr. at 3176 (Hartman) (CSOs negotiate for linear channels, but channels fall into categories. ''It's our day-to-day job to . . . know those, that type of programming.''); 2/22/18 Tr. at 1144–45 (Singer). Participants proffering survey results as a measure of relative value also asserted that cable system executives could accurately allocate program category values by reference to the ''dominant impression'' of each signal's content or the ''signature programming'' of a given signal. *See* 2/15/18 Tr. at 281, 334 (Trautman); 2/22/18 Tr. at 1001 (Singer).

Ms. Sue Ann Hamilton testified that the programming categories adopted in royalty distribution proceedings are unique and ''quite different from the industry understanding of what programming typically falls in a particular programing genre.'' *Id.* at 10; *see* 3/19/18 Tr. at 4309, 4312 (Hamilton); Hamilton WRT at 17–18. For example, she testified that ''most cable operators'' would not recognize that pre- and post-game interviews and highlight compilation telecasts would fall into the Program Suppliers category, or that locally produced high school team sports would fall into the Commercial Television category. *Id.* at 11. Other industry witnesses disagreed. *See* 2/22/18 Tr. at 1046–47 (Singer) (categories ''straightforward''). Ms. Hamilton further opined that cable operators were not likely to differentiate between network and non-network sports telecasts and that migration of live team sports programming to regional cable networks further complicates the equation. *See* Hamilton WRT at 17–18; 3/19/18 Tr. at 4315 (Hamilton).

Dr. Stec gave weight to Ms. Hamilton's testimony. *See* Stec AWRT at 23–25. According to Dr. Stec, the Horowitz Survey results, gained after the surveyors provided category descriptions and program examples, demonstrate the fallacies of the Bortz Survey and its reliance on CSO executives' familiarity with the program categories. *Id.* at 27. The Horowitz category descriptions and examples were also roundly criticized, however.[132] Nothing in Dr. Stec's analysis supports his contention that there is a causal relationship between changes in an interviewer's category or program descriptions in the two major surveys, from which Dr. Stec concludes that the Horowitz results are more valid than the Bortz results.

A related criticism from Professor Conrad was that the categories about which respondents were questioned were not comparable. *Id.* at 10–11. In other words, all programming categories other than CCG and PTV are characterized by homogeneity in types of program content. The CCG and PTV categories, on the other hand, are based on program origin and include programs that span the categories making them, in this context, ''unnatural categories.'' *See* 3/5/18 Tr. at 1965 (Conrad). Even though cable systems might retransmit PTV signals, all of which are compensable entirely from the PTV category, PTV stations might broadcast children's programming, nationally produced specials or series, or locally-produced programming. On the other hand, some of the CCG programs might be allocable to another category but some might not.[133]

b. Augmentation of Categories

Professor Mathiowetz criticized aspects that distinguish the Horowitz Survey from the Bortz Survey. Her two most significant criticisms related to Mr. Horowitz's use of program examples and the creation of an ''Other Sports'' category.[134]

Professor Mathiowetz asserted that a questioner's volunteering of examples tends to bias survey results. *See* 2/20/18 Tr. at 699 (Mathiowetz); *but see* 3/5/18 Tr. at 1967–68 (Conrad) (examples can hurt or help or have no effect on responses). According to Professor Mathiowetz, Respondents assume a questioner has valid information or knows something that is important to the survey outcome. *See* 2/20/18 Tr. at 699 (Mathiowetz). Thus, even a knowledgeable respondent might be influenced by a questioner's prompting. As she noted, in a relative valuation, a shift in one category affects potentially the value of every other category. *Id.* at 727.

Furthermore, according to Professor Mathiowetz, some of the examples used in the Horowitz Survey were simply erroneous. 2/20/18 Tr. 700 (Mathiowetz). Use of erroneous examples illustrated Professor Mathiowetz's criticism of Mr. Horowitz's creation of an ''Other Sports'' category. In an effort to differentiate live team college and professional sports, *i.e.,* the programs to be compensated from JSC's share of the royalty funds, interviewers introduced ''other sports programming.'' For WGNA-only systems, the category description ended with ''Examples include horse racing.'' *Id.* at 27. According to Professor Mathiowetz, in 2013, WGNA carried only a single horse race. *Accord* Trautman WRT 20–21.[135] For WGNA and PTV systems, the interviewers prompted, ''Examples include NASCAR auto races, professional wrestling, and figure skating broadcasts.'' Horowitz WDT (App. A) at 26. WGNA retransmitted no programming fitting the description of the examples. 2/20/18 Tr. at 703 (Mathiowetz). Professor Mathiowetz also expressed doubt that non-JSC sports broadcasts accounted for sufficient distantly retransmitted airtime to warrant a separate category, even for survey inquiry purposes. *Id.* at 702. As she noted in another context, in a constant sum survey, variation in one

[130] PTV and, to a lesser extent, CCG signals are exceptions to this bundling phenomenon.

[131] Satisfice means ''to choose or adopt the first satisfactory option that one comes across.'' *See www.dictionary.com,* last visited 07/19/2018.

[132] *See* discussion at section § III.D.2.b.

[133] For example, Mr. Trautman acknowledged that the Bortz Survey did not differentiate by category programming transmitted on Canadian signals even though some of the programs should be compensated not in the CCG group, but in other categories. 2/20/18 Tr. at 629 (Trautman).

[134] Professor Mathiowetz also opined that the Horowitz Survey was not a valid constant sum survey because some of the Horowitz respondents, the PTV-only and CCG-only systems, could be asked about only one category of programming, and thus not requiring a sum of percentages at all. 2/20/18 Tr. at 511 (Mathiowetz). While correct as to PTV-only systems, this opinion disregards the fact that Canadian stations transmit both CCG-compensable programs and, for example, Devotional programs compensable from the SDC royalty funds.

[135] Mr. Trautman further argued that cable systems retransmit a ''substantial amount'' of other sports programming, most of which is non-compensable under the section 111 license. Trautman WRT at 16. He contended that, notwithstanding the examples of rare compensable sports broadcasts, CSO respondents likely confused the volume of non-compensable sports programs as belonging in the unfamiliar Other Sports category inserted by Mr. Horowitz. *Id.*

category necessarily effects the relative value of other categories. *See* 2/20/18 Tr. at 727 (Mathiowetz).

Professor Conrad agreed with the criticism of enumerating examples of ''other sports'' or any program category. 3/5/18 Tr. at 1967(Conrad). According to Professor Conrad, citing examples might cut either way. If the example is typical of the category, then citing it will have no effect. An atypical example might help a respondent ''think outside the box'' and trigger a broader, more accurate response. For other respondents, however, an atypical example might narrow focus to incidents closely related to the particular example and therefore confine the respondent's thinking too narrowly. *Id.* at 1968. Professor Conrad cautioned that a ''rare example'' will bias downward the counts for more typical choices. *Id.*

Mr. Horowitz assigned all ''Other Sports'' points to Program Suppliers. *See* Horowitz WDT at 3, 5. This allocation ignores the possibility that a portion of ''other sports'' might be attributable to CTV. Without evidence to support the assignment of all ''other sports'' value to Program Suppliers, the category becomes even more problematic.

c. Value Measurement

Dr. Jeffery Stec, criticized the Bortz Survey on several grounds. *See* Stec AWRT at 11–12. His primary criticism is that the Bortz Survey measures, at best, only a CSO's willingness to pay. *Id.* at 17. Dr. Stec disputes the assertion by Mr. Trautman and Bortz that CSO respondents are familiar with the rates charged for programming and that their responses are, therefore, a reflection of the ''supply side.'' *Id.* at 18; *see* 3/13/18 Tr. at 3432–50 (Stec). Dr. Stec contends that a CSO's willingness to pay is also influenced by its own market factors, *e.g.,* local market demand or competition from other CSOs. *Id.* at 19–20. According to Dr. Stec, relative willingness to pay is not the same as relative market value. *Id.* at 22.

An underlying assumption in each survey is that cost is the equivalent of value. Economists do not measure such a subjective trait as value. According to Professor Steckel, value, in an economic sense, can only be surmised by reference to external indicators of value. Steckel WDT at 36–40; *but see* Mathiowetz WRT ¶¶ 4, 11–12 (Steckel incorrect; CARP precedent accepted Bortz as measure of relative market value). Professor Steckel opined that resource allocation does not equate to value and that marketplace value is measured by a CSO's return on investment. Steckel WDT at 21. Because of the cable television market structure, *i.e.,* program acquisition in a bundle, CSOs are unable to assess market returns by program category. *Id.* Professor Steckel proposed—as a possible alternative to surveying CSO executives' best guesses about supply-side relative values—a survey of demand-side program consumers. Steckel WDT at 40–41 (''customers are the best judges of what customers want, value, and will do.''). Alternatively, Professor Steckel recommended relying on viewership to establish relative values. *See* Steckel WRT at 4.

Mr. Horowitz also criticized Bortz for asking a cost question, opining that cost is not the equivalent of value. Horowitz WDT at 7. He testified that the Bortz Survey erroneously mixed the concepts of value and cost. 3/16/18 Tr. at 4146–47 (Horowitz). Mr. Horowitz contended that by asking about expense in a warmup question, Bortz conflated the concepts of cost and value.[136] Mr. Horowitz noted that the Bortz Survey did not define ''relative value'' and made no mention of subscriber attraction and retention.[137] *Id.* Further, Mr. Horowitz criticized the form of the budget allocation (constant sum) question as ambiguous. The question asked how much the respondent's system ''would have spent'' during the relevant year. *See, e.g.,* Bortz Survey at B–5 (Question 4a.). Mr. Horowitz maintains this sentence structure is open to interpretation. *Id.* Treatment of PTV, CCG, and WGNA.

d. PTV and Canadian Measures

Various parties criticized the treatment of PTV and CCG claimant groups in almost every relative value measure, including the surveys. As noted, Ms. McLaughlin and Dr. Blackburn criticized both the survey and regression methodologies, but applied their ''changed circumstances'' [138] analysis to estimate the relative value of PTV programming and PTV's relative claim to royalties deposited in the Basic Fund.[139] Professor Conrad opined that it was a ''strange practice'' to assign a value of zero to Canadian programming for respondents who did not retransmit any Canadian signals. *See* 3/5/18 Tr. at 1964–65 (Conrad). He testified that the better practice would have been to characterize Canadian programming for non-CCG signals as ''missing data'' and to impute values from data actually collected. *Id.* at 1965.

Mr. Trautman acknowledged a slight participation bias in the Bortz Survey, but testified that the number of PTV-only and CCG-only cable systems (approximately 60 systems in the aggregate) was insignificant and that including them would have made little difference in his results. *See* 2/15/18 Tr. at 507 (Trautman). The triers of fact for these royalty allocation proceedings have long recognized that the results of the survey methodology employed by Bortz exhibited a bias against PTV and Canadian claimants. The Judges in the 2004–04 proceeding acknowledged that the participation bias affecting results for both PTV and CCG was troubling, but that

> [i]t would be inappropriate to overstate the impact of this problem. No one in this proceeding maintains that it substantially affects more than a small portion of the total royalty pool . . . . Nor has it been shown that the Bortz survey's remaining non-PTV-Canadian estimates were thrown outside the parameters of their respective confidence intervals solely because of this problem. That is, the PTV-Canadian problem does not substantially affect any of the remaining categories in some disproportionate way.

2004–05 Distribution Order, 75 FR at 57067. Nonetheless, on rebuttal, Mr. Trautman adjusted the Bortz Survey results based on the McLaughlin/Blackburn testimony that supported a greater valuation of the PTV and CCG claimant groups and by referring to the Horowitz Survey responses to further adjust the augmentation proposed by McLaughlin/Blackburn. *See* Trautman WRT at 47–48; 2/20/18 Tr. at 523–24 (Trautman).[140]

Further, in the present proceeding, the Judges have the advantage of competing surveys such as the Ringold Survey commissioned by the CCG that dealt with PTV and Canadian programming, and other methodologies that did not suffer from the participation bias that discounts the Bortz Survey results.

[136] Question 3 of the Bortz Survey asked respondents as a warmup question to rank how ''expensive'' it would be to acquire the programming in each category if the system had to acquire the programming ''in the marketplace.'' *See, e.g.,* Bortz Survey at B–4.

[137] *See supra* note 110 and accompanying text.

[138] *See infra* section 200E;VI. McLaughlin and Blackburn used the Judges' 2004–05 distribution determination as their starting point. *See* Testimony of Linda McLaughlin & David Blackburn, Trial Ex. 3012 at 9 (McLaughlin/Blackburn WDT).

[139] PTV does not participate in the 3.75% Fund or the Syndex Fund. McLaughlin and Blackburn were careful, therefore, to relate their valuations to the Basic Fund. *See* McLaughlin/Blackburn WDT, *passim.*

[140] Mr. Trautman made the further adjustment by reference to the Horowitz Survey actual responses from PTV-only cable systems. *See* 2/2/0/18 Tr. at 525–26 (Trautman).

e. Impact of WGNA

Participants in the present proceeding wrangled with valuation of WGN programming distantly retransmitted on the WGN ''Superstation,'' WGN America (WGNA).[141] WGNA did not offer for retransmission, a program lineup identical to the one broadcast locally on WGN. Only those programs carried simultaneously on WGN and WGNA are compensable under the section 111 license. WGNA substituted syndicated or devotional programming for elements of the WGN signal. In the 2004–05 proceeding, the Judges criticized the Bortz Survey for failing to measure and value accurately the compensable programs retransmitted on WGNA. In fact, Bortz acknowledged this failure to differentiate compensable from noncompensable programs on WGNA and conceded that the survey results for Program Suppliers (the category most frequently retransmitted on WGNA) and Devotional Programming should be considered the ceiling for those categories. *See* 75 FR at 57067. In the 2004–05 determination, the Judges cited repeatedly the lack of record evidence regarding the quantitative adjustment for over-valuing noncompensable programming retransmitted on WGNA. *See, e.g., id.*

In the present proceeding, Bortz employed a separate questionnaire form to survey cable systems that retransmitted only the WGNA signal. Bortz created a WGNA programming list that identified compensable programming and provided the list to survey respondents before continuing with the questions. *See* Bortz Survey at 30. Bortz continued to use its standard questionnaire for cable systems that carried WGNA along with other distant signals. *See* Bortz Survey at B–2 (''This Appendix provides examples of the survey instruments used to interview respondents at systems that carried distant signals *in addition to or other than WGN* during the relevant survey year.'') (emphasis added).

The Horowitz Survey's questions relating to WGNA directed respondents not to assign any value to noncompensable programming, describing noncompensable programs as ''substituted for WGN's blacked out programming.'' Mr. Trautman opined that the ''blacked out'' instruction in the Horowitz Survey was meaningless because respondents would ''have no reason to be aware of which [programming is substituted].'' *See* 2/20/18 Tr. at 535 (Horowitz).

WGNA was the most widely-retransmitted station in the U.S. during the period at issue in this proceeding.[142] In the 2010–2013 timeframe WGNA was retransmitted by approximately three-fourths of the cable systems retransmitting distant signals and reached over 41 million distant subscribers. *See* Wecker Report, ¶ 23; Bortz Survey at 25. Bortz attempted to improve on the measure of WGNA retransmissions criticized in the 2004–05 proceeding. Horowitz also addressed the issue from the 2004–05 Bortz survey, but with less specificity than Bortz achieved in its 2010–13 survey for WGNA-only cable systems.

E. Conclusions Regarding Surveys

Surveys of cable system programming executives provide insight into the value those executives assign to the categories of programs eligible to receive a portion of the retransmission royalties cable systems deposit with the Copyright Office. No participant in any television royalty proceeding has developed a method to measure the actual market value of a content creator's product as bundled into a broadcast signal. Indeed, the value of a content creator's product will vary depending on the nature of the bundle and the buyer of that bundle; every creator and every viewer is likely to place a different value on every product. As buyers of the broadcast signals, CSO executives' valuations reflect their conclusions regarding the extent to which the category of programming contributes to the return on that investment; *i.e.,* helps the cable system attract and retain subscribers.[143]

Surveys of CSO executives admittedly measure only the demand side of a value calculation. Several witnesses in the present proceeding criticized the focus only on a demand-side valuation. *See, e.g.,* 3/13/18 Tr. at 3433 (Stec) As noted in the discussion of relative value in allocation proceedings, the Judges accept that there are valid reasons for focusing on the demand side in this proceeding. *See 1998–99 Librarian Order,* 69 FR at 3615 (in relevant hypothetical marketplace, supply of broadcast programming is fixed and does not determine value). Indeed, in the present proceeding, both the regression and viewership methodologies also attempt to measure value from a demand-side perspective: Regressions by measuring various demand variables, such as subscribers, and the viewership study by measuring consumption of programming by viewers. In the current regulated market structure, CSOs' purchase of broadcast signals as bundles reflects a derived demand, one step removed from the supply and demand measured at the station acquisition level. CSOs deposit royalties based on distant signal equivalents (or a minimum fee) that is divorced from the individual program content copyright owner. In this context, the buyers' demand, as measured primarily by revealed preferences, is the only equitable measure of compensation to copyright owners.

Bortz, Horowitz, and Ringold used a constant sum construct, asking respondents to value program categories by percentages and requiring that their allocations totaled 100%. The Bortz Survey muddled the concepts of cost and value by means of its warm-up question that asked survey respondents to rank program categories by how expensive it would have been for the CSO to acquire them. This may have injected some confusion into the respondent's estimation of relative value. The question of interest in this proceeding is not *cost;* rather, it is relative *value.* It is unclear how, if at all, the injection of a cost question furthers that inquiry.

Further, as in past surveys Bortz did not survey cable systems that carried only PTV and/or CCG signals; those systems thus had no opportunity to allocate any of their hypothetical budgets to PTV or CCG programming. *See id.* The Horowitz Survey included PTV- and CCG-only systems, but threw a curve ball by including an ''Other Sports'' category when there may have been little to no ''other sports'' content, and assigning the entire value of that category to Program Suppliers. Horowitz also may have introduced bias by providing program examples for some of the program categories. The examples, at best, would have had no effect on the results; but at worst, could have skewed results unnecessarily.

For all of the reasons highlighted by critics of the survey valuation method, the Judges agree that surveys are not a perfect measure. Nonetheless, survey results have been cited in prior royalty distribution proceedings as a generally acceptable starting point to measure

[141] According to the Bortz Survey, approximately three-fourths of cable systems retransmitting distant signals retransmitted WGNA. Bortz Survey at 25.

[142] For purposes of the royalty years at issue in this proceeding, WGNA as a superstation cast a long shadow on valuation methodologies. Following the period at issue in the present proceeding, WGNA began the process of converting to a cable network, which would, in time, remove it from consideration in royalty allocation proceedings.

[143] Subscribers are a major source of revenue for cable systems; consequently, CSOs focus on retention of subscribers. In some instances, a CSO might relicense a signal with less viewed, niche programming to avoid losing a subscriber to a competing system. *See* 3/19/18 Tr. at 4297–99 (Hamilton).

relative program category value. Previous allocation determinations have relied heavily and almost exclusively on Bortz surveys. That reliance serves as precedent for the current Judges.[144] Adoption of a methodological precedent does not, however, preclude the Judges' consideration of current evidence.[145] In the present proceeding, the Judges have three CSO surveys to consider. The methodological precedent thus gives rise to additional evidence to guide the Judges' treatment of the survey methodology. Notwithstanding the differences in approach, the results derived from the Bortz Survey and the Horowitz Survey are compatible. Further, the relative valuations of CSO executives do not vary wildly from the valuations derived from participants' regression analyses.

The Judges conclude that the allocation measures resulting from the Horowitz Survey, with adjustments, are the survey results that most closely reflect the relative value of the agreed categories of programming in the hypothetical, unregulated market. Regardless of proffered evidence to the contrary, the Judges find that the surveyed cable system executives were sufficiently familiar with the compensable content on the signals their respective systems retransmit.[146]

The doubly regulated nature of compensable Canadian programming complicates assignment of a value to that category. The clarity of the Ringold Survey, with its comparisons to superstations and independent stations, establishes the relative value of Canadian and non-Canadian programming on Canadian signals to cable systems retransmitting within the Canadian zone of the U.S. The Ringold Survey takes the relative values of Canadian programming on Canadian signals to cable operators that retransmit them within the Canadian zone. The CCG did not provide any means of converting those results into a royalty share for the CCG category (or any other program category). The Ringold survey is thus of minimal assistance to the Judges.

Horowitz did not exclude from its sample systems that distantly carried only PTV and/or Canadian signals. The Judges conclude that Horowitz's use of examples to ''aid'' respondents, while flawed, was not likely to skew significantly results in any of the established categories. Horowitz. Horowitz's inclusion of Other Sports created a value where none, or next to none, existed and allocated all Other Sports value to Program Suppliers.

For all the reasons described above, particularly the acknowledged systematic bias against PTV and CCG programming, the Judges accord relatively less weight to the ''Augmented'' Bortz Survey. On balance, the Judges find the Horowitz Survey results to be more reflective of CSOs actual valuations of the program categories defined by agreement and adopted in this proceeding. However, the Judges cannot accept allocation of 100% of the Other Sports relative value to Program Suppliers. For that reason, the Judges conclude that the most appropriate treatment of the Other Sports ''points'' is to reallocate them in proportion to the relative values established outside the Other Sports category. The Judges' calculations are illustrated in Table 15.[147]

TABLE 15—HOROWITZ SURVEY RESULTS AFTER REALLOCATING ''OTHER SPORTS'' TO REMAINING CATEGORIES

	2010 (%)	2011 (%)	2012 (%)	2013 (%)
CTV	13.28	14.41	17.28	10.30
Program Suppliers	40.15	32.50	30.90	30.94
JSC	34.26	30.41	28.03	38.10
SDC	4.05	6.64	6.31	3.76
PTV	8.25	14.92	16.54	16.62
CCG	0.01	1.12	0.96	0.38

With regard to the ultimate question of interest in the present proceeding, the Judges conclude that survey results offer one acceptable measure of relative value, particularly for Sports, Program Suppliers, Commercial TV, and Devotional programming. With regard to PTV and Canadian programming, adjustments resulting from the McLaughlin/Blackburn evidence and the Ringold Survey assure a reasonable relative value of PTV and Canadian signals, respectively. Considering all of the evidence presented in this proceeding, the Judges conclude that the constant sum survey methodology, with adjustments, provides relevant information relating to the relative value for each of the six categories remaining at issue. Considering the more persuasive regression analyses, however, the Judges afford less evidentiary power to the values derived from these adjusted survey results. The Judges conclude that Dr. Crawford's first (duplicate minutes) regression analysis is a stronger base on which to make the category allocation determination.

IV. Viewership Measurement

Program Suppliers, unique among all participants in this proceeding, proposed an allocation methodology based on the relative amount of aggregate viewing of the programs in each of the agreed program categories.

[144] In the 1998–99 CARP determination, the Panel concluded that the Bortz Survey was the most ''robust'' and ''powerfully and reliably predictive'' model for determining relative value . . .'' for all categories except PTV, Canadian Programming, and Music Claimants. *Report of the Copyright Arbitration Royalty Panel to the Librarian of Congress,* Docket No. 2001–8 CARP CD 98–99, at 31 (Oct. 21, 2003) (*1998–99 CARP Report*); *see also 1998–99 Librarian Order,* 69 FR at 3609. For PTV, the Panel acknowledged the inherent bias against PTV in the Bortz Survey, but found the changed circumstances and fee-generation evidence proffered by PTV to be unpersuasive and declined to increase the PTV allocation percentage from the 1990–92 determination. *Id.* at 3616.

[145] For Canadian Claimants, the CARP had no Bortz results so it used a fee-generation methodology. *Id.* at 3618. In the 2000–03 determination involving only the Canadian Claimants, the Judges distinguished the precedential mandate of a fee-generation *methodology* and applicable changed circumstances *evidence. See 2000–03 Distribution Order,* 75 FR at 26807.

[146] Further, the categories endorsed by the Judges in the present proceeding have not changed for decades, giving CSOs time to acquaint themselves fully with the programming comprising each agreed category, whether or not they routinely agree with the programming characterizations at issue in these proceedings. The Judges do not gainsay that there have been changes in CSO personnel over the years, but it is nonetheless not unreasonable to think that even with changes in personnel, the CSOs have maintained an institutional memory of the requirements of these proceedings.

[147] For example, for 2010, eliminating the relative value of Other Sports from the 100% constant sum leaves an allocation of 93.23% of the total assessed value. Recasting that 93.23% as the whole, the 3.78% relative value assigned to Devotional programming in 2010 would translate to 3.52% (3.78% of $3.78 \times 93.23 = 100x$; $x = 3.52$).

They presented this methodology through the report and testimony of economist Dr. Jeffrey Gray.[148]

A. Viewership as a Measure of Value

Dr. Gray posited a hypothetical market structure divided into a primary market and a secondary market. In the primary market broadcasters would purchase from copyright owners the right to broadcast programs in their local market (as is currently the case) and would at the same time obtain the right to retransmit the programs into distant markets. In the secondary market the broadcasters would sell their entire signal to cable operators, most likely as part of retransmission consent negotiations. In the hypothetical primary market the broadcaster would pay the copyright owner both a royalty to broadcast the program in the local market and a surcharge for the right to retransmit each program into distant markets. The broadcaster would recoup that surcharge as part of its transaction with the cable operator in the secondary market. *See* 3/14/18 Tr. at 3682–84, 3779–81 (Gray); Hamilton WDT at 14.

Dr. Gray stated that ''[i]t is axiomatic that consumers subscribe to a CSO to watch the programming made available via their subscriptions'' and that ''[t]he more programming a subscriber watches, the happier the subscriber is, and the more likely she will continue to subscribe, all else equal.'' Gray CAWDT ¶ 13. He concluded, therefore, that ''a measure of the happiness, or 'utility,' an individual subscriber gets from a specific program is the number of minutes that subscriber spent viewing the program offered to him or her by the CSO'' and ''[a] measure of the utility all subscribers get, in total, from a specific program is the total level of subscriber viewing of the program.'' *Id.*

Applying this economic principle to the hypothetical market, Dr. Gray opined that expected viewing in the distant market would determine the value of the programming in the distant market. *See* 3/14/18 Tr. at 3684–85, 3873–74. Program Suppliers assert that actual and projected subscriber viewing information would be critical to negotiations between cable operators and broadcasters for the right to retransmit broadcast signals in an unregulated market. *See* PS PFF ¶ 17; Hamilton WDT at 14; 3/19/18 Tr. at 4317–19 (Hamilton). Consequently, Program Suppliers argue that subscriber viewing information is the most reasonable metric for determining relative market value. *See* PS PFF ¶ 18; Hamilton WDT at 14–15; 3/19/18 Tr. at 4317–19 (Hamilton); 3/14/18 Tr. at 3822–23, 3873–74 (Gray).

B. Implementation of the Viewing Study

In the broadest sense, Dr. Gray's methodology for determining the relative value of programming in the various program categories was to assign all compensable distantly retransmitted programs on a sample of stations to appropriate program categories, aggregate the quarter hours of expected viewing for every program in each category, and divide the total number of expected quarter hours of viewing for each program category by the sum of expected quarter hours of viewing for all categories. *See* Gray CAWDT ¶ 22; 3/14/18 Tr. at 3684–85, 3689–90 (Gray).

To accomplish this, Program Suppliers obtained, at Dr. Gray's direction, data on cable systems and retransmitted television signals from Cable Data Corporation (CDC),[149] television programming data from Gracenote,[150] program logs for Canadian television stations from the Canadian Radio-television and Telecommunications Commission (CRTC),[151] and viewing data from Nielsen's National People Meter (NPM) database.[152] *See* 3/14/18 Tr. at 3685–88 (Gray). Due to cost considerations, Dr. Gray created a sample of approximately 150 distantly retransmitted stations for each year and instructed Program Suppliers to obtain program and viewership data only for those stations included in his sample. *See* Gray CAWDT at 24 App. B; 3/14/18 Tr. at 3686–89 (Gray).

Dr. Gray did not calculate viewing shares directly from the Nielsen viewing data. Instead, he used the Nielsen data as inputs to a regression algorithm that permitted him to calculate expected distant viewing for each program in each quarter-hour throughout each year based on a number of independent variables including what Dr. Gray described as ''a measure of local ratings.'' *See* Gray CAWDT ¶¶ 36–38; 3/14/18 Tr. at 3692 (Gray).[153] Dr. Gray stated that he employed regression to compensate for the high incidence of non-recorded viewing in the Nielsen data, as well as instances where viewing data were missing. *Id.* at 3690–91. Regression analysis allowed Dr. Gray to estimate positive viewing even in instances where there was zero observed viewing in the Nielsen data, by increasing low estimates and decreasing high estimates. Dr. Gray described this as ''data smoothing,'' and opined that ''[i]t's a desirable outcome in general when estimating based upon other estimates, in particular.'' *Id.* at 3691. In addition, regression allowed Dr. Gray to ''fill in the blanks'' where Nielsen data was missing. *Id.*

Based on his regression analysis Dr. Gray derived the following viewing shares:

[148] Dr. Gray also performed an analysis of the relative ''volume'' (*i.e.,* total number of minutes) of the different categories of programming, which he described as ''useful'' but not ''sufficient'' information concerning the relative value of programming. *See* Corrected Amended Direct Testimony of Jeffrey S. Gray, Ph.D., Trial Ex. 6036, ¶¶ 17–18, 32–34 (Gray CAWDT); 3/14/18 Tr. at 3696–97 (Gray); 3/15/18 Tr. at 3834–36 (Gray). As Dr. Gray himself conceded that his volume analysis was an insufficient basis for determining relative value of programming, the Judges will not rely on it. *See also* Written Rebuttal Testimony of Dr. Mark A. Israel, Trial Ex. 1087, ¶ 38 (Israel WRT) (''measures of volume do not translate directly into value''). The Judges need not consider, therefore, criticisms concerning the accuracy of Dr. Gray's volume analysis. *See* Analysis of Written Direct Testimony of Jeffrey S. Gray, Ph.D., Trial Ex. 1089, at ¶¶ 11–17 (Wecker Report); 2/22/18 Tr. at 1169 (Harvey); Written Rebuttal Testimony of Christopher J. Bennett, Trial Ex. 2007, ¶¶ 36–43 (Bennett WRT); 3/1/18 Tr. at 1861–64 (Bennett).

[149] CDC data is a compilation of information provided by cable systems to the Copyright Office on their semi-annual statements of account (SOAs). It includes information about the number of distant signals that each cable system carries, the number of subscribers receiving each distant signal, and the amount of royalties paid. *See* Gray CAWDT ¶ 28; Martin WDT at 5. From this information, CDC provided, *inter alia,* an analysis of which counties fall within a television station's local service area. *See* Martin WDT at 5–6.

[150] Gracenote (formerly Tribune) provides a compilation of information about each television program airing throughout each day, including the station on which the program aired; whether the program was local, network or syndicated; the program and episode titles; and the type of program. *See* Gray CAWDT ¶ 27; 3/14/18 Tr. at 3686–87 (Gray).

[151] The CRTC program logs include station call signs, program title, actual starting and ending time, and country of origin for each program broadcast on Canadian television stations. Dr. Gray used them to determine the country of origin of programs broadcast on Canadian stations, since U.S.-origin programs are excluded from the Canadian Claimant category. *See* Gray CAWDT ¶ 29.

[152] A ''people meter'' is a device attached to a television set that passively detects the channel to which the television is tuned, and includes a means for each household member to identify him- or herself as the person watching the TV. The NPM database is derived from a national sample of households equipped with people meters and is used for measuring national broadcast and cable networks. *See* Direct Testimony of Paul B. Lindstrom, Trial Ex. 6017, at 4 (Lindstrom WDT); 3/14/18 Tr. at 3496–97, 3505–07 (Lindstrom).

[153] The other independent variables include the time of day that the program aired and the program type. *See* 3/14/18 Tr. at 3692 (Gray).

TABLE 16—GRAY VIEWING SHARES

Claimant	Royalty share			
	2010 (%)	2011 (%)	2012 (%)	2013 (%)
Canadian Claimants	1.96	3.93	3.58	5.16
Commercial Television	15.83	12.06	15.48	10.61
Devotionals	1.18	2.44	1.07	1.10
Program Suppliers	50.94	49.92	36.17	45.09
Public Television	27.96	29.09	41.64	33.29
JSC	2.13	2.57	2.06	4.76
Total	100	100	100	100

Gray CAWDT ¶ 38, Table 2.

Program suppliers propose that Dr. Gray's viewing shares serve as one end of a range of reasonable royalty allocations (the other end being determined by the Horowitz survey). PS PFF ¶ 355.

C. Criticism of Dr. Gray's Viewing Study

Program suppliers' proposed use of Dr. Gray's viewing analysis as a basis for allocating royalty shares was roundly criticized by nearly all other participants through their respective experts. The criticism ranged from general disagreement with the underlying premise that viewership is an appropriate measure of relative value, to specific critiques of how Dr. Gray executed his study.

1. Viewership Not an Appropriate Measure

Several economists testified that viewership is not an appropriate measure of relative value, at least when apportioning value among different program types.[154] *See, e.g.,* Written Direct Testimony of Michelle Connolly, Trial Ex. 1005, ¶ 33, and citations to designated prior testimony therein (Connolly WDT); Israel WRT ¶ 42; *see also* 3/7/18 Tr. at 2474 (McLaughlin) (''We can look at viewing, which I don't see as a measure of value itself . . . .''). For example, Dr. Mark Israel, an economist testifying for the JSC, opined that Dr. Gray's viewing analysis ''provides no reliable basis for determining the relative valuation'' of the agreed categories of programs, primarily because ''it treats all viewing minutes as the same and thus does not account for the fact that minutes of different types of programming have different values.'' Israel WRT ¶ 42. Dr. Israel argues that it is not valid to treat all minutes of viewing equally without considering the number of minutes of each type of content that is available. ''If the same number of minutes of all types of content were available, then the total amount of each that viewers choose to consume could indicate their relative value. But given the smaller number of available minutes of Sports programming, one cannot support such a conclusion.'' *Id.*

Professor Crawford, an expert witness for CTV, sought to demonstrate the lack of a one-to-one correlation between viewing minutes and relative value by examining the affiliate fees cable operators pay in an unregulated market to carry cable channels with different types of content. His analysis showed that cable systems pay far more for sports content than non-sports content with the same level of viewership. *See* Written Rebuttal Testimony of Gregory S. Crawford, Ph.D., Trial Ex. 2005, ¶ 36 & Fig. 1 (Crawford WRT).

Dr. Israel posited that many viewers may choose to view a given category of programming only as a second choice because their first choice is not available. *See* Israel WRT ¶ 42. Stated differently, a raw viewing measurement conveys no information about the intensity of the viewers' preferences for particular types of programming. *See* Connolly WDT ¶ 29. In its pursuit of greater subscription revenues, ''the perceived intensity of subscriber preferences'' would be a key consideration for cable operators. *Id.* ¶¶ 29–30.

Several economists found Dr. Gray's focus on subscribers' viewing patterns to be misplaced because it is cable operators, not subscribers, who pay for programming to fill their channel lineups. *See, e.g.,* Israel WRT ¶ 43; Written Rebuttal Testimony of Matthew Shum, Trial Ex. 4004, ¶ 7 (Shum WRT). ''Naturally, the value of distant signals to CSOs derive [sic] in part from the value that existing and potential subscribers place on them. . . . Nevertheless, *as a principle, the relative market values for distant signal programming depend on the CSOs' valuations of the programming, and not on subscribers' valuations.* Shum WRT ¶ 7. According to CCG expert Professor Shum, viewing is, at best, ''a measure of *subscribers'* valuations'' rather than CSOs'. *Id.* ¶ 8.

Dr. Gray's critics assert that viewership is not a primary consideration for cable operators. A cable operator's goal in selecting distant signals is to grow subscriber revenue by attracting new subscribers, retaining existing subscribers, and increasing subscription fees. *See* Connolly WDT ¶¶ 29, 31–32. Cable operators seek to increase profits by offering bundles of channels that will appeal to subscribers with varying tastes, including tastes for niche programming. *See* Shum WRT ¶¶ 10–11; Connolly WDT ¶¶ 31–32. According to JSC expert Professor Connolly, ''the economics of bundling suggests that the most profitable addition to a cable system's programming is for content that is *negatively correlated* with content already offered by the cable system[,]'' thus, ''in the context of the economic value of individual programming within a bundle to a CSO, neither simple viewership data nor volume of programming is an appropriate metric for the relative market value of programming on distant signals.'' Connolly WDT ¶¶ 32, 31; *accord* Crawford CWDT ¶ 7 (''channels that appeal to niche tastes are more likely to increase cable operator profitability due to the likelihood that household tastes for such programming are negatively correlated with tastes for other components of cable bundles''). As Professor Shum explained:

> [N]iche programming, which may have small viewership numbers, may actually have higher incremental value for CSOs relative to mass appeal programs with larger viewerships. . . . While this may seem paradoxical, the reason is that many mass appeal programs (*e.g.,* gameshows or sitcom

[154] Dr. Erdem, an economist testifying on behalf of the SDC, conceded that, in past proceedings, he had found viewership to be a reasonable basis for apportioning royalties among claimants *within the same program category. See* 3/8/18 Tr. at 2791–93 (Erdem); *accord* Amended Written Direct Testimony of John S. Sanders, Trial Ex. 5001, at 22.

reruns) are close substitutes for each other, and hence if many viewers watch a mass appeal program on a distant signal, that merely subtracts from, or ''displaces,'' the viewership of similar programs on non-distant signals. Thus adding a distant signal station with mass appeal programming merely shuffles existing viewers between the added stations and other stations already carried by the CSO and does not attract new viewers to the CSO's offerings. The rational CSO would have no value for such a distant signal. In contrast, the viewership of niche programs, no matter how small, represent ''new eyeballs'' for the CSOs, as those viewers would not find similar programs on other channels in the CSO's bundles. These viewers would be among the ''new subscribers'' who may otherwise not initiate service with the CSO if distant signal programming were not available.

Shum WRT ¶ 12 (footnotes omitted).

Parties critical of using viewing as a measure of value point to empirical evidence to corroborate arguments based on economic theory. Dr. Wecker and Mr. Harvey demonstrate (based on Dr. Gray's analysis) that paid programming (*i.e.,* infomercials) had a higher viewing share than JSC programming in three of the four years covered by this proceeding. *See* Wecker Report ¶ 44 & Table 7. The JSC point out that, according to Dr. Gray's theory equating viewership with value, cable operators would place a higher value on paid programming than live sports broadcasts, even though Mr. Allan Singer, a former cable industry executive and JSC witness, testified that content such as infomercials actually detracts from the value of a signal. Singer WRT ¶ 7. Mr. Singer also testified that there is ''clearly not'' a ''one-to-one correlation between audience viewing levels and value,'' though it is a ''component'' of value. 2/22/18 Tr. at 1047–48 (Singer). Mr. Daniel Hartman, a media consultant and former DirectTV executive testifying for the JSC, stated that ratings were ''definitely not a determinative factor'' in a multi-channel video program distributor's (MVPD's) negotiations with suppliers of programming. 3/12/18 Tr. at 3155–56 (Hartman). Nor do ratings figure into the rates that MVPD's pay or the contractual terms and conditions they agree to when they negotiate with suppliers of programming. *Id.* at 3156–57. CTV argues that, while Program Suppliers' witness Sue Ann Hamilton testified to the importance to cable operators of prospective viewing by subscribers, she also stated that she did not obtain Nielsen data on viewing of distant signals. CTV PFF ¶¶ 147–148 (citing Hamilton WDT at 5–6; 3/19/18 Tr. at 4326 (Hamilton)).

Program Suppliers responded by holding to the position that viewership is the most direct measurement of relative value of programming for the reasons articulated *supra,*[155] relying primarily on Dr. Gray's and Ms. Hamilton's testimony in support of Dr. Gray's viewing study. *See, e.g.,* PS Reply PFF ¶ 129.

2. Reliance on Incomplete Nielsen Data

On January 22, 2018, two weeks before the scheduled commencement of the allocation hearing in this proceeding,[156] Program Suppliers filed a ''Third Errata'' to Dr. Gray's written direct testimony. *See* Third Errata to Amended and Corrected Written Direct Statement and Second Errata to Written Rebuttal Statement Regarding Allocation Methodologies of Program Suppliers (Jan. 22, 2018) (Third Errata). The stated reason for this Third Errata was that Dr. Gray had discovered that the Nielsen viewing data he had been provided for his analysis did not include any data for distant viewing of WGNA. *Id.* at 1; *see also* 3/14/18 Tr. at 3518 (Lindstrom). WGNA, the national satellite feed for WGN-Chicago, was the most widely retransmitted distant signal in the U.S. during the years covered by this proceeding.

The SDC moved to exclude the Third Errata from evidence, arguing that Program Suppliers were seeking to introduce ''substantial revisions to its proposed allocation methodology'' and not ''mere corrections of errors.'' Settling Devotional Claimants' . . . Motion to Strike MPAA's Purported ''Errata'' to the Testimony of Dr. Jeffrey Gray at 9 (Jan. 25, 2018). The SDC argued that, in addition to using a Nielsen dataset that included WGNA viewing data, Dr. Gray proposed ''an all-new regression in addition to the regression [he] previously proposed, and a new sample weighting methodology underlying all of its computations.'' *Id.* The Judges granted the SDC's motion and excluded the Third Errata, reasoning that it was too late to introduce a new analysis. *See* 2/15/18 Tr. at 232 (Barnett, C.J.); *accord Order Granting MPAA and SDC Motions to Strike IPG Amended Written Direct Statement and Denying SDC Motion for Entry of Distribution Order,* Docket Nos. 2012–6 CRB CD 2004–09 (Phase II), 2012–7 CRB SD 1999–2009 (Phase 2), at 5 (Oct. 7, 2016) (striking Amended Written Direct Statement that was filed without leave and that introduced a substantially modified regression specification).

As a result of the Judges' exclusion of the Third Errata, the version of Dr. Gray's viewing analysis in the record is based on a Nielsen dataset that does not include viewing data for WGNA. While it is undisputed that the use of this incomplete dataset almost certainly affected Dr. Gray's computations, the record does not reveal the magnitude of the effect on each participant's viewing share.

Dr. Gray testified that, in spite of the missing WGNA data, his viewing analysis produced viewing shares that were within a ''zone of reasonable consideration.'' 3/14/18 Tr. at 3764 (Gray). He based his opinion on ''a dramatic decline in compensable programming carried on WGNA and a dramatic decline in viewing of WGNA programming, such that it had become increasingly less important over time.'' *Id.* at 3763; *see also* 3/14/Tr. at 3522 (Lindstrom) (''I haven't quantified it, but based on past experience, I would say that . . . there wasn't much that was, in fact, compensable programming that was on.''). In addition, Program Suppliers argue that Dr. Gray's computed viewing shares were based on accurate Nielsen data as to viewing on the remainder of the approximately 150 stations in his sample for each year and were reliable as to those stations. *See* PS PFF ¶ 109; 3/14/18 Tr. at 3525, 3537–38 (Lindstrom). Moreover, Dr. Gray testified that the Crawford and Israel fee-based regression analyses, as modified by Dr. Gray, support his estimated viewing shares as being within a zone of reasonableness. *See* 3/14/18 Tr. at 3744–45 (Gray).

Other participants dispute this. The JSC point to evidence that, while compensable *Program Suppliers'* programming declined in the 2010 to 2013 time frame (and as between that period and the 2004–05 period), the amount of compensable JSC programming remained stable. *See* Cable Operator Valuation of Distant Signal Non-Network Programming 2010–13, Trial Ex. 1001, at 28 Table III–2 (Bortz Report); *see also* Hartman WRT ¶ 14, Table III–1 (telecasts of JSC programming on WGNA remain relatively constant during 2010–13 and between 2010–13 and 2004–05). The JSC argue that the omission of the WGNA data thus disproportionately affected the JSC, as compared to Program Suppliers. JSC PFF ¶ 162.

[155] *See supra,* section IV.A.

[156] The hearing had been scheduled to begin on February 5. The Judges granted Program Suppliers' motion to delay the start of the hearing until February 14 for reasons unrelated to Dr. Gray's Third Errata. *See Order Continuing Hearing and Permitting Amended Written Rebuttal Statements, Denying Other Motions, and Reserving Ruling on Other Requests* (Jan. 26, 2018).

The SDC, through the testimony of their economist Dr. Erdem, similarly argue that the absence of WGNA data is likely to disproportionately bias the results against claimant categories with smaller distant viewership. *See* Erdem WRT at 32.

Several experts testified that the imputed zero distant viewing values that Dr. Gray input into his regression for the missing WGNA data necessarily affected the predicted viewing that the regression produced. *See* Wecker Report ¶ 33 (''choosing to code zero distant viewing for large stations such as WGNA . . . created counterintuitive associations within the data where stations with extremely large distant subscribers are predicted to have low numbers of viewers''); 2/22/18 Tr. at 1299–1300 (Harvey). Dr. Gray appears to have conceded this point. *See* 3/15/18 Tr. at 4054–55 (Gray).

3. Reliance on Unweighted Nielsen NPM Data

The Nielsen data on which Dr. Gray relied was an extract from Nielsen's NPM database. *See* 3/14/18 Tr. at 3685–88 (Gray). The NPM data are derived from a geographically stratified sample of about 22,000 television households that is ''designed in such a way so that every household in the United States has a probability of being selected'' and represents approximately 110 million U.S. television households. *Id.* at 3507, 3539–40 (Lindstrom); 2/22/18 Tr. at 1179 (Harvey); National Reference Supplement 2010–2011, Trial Ex. 2021, at 1–1 (Nielsen Supplement). A subset of the NPM data, known as Local People Meter (LPM) data, is used for measuring viewership in the top 25 local markets. 3/14/18 Tr. at 3556 (Lindstrom); Sanders WRT ¶ 6.viii. Nielsen disproportionately oversamples the (mostly urban) LPM markets, with 600 to 1000 metered households in each. *See* Nielsen Supplement at 1–1; Erdem WRT at 27.

a. Use of Nielsen NPM Data

Several witnesses opined that the NPM database is the wrong tool for measuring local and distant viewing to individual television stations because the NPM data are not designed to measure viewership in local or regional markets. *See* Corrected Written Rebuttal Testimony of Susan Nathan, Trial Ex. 1090, at 3, 5–6 (Nathan CWRT); 2/22/18 Tr. at 1180–81, 1213 (Harvey); Written Rebuttal Testimony of Ceril Shagrin, Trial Ex. 2009, ¶ 24 (Shagrin WRT). Ms. Shagrin contended that an appropriate sample to measure distant viewing would need to oversample small markets, and the NPM does not oversample small markets. Consequently, the NPM data could not produce a proper measure of distant signal viewing. Shagrin WRT at ¶¶ 18, 22, 24; 3/1/18 Tr. at 1778 (Shagrin).

The CCG and SDC both argued that their program categories are underrepresented in the NPM sample design. *See* CCG PFF ¶ 200; SDC PFF ¶¶ 130–131. By statute, Canadian television stations may only be carried by cable systems within 150 miles of the U.S.-Canada border or north of the forty-second parallel. 17 U.S.C. 111(c)(4). Many communities within that ''Canadian Zone'' are not included in the NPM sample. 3/15/18 Tr. at 4071–73 (Gray); Sanders WRT, App. E; Boudreau CWDT at 87. Similarly, the SDC claim that many portions of the ''Bible Belt'' are not included in the NPM sample. *See* Sanders WRT, ¶ 6.xi, Apps. E–F.

More generally, some experts argued that Dr. Gray's use of the NPM data resulted in a high number of instances of zero recorded viewing in the data he fed into his regression algorithm. Viewing of distantly-retransmitted signals is a relatively small phenomenon, and in many regions the NPM had an insufficient number of metered households to measure that viewing. *See* Nathan CWRT at 5–6, 8; Wecker Report ¶¶ 21–22 & Table 4; 2/22/18 Tr. at 1180–81, 1183–84, 1252–54 (Harvey); Gray CAWDT ¶ 35. Ninety-four percent of the quarter hour observations in Dr. Gray's dataset showed zero recorded viewing, and only 0.96% of the observations reported two or more distant viewing households. *See* Wecker Report ¶¶ 18, 21–22 & Table 4; Shum WRT ¶ 17; *see also* Bennett WRT ¶ 49 & Fig. 16. Approximately 20% of the distantly-retransmitted stations in Dr. Gray's sample have no recorded local or distant viewing in the Nielsen data. *See* Shum WRT ¶ 18.

Dr. Gray, and Mr. Lindstrom of Nielsen,[157] defended the use of NPM data for measuring viewership of programs on distant signals. Dr. Gray testified that he consulted with Nielsen concerning his selection of data and the uses to which he intended to put it, and Nielsen found his approach to be reasonable. *See* 3/14/18 Tr. at 3932–33 (Gray); 3/15/18 Tr. at 3846 (Gray). He relied on his regression analysis to project distant viewership values to quarter hours on stations in his sample, including those stations in portions of the country that were not included in the Nielsen NPM sample. *See id.* at 4073. Mr. Lindstrom testified that Nielsen recommended the NPM database because ''it is recognized that the meter is by far the best technology and best method for being able to measure television usage.'' 3/14/Tr. at 3506 (Lindstrom). Mr. Lindstrom also testified that, while the NPM is a measurement of nationwide viewing, ''all national viewing is inherently aggregations of local usage. . . . It's all based on viewing built up from a very localized level. . . . [I]f you believe in sampling—and I'm a big believer in sampling—and the core methodology behind it, that you are getting a very good measure of the viewing going on in those homes and that when looked at in aggregate, it is a very solid number.'' *Id.* at 3508–10.

Regarding the ''zero viewing'' criticisms, Dr. Gray testified that instances of no recorded viewing are to be expected, and constitute ''information regarding the level of viewing for the Nielsen sample.'' 3/15/18 Tr. at 3973 (Gray); *see* Gray CAWDT ¶ 35; 3/14/18 Tr. at 3717 (Gray). Similarly, Mr. Lindstrom explained that, given Nielsen's sampling rates and the levels of distant viewing, one would expect a large number of individual quarter-hour observations to show no recorded viewing. He emphasized that it is necessary to aggregate and average the observations to get an accurate picture of viewing. *See* 3/14/18 Tr. at 3527–28 (Lindstrom). ''[I]f you believe in sampling, then the aggregation is, in fact, going to give you solid results . . . . [I]f you're going to look at the individual pieces, then the individual pieces are highly subject to criticism because you're not supposed to look at individual pieces.'' *Id.* at 3529.[158]

b. Application of Improper Sample Weights to the Nielsen Data

In order to project viewing data from sample households to the broader television audience, Nielsen employs sophisticated weighting schemes. ''The weights measure the number of people in the population that are represented by each member of the sample. For example, if [a] sample member has a weight of 20,000 for a selected day, this

[157] Mr. Lindstrom retired in June 2017 after nearly 40 years at Nielsen. *See* 3/14/18 Tr. at 3495–96 (Lindstrom). Prior to his retirement, Mr. Lindstrom was a Senior Vice President in charge of custom research and custom analysis for Nielsen's media business. *See id.* at 3496. He testified in this proceeding with Nielsen's ''full cooperation and support.'' *Id.* at 3495.

[158] Program Suppliers also sought to cast doubt on the experience and expertise of the witnesses who criticized Dr. Gray's use of the NPM database for his viewing study. *See, e.g.,* PS Reply PFF ¶ 66 (''Ms. Shagrin testified that she had never worked on custom analysis projects while at Nielsen, and that she did not understand how Dr. Gray used Nielsen's custom analysis in his methodology.'').

means that on that day the sample member represents 20,000 in the population.'' Nathan CWRT at 5 (quoting Nielsen online tutorial on weighting (internal quotations and footnote omitted)). Dr. Gray was supplied with Nielsen's national weights, but not with weights that would permit accurate projection to local or regional markets. *See* 3/14/18 Tr. at 3711, 3715–16 (Gray). He chose to use the unweighted Nielsen data, rather than weights that would project to a national audience. Dr. Gray testified that he was concerned that using the national weights would produce anomalous results, where numbers of projected viewers for a distant signal would, in some cases, exceed the number of cable households that receive the signal on a distant basis. *See id.* at 3715–16.

Ms. Susan Nathan, a media research consultant, agreed that it would have been inappropriate for Dr. Gray to apply the NPM national weights to data concerning distant viewing. *See* Nathan CWRT, at 9. However, Ms. Nathan also found Dr. Gray's use of unweighted Nielsen data inappropriate:

> In arriving at his distant viewing estimates, Dr. Gray treats each NPM sample household as equal—even though each NPM sample household is not equal in Nielsen's sample design. Rather, each household is representative of a different number of potential viewers. Simply estimating the number of sample participants that might view a given program is not an accurate means of estimating viewership. By ignoring the weighting and assuming one people meter household is the same as another, Gray also applies the unweighted data in a manner for which it was not intended.

Id. Mr. Gary Harvey, a statistician and applied mathematician, similarly criticized Dr. Gray's use of unweighted data: ''[B]ecause Dr. Gray doesn't take into account any weighting . . . you don't know how important that household is . . . for your particular area.'' 2/22/18 Tr. at 1182 (Harvey); *see id.* at 1201–02.

Dr. Gray responded that his decision to use the unweighted Nielsen data was the best of three options available to him. He could have used the sample weights in the NPM database, which project each quarter-hour observation out to the number of households in the NPM survey that particular Nielsen household represented on that particular day. Dr. Gray was concerned that this would produce anomalous results, where the predicted number of viewing households could exceed the number of distant subscribers with access to that distant signal. See 3/14/18 Tr. at 3714–15 (Gray). He could have used sample weights that project each observation to the particular distant viewing market, but those weights were not available from Nielsen, and would have been impracticable for him to develop. *Id.* at 3715–16. Or he could have taken the approach that he ultimately settled on and used the unweighted Nielsen data. *See id.* at 3716. Dr. Gray pointed out that Nielsen used unweighted data in a similar fashion in a previous proceeding and noted that, in any event, he was not interested in the absolute number of viewer quarter hours, but the relative level of viewing among the parties. *See id.* He concluded that performing a regression on the unweighted Nielsen viewing numbers was ''a reliable methodology to do so.'' *Id.*

4. Sample of Stations Biased Results

Dr. Gray selected his sample of stations using a statistical technique called stratified random sampling. He ranked the universe of distantly-retransmitted stations by numbers of distant subscribers, divided the stations into strata proportionate to the number of distant subscribers reached by the signal, and randomly selected stations from each stratum. 3/14/18 Tr. at 3686 (Gray). He selected stations from the stratum containing the stations with the most distant subscribers with 100% probability (*i.e.,* he selected all of them). The probability of selecting any given station declined with each succeeding stratum, with the probability of selecting a given station in the final stratum ranging from approximately 2.4% (*i.e.,* 19 in 792) to approximately 3.5% (*i.e.,* 22 in 632). *See* Bennett WRT ¶ 28, Figs. 6–9. In order to account for the differing probabilities of selection between the different strata, Dr. Gray had to weight the viewing data. Data pertaining to the largest stations, which were selected with 100% probability received a weight of 1. Data pertaining to stations with a lower probability of selection received a higher sample weight (the reciprocal of the probability of selection). *See* 3/15/18 Tr. at 3964–65 (Gray). The stations with the fewest number of distant subscribers, which had the lowest probability of being selected, received the highest sample weight, ranging from 28.73 to 41.68. *See* Bennett WRT ¶ 28, Figs. 6–9.

Use of a stratified random sample (with appropriate weighting) can allow oversampling of elements with a given characteristic (in this case stations with larger numbers of distant subscribers), while still being able to make statistical inferences about the universe of elements as a whole. However, Dr. Bennett, an economist and econometrician who testified for CTV, criticized this approach, arguing that Dr. Gray's sampling design is prone to error and bias and that Dr. Gray made a number of errors implementing his sample. *See generally* Bennett WRT.

a. Sample Design Led to a Biased Sample

Dr. Bennett describes Dr. Gray's sample design as an example of ''cluster sampling'' because Dr. Gray sampled stations (which air multiple programs) rather than sampling programs directly. *See* Bennett WRT ¶¶ 15–16. Cluster sampling, according to Dr. Bennett, is ''more prone to bias than simple random samples of equal size'' because ''individual clusters often contain a non-random and relatively homogenous set of units.'' *Id.* ¶ 17, 18 & Fig.1. In the context of television programming, Dr. Bennett observed that programs assigned to particular claimant categories are often concentrated by station type (*i.e.,* Canadian, educational, network, independent, or low power). Over- or under-sampling of stations of a particular type could thus have a substantial impact on the volume and viewership share of the categories of programming that are disproportionately carried on those stations. *Id.* ¶ 18. If the sample of stations is not proportionately representative of the station types in the population, the program types will not be representative of the population of television programs.

Dr. Bennett argues that Dr. Gray's samples of stations were, in fact, not representative of the station types in the population. *See id.* ¶ 29. Dr. Bennett offers as evidence of unrepresentativeness the proportion of educational stations in Dr. Gray's samples in each year as compared to the proportion of educational stations in the population. He notes that Dr. Gray consistently under-sampled educational stations in 2010, 2011, and 2013, and oversampled educational stations in 2012. *See id.* ¶ 32 & Fig. 10. Conversely, he finds that Dr. Gray over-sampled independent stations in 2010, 2011, and 2013, and under-sampled them in 2012. *See id.* ¶ 34 & Fig. 11. Since independent stations carry a greater proportion of Program Suppliers' programs than other station categories, Dr. Bennett concludes that Dr. Gray's computations of volume and viewership overstate those values for Program Suppliers' programming. *See id.* ¶¶ 39–42. Dr. Bennett opines that Dr. Gray should have included station type as a stratification variable to avoid potential bias. *See id.* ¶ 19.

Dr. Gray acknowledged that it would have been possible, as Dr. Bennett suggested, to stratify with respect to program type. *See* 3/14/18 Tr. at 3771 (Gray). However, he argued that not performing that stratification did not render his sample biased. ''I'm appealing to randomness. I think bias is a strong word.'' *Id.* He also acknowledged that he could have done some ''post-sampling weighting, which would have changed [the] estimate slightly,'' but did not do so. *Id.*

b. Sampling Frame and Sampling Weights Were Incorrect

Dr. Bennett points out (and Dr. Gray confirms) that some duplicate stations were included in Dr. Gray's samples. *See id.* ¶¶ 21–25 & Fig. 3; 3/15/18 Tr. at 3859–63 (Gray). This occurred, for example, when the CDC data Dr. Gray received listed certain stations twice—once with a ''DT'' suffix after the call sign and once without (*e.g.,* CBUT and CBUT–DT). *See* Bennett WRT ¶ 24 & Fig. 4.

As a result of these duplicates, Dr. Bennett found that Dr. Gray's sampling frame included more stations than were in his target population.[159] Bennett WRT ¶ 22. Dr. Bennett argues that the mismatch of Dr. Gray's sampling frame and the population of distantly-retransmitted stations rendered the sampling frame unsuitable to represent the target population. *Id.* ¶ 21. Dr. Bennett argues that ''Dr. Gray's failure to remove duplicate stations . . . distorts his count of unique stations, his assignment of stations to individual strata, and the sampling weights that he calculates based on his incorrect station count,'' which could affect Dr. Gray's analysis in several ways:

a. Double-counting some stations in the sampling frame, which changed the likelihood of selection for all stations outside the top stratum; and

b. Where both versions of the duplicative station were selected, such as for CBUT . . . 2010, overrepresentation of the duplicate station in the sample, and the exclusion of a non-duplicate station from the sample; and

c. Incorrect sampling weights being applied to sampled stations in strata with one or more of the duplicative stations.

Id. ¶ 25.

Dr. Bennett argued that ''the errors in Dr. Gray's sampling weights are further compounded by the fact that Dr. Gray has dropped sampled stations that did not have coverage in the Gracenote Data.'' *Id.* ¶ 26. Over the four years at issue in this proceeding, Dr. Gray had to drop between five and eight sampled stations per year (for a total of 24 of his 609 sampled stations) because Gracenote could not provide programming information for them. *See id.* ¶ 27. The omitted stations were distributed unevenly across the sample strata and subject to different sample weights. Dr. Bennett opines that Dr. Gray should have adjusted his weighting to account for the number of missing stations across the strata for each year. *See id.* ¶ 28. In addition, Dr. Bennett testified that Dr. Gray failed to apply his sample weights in performing his regression analysis, leading to biased results. *See id.* ¶¶ 58–59.

Dr. Gray acknowledged the existence of duplicate stations in his sample. *See* 3/15/18 Tr. at 3859 (Gray). He explained that at the time that he drew the sample there were a number of stations that had the same call signs with different suffixes, and, after consultation with CDC and Nielsen, he was unable to determine whether or not they were the same or different signals. *See* 3/14/18 Tr. at 3719–20. He opted to treat them as different stations because, if he had treated them as the same station and they proved to be different stations he would have had to discard the sample and start over. *Id.* Having duplicate stations in the sample effectively resulted in a smaller sample and a higher margin of error. *See id.* at 3721; 3/15/18 Tr. at 3853–56 (Gray). Dr. Gray testified, however, that the existence of duplicate stations did not render his viewing estimates biased or incorrect. *See* 3/15/18 Tr. at 3859 (Gray).

Dr. Gray also acknowledged that the existence of duplicate stations resulted in the application of different sample weights to different subscriber groups that received the same signal. *See id.* at 3861–62. He maintained, however, that applying differing sample weights did not ''make the make the estimated viewing biased or wrong.'' *Id.* at 3861.

Regarding his sampling weights, Dr. Gray acknowledged that he should have recalculated them to reflect the removal of certain stations from the sample for which data were unavailable. *See id.* at 3867. He opined that the difference would be *de minimis,* ''given the types of stations that did not have programming data.'' *Id.* ''[E]very . . . sensitivity analysis I ever did with respect to viewing had . . . almost *de minimis* impacts. . . . I would not expect it to impact the overall calculated shares.'' *Id.* at 3867–68.

Contrary to Dr. Bennett's assertion, Dr. Gray testified that he applied his sample weights to the Nielsen data and maintained that ''it's an unbiased measure of viewing.'' *Id.* at 3861–62.

c. Erroneous Application of Random Sample to Geographic Stratified Sample

Dr. Erdem criticized Dr. Gray's sampling technique because it superimposed a random selection on a geographically-stratified sample.[160] He argued that the two sampling schemes are incompatible, because ''[t]here is no guarantee that the stations in Dr. Gray's sample were broadcast or retransmitted in the . . . geographic areas sampled by Nielsen.'' Erdem WRT at 26. As a result, ''[l]ocal or distant viewership would be underreported or completely missing if geographies where a particular station is retransmitted are not sampled by Nielsen.'' *Id.* Consequently, Dr. Erdem considered Dr. Gray's data source to be ''practically unusable,'' and concluded that ''no reliable conclusions can be drawn on the basis of the sample that Dr. Gray uses.'' *Id.* at 25.

Dr. Gray responded that Dr. Erdem's criticism ''would have been a concern, had [he] not used regression analysis.'' 3/14/18 Tr. at 3718 (Gray). He conceded that ''Dr. Erdem has a legitimate point'' and that it is not ''ideal'' to superimpose a random sample on top of a geographic sample. *Id.* He testified, however, that he had overcome that criticism by using regression analysis to predict viewing ''even in those areas of underrepresentation by Nielsen.'' *Id.* at 3718–19. As a consequence, he was not concerned about Dr. Erdem's criticism. *Id.* at 3719.

5. Other Methodological Errors

Experts for the other parties lodged a barrage of criticisms of a variety of methodological choices that Dr. Gray made in performing his analysis.

a. Imputation of Zeroes for Missing Nielsen Data

The NPM data that Nielsen provided to Dr. Gray included only observations of positive viewing. *See* 3/14/18 Tr. at 3712 (Gray). For several million station/quarter-hour pairings during the relevant period there was no record of positive viewing in the NPM data. *See* Wecker Report ¶ 21. Dr. Gray added zero-viewing records for these station/quarter-hour pairings and used these zero values as input in his regression analysis. *See id.;* Bennett WRT ¶ 53 & Fig. 17.

[159] ''A sampling frame is an enumeration of the items from which a sample is selected. Ideally, the sampling frame will be identical to—and therefore representative of—the target population that one seeks to study.'' Bennett WRT at ¶ 21.

[160] Nielsen's sample is a tiered sample of geographic areas, *see* Erdem WRT at 25; *see also* 3/14/18 Tr. at 3507, 3539–40 (Lindstrom), unlike Dr. Gray's sample, which was stratified by the number of distant subscribers. *See* 3/14/18 Tr. at 3686 (Gray).

Dr. Bennett and Mr. Harvey both criticized this practice. Dr. Bennett argued that ''Dr. Gray's practice of equating missing records with zero viewing 1acks foundation and undermines the reliability of his regression analysis. . . . Dr. Gray offers no logical explanation for why zero might be the correct value to use in place of a missing record.'' Bennett WRT ¶ 54. Dr. Bennett posited the existence of an apparent contradiction: ''[E]ither the missing values truly correspond to zero viewing and the regressions serve no purpose—why estimate a known quantity—or the true values of the missing records potentially differ from zero, in which case Dr. Gray has imposed an incorrect assumption that biases the estimated relationship between distant and local viewing.'' *Id.*

Mr. Harvey argued that Dr. Gray failed to demonstrate that a sufficient number of NPM households received a given distantly transmitted signal to conclude that the absence of viewership data indicated zero viewing. 2/22/18 Tr. at 1203–07 (Harvey). ''[Y]ou might have zero people meters, in which case [a zero viewing observation] is useless data. . . .'' *Id.* at 1335. In Mr. Harvey's view, ''there is no possible way to come up with some metric . . . for these smaller samples without knowing the number of people meters. . . .'' *Id.*

Dr. Gray explained that ''[t]here was [sic] never any zeros in the Nielsen data. They only have recorded viewing and non-recorded viewing.'' 3/24/18 Tr. at 3712 (Gray). The data that Nielsen provided to Dr. Gray were ''all recorded viewing values.'' *Id.* He testified that the absence of an entry for recorded viewing for a given quarter hour meant that ''there was no Nielsen household in the sample viewing'' that channel at that particular time. *Id.* In those cases he added an entry with a zero-household count. *See id.* at 3712–13. Dr. Gray distinguished between instances zero local viewing and data that was ''missing'' because local viewing for that channel was not measured by Nielsen. *See id.* at 3895–97; 3/14/18 Tr. at 3717–18. In the latter instance, he imputed a local rating based on the average local rating for programs of the same type during that particular quarter hour. *See id.;* 3/15/18 Tr. at 3897–3900 (Gray).

b. Incorrect Measure of Local Ratings

As an input for his regression analysis, Dr. Gray used a ''measure of local ratings'' that he constructed by dividing local viewing (as measured by Nielsen) by the size of the market—*i.e.,* ''the number of subscribers reached by the particular signal.'' *See* 3/14/18 Tr. at 3693 (Gray). Dr. Bennett clarifies that, by number of subscribers, Dr. Gray refers to the total number of local and distant subscribers who receive the signal. *See* Bennett WRT ¶ 56.

Dr. Bennett faults Dr. Gray's inclusion of the number of distant subscribers in the denominator when calculating his measure of local ratings. ''Dr. Gray's inclusion of distant subscribers in his 'measure' of local viewing means that, all else equal, he will assign higher local viewing to a station with the fewest distant subscribers, and vice versa.'' *Id.*

Dr. Gray maintained that, after consultation with Nielsen, he found his measure of local ratings to be reasonable. *See id.* at 3932–33.

c. Regression-Based Estimates in Lieu of Nielsen Observations of Positive Viewing

Dr. Gray computed his viewing shares based solely on the estimates he computed using his regression analysis. He used the observations of positive viewing in the Nielsen NPM data solely as an input into the regression analysis, not in the final computation of viewing shares. Dr. Bennett described this procedure as being ''without . . . support'' and argued that Dr. Gray's reliance on estimated viewing ''further undermines the reliability of his viewing analysis.'' *Id.* ¶¶ 50–51.

Specifically, Dr. Bennett argued that, as compared with the observations of positive viewing in the Nielsen NPM data, Dr. Gray's estimates are biased in favor of Program Suppliers and PTV programming, and biased against CTV and CCG programming. *See id.* ¶ 64 & Figs. 21–22; 3/1/18 Tr. at 1874–75 (Bennett). Professor Shum reiterates the same point with respect to CCG programming, arguing that Dr. Gray's analysis systematically lowered estimates of distant viewing of Canadian signals because (a) the regression undercounted local viewing by excluding local viewing in Canada; (b) Canadian stations were underrepresented in Dr. Gray's 2010 sample; and (c) Canadian signals cannot be carried outside the Canadian Zone. *See* Shum WRT ¶¶ 25–38. Professor Shum proposes adjustments to Dr. Gray's viewing shares to account for the first two purported defects, but he was unable to propose an adjustment to account for the third. *See id.* ¶¶ 29–30, 33–35, 38.

Dr. Gray maintained that basing his viewing shares on the predicted viewing he computed through his regression analysis was both reasonable and superior to using Nielsen's viewing estimates for that purpose. *See* 3/15/18 Tr. at 3940–41, 3943, 3948 (Gray). In particular, he argued that, while Nielsen's measurements were of ''geographically-focused areas,'' his regression analysis produces estimates of relative viewing ''throughout the United States.'' *Id.* at 3949. He acknowledged that his regression would not produce particularly good estimates of the level of distant viewing, but opined that his estimates were ''more accurate on a relative basis for the United States.'' *Id.; see id.* at 3946, 3948.

d. Miscategorized Programs

Dr. Bennett asserts that Dr. Gray incorrectly assigned thousands of programs to the wrong claimant categories. For example, he states that Dr. Gray's algorithm failed to consider Gracenote's title and program type fields when assigning programs to the CCG category and, as a result, incorrectly assigned JSC programming on Canadian signals to the CCG category. Bennett WRT ¶¶ 44–45; *see also* Wecker Report ¶ 12 (Dr. Gray included nearly all MLB, NHL, NBA, and NFL broadcasts on Canadian signals in the CCG category); 2/22/18 Tr. at 1169–70 (Harvey) (''Dr. Gray was very clear in his testimony that he intended to code Canadian broadcasts of Major League Baseball games and football games into the JSC Category, but he did not do that.''); Bennett WRT ¶ 18, n.11 (''obvious program categorization errors'' in table showing 20 CTV programs on Canadian stations and 5 Devotional programs on Educational stations). In addition, Dr. Bennett states that Dr. Gray didn't consider whether a program coded as ''religious'' was syndicated before he assigned it to the Devotional category. Dr. Bennett asserts that nonsyndicated religious programming belongs in the CTV category. *Id.* ¶ 46.

Dr. Gray compared the category classification that he performed to Dr. Bennett's. He found that their respective algorithms assigned programs to the same category 93.5% of the time. *See* Gray CWRT ¶ 50. As to the programs where Dr. Gray's categorization differed from Dr. Harvey's, Dr. Gray was unable to determine which categorization was correct with undertaking a program-by-program review.[161] *See id.* Instead, Dr. Gray performed a sensitivity analysis to determine whether using Dr. Bennett's categorizations would have an impact on his (Dr. Gray's) share calculations. *See id.* ¶ 51. Using Dr. Bennett's program categorizations resulted in a modest increase in Program Suppliers'

[161] Dr. Gray testified about a number of specific instances in which his categorization differed from Dr. Bennett's, and, on further review, he stood by his categorization. However, he did not perform a comprehensive review. *See* 3/14/18 Tr. at 3721–23 (Gray).

viewership share in each royalty year, ''consistent with no bias in intent on the part of Dr. Bennett or me.'' *Id.* ¶ 52.

D. Analysis

1. Relevance and Impact of Prior Decisions

Program Suppliers' use of viewing data to propose allocations of cable royalties among program categories has a long, if not illustrious history. MPAA (to use the Program Suppliers' contemporaneous designation) first offered a Nielsen study in the Copyright Royalty Tribunal's (CRT) adjudication of 1979 cable royalties. *See* 1979 Cable Royalty Distribution Determination, 47 FR 9879, 9880 (Mar. 8, 1982). At that time the CRT found Nielsen's viewership study to be the ''single most important piece of evidence in [the] record.'' *Id.* at 9892. Over time, however, decision makers' (first the CRT, then the CARPs) reliance on Nielsen studies waned. *See 1998–99 CARP Report, supra* note 144, at 33 (recounting history of use of Nielsen studies by CRT and CARPs). In 2003 a CARP, with the approval of the Librarian of Congress (Librarian) declined to use the Nielsen study as a direct measure of relative value of programming to cable operators:

> [T]he Nielsen study does not directly address the criterion of relevance to the Panel. The value of distant signals to CSOs is in attracting and retaining subscribers, and not contributing to supplemental advertising revenue. Because the Nielsen study ''fails to measure the value of the retransmitted programming in terms of its ability to attract and retain subscribers,'' it can not be used to measure directly relative value to CSOs. The Nielsen study reveals what viewers actually watched but nothing about whether those programs motivated them to subscribe or remain subscribed to cable.

Id. at 38 (citations omitted). Or, as the Librarian summarized pithily, ''[t]he Nielsen study was not useful because it measured the wrong thing.'' *1998–99 Librarian Order,* 69 FR at 3613.

More recently the Judges have relied upon evidence of viewership in a pair of ''Phase II'' distribution cases.[162] In the 2000–03 cable Phase II distribution case, the Judges concluded that ''viewership, as measured after the airing of the retransmitted programs is a reasonable, though imperfect proxy for the viewership-based value of those programs.'' *Distribution of 2000, 2001, 2002 and 2003 Cable Royalty Funds,* 78 FR 64984, 64995 (Oct. 30, 2013) (2000–03 Cable Phase II Decision) (footnote omitted). The Judges agreed with Program Suppliers' expert in that case[163] that ''viewership can be a reasonable and directly measurable metric for calculating relative market value . . . . Indeed, the Judges conclude that viewership is the initial and predominant heuristic that a hypothetical CSO would consider in determining whether to acquire a bundle of programs for distant retransmission . . . .'' *Id.* at 64996. Similarly, in the 1998–99 Phase II proceeding, the Judges found a viewership analysis to be an ''acceptable 'second-best' measure of value'' for distributing funds allocated to the devotional programming category among claimants in that category. *See Distribution of 1998 and 1999 Cable Royalty Funds,* 80 FR 13423, 13432–33 (Mar. 13, 2015) (*1998–99 Cable Phase II Decision*).

The Copyright Act mandates that the Judges act

> on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights), and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1)(A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals. . . .

17 U.S.C. 803(a)(1). In interpreting a nearly identical provision under the CARP system,[164] the Librarian stated that ''[w]hile the CARP must take account of Tribunal precedent, the Panel may deviate from it if the Panel provides a reasoned explanation of its decision to vary from precedent.'' *Distribution of 1990, 1991 and 1992 Cable Royalties,* 61 FR 55653, 55659 (Oct. 28, 1996) (*1990–92 Librarian Order*) (citation omitted). In a subsequent decision, the Librarian observed that ''prior decisions are not cast in stone and can be varied from when there are (1) changed circumstances from a prior proceeding or; (2) evidence on the record before it that requires prior conclusions to be modified regardless of whether there are changed circumstances.'' *1998–99 Librarian Order,* 69 FR at 3613–14.

As an initial matter, the Judges find that the *1998–99 CARP Report* and the *1998–99 Librarian Order* are relevant ''precedent'' [165] that the Judges must consider in connection with Dr. Gray's analysis of Nielsen viewing data; the *1998–99 Cable Phase II Decision* and the *2000–03 Cable Phase II Decision* are not. The task of distributing royalties among a reasonably homogeneous group of programs differs from that of allocating royalties among heterogeneous categories, and different considerations apply to each. *See Indep. Producers Grp.* v. *Librarian of Congress,* 792 F.3d 132, 142 (DC Cir. 2015) (*IPG* v. *Librarian*); *Distribution of 1993, 1994, 1995, 1996 and 1997 Cable Royalty Funds,* 66 FR 66433, 66453 (Dec. 6, 2001).

In considering Dr. Gray's viewing study, therefore, the Judges are mindful of the earlier decisions that found viewership studies unhelpful in allocating royalties among program categories. In particular, the Judges examine whether there is record evidence that would compel a different conclusion in the present case.[166]

2. Rejection of Viewership as a Measure of Relative Value

Although the record supports a conclusion that viewership is *a* measure of value, the weight of the evidence demonstrates that it is *an incomplete* measure of value.

The Judges agree in principle with Dr. Gray that the focus of the relative market value inquiry is on the hypothetical market in which copyright owners license programs to broadcasters for retransmission by cable operators. *See* 3/14/18 Tr. at 3683–84 (Gray). Experts from multiple parties agreed that, in the hypothetical market, cable operators would continue to acquire

[162] Prior to the cases to determine allocation and distribution of 2010–13 cable and satellite royalties the Judges and their predecessors referred to the process of dividing royalties among program categories as ''Phase I,'' and the process of dividing royalties allocated to a program category among the claimants within that category as ''Phase II.'' When the Judges decided to conduct both processes simultaneously for 2010–13 cable and satellite royalties they decided to refer to them as the ''allocation phase'' and ''distribution phase,'' respectively, to avoid any expectation that the processes would be carried out sequentially.

[163] Then, as now, the Program Suppliers' principal witness regarding the analysis of Nielsen viewership data was Dr. Gray.

[164] The earlier provision, former section 802(c) of the Copyright Act, stated that CARPs ''shall act on the basis of . . . prior decisions of the Copyright Royalty Tribunal, prior copyright arbitration panel determinations, and rulings of the Librarian . . . .''

[165] The decision whether or not to accept a methodology for determining relative market value is factually-dependent, so it is a misnomer to describe a previous decision declining to rely on viewership as ''precedent''—*i.e.,* controlling under the principle of *stare decisis.* Nevertheless, it is a ''prior determination'' ''on the basis of'' which Congress has directed the Judges to act (along with the written record and other items enumerated in the statute). *See* 17 U.S.C. 803(a)(1).

[166] No party has alleged changed circumstances that would bear on the Judges' reliance, *vel non,* on viewing data.

entire signals, rather than individual programs. *See id.* at 3683; 2/28/18 Tr. at 1377–78 (Crawford); 3/5/18 Tr. at 2157–58 (George). In this market structure copyright owners' compensation (the object of this proceeding) would flow from broadcasters to copyright owners, and would be recouped through the retransmission fee charged by the broadcaster to the cable operator. *See* 3/14/18 Tr. at 3682–84, 3779–81 (Gray).

That market does not exist in a world with a compulsory license, so there is no evidence of the surcharge that broadcasters would pay to copyright owners for the right to license distant retransmissions. Most parties have used the transaction in which a cable operator acquires the right to retransmit programming as a proxy. Program Suppliers, by contrast, focus on the consumer demand for programs as measured by viewership.

At bottom, Dr. Gray's study is premised on the truism that, ultimately, programming is acquired to be viewed. *See* Gray CAWDT ¶ 13. Consumers subscribe to cable in order to watch the programming carried on the various channels provided by the cable operator. Cable operators acquire broadcast and cable channels that carry programming their subscribers want to view. Broadcasters acquire programs that will attract viewers.[167] Viewing is the engine that drives the entire industry. It is an example of the economic concept of derived demand. The demand for programming at each step in the chain is derived from demand further along the chain, all the way to the television viewer. Program Suppliers corroborated Dr. Gray's economic insight with evidence that at least some MVPDs consider viewership metrics in making program acquisitions.

Consequently, based on the evidence presented in this proceeding, the Judges disagree with the Librarian's statement that viewership studies are not useful because they ''measure [ ] the wrong thing.'' *1998–99 Librarian Order,* 69 FR at 3613. Viewership is no less relevant to the question of how a copyright owner would be compensated by a broadcaster in the hypothetical market than to the question of what a cable operator would be willing to pay to a broadcaster. Both are relevant because the copyright owner's compensation would be a function of downstream demand in the hypothetical market.

However, even accepting that viewership is relevant to the question of value doesn't end the inquiry. There is record evidence supporting the contention that, in the analogous market for cable channels, cable operators will pay substantially more for certain types of programming than for other programming with equal or higher viewership. *See* Crawford WRT ¶ 36 & Fig. 1.[168] These empirical data support economic arguments about the role of bundling and ''niche'' programming in cable operators' decision making. *See* Shum WRT ¶¶ 10–12; Connolly WDT ¶¶ 31–32; Crawford CWDT ¶ 7. It is clear to the Judges that relative levels of viewership do not adequately explain the premium that certain types of programming can demand in the marketplace. In short, viewing doesn't provide the whole picture.

The Judges conclude, therefore, that viewership, without any additional evidence to account for the premium that certain categories of programming fetch in an open market, is not an adequate basis for apportioning relative value among disparate program categories.

3. Rejection of Dr. Gray's Study due to Incomplete Data

The Judges also must reject Dr. Gray's study because he computed his predicted distant viewing on the basis of incomplete data. Specifically, the use of erroneous zero viewing observations for compensable WGNA programming rendered Dr. Gray's results unreliable.

WGNA was, by far, the most widely retransmitted signal in the U.S. during the period covered by this proceeding, reaching over 40 million distant subscribers. *See* Wecker Report, ¶ 23. That provided an opportunity for any compensable program retransmitted on WGNA to be viewed by a substantial number of households. Yet nearly none of those compensable programs were credited with any positive distant viewing on WGNA in Dr. Gray's regression. The *Wecker Report,* moreover, demonstrates that there were significant amounts of positive distant viewing in Nielsen's NPM database for programs carried on WGNA. *See id.* ¶ 26 & App. G. As Dr. Wecker and Mr. Harvey demonstrated, the numerous zeros for distant viewing on WGNA that were input into Dr. Gray's regression, combined with the use of the number of distant subscribers as a variable in the regression specification, created an erroneous negative correlation between distant subscribership and distant viewing. *See id.* ¶¶ 33; 2/22/18 Tr. at 1299–1300 (Harvey); *see also* 3/15/18 Tr. at 4054–55 (Gray) (appearing to concede point).

The aggregate effect of the missing WGNA data on Dr. Gray's predictions of distant viewing, and on the viewing shares he computed therefrom, cannot be determined with any certainty from the record. It was incumbent on Program Suppliers to demonstrate that the effect of the missing WGNA data did not have a substantial influence on Dr. Gray's results. They failed to do so. Program Supplier's efforts to argue, essentially, that the omission of the WGNA data was harmless error are unavailing. The JSC rebutted Dr. Gray's assertion that compensable programming on WGNA had declined significantly, showing that JSC programming on WGNA remained stable during the 2010–2013 period. *See* Bortz Report, at 28 Table III–2. The Wecker Report rebutted Dr. Gray's assertion that his computed viewing shares were accurate as to the non-WGNA stations in his sample. *See* Wecker Report, ¶¶ 33. As for Dr. Gray's assertion that his viewing analysis produced viewing shares that were within a ''zone of reasonable consideration,'' 3/14/18 Tr. at 3764 (Gray), the ''zone of reasonableness'' is a legal construct that is solely within the purview of the Judges. Dr. Gray's views on what lies within or without a zone of reasonableness are immaterial.

4. Other Asserted Methodological Defects

As recounted above,[169] several experts identified what they found to be methodological errors in Dr. Gray's analysis, including his decision to use Nielsen NPM data and not to apply Nielsen's weighting to that data; his sample design and application of sampling weights; his program categorization; his imputation of zero viewing values to quarter hours not represented in the Nielsen data; and his substitution of regression-based predicted distant viewing values for the observed distant viewing in the Nielsen data. Because the Judges have found an adequate basis for rejecting Dr. Gray's viewing study based on its failure to provide a complete measurement of value, and its reliance on incomplete data, the Judges do not need to evaluate the remaining critiques.

E. Conclusion Concerning Viewing Study

Dr. Gray's viewing study provides an incomplete and therefore inadequate measure of relative market value of disparate categories of distantly-

[167] Broadcasters' reasons to attract viewers are driven by advertising-revenue considerations rather than subscriber attraction and retention considerations.

[168] *See also* discussion of Dr. Israel's ''cable content analysis,'' *supra,* section V.

[169] *See* sections 0–0.

retransmitted programming. While viewing is relevant to value, it does not adequately measure the premium that cable operators are willing to pay for certain types of programming in the analogous market for cable channels.

Even if viewing were an adequate basis for apportioning value among program categories, Dr. Gray's study is fatally flawed by its reliance on Nielsen data that omitted distant viewing on WGNA—the most widely retransmitted station in the United States.

For the foregoing reasons, the Judges will not rely on Dr. Gray's viewing study for apportioning royalties among the program categories represented in this proceeding.

V. Cable Content Analysis

Dr. Israel also undertook an analysis that he characterized as a ''Cable Content Analysis''—focusing on the dollar amount paid by CSOs to carry sports and other programming during the years 2010–13. More particularly, for the years 2010–13 he considered the amounts that cable networks spent per hour of programming televised in relation to total household viewing hours (HHVH). Israel WDT ¶ 45. As explained in more detail, *infra,* Dr. Israel concluded that CSOs place a high value per hour on live sports programming compared with other program categories. He further opined that his Cable Content Analysis presented results that were consistent with the share estimates determined by the Bortz Survey. Israel WDT ¶ 46.

More particularly, according to Dr. Israel, his Cable Content Analysis demonstrated that in each year of the 2010–13 period, CSOs networks paid significantly more per hour for JSC programming than for any other category of programming. Making this point in an alternative manner, Dr. Israel testified that the JSC's programming share of CSO expenditures was larger than the JSC programming share of CSO broadcast minutes or HHVH. Israel WDT ¶ 46.

Table V–5 of Dr. Israel's WDT, set forth below, compares total program hours, total HHVH, and total CSO expenditures for JSC programming with all other categories of programming on the top twenty-five cable networks:

TABLE 17—CABLE CONTENT ANALYSIS 2010–2013, SUMMARY OF TOP 25 NETWORKS

Category	Total programming hours % [A]	Total HHVH (000) % [B]	Expenditures ($M) % [C]	Expenditures per hour of programming [D] = [C] / [A]	Expenditures per hour of viewing [E] = [C] / [B]
JSC	9,274.0	15,164,368.9	$12,524.7	$1,350,517.6	$0.826
Non-JSC	866,726.0	496,492,970.2	42,702.0	49,268.2	0.086
JSC / Non-JSC	0.01	0.03	0.29	27.41	9.60
JSC % of Total	1.06	2.96	22.68	.....	.....

Israel WDT ¶ 47 Table V–5.

As this table shows, for the top twenty-five cable networks, JSC programming represents approximately 1% of all programming in terms of hours transmitted and less than 3% of total HHVH. Nonetheless, these top twenty-five cable networks applied more than 22% of their programming budgets to acquire the rights to transmit JSC programming.

Dr. Israel further highlighted the importance of JSC programming to these cable networks, relative to other categories, by expressing the data on a per hour basis. Dividing total expenditures by total hours of programming per category, he showed that expenditures per hour of JSC programming are worth more than 27 times other programming categories. Dr. Israel also calculated these expenditures per hour of household viewing and found that JSC programming was worth almost 10 times more per hour of viewing than all other programming categories on the top twenty-five cable networks. Israel WDT ¶ 47; Table 17, *supra.*

Dr. Israel also looked more granularly at two cable networks, TBS and TNT, which he noted (without opposition) carried a mix of JSC and other program categories. His analysis showed patterns that were similar to what he had found with regard to the top twenty-five cable networks, *viz.,* that JSC programming was far more valuable than all other program categories. Specifically, during the years 2010–13, JSC programming accounted for approximately 2% of the total programming hours transmitted by TBS, and about 3% of the total programming hours transmitted by TNT. In terms of viewership, the JSC generated roughly 5.5% of total HHVH on TBS during the four-year period and about 7.9% on TNT. In contrast to these relatively small percentages of programming and viewing hours, TBS spent 44.4% of its 2010–13 programming budget on JSC programming, and TNT quite similarly spent 45.5%. Once again, expressing these choices on an hourly basis, expenditures per hour of JSC programming were more than 40 times greater than expenditures per hour of all other programming on TBS, and expenditures per hour of JSC programming were almost 30 times greater than expenditures per hour of all other kinds of programming on TNT. In terms of expenditures per HHVH, TBS spent more than 13 times as much on JSC programming than on other program categories, and TNT spent almost 10 times as much compared with its spending on other program categories. Israel WDT ¶ 48 & Table V–6.

According to Dr. Israel, these absolute and relative differences are reflected in ''the significantly higher license fees that cable systems and other MVPDs [Multichannel Video Programming Distributors] pay to carry these networks.'' Israel WDT ¶ 51. Dr. Israel presented data to support this point, analyzing the 97 nationally and regionally distributed cable networks with a minimum of 50 million subscribers in 2013. Of these 97 networks, he found that 14 offered telecasts of JSC events and 83 did not. Over the full 2010–13 period, Dr. Israel found that the average license fee for the 14 cable networks that offered JSC programming (along with other programming) was $0.753 per subscriber per month, whereas for the 83 cable networks that did not offer JSC programming, the average license fee over the four year period was much lower, $0.174 per subscriber per month. Israel WDT ¶ 51.

In opposition, Program Suppliers asserted that this analysis ''is irrelevant to this proceeding.'' PSPFF ¶ 354. In support of this argument they rely on Dr. Gray's assertion that ''consistent with Professor Crawford's economic arguments, after negotiating programming deals with cable networks carrying live team sports programming, CSOs may then have a sufficient quantity of that type of programming to bundle for its current and potential subscribers [such that] live team sports programming would be less valuable to CSOs than other types of programming.'' Gray CWRT ¶ 60.

In response to this opposition, the JSC asserted that Dr. Gray had misapplied Professor Crawford's explanation that CSOs have an incentive to add differentiated distant signal programming to their bundles ''because it can help to attract and retain subscribers.'' JSC RPFF ¶ 46 & n.174 (and record citations therein). More particularly, the JSC argued that Program Suppliers' argument regarding program-type saturation would not apply only to JSC programming. As they asserted: ''[T]hat argument would apply equally to [Program Suppliers] (and others), whose content likewise is on cable networks in addition to local and distant signals; it provides no basis to ascribe a lower relative value to JSC.'' JSC PFF ¶ 50 (and record citations therein).

The Judges understand Dr. Israel's Cable Content Analysis to be in the nature of an assertion that a similar market provides relevant and meaningful information regarding the relative values of distantly retransmitted local programs in a hypothetical market in which the statutory royalty structure did not exist. As such, Dr. Israel's approach is similar to the ''benchmark'' approach that is a hallmark of the sound recording and musical works rate proceedings within the Judges' jurisdiction. That is, parties in those proceeding regularly present economic evidence regarding royalty rates in other markets, urging the Judges to find sufficient comparability between the ''benchmark'' market and the hypothetical market at issue. When Judges decide whether and how to weigh such benchmark evidence, they begin with the following foundational analysis that is equally applicable here:

> In choosing a benchmark and determining how it should be adjusted, a rate court must determine [1] the degree of comparability of the negotiating parties to the parties contending in the rate proceeding, [2] the comparability of the rights in question, and [3] the similarity of the economic circumstances affecting the earlier negotiators and the current litigants, as well as [4] the degree to which the assertedly analogous market under examination reflects an adequate degree of competition to justify reliance on agreements that it has spawned.

In re Pandora Media, 6 F. Supp. 3d 317, 354 (S.D.N.Y. 2014), *aff'd sub nom., Pandora Media, Inc.* v. *ASCAP,* 785 F.3d 73 (2d Cir. 2015).

In the present case, Dr. Israel has not attempted to make such a structured analysis. Rather, the Judges understand his argument to be based on the assumption that the rights at issue are comparable (*i.e.,* the programs can be categorized in a similar manner) and the buyers/licensees (the CSOs) are identical in both markets. However, in all other respects—regarding economic circumstances, competitive positions, and the nature of the seller/licensor—the relative similarities or differences are unexplored.

Accordingly, the Judges are reluctant to put much weight on Dr. Israel's Cable Content Analysis. At most, the Judges rely on his Cable Content Analysis as demonstrating that JSC programming enjoys a level of demand out of proportion to its broadcast minutes, not inconsistent with the results of his regression analysis and Dr. Crawford's regression analysis.

VI. Changed Circumstances

The Judges and their predecessors have looked at a ''changed circumstances'' analysis in prior proceedings. In the 1998–99 cable distribution proceeding, the CARP recommended allocation to the four largest categories strictly based on the Bortz survey results.[170] Because PTV and CCG were undervalued by the Bortz survey, the CARP recommended adjustment of allocations to those categories, giving ''some weight'' to the remarkable increases in relative fee generation and in ''changed circumstances'' as measured by an increase in subscriber instances.[171] *See* Final Order, Distribution of 1998 and 1999 Cable Royalty Funds, 69 FR 3606, 3617 (Jan. 26, 2004). In the 2000–03 distribution proceeding, the Judges salvaged consideration of changed circumstances by differentiating a fee generation methodology from a changed circumstances evidentiary consideration. *See* Distribution Order,[172] 75 FR 26798, 26805–07 (May 12, 2010) (*2000–03 Distribution Order*). Ultimately, the CARP concluded that changed circumstances, as measured by changes in subscriber instances alone, revealed a change in programming volume, which did not necessarily translate to a change in programming value. *1998–99 Librarian Order,* 69 FR at 3616.

In the present proceeding, PTV retained Ms. Linda McLaughlin and Dr. David Blackburn, who filed joint written testimony. *See* Trial Ex. 3012. The McLaughlin/Blackburn report focused on the share of royalties that would reflect the relative value of PTV programming only. *See* 3/7/18 Tr. at 2446 (McLaughlin). McLaughlin and Blackburn began with the PTV share from the 2004–05 distribution proceeding, which was based largely on Bortz survey results. *See* Amended Testimony of McLaughlin and Blackburn, Trial Ex. 3007 at 7 (McLaughlin/Blackburn AWDT). Using primarily data from the Cable Data Corporation (CDC), they analyzed not just changes in subscriber instances, but external changes in various unit measures from 2005 to the relevant period, 2010–13, *viz.,* distant subscriber instances, distant signal transmissions, and the balance of programming types distantly retransmitted. *See id.* at 7–8. Each of their unit measures indicated an increase in the PTV relative share, and all of their unit measures indicated a basis for an increase in PTV's relative share for the period at issue in this proceeding. As Ms. McLaughlin testified, however, an increase in unit measures does not compel a conclusion that value also increased. 3/7/18 Tr. at 2648 (McLaughlin).

For valuation, McLaughlin and Blackburn analyzed survey results, regression analyses, and viewership studies. For survey analysis, they used the 2004–05 Bortz survey as a starting point. The Bortz Survey omitted respondents whose distantly retransmitted signal carried only PTV or only CCG or only PTV and CCG together.[173] McLaughlin and Blackburn added those omitted stations to the Bortz Survey results, using the overall Bortz response rates by stratum, and by assuming, for example, that the PTV-only systems would assign a relative value to PTV of 100%.[174] They then

[170] SDC did not challenge the relative share indicated by the Bortz results. *1998–99 Librarian Order,* 69 FR at 3609 n.15.

[171] A ''subscriber instance'' as used in these proceedings relating to distant signal retransmission means one subscriber having access to one distant signal.

[172] The *2000–03 Distribution Order* was a ''Phase I'' or category allocation determination.

[173] Ms. McLaughlin estimated that the average number of omitted stations over the period 2010–13 was 16 per year. *See* 3/5/18 Tr. at 2457 (McLaughlin).

[174] Ms. McLaughlin also assumed that CCG-only systems would assign a relative value of CCG at 100%. 2/20/18 Tr. at 719–20 (Mathiowetz); 3/6/18 Tr. at 2291 (Frankel). In fact, not all Canadian programming falls within the CCG category for

recalculated the Bortz Survey relative value for PTV, by stratum, using the relative values she determined. McLaughlin and Blackburn noted that the increase resulting from their augmentation of the Bortz Survey yielded a smaller PTV relative value (9.9%) than did the Horowitz Survey (15.8%), which included PTV- and CCG-only systems from the outset. They attributed this discrepancy to the participation bias evident in the Bortz data, *i.e.,* that fewer eligible systems carrying PTV responded to the Bortz Survey than the Horowitz Survey. *See* Rebuttal Testimony of McLaughlin and Blackburn, Trial Ex. 3002, at 4 (McLaughlin/Blackburn WRT).

On rebuttal, McLaughlin and Blackburn noted that their own calculations augmenting the Bortz survey probably also underestimated the relative value of PTV, because they originated with the 2004–05 Bortz survey, which was tainted with participation bias. *See id.* at 4. McLaughlin and Blackburn asserted that participation bias also discounted the value of the 2010–13 Bortz Survey as an accurate measure of the relative value of PTV programming. *Id.* at 5.

McLaughlin and Blackburn looked at Professor Crawford's econometric study to confirm that marginal value per minute of distantly retransmitted programs changed in a like manner to her unit measurements. She noted increases in relative value from Dr. Waldfogel's 2004–05 regression analysis, on the one hand, and Professor Crawford's and Dr. Israel's regression analyses on the other: 20.8% under Professor Crawford's analysis and 15% using Dr. Israel's analysis. 3/7/18 Tr. at 2472–73 (McLaughlin). As Ms. McLaughlin testified, the Crawford study establishes a price, from which value may be ascertained: ''value is . . . a quantity times a price. . . .'' 3/7/18 Tr. at 2653 (McLaughlin).

Ms. McLaughlin opined that viewership is just another unit measure, not a valuation. Nonetheless, she contended that the results of Dr. Gray's viewership analysis were consistent with the survey and regression analyses, indicating a PTV relative market value of 12.6%. *See* McLaughlin/Blackburn WDT at 23.

The Judges find that quantifying changes in various unit measures, while not without corroborative value, is not a definitive approach to relative valuation, especially in comparison to other more probative approaches, such as regression analyses. Apparently, PTV ultimately made the same assessment. *See* PTV PFF ¶ 11 (''[Professor] Crawford's econometric framework is the best suited methodology to determine the claimants' shares in this proceeding for the years 2010 through 2013.''). Accordingly, the Judges consider PTV to have adopted Professor Crawford's regression analysis as the methodology on which it has relied in this proceeding.

VII. Nonparticipation Adjustment for PTV

In its proposed findings of fact and conclusions of law, PTV raised the issue of Basic Fund allocation adjustment to account for PTV not being a participant in the 3.75% Fund. *See* PTV PFF/PCL at ¶¶ 43–45. Although there was mention of the 3.75% Fund in the record of the proceeding, no party addressed the issue comprehensively. The Judges issued an order seeking additional briefing, including an inquiry about both the 3.75% Fund and the Syndex Fund. *See Order Soliciting Further Briefing* (Jun. 29, 2018) (*June 29 Order*). Specifically, the Judges asked

> [w]hether the interrelationship between and among the Basic Fund, the 3.75% Fund, and the Syndex Fund affects the allocations within the Basic Fund, if at all, and, if so, how that affect should be calculated and quantified.

June 29 Order at 1. The Judges expressly asked for legal analysis of the issue. The Judges refused to allow introduction of any new evidence but agreed to accept affidavits, if appropriate, to clarify the record evidence of any witness. *Id.* at 2.

In their responses, the parties agreed that only Program Suppliers were entitled to any royalties in the Syndex Fund and that the size of the fund was so insignificant in context that the Judges should not make any adjustment to allocations in the Basic Fund to compensate for any party's exclusion from the Syndex Fund. *See, e.g.,* SDC Brief at 1 n.1; SDC Responsive Brief at 5 (''given the minuscule amount of money in the Syndex Fund, any calculation to compensate for that fund would constitute nothing more than a rounding error to a second or third decimal place. . . .''). The parties offered analysis and argument regarding the 3.75% Fund.

The essence of the Judges' question is whether the record evidence was intended to propose an allocation of all royalty funds in all three funds, which might imply an adjustment to the Basic Fund allocations for parties that did not participate in the other two funds. Program Suppliers submitted affidavits from their witnesses asserting that their analysis focused on the Basic Fund only. Accordingly, according to the Program Suppliers' argument, the Judges should simply scale the Basic Fund allocation by eliminating PTV from the calculation of allocation percentages for the 3.75% Fund. *See* Program Suppliers' Responsive Brief at 6. PTV and the SDC both argued contrariwise that the Judges should scale the Basic Fund up for PTV. PTV/SDC derived their argument from prior allocation determinations. *See* PTV Brief at 5–7; SDC Brief at 1–5.

All parties agree that the PTV category is ineligible for an allocation of royalties assigned to the 3.75% Fund.[175] The Judges found, however, that the parties did not agree whether PTV's nonparticipation in the 3.75% Fund affects the allocations within the Basic Fund. Moreover, the Judges found that the arguments and evidence presented by the parties was insufficient for the Judges to resolve the issue. That problem was compounded by the fact that prior determinations, regarding how the 3.75% Fund allocations might affect the Basic Fund allocation, were themselves contradictory and did not address all the issues the Judges have concluded are relevant. Consequently, on June 29, 2018, the Judges entered an Order soliciting further briefing regarding:

> Whether the interrelationship between and among the Basic Fund, the 3.75% Fund, and the Syndex Fund affects the allocations within the Basic Fund, if at all, and, if so, how that affect should be calculated and quantified.

Order Soliciting Further Briefing (Jun. 29, 2018) (*3.75% Fund Order*).[176] In

royalty purposes. CCG conceded that, for example, some programming broadcast on Canadian stations should rightfully be attributed to the SDC. 3/7/18 Tr. at 2675 (Erdem); Boudreau CWDT at 3–4, 10. The volume of mischaracterized programming is not great, but, as Professor Mathiowetz pointed out, a change in the relative allocation to any one category necessarily changes the allocation to other categories. 2/20/18 Tr. at 701 (Mathiowetz).

[175] The five parties eligible to share the royalties allocated to the 3.75% Fund (CCG, CTV, JSC, Program Suppliers, and the SDC) agree that, to reflect PTV's nonparticipation in the 3.75% Fund, the Judges must adjust each eligible group's share of that fund in proportion to its respective share of the Basic Fund. *See 2004–05 Distribution Order,* 75 FR at 57071; Declaration of Howard Horowitz ¶ 4 (Jul. 13, 2018); Declaration of Jeffrey S. Gray ¶ 8 (Jul. 16, 2018); *see also* JSC Initial Brief at 3–4. The Judges apply this approach in allocating shares in the 3.75% Fund in the present proceeding.

[176] The parties agreed that Program Suppliers are entitled to receive 100% of the remaining royalties from the Syndex Fund. Further, the amount in that Fund, less than $10,000 per six-month accounting period, *see* JSC Initial Brief at 2 n.1, is so low that, even assuming *arguendo* allocations to the Syndex Fund would require an adjustment to the Basic Fund, such an adjustment would be ''inconsequential.'' CTV Initial Brief at 11 n.20; *see also* SDC Initial Brief at 1 n.1 (the Syndex Fund

Continued

accordance with the *3.75% Fund Order,* the parties filed briefs and responding briefs on these issues, The Judges weighed the parties' arguments and based on their analysis, the Judges do not adjust PTV's share of the Basic Fund to reflect its nonparticipation in the 3.75% Fund or to reflect any alleged inconsistencies between the record evidence, on the one hand, and the separate allocations to the Basic Fund and the 3.75% Fund, on the other.

A. Arguments of the Parties

The parties disagree as to how, if at all, the scaling of the 3.75% Fund allocations might affect allocations in the Basic Fund. PTV argues that it is entitled to an ''Evidentiary Adjustment,'' [177] whereby its share of the Basic Fund is ''bumped up'' [178] to offset its nonparticipation in the 3.75% Fund. PTV Initial Brief at 1–2. PTV alleges that this increase is necessary because ''[t]he surveys and econometric estimates of value to CSOs determine shares of the *Combined Royalty Funds* for each of the programming claimants'' and that ''[a]s a result, in order for PTV to receive the share of total value to CSOs estimated by the . . . experts, it must receive a larger share of the Basic Fund, since it will receive no share from the [3.75% Fund].'' *Id.* at 7 (quoting McLaughlin/Blackburn WDT at 24–25). In addition, PTV maintains that it is entitled to this Evidentiary Adjustment regardless of whether the Judges allocate the Basic Fund shares based on survey evidence, regression evidence, or viewing evidence. PTV Responding Brief at 12–21. PTV also argues that this result is supported by precedent and by the record in this proceeding. PTV Initial Brief at 10–16.[179]

JSC, CTV, and the SDC agree that prior rulings support PTV's assertion that it is entitled to a bump up in its Basic Fund share, but only to the extent the Judges tie the Basic Fund allocations to the Bortz Survey results and no other allocation methodology.[180] Those parties maintain that the language in prior rulings supports such an adjustment only to that limited extent. *See* JSC Initial Brief at 7–8; CTV Initial Brief at 10; SDC Initial Brief at 9–10.

By contrast, CCG argues that, in light of the evidence presented, PTV's Basic Fund shares should be adjusted upward, regardless of the allocation methodology employed by the Judges, to account for PTV's non-participation in the 3.75% Fund. *See* CCG Initial Brief at 6.

At the other extreme, Program Suppliers oppose any increase in PTV's Basic Fund share, arguing that such an increase ''effectively, albeit indirectly, compensates PTV for royalties to which it is not entitled.'' Program Suppliers Initial Brief at 2. Further, Program Suppliers argue that relevant prior rulings that may have suggested PTV was entitled to this upward adjustment were based on incorrect reasoning and that none of them ''rises to the level of controlling precedent.'' *Id.* at 7; *see* Program Suppliers Responding Brief at 2. Finally, arguing in the alternative, Program Suppliers assert that, even under PTV's view of the relevant prior rulings, PTV would not be entitled to the Evidentiary Adjustment it seeks unless ''PTV's Basic Fund share was derived solely from the Bortz Survey.'' Program Suppliers Initial Brief at 7.

B. Analysis

1. Statutory Law and Regulations

Any upward adjustment of PTV's share of the Basic Fund to account for its non- participation in the 3.75% Fund would be inconsistent with the regulations that established the 3.75% Fund because CSOs are expressly exempted from paying into the 3.75% Fund for the distant retransmission of noncommercial educational stations. *See* 37 CFR 387.2(c)(2).[181]

More particularly, the CRT established the 3.75% Fund in 1982 to offset the negative economic effects on owners of copyrights on *commercial programming* arising from the FCC's elimination of its rule setting a ceiling on the number of distant commercial stations a CSO could retransmit. *See Final Rule, Adj. of the Royalty Rate for Cable Sys.,* 47 FR 52146 (Nov. 19, 1982). The regulation implements Congressional policy as expressed in 17 U.S.C. 801(b)((2)(B), which provides that ''[i]n the event that the . . . [FCC] . . . permit[s] the carriage by cable systems of additional television broadcast signals beyond the local service area . . . the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional [DSEs] resulting from such carriage are reasonable in light of the changes effected by the [FCC] . . . . ''). *See also Malrite T.V. of New York, Inc.* v. *FCC,* 652 F.2d 1140, 1148 (2d Cir. 1981) (''The plain import of § 801 is that the FCC, in its development of communications policy, may increase the number of distant signals that cable systems can carry and may eliminate the syndicated exclusivity rules, in which event the [CRT] is free to respond with rate increases.'').[182]

Thus, any upward adjustment in the Basic Fund by the Judges to ''compensate'' PTV—*i.e., non-commercial* stations—would constitute an unlawful back-door attempt to modify this regulation and would be inconsistent with the statutory provision on which it is based. *See generally* 5 U.S.C. 706(2)(A) and (C) (agency action unlawful if ''not in accordance with law'' or ''in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.'').

2. Administrative Process

Even assuming *arguendo* that applicable statutory law permits the adjustment PTV seeks, any such adjustment would amount to an *adjudicatory* change to an economic policy that was created through a separate administrative rulemaking proceeding initiated for the *express* purpose of protecting *only* those copyright owners who, as a result of FCC action, lost the protection afforded by the ceiling on the number of a CSO's distant retransmissions of commercial broadcasts. *See* 47 FR 52146. The Judges

comprises ''only about 0.01% of total royalties paid in 2010–2013.''). Accordingly, the discussion in this section is limited to the impact, if any, of the allocations *to the 3.75% Fund* on the allocations in the Basic Fund.

[177] PTV broadly defines the phrase ''Evidentiary Adjustment'' as the process by which ''the Judges must . . . convert the [evidentiary] studies' estimated shares based on the 'Combined Royalty Funds' [*i.e.,* estimated without explicit regard to an itemization among the three specific funds] to shares tailored to the particular funds from which the parties are entitled to recover.'' *Id.* at 1. For the sake of clarity, the Judges utilize the phrase ''Evidentiary Adjustment'' more narrowly in this Determination, to mean only the potential bump up of PTV's share of the Basic Fund to account for its nonparticipation in the 3.75% Fund.

[178] Of course, because the Basic Fund is finite, any bump up in PTV's share would necessitate a decrease in the percentage allocations to the other five claimant groups proportionate to their relative shares (*inter se*) of the Basic Fund.

[179] The Judges discuss the relevant prior rulings, *infra,* section 0.

[180] In prior rulings by the Judges and the Librarian (in the CARP era), the Bortz survey was the only survey of CSO representatives given any credence. In the present case, the Horowitz Survey also surveyed CSO representatives. The Judges find no basis to treat these two surveys differently in connection with the issue of whether PTV should receive an increase in its Basic Fund share to account for its nonparticipation in the 3.75% Fund.

[181] The original regulatory text was located in 37 CFR, part 308. *See* 37 CFR 308.2(c)(2). In 2016, the Judges recodified this provision in Part 387, without changing the relevant language. *See* Adjustment of Cable Statutory License Royalty Rates, 81 FR 24523 (April 26, 2016); Adjustment of Cable Statutory License Royalty Rates 62812 (Sept. 13, 2016) (Note that the CFR version of Part 387 erroneously lists the second **Federal Register** page cite as page 62813.).

[182] In economic terms, the new 3.75% Fund royalties substitute a tariff for a quota, in order to maintain some form of protection of the value of copyrights on local commercial programs in markets into which CSOs would now be able to retransmit an unlimited number of commercial stations from distant locales.

will not shoehorn a *de facto* change in the regulations in this adjudicatory proceeding by permitting PTV to share in the royalty revenue collected by the levy of the ''penalty rate'' [183] of 3.75% of gross receipts.

3. Unauthorized Redistribution of Wealth and Income

Any adjustment upward to PTV's Basic Fund allocation to account for its nonparticipation in the 3.75% Fund would amount to a redistribution of wealth and income by the Judges that is not authorized by law or regulation. That is, any reduction in the Basic Fund royalties paid to owners of copyrights on programs distantly retransmitted on commercial stations to ''compensate'' PTV for its nonparticipation in the 3.75% Fund would constitute the imposition of an economic loss on the former and an economic windfall on the latter, in terms of the value of the program copyrights (a redistribution of wealth) and the flow of royalties realized from such ownership (a redistribution of income). The Judge find no basis in law to support such a transfer of wealth or income.

PTV argues though that ''[n]othing could be further from the truth'' than the characterization of its position as seeking to share in the 3.75% Fund. PTV Responding Brief at 5. In point of fact, PTV's argument *is* tantamount to an attempt to appropriate value from the 3.75% Fund. Although PTV does not seek a ruling that it is *legally* entitled to share in the 3.75% Fund, it seeks a ruling that it is *economically* entitled to appropriate value from the Basic Fund, as *measured* by its non-participation in the 3.75% Fund. The Judges are as concerned with the *economic incidence* of the application of the so-called Evidentiary Adjustment as they are with the *legal incidence* of PTV's attempt to appropriate wealth and income from a fund that, by law, belongs to other claimants.[184]

In the face of the foregoing points, PTV and all the other parties except Program Suppliers nonetheless argue that two factors—evidence and precedent—support the subsidy sought by PTV. The two arguments are considered below.

4. The Evidence-Based Argument

As an initial matter, the Judges note that the evidence-based argument asserted by PTV and other parties in support of the Evidentiary Adjustment cannot overcome the legal points, discussed above, that make it legally impermissible to bump up PTV's share of the Basic Fund.

Additionally, the Judges find the evidence-based argument made by and on behalf of PTV, standing alone, to be insufficient. Broadly, PTV and other parties assert that the Evidentiary Adjustment is necessitated by the purported nature of the survey evidence and the regression evidence.[185] The Judges reject this argument.

a. The Survey Evidence

With regard to the survey evidence, PTV notes that the survey questions did not explicitly ask the respondents to ''differentiat[e] between the Basic, 3.75% and Syndex Rates,'' and ''their responses *presumably* were based on their past payments at all rates into the Combined Royalty Funds.'' PTV Initial Brief at 10–11 (emphasis added); *see also* CTV Initial Brief at 6 (survey responses measure relative value of distant signals ''without regard to the royalty rate paid for any particular signal''). According to this argument, the survey responses could not reflect the effects, if any, of the higher royalty rate of 3.75% of gross receipts paid by CSOs into the eponymous 3.75% Fund. Rather, according to this argument, the survey responses reflected relative value in the combined royalty funds. Therefore, PTV asserts that it is entitled to the Evidentiary Adjustment, bumping up its Basic Fund allocation to offset the economic effect of its nonparticipation in the 3.75% Fund.

The Judges find this argument to lack sufficient merit. The two surveys were designed to allow for the selection of respondents to the surveys who were the individuals most responsible for programming carriage decisions at the CSO. *See* Bortz Survey at 14–15 & App. B; Horowitz WDT at 9, 24; *see also* 2/15/18 Tr. 254 (Trautman); 3/16/18 Tr. 4109 (Horowitz). Neither survey was designed to question whether the individuals who self-reported in fact possessed this knowledge, or to test the extent or specific aspects of respondents' knowledge.

The Judges decline to presume, in the context of this 3.75% Fund dispute, that the survey respondents lacked knowledge as to the variable royalties paid for distantly retransmitted stations, when the accepted survey evidence upon which the Judges rely (the same type of survey evidence on which their predecessors have consistently relied) presumes the opposite, *i.e.,* that the respondents are indeed knowledgeable regarding this sector of the cable industry.[186] Indeed, the argument that the Judges should presume that the survey respondents were ignorant of the impact on royalty costs of retransmitting a given number of distant local stations [187] also proves too much, because it would call into question *any* reliance on the survey evidence.

Moreover, the Bortz Survey includes a question—Question #3—in which the respondents are directed to consider the costs associated with the retransmission of categories of programs. Although the question is linked to the cost of program categories rather than the cost of retransmitting entire stations, the question was designed as a ''warm-up'' question that would encourage

[183] *See, e.g.,* PTV Initial Brief at 4 (3.75% rate ''sometimes called the 'Penalty Rate' '' because it applies higher royalty rate ''to the retransmission of additional distant signals beyond the limited number that cable systems could carry under the [f]ormer FCC Rules.'').

[184] The distinction between *economic incidence* and *legal incidence* is typically exemplified in the analysis of sales taxes. The seller bears the *legal incidence* by writing a check to the governmental unit assessing the tax, but the seller and the consumer share the *economic incidence* of the sales tax, the latter paying a portion of the tax in the form of a higher prices for the taxed item, with the allocation of the economic incidence between merchant and consumer determined by the elasticity of demand for the taxed item. *See* R. Posner, *Economic Analysis of Law* at 491–495 (6th ed. 2003). Analogously, the *economic incidence* of PTV's argument is transparent; although the *legal incidence* of its argument—bumping up its Basic Fund share—is not *expressly* prohibited, 100% of the *economic incidence* of its argument is a shift to itself wealth and income from the lawful participants in the 3.75% Fund.

[185] Again, PTV makes the same argument with regard to the viewing evidence. However, that issue is moot, because, as explained *supra,* the Judges do not apply the viewing evidence in making allocations.

[186] The Judges part company with the CARP determination (adopted by the Librarian), allocating royalties for 1998 and 1999, in which the CARP stated that the adjustment is warranted because ''the Bortz respondents . . . presumably did *not* know that PTV would not be eligible to receive part of their budget allocation . . . .'' *Distribution of 1998–1999 Cable Royalties,* at 26 n.10 (Oct. 21, 2003), *adopted by the Librarian* 69 FR 3606 (Jan. 26, 2004). When the Judges have qualified and relied upon expert survey witnesses, the Judges cannot, without contrary evidence, inject a presumption inconsistent with their qualifications. The Judges consider that and other prior rulings *infra.*

[187] The Judges find no reason to presume that survey respondents who were otherwise deemed by the survey experts, based on answers to introductory questions, to be knowledgeable about their programming and carriage decisions, would not also be aware that they could add an educational station without incurring the higher 3.75% royalty, whereas the addition of a commercial station in certain instances did trigger the 3.75% royalty. All parties accepted, and the Judges agreed, that the individuals responsible for making distant retransmission decisions for the cable systems understood that the CSO paid the minimum fee of 1.064%, regardless of whether they distantly retransmitted any local stations. It would be inconsistent to presume, on the one hand, that CSO executives were cognizant of a 1.064% minimum fee, but were ignorant of the 3.75% rate—*more than 300% greater than that minimum fee*—when the responsible executives answered the surveys.

respondents to be cognizant of the costs associated with their decisions to distantly retransmit stations containing the categories represented in this proceeding. *See* Bortz Survey, App. at 15. Thus, the Bortz Survey evidence tends further to support the assumption that the respondents were cognizant of the costs, including the royalty costs, associated with retransmitting distant local stations.[188]

For these reasons, the Judges cannot adopt a presumption that the survey respondents, deemed knowledgeable in all other pertinent respects regarding distant retransmissions of local stations, were ignorant of the royalty costs associated with the number and type of local stations they carried. Thus, there is not a sufficient evidentiary predicate for the application of the Evidentiary Adjustment.[189]

b. The Regression Evidence

Turning to the Crawford and Israel regressions, PTV's arguments fare no better. As the SDC explained in its briefing: ''Each regression includes an indicator for retransmission of a 3.75% signal [with] statistically significant coefficients for the indicator variables suggest[ing] that there is a systematic difference in the amount of royalties paid by systems and subscriber groups that retransmit 3.75% signals and those that do not.'' SDC Initial Brief at 4. Thus, the Crawford and Israel regression analyses demonstrated a correlation between the amount of royalties paid by a CSO and its participation in the 3.75% Fund. This correlation is essentially tautological. CSOs who pay the higher 3.75% royalty rate for the distant retransmission of one or more additional commercial local stations (previously ''non-permitted'' under the since-repealed FCC ''ceiling'' regulation) will pay higher royalties than CSOs that pay no more than 1.064% to retransmit such stations. *See id.* (correlation is ''not surprising, considering that retransmission of a 3.75% signal by definition carries a higher rate''). Moreover, Dr. Crawford confirmed that the coefficient for the 3.75 control variable in his regression analysis was both large and statistically significant. Crawford WDT at App. B Fig. 22.[190]

Likewise, Dr. Israel ''[s]imilar to Dr. Waldfogel,'' included an indicator variable ''for whether a CSO pays the special 3.75 percent fee,'' and he held this factor ''constant'' in order to determine the extent of any correlation between royalty payments and additional minutes of programming category content. Israel WDT ¶¶ 33–34. In his regression model, Dr. Israel estimated a coefficient of 41,918 for his ''Indicator for Special 3.75% Royalty Rate,'' multiple times the coefficients he estimated for any other variable. *Id.* ¶ 36, Table V–1.

Thus, the regression evidence in the hearing records provides independent support for distinguishing the allocations in the 3.75% Fund from the allocations in the Basic Fund. Accordingly, the regression evidence provides substantial support for rejecting PTV's proposed bump-up in its Basic Fund allocation to offset its non-participation in the 3.75% Fund.[191]

5. The Effect of Prior Decisions

The second argument raised by PTV and supported by several other parties, is that the Judges are bound by prior decisions of CARP panels, the Librarian, and the Judges, in which the Evidentiary Adjustment was either applied or found to be generally valid. PTV Initial Brief at 10–12; PTV Responding Brief at 9–12; JSC Initial Brief at 4–6; CTV Brief at 1–6; SDC Initial Brief at 1–7. That is, they argue that prior rulings, by the force of their reasoning or as controlling law, require the Judges to bump up PTV's share of the Basic Fund to account for its non-participation in the 3.75% Fund.

More particularly, PTV and other parties make this argument in several alternative forms, from broad to narrow. PTV and CCG argue that prior rulings support increasing PTV's share of the Basic Fund to reflect not only the survey-based allocations but also the regression-based allocations, whereas JSC, CTV, and the SDC assert that PTV's survey-based allocations should be bumped-up, only to the extent the Judges apply the survey share percentages in making their overall allocations.

The Judges conclude that there is neither controlling law nor any prior determination or other ruling that binds them on this issue. Further, the Judges do not agree with the explanations in two prior rulings that applied or legitimized the application of the Evidentiary Adjustment. To the extent those prior rulings might, *arguendo,* constitute controlling law or might, *arguendo,* have properly applied or legitimized the Evidentiary Adjustment *on the record in those cases,* the Judges find those rulings distinguishable, based on the particular facts of the present case.

a. The 1986 CRT Determination

In a 1986 determination regarding the distribution of 1983 royalties, the CRT ruled that public television (represented by PBS in that proceeding) was not entitled to participate in the 3.75%

[188] Although Question #3 referred to program categories, it is still relevant to the 3.75% Fund issue, because only the five other claimant categories (*i.e.,* other than PTV) could have triggered the higher royalty cost. Thus, a knowledgeable survey respondent could not be presumed to lack knowledge of the different impact on value from adding an educational station rather than a commercial station.

[189] In response to the Judges' 3.75% Fund Order, Program Suppliers submitted a Declaration by Howard Horowitz, who designed the Horowitz Survey, in which he stated that it is ''appropriate'' to apply the allocation of the Horowitz Survey shares ''to any fund in which all parties participate.'' Declaration of Howard Horowitz ¶ 4 (July 16, 2013). This statement would support the Judges' decision, but the Judges give no weight this declaration, for two reasons. First, Mr. Horowitz did not offer any such testimony during the proceeding; therefore his declaration is impermissible new testimony (not clarifying testimony). Second, in the absence of persuasive hearing testimony, Mr. Horowitz cannot opine as to what would be the ''appropriate'' allocation of the Horowitz Survey shares. What is an appropriate allocation in this context is a question of law reserved to the Judges.

[190] CTV, on whose behalf Dr. Crawford undertook his regression analysis, argues in its briefing that Dr. Crawford's 3.75% Fund coefficient ''*may* already be accounted for *to some degree*'' in his overall regression analysis. CTV Responding Brief at 7 (emphasis added). Not only is this statement highly conditional (as noted by the italicized language, CTV also did not submit a supporting declaration from Dr. Crawford properly clarifying how his hearing testimony supported this assertion, despite the Judges' invitation in the 3.75% Fund Order to submit witness statements. Instead, CTV referred to Dr. Crawford's hearing testimony on an unrelated issue in which he stated, with regard to a different control variable, that its coefficient estimate should be included in a regression analysis when there are ''good'' economic and statistical reasons to do so. *See* 2/28/18 Tr. 1643 (Crawford). The Judges do not dispute this point, but it is not relevant to the task at hand. As an indicator (dummy) variable in a regression designed to generate estimates for relative value results among program categories, the 3.75% Fund variable was designed to control for the influence of the 3.75% Fund impact on those relative values. Dr. Crawford further testified that any control variable that would correlate significantly with the dependent variable should be included in the regression model so that it does *not* bias the coefficients of interest (the program categories' coefficients in the present case), *Id.* at 1644 (Crawford). Thus, the excerpt from Dr. Crawford's testimony, when considered in context, does not demonstrate that the impact of participation in the 3.75% Fund is already ''accounted for'' in his overall regression analysis in a manner relevant to the present issue.

[191] The Judges emphasize a distinction between their consideration of the 3.75% Fund regression coefficients and their evaluation of the various coefficients relied on by Dr. Erdem to predict the level of royalty payments. The Judges discounted Dr. Erdem's emphasis on coefficients relating, for example, to the number of CSO subscribers, because such coefficients, as Dr. Crawford testified, simply re-created the royalty formula. However, now the Judges are called upon to distinguish and apply a separate royalty formula—the formula for the 3.75% Fund—from the formula for the Basic Fund. In this latter context, the coefficients related to the 3.75% Fund are indeed relevant. Accordingly, what constituted *vice* in the critique of the Crawford regressions with regard to allocations among the program categories is *virtue* in distinguishing between two different categories of rate formulas.

Fund because ''non-commercial educational stations could be carried on an unlimited basis prior to FCC deregulation, and . . . no cable operator paid the 3.75% rate to carry any noncommercial stations.'' *1983 Cable Royalty Distribution Proceeding,* 51 FR 12792, 12813 (Apr. 15, 1986), *aff'd sub nom. Nat'l Ass'n of Broadcasters* v. *CRT,* 809 F.2d 172, 179 n.7 (2d Cir. 1986) (''because cable carriage of noncommercial educational stations was not limited by the old distant signal rules, PBS is not eligible for royalties at the new 3.75% rate''). Further, there was no argument by the parties, and no discussion in the 1986 determination, with regard to the issue at hand, *viz.* whether PTV should receive an upward adjustment to its Basic Fund allocation to account for its non-participation in the 3.75% Fund. *See* 51 FR 12792 *et seq.*

Accordingly, the Judges find no aspect of the 1986 determination to be on point with regard to whether PTV is entitled to an upward adjustment in its Basic Fund share to offset its non-participation in the 3.75% Fund. Indeed, the 1986 determination would be consistent with the rejection of such an adjustment.

b. The 1992 CRT Determination

The next CRT determination concerned distribution of cable television royalties for the 1989 year. *1989 Cable Royalty Distribution Proceeding,* 57 FR 15286 (Apr. 27, 1992). PBS was again denied any share of the 3.75% Fund ''because PBS stations are not paid for at the 3.75% rate . . . .'' 57 FR at 15303.

In this 1992 case, public television claimants, through PBS, requested the bump up in their adjustment to the Basic Fund that is at issue in the present proceeding, *i.e.,* ''to back out the 3.75% portion'' from the Basic Fund. *See* 57 FR at 15300. The CRT rejected this proposed adjustment, relying on the testimony of Paul Bortz (president of the entity that administered the Bortz Survey), who stated that ''there was nothing in his survey to suggest that respondents were considering their 1989 copyright payment as the fixed budget they were allocating.'' *Id.*

The Judges find this rationale to be cryptic at best, because there is no obvious logical link between Mr. Bortz's description of the mindset of the CSO survey respondents and its impact on whether PBS's share of the Basic Fund should have been adjusted upward to reflect the survey evidence. In fact, Mr. Bortz's testimony could be construed as supportive of the upward adjustment in the public television claimants' share of the Basic Fund. Accordingly, the Judges do not find any controlling or persuasive authority in the 1992 determination that can serve as guidance in the present proceeding.

c. The 1990–92 CARP Report and the Librarian's Order

In the proceeding to allocate royalties for the 1990–1992 period, PTV argued on behalf of public television claimants for an Evidentiary Adjustment to its share of the Basic Fund, as that share was estimated by the CARP's reliance on the Bortz Survey.[192] The CARP ruled, with regard to the question of whether to adjust PTV's share of the Basic Fund:

> PTV also contends that a further adjustment should be made in its award because its total share of the adjusted Bortz Survey must come entirely from the Basic Fund and the Bortz survey does not differentiate between the Basic fund and the 3.75 fund in which PTV does not participate.
>
> . . .
>
> PTV's proposed further adjustment to allow for its non-participation in the 3.75 fund is rejected for the same reason given by the [CRT] in the 1989 proceeding. Mr. Bortz specifically disavowed any intention or implication in his survey to have respondents answer based on their royalty payments.

1990–92 CARP Phase I Distribution Report 120, 124 (Jun. 3, 1996) (*1990–92 CARP Report*). The Judges find that the CARP's reliance on the prior reasoning of the CRT only serves to repeat the cryptic nature of that prior ruling, and does not offer any basis on which the Judges may rely to resolve the issue in this proceeding.

When Congress instituted the CARP process, it also charged the Librarian with the duty to accept or reject, in whole or in part, the decision of a CARP, and charged the Register with the duty to provide recommendations to the Librarian. 17 U.S.C. 802(f) (2003) (superseded). Discharging her duty in that 1990–92 proceeding, the Register made specific recommendations to the Librarian regarding the issues pertaining to the 3.75% Fund, all of which the Librarian adopted. The Register described, and the Librarian agreed, that the CARP's reasoning supporting its distribution of the 3.75% Fund was ''at best, terse.'' *Distribution of 1990, 1991 and 1992 Cable Royalties,* 61 FR 55653, 55662 (Oct. 28, 1996) (*Librarian's Order*).

In her recommendations, the Register more specifically addressed the issue at hand, rejecting PTV's request for the Evidentiary Adjustment.

> The Panel did not act arbitrarily in rejecting PBS's [193] Bortz adjustment for the same reasons articulated by the [CRT] in 1989. . . . [T]he approach used in the Bortz survey itself remained unchanged. As in the 1989 proceeding, Bortz did not ask cable operators to base their program share allocation according to the royalties they actually paid. Thus, in awarding PBS programming a specific share, a [CSO] did not take into account that its stated share only applied to the Basic Fund and not the 3.75% fund. . . . The Bortz survey numbers therefore do not necessarily require the adjustment demanded by PBS. Thus, the Panel was reasonable in adopting the [CRT's] 1989 rationale because PBS's argument, and the design parameters of the Bortz survey, were fundamentally the same.

Id. at 55668. However, for the first time in a distribution proceeding, the door was opened to an argument that this Evidentiary Adjustment might be appropriate in certain contexts, as the Register further recommended:

> The Panel did not state that it was using PBS's Bortz numbers as the sole means of determining its award. In fact, the Panel awarded PBS a share that is less than the unadjusted Bortz survey numbers. *Had the Panel stated that it was attempting to award PBS its Bortz share, then PBS's argument might have some validity.* However, since the Panel did not, it did not act arbitrarily in denying PBS's requested adjustment.

Id. (emphasis added).

d. The 2003 CARP Determination and the Librarian's Order

In 2003, for the first time, public television claimants, through PTV, were successful in obtaining a ruling that supported the application of the Evidentiary Adjustment. Specifically, a CARP adopted PTV's argument that it was entitled to the Evidentiary Adjustment, whereby its share of the Basic Fund was increased to offset the impact of its non-participation in the 3.75% Fund. The CARP Report was adopted by the Librarian, upon the recommendation of the Register. *1998–99 CARP Report, supra* note 144, at 26, n.10, *adopted by the Librarian,* 69 FR 3606.

The 1998–99 CARP found that, based on the evidence, PTV's ''raw Bortz figure'' was 2.9% for both 1998 and 1999, prior to the application of the Evidentiary Adjustment. *1998–99 CARP Report* at 26 n.10. The CARP then, over JSC's opposition, bumped up this ''raw'' percentage ''to account for PTV's non-participation in the 3.75% . . . fund[ ].'' *Id.* The CARP explained its rationale:

[192] While this proceeding was pending, Congress abolished the CRT. The proceeding continued under the auspices of the CARP appointed to distribute the royalties.

[193] The Librarian identified the public television claimants as the PBS claimants, rather than the PTV claimants as had the CARP.

The Adjustment makes sense in the context of a CSO Survey where the respondents are allocating a fixed budget among the various claimant groups—unless JSC can demonstrate that the respondents already understood that PTV does not participate in the 3.75% Fund. JSC has made no such showing.

Id.

The CARP also sought to distinguish the prior rejections of this Evidentiary Adjustment by the CRT and the 1990–92 CARP panel.

The Panel is aware that the 1989 CRT rejected this Adjustment to Bortz and the 1990–1992 CARP adopted that rejection . . . . The Panel believes the 1989 CRT and 1990–92 CARP did not fully appreciate the logic supporting this Adjustment. It is precisely *because* the Bortz respondents did *not* answer based on their actual royalty payments and **presumably** did *not* know that PTV would not be eligible to receive part of their budget allocation that the Adjustment is warranted.

Id. (citation omitted) (boldface added). However, the *1998–99 CARP Report* did not make an upward adjustment to PTV's overall Basic Fund allocation or to any measure of its relative share of the Basic Fund *other than the Bortz Survey percentage,* concluding:

[W]e *disagree* with PTV's assertion that it is entitled to such an Adjustment *no matter which methodology* is employed. . . . We view PTV's position that the adjustment should be made for *any* methodology merely as an attempt to circumvent mathematically the legal precedents established by the CRT, and PTV has presented no legal justification for reversing these precedents.

Id. Consistent with this limitation, the 1998–99 CARP did not apply the Evidentiary Adjustment to the regression approach utilized by Dr. Gregory Rosston, an economic expert who presented a regression analysis on behalf of another party. *See 1998–99 CARP Report, supra* note 144, at 45–51 (discussing Rosston regression approach). However, although the CARP did not apply the Evidentiary Adjustment, it did not explicitly state its reasoning, nor did the CARP provide any specific rationale for not applying the Evidentiary Adjustment to the Rosston regression approach, other than to refer to the general discussion in that same report.. *See id.* at 48 n.21 & 59 n.29 (citing p. 26 n.10).

In the end, the CARP applied the Evidentiary Adjustment by increasing PTV's Basic Fund minimum allocation, or ''floor,'' as derived from the Bortz Survey, from 2.9% to 3.2%. *1998–99 CARP Report, supra* note 144, at 25–26, & n.10. The final allocation to PTV though was based on additional evidence, which led the CARP to establish PTV's share *above this floor,* at 5.49125%, the same level as in the prior proceeding. *Id.* at 69; *see* 69 FR 3606, 3610, 3616 & n.32.

The Librarian, upon the recommendation of the Register, accepted the CARP Report in its entirety. 69 FR at 3606. However, neither the Register nor the Librarian made any specific recommendations or findings regarding the Evidentiary Adjustment applied by the CARP to increase PTV's allocation floor from 2.9% to 3.2%. *See* 69 FR at 3616–17[.

In the present proceeding, Program Suppliers assert that, because the CARP set PTV's Basic Fund share above the 3.2% floor, it had not actually applied the Evidentiary Adjustment to the Bortz Survey results. Therefore, Program Suppliers argue that the CARP's analysis regarding the Evidentiary Adjustment was mere *dicta,* rather than a controlling endorsement of the Evidentiary Adjustment. Program Supplier's Responding Brief at 3–4. The Judges disagree with Program Suppliers' characterization of that ruling. The fact that PTV's ultimate Basic Fund Share exceeded the floor does not call into question the ruling by the CARP or the Librarian that the Evidentiary Adjustment, in their opinion, should be applied.[194]

e. The Judges' 2010 Determination

In 2010, the Judges determined the allocation of royalties for the 2004 and 2005 distribution years.[195] *See 2004–05 Distribution Order.* There, the Judges applied the Evidentiary Adjustment on behalf of PTV, as proposed by the ''Settling Parties.''[196] *Id.* at 57070. However, the Judges did not engage in any analysis of the Evidentiary Adjustment (and indeed did not even describe that adjustment or identify it by name). Rather, they simply adopted as a ''starting point'' the augmented Bortz Survey ''which includes appropriate adjustments to the PTV share'' and then referred to paragraph 317 of the ''Settling Parties'' Proposed Findings of Fact. That paragraph stated: ''Because PTV receives payments from only the Basic fund, an adjustment to the augmented survey results is needed to produce PTV's share of the Basic fund, as recognized by the CARP in the 1998–99 Proceeding.'' *Id.*

In the present proceeding, PTV further notes that, in that 2010 proceeding, Professor Waldfogel asserted that his regression approach, like the Bortz survey approach, had not differentiated between the Basic Fund and the 3.75% Fund, thus purportedly supporting an application of the Evidentiary Adjustment to the regression allocations. PTV Initial Brief at 14–15. PTV further asserts that Professor Waldfogel's testimony was consistent with Dr. Rosston's testimony in the prior proceeding, supporting the application of the Evidentiary Adjustment to Basic Fund allocations based on regression analyses. *Id.* at 13–14. Notwithstanding that testimony, in neither of those cases did the CARP, the Librarian, or the Judges find that the Evidentiary Adjustment should be applied to the regression results. *See* JSC Responding Brief at 7, 9.

6. The Prior Decisions Are Not Binding

The Judges do not find the foregoing findings and conclusions sufficient to overcome the analysis they undertake in this proceeding. First, none of the prior cases considered the dispositive statutory or regulatory issues discussed herein. Second, the prior cases are *factually* distinguishable, because neither the survey evidence nor the regression evidence support the application of the Evidentiary Adjustment to PTV's share of the Basic Fund. Third, as explained below, as a matter of law, the Judges are not duty bound to apply the Evidentiary Adjustment on behalf of PTV as it relates to the survey evidence, notwithstanding the conclusions in the two most recent distribution cases.

The Copyright Act does not equate relevant prior rulings with binding legal precedent. Rather, the Act provides only that the Judges shall ''*act on the basis* . . . of prior determinations and interpretations . . . .'' 17 U.S.C. 803(a)(1) (emphasis added). As the D.C. Circuit has explained, this provision does not mandate that the Judges abide by specific findings in prior rulings, provided the Judges set forth a ''reasoned explanation'' for a departure from those findings. *See Program Suppliers* v. *Librarian of Congress,* 409 F.3d 395, 402 (D.C. Cir. 2005). In the present determination, the Judges have explained the legal, administrative, policy, economic, and factual reasons why an application of the Evidentiary Adjustment on behalf of PTV is unwarranted. The two prior rulings that applied the Evidentiary Adjustment did not address these multiple factors, and

[194] However, as discussed *infra,* for other reasons, the Judges do not conclude that the decisions by the CARP and the Librarian to apply the Evidentiary Adjustment are dispositive in the present proceeding.

[195] Congress replaced the CARP system with the Judges in 2004 (effective 2005). Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419, 118 Stat. 2341 (Nov. 30, 2004).

[196] The ''Settling Parties'' were comprised of: JSC, CTV, PTV, and Music Claimants. *Id.* at 57064.

certainly did not consider the issue at the depth warranted by the supplemental briefing required in this proceeding.

Further, the prior decisions reveal that the relevant tribunals went through an evolution, from prohibiting the application of the Evidentiary Adjustment, to acknowledging its potential application and, then, to supporting its application. Thus, the ''controlling'' aspect of those prior decisions, if any, appears to be the proposition that this thorny issue needs to be considered in detail, and that no prior decision should be extended if the successor tribunal, through reasoned explanation, finds good cause to render a decision different from the one that immediately preceded it.

7. The Waiver Argument

In its Responding Brief, PTV asserts, for the first time, that Program Suppliers, the SDC, and JSC, each ''waived'' its right to contest the application of the Evidentiary Adjustment. PTV Responding Brief at 21–26.[197] PTV makes two basic arguments in support of its theory of waiver. First, it argues that Program Suppliers, the SDC, and JSC ''knowingly and intentionally'' did not ''submit evidence or advance arguments'' regarding the Evidentiary Adjustment, seeking to depart from or to distinguish the prior determinations that adopted PTV's construction of the Evidentiary Adjustment. *Id.* at 21. Second, PTV notes that none of these parties raised the issue of the application of the Evidentiary Adjustment in closing arguments. *Id.* at 22. PTV acknowledges that Program Suppliers did address the issue previously, but only in response to PTV's PCL addressing the Evidentiary Adjustment issue. *See* PTV Initial Brief at 9 (citing Program Suppliers' RPCL ¶ 12. Accordingly, PTV, relying on four decisions,[198] asserts that Program Suppliers, the SDC, and JSC waived their arguments against the Evidentiary Adjustment.

The Judges find PTV's waiver argument to be inapposite, given the procedural posture of the proceeding. The Judges found the hearing record and legal arguments to be incomplete with regard to the impact, if any, of allocations in the 3.75% Fund on the allocations in the Basic Fund. That deficiency extended to PTV's briefing as well as to the briefing of the other parties. In an attempt to cure the incompleteness, the Judges, *sua sponte,* entered the 3.75% Fund Order, which specifically noted the insufficiency of the *facts* (''exhibits [and] witness testimonies'') and the *law* (''legal arguments''), which could be remedied by supplemental ''memoranda of law,'' as well as new affidavits that ''clarif[ied]'' the extant record. *Id.* at 1. In sum, the deficiencies in the factual presentations and legal briefings of the parties were the bases for the Judges' ordering of supplemental briefing.[199] It would be anomalous for the Judges to now reverse course and find that the arguments relevant to this issue had been waived prior to the submission of supplemental filings, when those deficiencies had themselves engendered the 3.75% Fund Order.

The four cases PTV string cites in its responding brief,[200] are not on point, and do not alter the Judges' analysis. *U.S.* v. *Laslie,*[201] *American Wildlands* v. *Kempthorne,*[202] and *U.S.* v. *L.A. Tucker Truck Lines, Inc.,*[203] all involved litigants who raised issues for the first time during judicial review of action by a trial court or administrative agency, and thus had engaged in an ''intentional relinquishment of a known right,'' which is the essence of an act of waiver. *Laslie,* 716 F.3d at 614. These cases are clearly distinguishable because: (1) The arguments raised with regard to the impact, if any, the 3.75% Fund has on allocation of the Basic Fund relate to an issue still before the tribunal hearing the matter; (2) the Judges have called for supplemental briefing on the very issue; and (3) the Judges' have concluded that the issue can and should be decided as a matter of law.

The final case cited by PTV is *Intercollegiate Broadcast. Sys., Inc.,* v. *Copyright Royalty Bd.,* 574 F.3d 748 (D.C. Cir. 2009). There, the D.C. Circuit declined to consider an argument, raised by an appellant for the first time ''[n]early a year after appealing the Judges' order, and almost three months after filing its opening brief. . . . '' *Id.* at 755. Although the D.C. Circuit accepted the supplemental briefing and permitted responsive briefing, the court expressly noted that it was allowing that briefing ''without prejudice'' as to whether it would consider the delinquent issue on appeal. *Id.* The D.C. Circuit ultimately ruled that it would not consider the

[197] There is an element of irony in PTV's assertion of waiver for the first time in its Responding Brief. By not making this legal argument of waiver in its July 16, 2018 Initial Brief, PTV prevented adverse parties from addressing the issue of waiver. *See, e.g., U.S.* v. *Layeni,* 90 F.3d 514, 522 (D.C. Cir. 1996); *In re Brand Name Prescription Drugs Antitrust Litig.* 186 F.3d 781, 790 (7th Cir. 1999) Although PTV might claim that it could not have been certain it had the right to assert the waiver argument until it had reviewed these parties' Initial Briefs, such a position would be belied by the fact that PTV's waiver argument is based on the alleged absence from *the hearing record* of adverse facts relating to facts or arguments concerning the impact, if any, of the 3.75% Fund allocations on the allocations of the Basic Fund. Thus, PTV appears to have waived its waiver argument. Nonetheless, the Judges consider and reject PTV's waiver argument on the merits.

[198] The cases are cited at PTV's Responding Brief at 22 n.85 and discussed below.

[199] The Judges regularly exercise discretion to seek supplemental briefing in order to address an issue that had not been sufficiently addressed during the hearing. A judicial order directing the filing of supplemental papers is the preferred method by which judges should address issues they find to have been insufficiently considered. *See United States Nat'l Bank of Oregon* v. *Ind. Agents of America,* 508 U.S. 439 (1991) (affirming D.C. Circuit's *sua sponte* raising of unaddressed issue and ordering supplemental briefing). Moreover, supplemental briefing provides the parties a full and fair opportunity to address relevant issues that were insufficiently developed and argued. *Trest* v. *Cain,* 522 U.S. 87, 92 (1997) (''We do not say that a court must always ask for further briefing when it disposes of a case on a basis not previously argued . . . [but] often . . . that somewhat longer (and often fairer) way 'round is the shortest way home.'') (*dicta*); *see also* R. Offenkrantz & A. Lichter, *Sua Sponte Actions in the Appellate Courts: The ''Gorilla Rule'' Revisited,* 17 J. App. Prac. 113, 120 (Spring 2016) (noting the Supreme Court's ''preference for ordering supplemental briefing when a new issue is raised *sua sponte* . . . .''); B. Miller, *Sua Sponte Appellate Rulings: When Courts Deprive Litigants of an Opportunity to be Heard,* 39 San Diego L. Rev. 1253, 1281–82, 1297–1300 (2002) (courts more likely to raise, *sua sponte,* ''questions of law,'' and ''routinely ask the parties for supplemental briefs when deciding a new issue.''); R. Ginsburg, *The Obligation to Reason Why,* U. Fla. L. Rev. 205. 214–15 (1985) (in D.C. Circuit, if judges identify a potentially dispositive point not raised by the parties, they generally invite supplemental briefs).

In the present case, the Judges also have wide statutory discretion to cure deficiencies in the legal or factual record to mitigate the harm that might otherwise necessitate a finding of waiver. *See* 17 U.S.C. 801(c) (''The . . . Judges may make any necessary procedural . . . rulings in any proceeding under this chapter. . . . ''). The ordering of supplemental briefing is one example of the exercise of that discretion, and its invocation renders moot a claim that legal arguments had been waived.

The parties' supplemental briefing ultimately did not address all of the legal reasons in the full detail that the Judges now rely upon to conclude that they cannot bump-up PTV's share of the Basic Fund to offset its non-participation in the 3.75% Fund. However, as *Nat'l Bank of Oregon* further holds, a court can rule *sua sponte* even if the parties fail to address in their supplemental briefing the issue on which the court sought such briefing. *Id.* at 447. Moreover, in that decision, the Supreme Court held that lower courts may reframe the legal issues posed by the parties, in order to ensure that the law is correctly applied, lest the parties force the court to misstate the law. *Nat'l Bank of Oregon* at 446–47. In the same vein, ''[a] court should apply the right body of law even if the parties fail to cite their best cases.'' *Palmer* v. *Bd. Of Educ.,* 46 F.3d 682, 684 (7th Cir. 1995 (Easterbrook, J.). Here, *a fortiori,* because PTV did not make its legal waiver argument until it filed its Responding Brief (the very tactic of which it accuses Program Suppliers regarding the substantive Evidentiary Adjustment issue), the adverse parties had *no opportunity to cite any cases.*

[200] *See* PTV Responding Brief at 22 n.85.

[201] 716 F.3d 612 (D.C. Cir. 2013).

[202] 530 F.3d 991 (D.C. Cir. 2008).

[203] 344 U.S. 33 (1952).

issue, noting that, notwithstanding its discretionary ''power'' to consider the delinquently briefed issue, it chose not to exercise that discretion, in part because of the incomplete nature of the briefing and the far-reaching consequences of the delinquently raised issue. *Id.* at 755–56.

Intercollegiate is clearly not on point. To the extent the D.C. Circuit's procedure for weighing whether to consider a delinquently raised issue is analogous to the present case, the D.C. Circuit emphasized that it was a matter of discretion. Likewise, the Judges have the discretion, pursuant to 17 U.S.C. 801(c), to make procedural rulings in furtherance of their statutory duties. The fact that the D.C. Circuit chose in *Intercollegiate* to allow supplemental briefing—without prejudice to its ultimate ruling that the delinquently asserted issue would not be heard—in no way suggests that the Judges in this proceeding are barred (by an assertion of waiver, or otherwise) from exercising their statutory discretion by deciding the issue at hand, after ordering supplemental briefing.

C. Conclusion Regarding Nonparticipation Adjustment

For the foregoing reasons, the Judges do not apply an Evidentiary Adjustment to or otherwise adjust PTV's share of the Basic Fund to reflect PTV's nonparticipation in the 3.75% Fund.

VIII. Conclusions and Award

As many witnesses testified in this proceeding, no one methodology can be a perfect measure of relative market value of categories of television programs distantly retransmitted by cable television systems. That is inevitable, because the market value of distantly retransmitted programs cannot be measured directly: Cable systems do not buy retransmission rights from the program copyright owners and cable systems do not acquire retransmission rights to broadcast stations in marketplace transactions. In the applicable scheme, prices are set by statute. Neither the copyright owners' valuations nor the general laws of supply and demand apply in all their particulars in setting prices as they would in an unregulated market. Use of different methodologies can assist the Judges by illuminating different aspects of the buyers' valuation.

In this proceeding, the participants, through their respective expert witnesses, took a variety of approaches to estimate how cable systems value programming on distant signals. Some witnesses looked to survey evidence in which CSOs estimated relative value of programming by category. Cable system fact witnesses also considered whether the value of the distantly retransmitted programs is generated more by acquisition of new subscribers or by retention of niche viewers.

A broadcast station's valuation of programming is driven by each show's popularity among viewers: Viewership translates to advertising income for the broadcast station. Program Suppliers advocated looking at that viewership to determine relative value. While viewership is important for broadcasters, the Judges conclude, based on the evidence and arguments presented, that viewership, without more, is an inadequate measure of relative value of different categories of programming distantly retransmitted by cable systems. The Judges, consistent with the past several allocation decisions, give no weight to viewership evidence in allocating royalties among the various program categories.

Several participants' econometricians who testified in this proceeding analyzed value from the perspective of what CSOs actually *had* done in terms of deciding which distant signals to retransmit on their systems. The essence of their regression approaches was the same as the fundamental correlation in the Waldfogel regression analysis in the 2004–05 proceeding—the correlation between royalties paid and minutes of programming in each program category on each distant signal. As discussed, the Judges place primary reliance on Professor Crawford's regression analysis, and rely on his duplicated minutes approach, as to which he expressed no methodological reservations during his testimony.

After considering all the methodologies and supporting evidence presented by the copyright owner groups, the Judges are struck by the relative consistency of the results across the accepted methodologies.[204] In this proceeding, the Judges conclude that the Horowitz Survey responses and Professor Crawford's duplicate minutes regression analysis, adjusted to account for methodological limitations in these approaches, are the best available measures of relative value of the program categories.

The Bortz and Horowitz Surveys, together with the McLaughlin ''Augmented Bortz'' results and the Crawford and George regressions, taking into account the confidence intervals (when available) surrounding the point estimates, define the following ranges of reasonable allocations for each program category in each year:

TABLE 18—RANGES OF REASONABLE ALLOCATIONS

	2010		2011		2012		2013	
	Min. (%)	Max. (%)	Min. (%)	Max. (%)	Min. (%)	Max. (%)	Min. (%)	Max. (%)
JSC	26.73	41.85	24.82	39.42	28.03	43.81	30.12	45.88
CTV	13.28	20.48	14.41	23.91	14.25	23.30	10.30	22.60
Program Suppliers	23.88	40.15	22.10	35.70	19.56	30.90	17.27	30.94
PTV	6.70	17.46	7.90	21.21	6.10	21.61	8.30	29.39
SDC	0.48	4.20	0.33	6.64	0.25	6.31	0.23	5.20
CCG	0.01	6.55	1.12	6.61	0.70	7.47	0.38	7.85

Within these ranges, the Judges use Professor Crawford's point estimates as the starting point for most categories because the Judges find the Crawford (duplicate minutes) analysis to be the most persuasive methodology overall on this record. For two specific categories, however, the Judges deviate from the Crawford analysis based on other record

[204] As noted, Dr. Israel's Cable Content Analysis, although not a methodology that the Judges adopted, provided information on JSC-related expenditures in a related market sufficient to lend some support for the award of a significant share to JSC (as indicated by the methodologies that the Judges have adopted), even though the shares are disproportionate to the number of programming hours retransmitted. Similarly, the McLaughlin/Blackburn ''changed circumstances'' adjustments bolster the results of methodologies valuing PTV programming above the lower bound set by regression analyses.

evidence. Specifically, the Judges make a modest upward adjustment to Professor Crawford's allocation for the SDC category based on the Horowitz survey results and the Augmented Bortz survey results, together with testimony concerning the ''niche'' value of devotional programming. Similarly, the Judges make a modest upward adjustment to the CCG category based on Professor George's analysis and testimony that Professor Crawford's analysis (as well as the survey evidence) undervalues Canadian programming to a degree. The Judges adjust the Crawford-based allocations for the remaining categories to account for the increased allocations to the SDC and CCG categories, and to ensure that the percentages total 100% after rounding. The resulting allocations are:

TABLE 19—BASIC FUND ALLOCATIONS

	2010 (%)	2011 (%)	2012 (%)	2013 (%)
JSC	32.9	30.2	33.9	36.1
CTV	16.8	16.8	16.2	15.3
Program Suppliers	26.5	23.9	21.5	19.3
PTV	14.8	18.6	17.9	19.5
SDC	4.0	5.5	5.5	4.3
CCG	5.0	5.0	5.0	5.5
Total	100.0	100.0	100.0	100.0

As discussed in section VII, the Judges considered and rejected PTV's arguments that the allocations of Basic Fund royalties must be adjusted to account for PTV's non-participation in the 3.75% Fund. Consequently, the allocations for the Basic Fund set forth in Table 1 are identical to the allocations set forth in Table 19. To arrive at the allocations for the 3.75% Fund set forth in Table 1, the Judges have reallocated the PTV share from Table 19 proportionally among the categories that participate in that fund. In accordance with the consensus view of the parties, the Judges have allocated 100% of the funds remaining in the Syndex Fund (after distribution of the Music Claimants' share) to Program Suppliers.

The allocations described in Table 1 at the outset of this Determination reflect the Judges' weighing of the evidence and their findings regarding allocation to each category of programming within the respective ranges of reasonable allocations.

The Register of Copyrights may review the Judges' Determination for legal error in resolving a material issue of substantive copyright law. The Librarian shall cause the Judges' Determination, and any correction thereto by the Register, to be published in the **Federal Register** no later than the conclusion of the 60-day review period.

October 18, 2018.

So ordered.

Suzanne M. Barnett,

Chief United States Copyright Royalty Judge.

David R. Strickler,

United States Copyright Royalty Judge.

Jesse M. Feder,

United States Copyright Royalty Judge.

The Register of Copyrights closed her review of this Determination on January 28, 2019, with no finding of legal error.

Dated: January 29, 2019.

Suzanne M. Barnett,

Chief United States Copyright Royalty Judge.

Approved by:

Carla B. Hayden,

Librarian of Congress.

[FR Doc. 2019–01544 Filed 2–11–19; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Update to Investigative and Enforcement Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No.: FAA–2017–1051; Notice No. 18–06]

RIN 2120–AL00

Update to Investigative and Enforcement Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the procedural rules governing Federal Aviation Administration investigations and enforcement actions. The proposed revisions include updates to statutory and regulatory references, updates to agency organizational structure, elimination of inconsistencies, clarification of ambiguity, increases in efficiency, and improved readability.

DATES: Send comments on or before May 13, 2019.

ADDRESSES: Send comments identified by docket number FAA–2018–1051 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: For questions concerning this action regarding 14 CFR part 13, subparts A through C, E, and F, contact Jessica E. Kabaz-Gomez, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–7395; email *Jessica.Kabaz-Gomez@faa.gov,* or Cole R. Milliard, Office of the Chief Counsel, AGC–300, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3452; email *Cole.Milliard@faa.gov.* For questions concerning this action regarding 14 CFR part 13, subpart D, contact John A. Dietrich, Office of the Chief Counsel, FAA Office of Adjudication, AGC–70, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–3433; email *John.A.Dietrich@faa.gov.* For questions concerning this action regarding 14 CFR part 13, subpart G, contact Vicki S. Leemon, Office of the Chief Counsel, Office of Adjudication, AGC–70, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–0415; email: *vicki.leemon@faa.gov.*

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Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. The Administrator has authority to issue regulations and procedure necessary for safety in air commerce and national security under 49 U.S.C. 44701(a)(5). The Administrator also has authority to issue regulations he considers necessary to carry out Subtitle VII, Part A of title 49 under 49 U.S.C. 40113(a).

This proposed rulemaking also relies on the authority of numerous other statutes because it prescribes procedures and other rules covering a wide variety of enforcement actions. Generally, it relies on the duties and powers delegated to the Administrator of the FAA under 49 CFR 1.83, including those described in 49 U.S.C. 40101 related to aviation. It also relies on the power of the Administrator to conduct investigations; prescribe regulations, standards, and procedures; and issue orders per 49 U.S.C. 40113–40114. Procedures and other requirements governing investigations, enforcement, complaints of violations, service, evidence, regulations and orders, and judicial review are found in 49 U.S.C. 46101–46110. Section 6002 of title 18 U.S.C. deals with immunity for witnesses in FAA formal investigations (see current and proposed 14 CFR 13.119).

The Administrator's duties and powers related to aviation safety in 49 U.S.C. 44701, and the authority of the Administrator to issue, amend, modify, suspend, and revoke certificates per 49 U.S.C. 44702–44703, 44709–44710, 44724, and 46111 also provide authority for this rulemaking. The rulemaking further relies on the Administrator's power to impose and collect civil penalties under 49 U.S.C. 46301.

The Administrator's powers with respect to aircraft maintenance (49 U.S.C. 44713, 44725), aircraft registration (49 U.S.C. 44103–44106), aircraft noise levels (49 U.S.C. 47531–47532), airports (49 U.S.C. 47106, 47107, 47111, 47122, and 47306), and

hazardous materials (49 U.S.C. 5121–5124) are also part of the authority for this rulemaking. There is authority regarding the special aircraft jurisdiction of the United States, which includes certain aircraft in, of, and connected to the United States. This jurisdiction includes provisions forbidding aircraft piracy, interference with flight crew, and carrying weapons or explosives on aircraft (49 U.S.C. 46501–46502 and 46504–46507). These authorities prescribe the standards that are enforced via the procedures provided in part 13.

I. Overview of the Proposed Rule

This rulemaking would revise subparts A through G of part 13, which provide the procedural rules governing investigations and enforcement actions taken by the FAA. It would update statutory and regulatory references, eliminate inconsistencies, clarify ambiguity, increase efficiency, and improve readability. The agency is not proposing substantive amendments to subpart B, which addresses administrative actions or to subpart F, which governs formal fact-finding investigations under orders of investigation. The proposal does, however, include substantive amendments to subparts A, C, D, E, and G.

Subpart A addresses the FAA's investigative procedures. A proposed amendment to § 13.1 would add a re-delegation provision applicable to the whole of part 13. The FAA would remove current § 13.5(e), which addresses complaints filed against members of the armed services, to align with the proposed removal of current § 13.21. Additionally, § 13.5(e) would include a proposed definition for the date of service of a written answer to a complaint.

Subpart C addresses legal enforcement actions. Proposed amendments would provide a new emergency procedure allowing for an expedited administrative appeal process for when a notice is issued under 14 CFR 13.20(d) simultaneously with the Administrator's issuance of a temporary emergency order under 49 U.S.C. 40113 and 46105(c). The required elements of consent orders provided in § 13.13 would be amended to include a withdrawal of all requests for hearing or appeals in any forum as well as an express waiver of attorney's fees and costs. The rule would also amend § 13.17(a) to replace the term ''operator'' with ''the individual commanding the aircraft'' to align with the underlying statute. Finally, the rule would remove § 13.29 pertaining to FAA enforcement procedures against individuals who present dangerous or deadly weapons for screening at airports or in checked baggage, as these proceedings are now under the Transportation Security Administration's (TSA) authority.

Current subpart D provides the rules of practice applicable to FAA hearings involving legal enforcement actions pertaining to certain FAA-issued certificates, hazardous materials violations by any person, and other types of enforcement actions. This proposal would amend the applicability section of subpart D such that it would no longer apply to hearings for emergency orders of compliance issued under the Hazardous Materials Transportation Act (HMTA), because the procedures for this process are now provided by 49 CFR part 109, Department of Transportation, Hazardous Materials Procedural Regulations.

Additional amendments to subpart D would recognize the role and function of the FAA's Office of Adjudication, and provide for the use of alternative dispute resolution (ADR) procedures. The proposed rule would consolidate sections relating to filing and service; update addresses; allow for filing and service by fax and email; clarify the discovery process including a modification to the subpoena rule; and consolidate and incorporate the appeal procedures stated in other subparts of part 13 into subpart D. Finally, a new provision would be added to subpart D at § 13.67 to provide an expedited review process for the subjects of emergency orders to which § 13.20 applies.

Subpart E provides for orders of compliance under the Hazardous Materials Transportation Act. Proposed amendments would harmonize procedures associated with notices of proposed orders of compliance and consent orders issued under subpart E with procedures for non-hazardous material notices and orders in subpart C. The rule would also move subpart D-related provisions regarding rules of practice in hearings into subpart D, and would update procedures that have been superseded by subsequent amendments to the hazardous material (hazmat) statutes. Finally, a new cross-reference to the procedures in 49 CFR part 109, subpart C applicable to hazmat emergency orders issued by all DOT modes would be added.

Subpart G provides the rules of practice in FAA civil penalty actions. Just as with subpart D, proposed amendments to subpart G would include recognition of the FAA's Office of Adjudication, the use of mediation as an ADR procedure, and the addition of fax and email for filing and service. The rule would eliminate the current provision that provides five additional days in which to act or respond after service by mail. The FAA also proposes codifying the current practice of treating timely petitions for reconsideration of administrative law judge (ALJ) initial decisions as appeals to the FAA decisionmaker. Additionally, this proposal would require a party applying for a subpoena to make a showing of the general relevance and reasonable scope of the evidence sought by the subpoena. Other proposed changes would codify existing practices and create consistency within subpart G.

The FAA concludes that this proposed rule is a minimal cost rule based on the potential for minimal costs and minimal cost savings.

II. Background

A. Statement of the Problem

The majority of the rules in part 13 were last amended a decade or more ago. Since then, there have been a number of statutory, organizational, and technological changes such that part 13 requires updating. The last rulemaking affecting part 13 was published in 2014 and added informal conference procedures to § 13.20. Orders of Compliance, Cease and Desist Orders, Orders of Denial, and Other Orders, 79 FR 46964, August 12, 2014. Over the last two decades there have been a number of changes and updates to the statutes cited in part 13, but the majority of these statutory references have not been updated. This rulemaking would update these statutory references to ensure that regulated parties have current and accurate information regarding the FAA's statutory authority.

The last rulemaking that amended part 13 for organizational updates was published in 2005. Rules of Practice in FAA Civil Penalty Actions, 70 FR 8236, February 18, 2005. Since then the FAA's Office of the Chief Counsel has undergone various organizational changes that are not reflected in part 13. Updates are necessary to reflect revised position titles and the creation of new offices within the Office of the Chief Counsel. For example, the FAA's Litigation Division was recently reorganized and the advisory function in civil penalty matters was transferred from the Assistant Chief Counsel for Litigation to the Director of the newly created Office of Adjudication. The Office of the Chief Counsel also has new deputy chief counsel positions: Principal Deputy Chief Counsel, Deputy Chief Counsel for Business Operations,

and Deputy Chief Counsel for Employment Law, Litigation, and Administration. Additionally, the following position titles referenced throughout part 13 no longer exist: The Deputy Chief Counsel for Operations, the Deputy Chief Counsel for Policy and Adjudication, and the Deputy Chief Counsel for Europe, Africa and the Middle East Area Office. Proposed amendments would reflect these organizational changes to ensure that regulatory references to separation of functions, delegations of authority, and service and filing address information reflect the current structure of the Office of the Chief Counsel.

Additionally, many provisions in part 13 are antiquated. For example, fax and electronic filing, which have been adopted by most courts and by many administrative bodies, are not provided for in FAA administrative proceedings under part 13. Adoption of fax and email filing and service provisions in this rulemaking would make these administrative proceedings more efficient, expeditious, and cost-effective.

Similarly, there is wide-spread growth in federal courts and agencies' use of ADR as a cost-effective and time-efficient option for resolving matters or narrowing issues. However, ADR is not currently mentioned as an option for resolving enforcement matters under part 13. Under this proposal, regulated persons would have the opportunity to resolve matters or narrow issues in subparts D and G proceedings in an informal and cost-effective manner through ADR.

In some instances, the rules do not adequately capture procedures and practices in part 13 that have evolved or been refined since the rules were last amended. For example, in civil penalty proceedings the practice of filing documents with the FAA Hearing Docket and also serving the ALJ is generally required by ALJ prehearing orders. Serving the ALJ with documents, however, is not currently reflected in the part 13 rules. Additionally, in civil penalty proceedings, the FAA decisionmaker has treated motions for reconsideration of an ALJ's initial decision, order dismissing a complaint, order dismissing a request for hearing, or order dismissing a request for hearing and answer as notices of appeal to the FAA decisionmaker. This practice is not currently addressed in the part 13 rules. Codification and clarification of these current practices would help ensure the public is on notice of such developments.

The FAA proposes adding a new administrative appeal process for emergency orders to which § 13.20 applies. Through this process, the Administrator's interest in responding to a condition that poses an immediate threat to public safety would be balanced with the interest of subjects of these emergency orders in a meaningful post-deprivation administrative process. Currently, the only recourse for litigating such an order is a direct appeal under 49 U.S.C. 46110 to a U.S. court of appeals, which means that the subject of such an order is not afforded an opportunity to develop a record through the administrative process before court of appeals review. This could have negative consequences such as a remand of the matter to the agency to develop the record, resulting in further delay, or a court of appeals decision on an inadequately developed record.

The FAA proposes amending part 13, subparts C and D, to provide an opportunity for an expedited administrative hearing before a Hearing Officer followed by an expedited appeal to the FAA decisionmaker through the issuance of a notice of proposed action that would allow for such process simultaneously with a time-limited emergency order for the matter. This process would be consistent with the Administrator's existing authority to issue indefinite emergency orders of suspension as well as the Administrator's existing authority to issue notices of proposed action.

Finally, the piecemeal and siloed development of the part 13 enforcement procedures and rules of practice in agency enforcement proceedings since 1979 has resulted in a lack of uniformity across the various rules and subparts in part 13. Many of the proposed amendments are intended to harmonize the rules of practice in agency enforcement proceedings. Other amendments would update, reword, and reorganize provisions. These changes are intended to eliminate the potential for confusion, for practitioners' ease of use, and to improve the rules' readability for regulated persons.

B. History

The FAA's investigative and enforcement procedures in part 13 were codified on November 5, 1979. The procedures developed unsystematically throughout the 1980s and 1990s, with piecemeal revisions to the various subparts in part 13. Major amendments in 1988 included the broadening of the investigative and enforcement procedures to airport-related actions and the development of detailed procedures for statutorily required on-the-record hearings in civil penalty actions. In the early 1990s the civil penalty provisions were revised to incorporate procedural changes made by the aviation community and the Committee on Adjudication of the Administrative Conference of the United States, update the designation of advisors to the FAA decisionmaker, and test a program recommended by the Vice President's National Performance Review designed to streamline the procedures used to process certain civil penalty enforcement actions. In the latter half of the 1990s, part 13 was amended to update statutory references and delegations of authority in the rules, and to reflect organizational changes that occurred in the agency.

Most of the part 13 revisions made over the last two decades have continued to focus on the civil penalty assessment procedures and rules of practice in FAA civil penalty actions contained in subparts C and G of part 13. In 2004, part 13 was amended to reflect the National Transportation Safety Board's (NTSB) new jurisdiction to review the FAA's administrative civil penalty actions against individuals acting as pilots, flight engineers, mechanics, or repairmen. In 2006, part 13 was amended again to update the procedural regulations governing the agency's administrative assessment of civil penalties for violations of certain provisions of the Federal aviation and hazardous materials statutes to reflect statutory updates.

The latest amendments to part 13, not including statutorily mandated civil penalty inflation adjustments, were codified in 2014. The revisions added fairness and additional process in subpart C by providing recipients of notices of proposed orders of compliance, cease and desist orders, orders of denial, and other orders issued under § 13.20 with the opportunity to partake in an informal conference with an FAA attorney prior to the issuance of such orders.

III. Discussion of the Proposal

The FAA proposes to revise subparts A through G of part 13. These provisions set forth procedural rules governing investigations and enforcement actions taken by the FAA.

The FAA proposes substantive amendments to subparts C, D, E, and G. In addition, the FAA proposes certain miscellaneous non-substantive changes throughout part 13. For example, the FAA proposes updating position title references throughout to reflect organizational changes in the Office of the Chief Counsel as well as updating office addresses and outdated statutory and regulatory references. Other proposed non-substantive amendments

include changes to improve readability and clarity such as grammatical corrections, sentence restructuring, section reorganization, topical consolidation of like requirements, and removal of redundant requirements.

A. Subpart A—General Authority To Re-Delegate and Investigative Procedures

Subpart A (current § 13.1 through 13.7) contains the regulations covering reports of violations made to the FAA, FAA powers and delegations in conducting investigations, formal complaints to the FAA regarding violations of FAA statutes or regulations, and the use of records required to be kept by FAA regulations in investigations. There are no substantive changes to current §§ 13.1 and 13.7.

Re-Delegation (§ 13.1)

Current § 13.1 on reports of violations would be renumbered as § 13.2. The FAA would replace the requirements in current § 13.1 with a re-delegation provision applicable to the whole of part 13. Currently, delegation provisions are located throughout part 13 but do not mention existing re-delegation authority. The Administrator and the Chief Counsel may each re-delegate the authority they receive as well as authorize successive re-delegations of that authority.[1] The proposed amendment would explicitly state that this power to re-delegate exists.

Reports on Violations (§ 13.2)

Proposed § 13.2 would contain the same requirements as current § 13.1. The FAA proposes revising this section by updating the statutory references and simplifying the language for readability.

Investigations (General) (§ 13.3)

Section 13.3 addresses the Administrator's powers related to investigations. Current § 13.3(b) sets forth the delegation of the Administrator's investigatory authority. This language is unnecessarily complex. The FAA proposes new delegation language for § 13.3(b) that is easier to understand.

Proposed § 13.3(c) consolidates authority delegated to several counsel positions in current § 13.3(b) and (c) and changes the delegates to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement. This is consistent with changes in organization and responsibilities within the FAA since part 13 was last amended. Proposed § 13.3(c) also describes the authority granted by the statutes cited in current § 13.3(b) rather than citing the statute.

Formal Complaints (§ 13.5)

Under § 13.5, any person may submit a formal complaint to the FAA alleging that a person has violated an FAA-related statute, rule, regulation, or order.

Proposed revisions to § 13.5(b)(2) and (i) would update the mailing address and docket location to reflect the division within the Office of the Chief Counsel currently responsible for handling formal complaints.

Proposed § 13.5(d) would clarify the method of forwarding complaints by requiring the copies of complaints sent by the FAA to the subjects of complaints to be sent by certified mail.

The FAA proposes removing current § 13.5(e), which addresses complaints filed against members of the armed services as set forth in current § 13.21. This section is no longer necessary, as the FAA proposes to remove § 13.21. Proposed § 13.5(f) would clarify that it is optional for the subject of a formal complaint to submit an answer and clarify that the date of service of the complaint on a subject is the date of mailing. The current regulation could be read as mandating the filing of an answer. While an answer can be beneficial to both the subject of a complaint and the FAA as it considers a formal complaint, it is not the FAA's intent to require a subject to file an answer. Also, the current regulation does not define date of service. To prevent confusion, the FAA is proposing to define it as the date of mailing.

B. Subpart B—Administrative Actions

Subpart B (current § 13.11) allows the Administrator to take administrative action rather than legal enforcement action if an investigation uncovers a violation or apparent violation. It also describes what constitutes an administrative action. The FAA proposes updating the statutory references and simplifying the language for readability, without changing the requirements of this section.

C. Subpart C—Legal Enforcement Actions

Subpart C (current § 13.13 through 13.29) describes the Administrator's authority to take different kinds of legal enforcement actions, including certificate actions, civil penalty actions, orders of compliance, cease and desist orders, aircraft seizures, and injunctions. It also explains how the different types of legal enforcement actions are initiated as well as how persons subject to those actions can respond to them.

The FAA proposes several substantive changes to this subpart. Primarily, unnecessary restatements of the Administrator's statutory authority to take legal enforcement action would be removed and new procedures would be added in § 13.20 to allow for an administrative appeal of emergency orders covered by that section.

Consent Orders (§ 13.13)

Section 13.13 allows for the resolution of any legal enforcement action mentioned in subpart C through a consent order.

In § 13.13(a), the FAA proposes updating the text to identify who specifically may issue a consent order, consistent with the reorganization of the Office of the Chief Counsel. Current § 13.13(a) states that a consent order may be issued ''at any time before the issuance of an order under this subpart.'' Proposed § 13.13(a) would remove this text to make clear that consent orders may be issued at any time, not just before an order is issued. This change would allow for greater flexibility for both the FAA and opposing parties when settling cases through consent orders.

A person who may be subject to legal enforcement action can propose a consent order, but it must contain the items listed in § 13.13(b). The existing introductory text is passive as to who can propose a consent order and would be rewritten to clarify that it is the person subject to the notice. As part of this clarification, existing § 13.13(b)(1) would be removed as it is duplicative of what is in the introductory text and current § 13.13(b)(2) would be redesignated as § 13.13(b)(1). The proposed rule would add an express waiver of attorney's fees and costs as an item that must be included with a proposed consent order. The proposed rule would also expand current § 13.13(c) (integrated in § 13.13(b)(5) as part of the proposal) to require withdrawal of any request for hearing or appeal in any forum; the current rule only mentions hearings under subpart D of part 13. This expansion is consistent with long-standing FAA practice that when settling a case (such as through a consent order) all requests for hearing or appeals in that case must be withdrawn, regardless of the forum.

Section 13.13(b)(2) (redesignated as § 13.13(b)(2)) would be amended to clarify that the waiver of review that must be in a proposed consent order covers any form of legal review including administrative processes as well as judicial review in Federal court.

[1] 49 CFR 1.81a (Administrator); FAA Order 1150.154A, ¶ 7.b (Chief Counsel).

Finally, § 13.13(b)(4) would be amended to reflect that a consent order may be issued after an order by stating that a notice or order may be incorporated by reference into the consent order and used to construe the consent order if it was issued prior to the consent order.

Civil Penalties: General (§ 13.14)

Section 13.14 lays out the authorities under which a person may be subject to a civil penalty. These authorities include not only the statutes themselves, but also any rule, regulation, or order promulgated under those statutes. Finally, it points to the minimum and maximum civil penalty amounts in subpart H of part 13 and mentions that they are periodically adjusted for inflation. The FAA proposes to delete this section because it is an unnecessary restatement of statutory authority. Also, current paragraph (c) is unnecessary and would be removed because subpart H of part 13 addresses the maximum and minimum civil penalties and inflation adjustments in detail.

Civil Penalties: Other Than by Administrative Assessment (§ 13.15)

When the FAA seeks to assess a civil penalty but the amount in controversy exceeds the statutory limits of its authority to administratively assess a penalty, § 13.15 applies. Under this section, the FAA sends a civil penalty letter to the person charged with a violation. The letter describes the charges, applicable law, and an amount the FAA would accept in compromise of the action.

The proposal includes amendments to § 13.15(b) and (c)(1) to reflect the current organizational structure of the Office of the Chief Counsel. Additionally, the proposal would eliminate references in § 13.15(b) to December 12, 2003 as obsolete because the statute of limitations for imposing a civil penalty for a violation before December 12, 2003 has run.[2]

The proposal would combine paragraphs (c)(2), (3), and (4) into new paragraph (c)(2), which would identify the options for responding to a civil penalty letter and adding the option to request an informal conference to discuss the case. Proposed § 13.15(c)(2)(i) would also allow a person to submit an electronic payment in the amount offered by the Administrator in the civil penalty letter, to reflect the FAA's current practice. The option in current § 13.15(c)(3) and (4) to submit a certified check or money order in an amount other than that proposed in the civil penalty letter as a compromise offer would be removed, as this option is not required by statute, was rarely used, and was an inefficient means of settling cases.

Civil Penalties: Administrative Assessment Against a Person Other Than an Individual Acting as a Pilot, Flight Engineer, Mechanic, or Repairman. Administrative Assessment Against All Persons for Hazardous Materials Violations (§ 13.16)

Currently, section 13.16 addresses administrative assessments of civil penalties against persons who are not acting as a pilot, flight engineer, mechanic, or repairman for violations cited in the first sentence of 49 U.S.C. 46301(d)(2), or in 49 U.S.C. 47531, or any implementing rule or order. It also covers civil penalties against all persons who violate hazmat laws, *i.e.,* 49 U.S.C. chapter 51 or a rule or order issued under that chapter.

The FAA proposes the following updates to § 13.16:

- Update all regulatory and statutory cross references.
- Remove obsolete references to December 12, 2003 from § 13.16(b) for the same reasons as the removal of this date from § 13.15.
- Move the delegation of authority, currently in § 13.16(e), to § 13.16(d) and update the delegation to reflect reorganization of the Office of the Chief Counsel. Consistent with the existing delegation of authority in § 13.16, the Chief Counsel would not be included because the Chief Counsel advises the Administrator when the Administrator acts as the FAA decisionmaker reviewing civil penalty actions under this section and § 13.18 on appeal.
- Redesignate § 13.16(d), describing when an order assessing a civil penalty may be issued and what counts as an order assessing a civil penalty, as § 13.16(e) without substantive change.
- Amend § 13.16(g) to eliminate the requirement for a company or corporation to designate in writing an agent to receive a final notice of proposed civil penalty because this option is provided for in proposed (and current) § 13.16(f) for notices of proposed civil penalty. A notice of proposed civil penalty would always be issued before a final notice of proposed civil penalty, so including it in both § 13.16(f) and (g) is unnecessary duplication.
- Remove the last sentence of current § 13.16(i), as well as most of current § 13.16(j), as the issues discussed there would be addressed in proposed subpart G.
- Redesignate current § 13.16(k) as § 13.16(l) with revisions to clarify how a person could pay a civil penalty as well as the due date for the payment, along with adding an option for electronic payment.
- Redesignate current § 13.16(l) and (m) as § 13.16(m) and (k), respectively.
- Delete the reference to 49 U.S.C. 46303(b) from § 13.16(n) as that paragraph falls under the authority of the Secretary of Homeland Security.

Seizure of Aircraft (§ 13.17)

Currently, § 13.17 describes how the Administrator exercises his authority to seize aircraft under 49 U.S.C. 46304. The FAA proposes two amendments to this section. In § 13.17(a), ''operator'' would be changed to ''the individual commanding the aircraft'' because the latter phrase is found in the statute which provides the authority for § 13.17 and the term ''operator'' appears to expand the agency's authority in this area beyond that intended by the statute.

''Operate'' is defined in 14 CFR 1.1 as to ''use, cause to use, or authorize to use aircraft, for the purpose . . . of air navigation including the piloting of aircraft.'' Thus an ''operator'' under this definition includes persons other than individuals, *e.g.,* an air carrier. In practice, the FAA applies § 13.17 consistent with the more narrowly construed statutory authority for aircraft seizure, limiting the scope of the provision to individuals. Accordingly, this amendment would harmonize the regulatory language with both the statute and FAA practice.

Section 13.17(c)(4)(ii) would be amended to make clear that an aircraft may be seized for administratively assessed civil penalties, not only those imposed by a Federal court.

Civil Penalties: Administrative Assessment Against an Individual Acting as a Pilot, Flight Engineer, Mechanic, or Repairman (§ 13.18)

Section 13.18 governs civil penalties administratively assessed against individuals acting as a pilot, flight engineer, mechanic, or repairman. The agency proposes the following amendments:

The delegation of authority in § 13.18(c) would be amended to reflect the current organizational structure of the Office of the Chief Counsel. Additionally, § 13.18(d) would be amended to include more detail regarding the options for responding to a notice, consistent with proposed § 13.16(f). Section 13.18(h) would also be amended to specify what constitutes a final decision or order so as to correspond with the analogous judicial review provision in § 13.16(k). In the same way, § 13.18(i) would be amended to specify when and how a compromise may proceed and thus match the analogous compromise provision in proposed § 13.16(n).

[2] 28 U.S.C. 2462.

Certificate Actions Appealable to the National Transportation Safety Board (§ 13.19)

Section § 13.19 describes the authority under which the Administrator may take certificate action. It also describes when and how the Administrator must provide notice before issuing an order under this authority. The proposed rule would remove unnecessary references to the FAA's statutory authority to act while clarifying how persons can respond to a notice or appeal an order. Statutory citations need not be listed in the regulatory text for the agency to exercise its authority under such statutes. However, § 13.19 would retain descriptions of the FAA's authority to issue immediately effective (*i.e.,* emergency) orders.

Proposed § 13.19(a) contains a general description of the Administrator's authority to take certificate action, which provides the basis for the regulations pertaining to the issuance of notices and orders that make up the rest of this section.

The content of a notice of certificate action and the ways a person may respond to a notice for non-emergency actions are contained in proposed § 13.19(b). It retains the substance of current § 13.19(c) and the floating paragraph that follows as to these areas, but has been restructured and reworded for consistency with similar provisions, *e.g.,* current (and proposed) §§ 13.18(d) and 13.16(f). This restructuring would also make new § 13.19(b) easier to understand than current § 13.19(c) and the floating paragraph that follows, which are both difficult to parse and difficult to relate to the rest of current § 13.19(c).

Proposed § 13.19(b) also resolves a conflict between current § 13.19(d) and 49 U.S.C. 44106. Current § 13.19(d) appears to exclude all orders affecting a certificate of registration, including orders issued under 44106, from being appealed to the NTSB. However, 49 U.S.C. 44106 explicitly provides for appeals on the merits of 44106 actions to the NTSB. Therefore, proposed § 13.19(b)(2)(iv) would clarify that orders issued under 44106 are appealable to the NTSB.

The FAA proposes removing current § 13.19(d) because it unnecessarily repeats statutory authority on appealing applicable orders on the merits as well as when their effectiveness is stayed on appeal (49 U.S.C. 44709 and 44106).

Proposed § 13.19(c) states that a person affected by the immediate effectiveness of an emergency order issued under 49 U.S.C. 44709 may petition the NTSB for review of the underlying emergency determination. The appeal of an emergency determination is mentioned in the NTSB's rules of practice, but is not currently mentioned in part 13. It is being added so that persons affected by emergency orders under 44709 are aware they may seek review of the emergency determination separately from the merits of the order.

Proposed § 13.19(d) states the three bases for an emergency order where the determination that an emergency exists cannot be appealed to the NTSB, even though the merits of the emergency order can be appealed to the NTSB. These three bases correspond to actions taken under 49 U.S.C. 44710, 44106, and 44726, respectively. In these cases, a separate appeal of the emergency determination must be made to a U.S. court of appeals.

Orders of Compliance, Cease and Desist Orders, Orders Of Denial, and Other Orders (§ 13.20)

Orders of compliance, cease and desist orders, orders of denial, and certain other orders have a different notice and appeal process than what is outlined in § 13.19; those orders are addressed in § 13.20.

Proposed § 13.20(a) would reorganize current § 13.20(a), update the statutory references to cite title 49, and make clear to which orders § 13.20 does and does not apply for purposes of providing FAA administrative hearings under subpart D. For example, § 13.20(a)(4) would make clear that orders issued under 49 U.S.C. 44105 fall under § 13.20 process. Proposed § 13.20(a)(5) would serve as a catch-all for any other orders where administrative process can be but is not otherwise explicitly provided.

Proposed § 13.20(b) would incorporate the requirement in current § 13.20(b) to provide notice in non-emergency cases (*i.e.,* cases where the order is not immediately effective) as well as specifically identify which procedures govern non-emergency versus emergency cases.

Proposed § 13.20(c) would integrate current § 13.20(c), (d), and (e) regarding notice of an action, deadline and options for responding to a notice (including requesting a hearing), and the consequences of failing to timely request a hearing.

The FAA also proposes adding an additional response option in § 13.20(c)(ii) allowing a recipient of a notice to agree to the issuance of an order as proposed in the notice of proposed action, with the understanding that the person choosing this option waives any right to contest or appeal the agreed-upon order issued under this option in any administrative or judicial forum. This parallels similar provisions in §§ 13.16(f)(1), 13.16(g)(2)(ii), 13.18(d)(1), and 13.19(b)(2)(i) describing what happens if a recipient accepts the civil penalty or other sanction proposed in a notice. It also makes clear that by agreeing to the order, the recipient is waiving his right to appeal it.

The FAA additionally proposes adding an expedited administrative process for the subjects of orders to which § 13.20 applies in proposed §§ 13.20(d) and 13.67. Currently, part 13 does not provide for an expedited administrative process for orders referenced in § 13.20 where the Administrator finds that an emergency exists and makes an order immediately effective.

The Administrator is authorized to issue orders to carry out the FAA's safety mandate under 49 U.S.C. 40113(a), and to order the immediately effectiveness of such orders under 49 U.S.C. 46105(c) when an emergency exists. Under 49 U.S.C. 46110, U.S. courts of appeals have exclusive jurisdiction over appeals of orders issued by the Administrator unless there is an administrative process that by statute requires exhaustion, as in 49 U.S.C. 44703, 44709, 44710, 44726, and 46111. Accordingly, subjects of some final orders do not have an opportunity to have the matter administratively adjudicated before court review.

The Administrator's use of emergency authority is critical when conditions require the cessation of conduct that poses an immediate threat to public safety. Due to the absence of administrative adjudication provisions for emergency orders to which § 13.20 applies, the subjects of such orders do not currently have the opportunity to develop a record through the administrative process, including the opportunity to conduct discovery, offer evidence, present testimony, and cross-examine witnesses. The record for court review would generally consist of materials compiled by the FAA as the basis for the FAA's emergency action. Courts of appeals have no predictable mechanism for a petitioner to submit evidence or testimony to add to the record. While a court of appeals could remand a case to the FAA for proceedings to further develop the record in a case, part 13 does not currently define what those administrative proceedings would entail. Filing a petition for review only to have it remanded to the agency is an inefficient use of both the petitioner's

and the agency's time and money. Further, a court's review of an underdeveloped record necessitating a remand is an unnecessary expenditure of resources that can be avoided if the agency provides an opportunity for the parties to develop the record during less costly and more efficient informal administrative proceedings. In fact, the proposed procedures could provide an expeditious resolution of a matter that may obviate court review.

The proposed emergency procedure in § 13.20(d), and corresponding process for expedited hearings in § 13.67, balance the Administrator's interest in responding to a condition that poses an immediate threat to public safety through the agency's emergency authority and the interest of a subject of an emergency order to which § 13.20 applies in a meaningful post-deprivation administrative process. Section 13.20(d) would provide for the issuance of a time-limited (or temporary) emergency order simultaneously with a notice of proposed action. Both the temporary emergency order and notice of proposed action would set forth the same charges forming the basis for the action. The order would expire 80 days after the date of its issuance, but the notice would not be time-limited.

The subject of the temporary emergency order could seek court review of the order under 49 U.S.C. 46110. As a practical matter, the temporary emergency order is akin to an immediately effective injunction ceasing conduct that poses an immediate safety threat, and an appeal from the order would likely consist of a petition to stay the effectiveness of the order given its short duration. Meanwhile, the subject of the action could request expedited administrative review of the notice, which would include a hearing before a Hearing Officer and an appeal of the Hearing Officer's decision to the Administrator governed by procedures in proposed § 13.67, which sets forth time limits allowing for the completion of the administrative process before the expiration of the temporary emergency order.

The process proposed in §§ 13.20(d) and 13.67 is consistent with the Administrator's existing authority and practice. The Administrator issues emergency orders under 49 U.S.C. 46105(c), including indefinite emergency orders to address a person's failure to comply with a statutory or regulatory requirement or cooperate with the FAA. The Administrator also has authority to seek mandatory or prohibitive injunctive relief in accordance with the procedures at 14 CFR 13.25. Further, the Administrator issues notices of proposed action and provides administrative processes related to such notices. While proposed § 13.20(d) and § 13.67 provide a new expedited administrative review for matters to which § 13.20 applies, expedited subpart D proceedings are not new, as current subpart E uses subpart D procedures for appeals of hazardous materials emergency orders of compliance issued under existing § 13.81(a).[3] Accordingly, these new provisions create no novel issues. Rather, these new provisions use existing processes—albeit modified—to achieve the mutually beneficial results previously discussed.

Finally, proposed § 13.20(e) updates the delegation of the authority of the Administrator to reflect the current organizational structure of the Office of the Chief Counsel.

Current § 13.20 (f) through (m) would be removed, as their subject matter would be moved to proposed subpart D, which would govern hearings requested under § 13.20.

Military Personnel (§ 13.21)

Section 13.21 addresses violations by members of the Armed Forces or civilian employees of the Department of Defense. This provision was intended to reflect the self-implementing language in 49 U.S.C. 46101(b). Section 46101(b) requires the Secretary of Transportation or the Administrator to refer a complaint against a member of the armed forces to the Department of Defense. It further requires the Department of Defense to provide information to the Secretary of Transportation or the Administrator regarding the action taken on the complaint no later than 90 days after receiving the complaint.

Currently, § 13.21 is an incomplete representation of section 46101(b) because the language in this section is not consistent with the statute and it does not include the requirement for the Department of Defense to provide information on the referred complaint. However, given that this provision is not necessary to implement the statutory requirements in section 46101(b) and does not include any requirements on regulated persons, the agency proposes to remove this section, thereby eliminating the inconsistency between the regulation and the statute. Removing this section from the FAA's regulations does not affect the substance of section 46101(b), which remains in effect.

Criminal Penalties (§ 13.23)

Section 13.23 identifies criminal penalties for statutory violations and the method by which FAA employees report criminal violations. The FAA proposes to remove this section because it does not impose any requirements on regulated persons. The method by which FAA employees report criminal violations is appropriately addressed through internal agency procedures.

Injunctions (§ 13.25)

Injunctions are addressed in § 13.25. The FAA proposes to remove this section as unnecessary. The authority to seek an injunction is already provided by statute. The FAA's process for seeking an injunction is a matter best addressed through internal agency procedures.

Final Order of Hearing Officer in Certificate of Aircraft Registration Proceedings (§ 13.27)

As final orders of Hearing Officers regarding aircraft registration proceedings would be addressed in proposed subpart D, § 13.27 would be removed and reserved.

Civil Penalties: Streamlined Enforcement Procedures for Certain Security Violations (§ 13.29)

The FAA proposes to remove and reserve § 13.29 because proceedings for security violations currently fall under the TSA's authority.

D. Subpart D—Rules of Practice for FAA Hearings

Subpart D (current §§ 13.31 through 13.63) currently provides the rules of practice applicable to FAA hearings requested in accordance with §§ 13.19(c)(5), 13.20(c)(3), 13.20(d), 13.75(a)(2), 13.75(b), or 13.81(e). This rulemaking proposes to consolidate, reorganize, and update the rules of practice applicable to subpart D hearings.

Applicability (§ 13.31)

Section 13.31 currently uses cross references within part 13 to explain when subpart D hearings may be requested. The FAA proposes removing the cross-reference to 13.81(e) to reflect that subpart D hearings are no longer an option in appeals of hazmat emergency orders issued under current § 13.81. The formal hearing requirements in 49 CFR part 109, published in 2011, superseded the option for subpart D hearings in

[3] This rulemaking proposes removing the current regulations regarding appeals of hazmat emergency orders of compliance in subpart E because 49 CFR part 109 now governs them. *See* discussion of proposed § 13.81(a).

such matters.[4] Additionally, the amendment would remove the cross-reference to § 13.19(c)(5), as the contents of this provision would be moved to proposed § 13.20. The current cross-references to § 13.20(c) and (d) would be streamlined to cite § 13.20, as would the current cross-references to § 13.75(a)(2) and (b), to cite § 13.75. Subpart D hearings, therefore, would be limited to review of orders as described in proposed § 13.20, and non-emergency hazmat orders of compliance described in proposed § 13.73.

Further, to clarify the current applicability of the subpart and to reflect organizational changes, as set forth in FAA Order GC 1100.170, effective January 3, 2017 (available at *http://www.faa.gov/regulations_policies/orders_notices/*), the FAA proposes to state expressly that hearings under subpart D would be considered informal adjudications, and that the FAA's Office of Adjudication would provide subpart D proceedings.

Parties, Representatives, and Notice of Appearance (§ 13.33)

Current § 13.33 provides that any party may appear and be heard in person or by an attorney. The provision does not define any relevant terms pertaining to appearances or representation in subpart D hearings, and it does not provide the process by which a representative of a party enters an appearance.

The FAA proposes amending § 13.33 to identify and define the parties to a proceeding in order to ensure clarity in subsequent sections. The FAA also proposes to provide a process for designating representatives, explaining that a party must file a notice of appearance that includes the representative's name and contact information, and that the notice may be incorporated into an initial filing, but subsequent notices by additional representatives or substitutes must be filed independently. Changes to representation do not require filing an amended pleading. Instead, a party may file a notice of appearance with the FAA Hearing Docket and serve it on the other parties.

Request for Hearing, Complaint, and Answer (§ 13.35)

Section 13.35 presently provides the process for filing an initial request for hearing and pleading documents with the FAA Hearing Docket, including that a party must file an answer with the request for hearing, prior to the filing of the complaint. The order of these initial filing requirements distinguishes current subpart D procedures from those of other administrative bodies that the FAA practices before, including the NTSB (49 CFR part 821), as well as initial pleading procedures before Federal courts. In those forums, the filing of an answer occurs after the filing of a complaint.

The FAA proposes to align the subpart D initial pleading processes with more traditional initial pleading processes that are also employed by the NTSB by removing the requirement in § 13.35(b) and (c) that an answer must be filed concurrently with the request for hearing. Instead, proposed § 13.35(b) would require the FAA to file a complaint within 20 days after an affected party serves the FAA with a copy of a request for hearing. Proposed § 13.35(c) would require the party who requested the hearing to file an answer to the complaint within 30 days after service of the complaint. The proposed amendment, consistent with Rule 8 of the Federal Rules of Civil Procedure and § 13.209(e) in subpart G, would specify that all allegations in the complaint not specifically denied in the answer are deemed admitted.

The proposal would also reorganize subpart D procedures by moving the filing and service information currently found in § 13.35 to § 13.43, which provides general filing and service instructions for all documents. The FAA also proposes consolidating the instructions for filing a request for hearing from two paragraphs ((a) and (b)), to one paragraph (a), without substantive change.

Hearing Officer: Assignment and Powers (§ 13.37)

Section 13.37 currently provides a list of the Hearing Officer's powers without providing how or when a Hearing Officer is assigned. The proposed amendments to this section would provide how and when Hearing Officers are assigned, specifying that the Director of the Office of Adjudication would assign a Hearing Officer to preside over the matter as soon as practicable after the filing of a complaint. The proposed amendment would also clarify § 13.37(h) by explaining that in addition to regulating the course of a hearing, a Hearing Officer may generally regulate the course of proceedings, including but not limited to discovery, motions practice, imposition of sanctions, and the hearing, which is consistent with current practice. The proposed amendment to § 13.37(k) would specify that a Hearing Officer may issue protective orders governing the exchange and safekeeping of information otherwise protected by law, except that national security information[5] may not be disclosed under such an order. Proposed § 13.37(l) would address the remaining Hearing Officer's powers currently provided in § 13.37(k). Finally, the amendment would add § 13.37(m) explaining that a Hearing Officer may take any other action authorized in subpart D.

Separation of Functions and Prohibition on Ex Parte Communications (§ 13.41)

The FAA proposes to add a new § 13.41, pertaining to separation of functions and ex parte communications. Proposed § 13.41 would ensure separation between the hearing and appellate functions in the Office of Adjudication by prohibiting a Hearing Officer from participating in any appeal to the Administrator, so as to instill public confidence in the process.

Proposed § 13.41 also establishes procedural safeguards against ex parte communications to ensure that decisions by the Hearing Officer and the Administrator are based on the agency record. However, an event scheduled with prior notice would not be considered a prohibited ex parte communication even if a party failed to appear, respond or participate, and would be permitted to proceed in the Hearing Officer's sole discretion. Further, proposed § 13.41(c) would provide that under subpart D appeals to the Administrator from a Hearing Officer's order, FAA attorneys representing the complainant are not permitted to advise the Administrator or engage in substantive ex parte communications with the Administrator or with the Administrator's advisors.

Service and Filing of Pleadings, Motions, and Documents (§ 13.43)

Currently, § 13.43 provides the service and filing rules for pleadings, motions, and other documents filed under subpart D. It does not, however, address service of requests for hearings nor does it provide the filing address for the FAA Hearing Docket. Additionally, § 13.43

[4] *See* 49 U.S.C. 5121(d)(3) (requiring formal review procedures under 5 U.S.C. 554) and the final rule implementing the requirements, Hazardous Materials: Enhanced Enforcement Authority Procedures, 76 FR 11570, March 2, 2011.

[5] The term ''national security information'' in amended § 13.37(k) is interpreted consistently with existing executive orders governing this information. For example Executive Order 13526, 75 FR 707, 728–29, January 5, 2010, defines ''national security'' and ''information'' as any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, is produced by or for, or is under the control of the United States Government pertaining to the national defense or foreign relations of the United States.

only provides for service by personal delivery or mail.

Proposed § 13.43(b) would add the options of filing with the FAA Hearing Docket by fax or email. Filing in person, by expedited courier service, or by U.S. mail would continue as currently provided. Proposed § 13.43(c) would contain the physical addresses for filing documents. It would also state that the email and fax number for the FAA Hearing Docket would be on the Office of Adjudication website.[6] Proposed § 13.43(d) would provide the number of originals or copies that must be filed depending on the method of service. Instructions for filing by email would be given in proposed § 13.43(e).

Proposed § 13.43(f) would reflect the permissible methods of service on parties. Service by personal delivery or mail would continue as currently provided. The amendment would permit service by email or fax, though email service would require the prior consent of the person to be served and allow consent to be withdrawn in writing.

Additionally, proposed § 13.43(g) would provide the certificate of service requirements currently in 13.43(c), as amended to address service by fax or email and the requirement that the certificate must be signed, describe the method of service, and state the date of service.

Finally, the proposed reorganization would move the ''date of filing'' and ''date of service'' definitions from paragraphs (d) and (e) to proposed paragraph (h). The proposal would further provide that the date of filing/service is determined depending on the method of filing/service used, which is consistent with common practice. If a document is filed/served by fax or email, the date of filing/service would be the date the email or fax is sent. If a document is filed/served by personal delivery or by expedited courier service, the date of filing/service would be the date that delivery is accomplished. If a document is mailed, the date of filing/service would be the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

Computation of Time and Extension of Time (§ 13.44)

The FAA proposes moving the provisions currently in 13.44, describing how to compute time periods proscribed under subpart D and procedures for requesting extensions of time, to section 13.45. Section 13.44 would be removed and reserved for future use in order to follow the general numbering scheme proposed for subpart D.

Computation of Time and Extension of Time (§ 13.45)

In place of current § 13.45, the FAA proposes adding the general computation of time provision and extension of time provision currently in § 13.44.

Proposed § 13.45(a) would contain the provision for computing time that is currently in § 13.44(a), removing extraneous language that is confusing, without any substantive change. The reference in current § 13.44(a) to ''legal holiday for the FAA'' would be updated in proposed § 13.45(a) to ''Federal holiday'' which has the same meaning, but is more easily understood by the general public.

Proposed § 13.45(b) and (c) would contain the requirements for requesting extensions of time previously provided in § 13.44(b). The FAA proposes to amend these requirements to distinguish between extension requests that the parties agree on, and those they do not agree on, which are not distinguished in current § 13.44(b). This proposed distinction would decrease the burden on parties making joint requests for extensions or unopposed requests for extensions, by not requiring parties making those requests to show good cause for the extension to be granted. Proposed § 13.45(b) would provide that parties may agree to extend the time for filing any document required by this subpart, with the consent of: (1) The Director of the Office of Adjudication, prior to the designation of a Hearing Officer; (2) the Hearing Officer, prior to the filing of a notice of appeal; or (3) the Director of the Office of Adjudication, after the filing of a notice of appeal. Proposed § 13.45(c) would provide that if the parties do not agree, a party may make a written request to extend the time for filing to the appropriate official listed in § 13.45(b), who could grant the request for good cause shown.

Withdrawal or Amendment of the Complaint, Answer or Other Filings (§ 13.47)

Section 13.47 provides for withdrawal of the notice or a request for hearing. The proposed amendment to § 13.47 would retain the existing withdrawal provision and substitute ''complainant'' and ''respondent'' as defined in amended § 13.33 where appropriate, as well as substitute ''complaint'' for ''notice of proposed action'' to align with initial pleading changes in proposed § 13.35. The FAA proposes adding § 13.47(b), containing the provisions for amending the notice and answer from current § 13.45. It proposes amending the provision to replace unnecessary references to ''his or her'' with ''its'' and modifying the requirement for parties to file amended pleadings with the Hearing Officer so that all amendments are filed with the FAA Hearing Docket instead. This would align with the amended filing requirements proposed in § 13.43(b). The proposed amendment would also replace the reference to a notice of proposed action with a reference to a complaint, to align with initial pleading changes in proposed § 13.35.

Motions (§ 13.49)

Section 13.49 currently provides a list of motions that parties may file. The FAA proposes to revise § 13.49 to consolidate certain categories of motions to reduce redundancy, specifically address certain common motions that were previously not listed, provide additional information or clarity about motions currently listed, and to align motions practice with common practices permitted under the Federal Rules of Civil Procedure.

Sections 13.49(a) and (c) would be consolidated into proposed § 13.49(a)(1) and (2), allowing parties to file a motion to dismiss or a motion for a more definite statement in place of an answer, as is currently provided, with the addition that a respondent's motion to dismiss may be based on other appropriate grounds not specifically listed.

In § 13.49(b), the FAA proposes to explicitly state that motions to dismiss a request for hearing could be based on jurisdiction, timeliness, or other appropriate grounds.

Proposed § 13.49(c) would address motions for decisions on the pleadings, currently called motions for judgment on the pleadings in § 13.49(d), and it would add an option to file motions for summary decision. The FAA proposes that parties file these motions in the manner provided by Rules 12 and 56, respectively, of the Federal Rules of Civil Procedure.

Proposed § 13.49(d) would provide for motions to strike, which are currently provided for in § 13.49(e). It would also add ''redundant'' matters as a basis for motions to strike, consistent with the Federal Rules of Civil Procedure.

Proposed § 13.49(e) would address motions to compel, which were previously addressed as motions for production of documents in § 13.49(f).

[6] *See* Office of Adjudication website (*http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/*).

This change is intended to align with the revised discovery rule in proposed § 13.53. The proposal would also remove the reference to Rule 34 of the Federal Rules of Civil Procedure. Additionally, the FAA would clarify that a party may file a motion to compel if the other party fails to timely produce requested discovery and the moving party certifies it has conferred in good faith with the other party in an attempt to obtain the requested discovery prior to filing the motion.

Section 13.49(f), as proposed, would permit a party to file motions for protective orders. It would also permit Hearing Officers to order information or testimony withheld from public disclosure if: Such disclosure would be detrimental to aviation safety; the disclosure would not be in the public interest; or the information is not otherwise required to be made available to the public.

The FAA proposes removing the requirement to consolidate motions currently in § 13.49(g), and replacing this paragraph with a catch-all provision stating that any application for an order or ruling not otherwise provided for in subpart D would have to be made by motion.

Finally, § 13.49(h) would be amended to provide a party filing a response to a motion with 10 days to respond after service of the motion instead of 5 days. This amendment would provide a more reasonable length of time to permit the parties to prepare better-developed responses to motions, and create uniformity with subpart G motions practice. The amendment would also replace the term ''answer'' with ''response,'' as to avoid confusion with the pleading called an ''answer'' found in revised § 13.35(c).

Discovery (§ 13.53)

Section 13.53 currently provides that a party may take depositions in accordance with section 1004 of the Federal Aviation Act of 1958 (49 U.S.C. 1484, presently codified at 49 U.S.C. 46104) or Rule 26, Federal Rules of Civil Procedure. It does not address other means of discovery.

The FAA proposes amending § 13.53 by establishing the scope for discovery in subpart D hearings, setting relevant time limits and procedures for discovery, and clarifying that parties do not ordinarily file discovery requests and responses with the FAA Hearing Docket unless in support of a motion, offered for impeachment, or other permissible circumstances as approved by the Hearing Officer.

Proposed § 13.53(b) would provide the scope of discovery, modeled after Rule 26 of the Federal Rules of Civil Procedure, which provides that the scope is any matter that is not privileged and is relevant to any party's claim or defense.

Proposed § 13.53(c) would provide for written discovery requests and set a 30-day time frame for responding to such requests. This time frame would be consistent with comparable discovery-related provisions in § 13.220(d), and Rules 33(b)(2) and 36(a)(3) of the Federal Rules of Civil Procedure.

Proposed § 13.53(d) would include the deposition provision currently in § 13.53, amended to remove the outdated statutory citation to 49 U.S.C. 1484, and to remove the reference to Rule 26 of the Federal Rules of Civil Procedure which only governs oral depositions. The FAA has the discretion to rely on its authority in section 49 U.S.C. 46104, as 46104(c) specifically provides how to give notice of and conduct depositions in proceedings or investigations by the Secretary of Transportation or the Administrator of the Federal Aviation Administration.

Finally, proposed § 13.53(e)(1) through (4) would provide that the Hearing Officer could limit the frequency and extent of discovery upon a party's showing that: (1) The discovery requested is cumulative or repetitious; (2) the discovery requested can be obtained from another less burdensome and more convenient source; (3) the party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or (4) the method or scope of discovery requested by the party is unduly burdensome or expensive. These limitations on discovery align with Rule 26(b) of the Federal Rules of Civil Procedure and they parallel the discovery limits in § 13.220(f).

Subpoenas and Witness Fees (§ 13.57)

Section 13.57, which governs subpoenas and witness fees, does not currently provide any deadlines for requesting subpoenas, or any process for quashing, modifying, or enforcing subpoenas. It does contain a provision that shifts the standard witness fee burden from the party requesting the appearance of the witness to the FAA when certain circumstances are met. The proposed amendments would address each of these items.

The FAA proposes amending § 13.57(a) to include deadlines for requesting subpoenas to ensure people receiving a subpoena have adequate notice. Specifically, the proposed rule would require parties requesting subpoenas to file subpoena requests 15 days before the scheduled deposition or 30 days before the scheduled hearing, barring good cause shown.

The FAA proposes amending § 13.57(b) by adding a reference to amended § 13.53 which would provide the process for requesting production of documents. This section would also be amended to clarify that only a party could request the production of documents under this section.

Amendments to § 13.57(c) would explain that the provision does not apply to FAA employees who appear at the direction of the FAA, because consistent with current practice, FAA employees appearing at the direction of the agency do not receive additional compensation for testifying on behalf of the agency. The amendments would also clarify the current witness payment provision in § 13.57(c) by specifying that subpoenaed witnesses would be entitled to fees and allowances as provided under 28 U.S.C. 1821, the applicable statute governing the payment of witnesses in judicial proceedings. Additionally, this section would explain that the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, would pay the witness fees. This would align the subpart D witness fee provision with the current provision in § 13.229 of subpart G, and § 13.121 of subpart F, as amended by this proposed rule.

The FAA proposes removing the fee-shifting provision in § 13.57(d) which currently permits the Hearing Officer to shift the standard witness fee burden from the party requesting the appearance of the witness to the FAA. This fee-shifting authority has not been used, is not supported by an applicable statute, and runs contrary to the ''American Rule'' that parties pay their own costs.

Proposed § 13.57(d) would state the requirements for service of subpoenas, modeled on the analogous Federal Rule of Civil Procedure 45(b). It would require that except for the Complainant, the party that requested the subpoena must tender at the time of service of the subpoena the fees for 1 day's attendance and the allowances allowed by law if the subpoena requires that person's attendance. The proposed exemption for the Complainant would align the rule with Federal Rule of Civil Procedure 45(b), which does not require pre-payment of fees and allowances when the subpoena issues on behalf of the United States or any of its officers or agencies. This exemption would also

align with the general principles against advance payment in 31 U.S.C. 3324.

The FAA proposes a new § 13.57(e) to explain how any person upon whom a subpoena has been served could file a motion to quash or modify the subpoena with the Hearing Officer at or before the time specified in the subpoena for compliance. The rule would require that the motion describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible things are not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. The FAA proposes that a motion to quash or modify the subpoena would stay the effect of the subpoena pending a decision by the Hearing Officer.

Finally, the proposed amendment would add § 13.57(f) to include instructions for seeking enforcement of a subpoena if it is disobeyed, allowing a party to apply to a U.S. district court to seek judicial enforcement of the subpoena.

Evidence (§ 13.59)

Section 13.59 provides how parties may present evidence at subpart D hearings, which party carries the burden of proof, and the Hearing Officer's authority to withhold private information from public disclosure. The FAA proposes to update the reference to ''FAA counsel'' to ''complainant'' to conform to the proposed explanation of complainant in § 13.33. The FAA also proposes moving the Hearing Officer's authority to withhold private information from public disclosure to proposed § 13.49(f).

Record, Decision, and Aircraft Registration Proceedings (§ 13.63)

Section 13.63 currently defines what establishes the record in a case and provides that the record is the exclusive basis for the issuance of an order. The rule also permits either party to obtain a transcript of the hearing from the official reporter upon payment of a fee. The FAA proposes amending § 13.63 by creating new paragraphs (a) through (c) to define the parameters of a subpart D hearing record and also address the Hearing Officer's decisions.

Proposed § 13.63(a) would contain the content currently in § 13.63, with a minor edit to clarify that only admitted exhibits at the hearing, not all exhibits presented at the hearing, form part of the record.

Proposed § 13.63(b) would establish minimum standards for a Hearing Officer's decision, by requiring that the decision include findings of fact based on the record, conclusions of law, and an appropriate order.

The FAA would move the contents of current § 13.27(a), describing the Hearing Officer's authority to suspend or revoke a respondent's aircraft registration certificate upon the Hearing Officer's determination that the aircraft is ineligible for an aircraft registration certificate in proceedings relating to aircraft registration under 49 U.S.C. 44105, into proposed § 13.63(c).

Appeal to the Administrator, Reconsideration, and Judicial Review (§ 13.65)

The FAA proposes adding § 13.65 to subpart D, which would be titled ''Appeal to the Administrator, reconsideration, and judicial review.'' This new section would consolidate all pertinent subpart D appeal procedures, including appeals from Hearing Officer decisions, motions for reconsideration of the Administrator's decisions, and petitions for judicial review, currently found in § 13.20(g) through (k); § 13.83(a), (c) through (e), and (g); and the filing and service requirements currently referenced in §§ 13.20(m) and 13.85.

Proposed § 13.65(a) would provide the consolidated procedures for appealing from the order of the Hearing Officer by filing with the FAA Hearing Docket a notice of appeal to the Administrator within 20 days after the date of issuance of the order. Filing and service of the notice of appeal, and any other papers, would continue to be accomplished according to the filing and service procedures proposed in § 13.43.

Proposed § 13.65(b) would contain the consolidated procedures which provide that if a notice of appeal is not filed from the order issued by a Hearing Officer, such order would be final with respect to the parties, but would not be binding precedent or subject to judicial review. This amendment would make clear that all Hearing Officer decisions could be appealed to the Administrator, and are otherwise final if not appealed. This amendment would also clarify an ambiguity in current § 13.19 by making clear that subpart D Hearing Officer decisions regarding notices of proposed certificate actions for matters under Title V of the Federal Aviation Act, now codified at 49 U.S.C. chapter 441, are appealable to the Administrator. Currently, § 13.19(c)(5) provides that a subpart D hearing may be requested for certificate actions regarding aircraft registration (covered by Title V of the Federal Aviation Act). However, unlike current §§ 13.20(g) and 13.83(a) and (b), it fails to provide that a Hearing Officer's decision reached at the conclusion of the subpart D hearing is appealable to the Administrator. This proposed amendment clarifies this point.

Proposed § 13.65(c) would provide filing deadlines for briefs to the Administrator, keeping the current time frames provided in current §§ 13.20(i) and 13.83(e), but with a deadline of 40 days, rather than 20, for filing a reply brief. This modified deadline of 40 days would provide both parties an equal amount of time to prepare their briefs to the Administrator.

The FAA would add § 13.65(d) to consolidate provisions in current §§ 13.20(j) and 13.83(g). These provisions provide that on appeal of a Hearing Officer's order to the Administrator, the Administrator would review the record of the proceeding, and issue an order dismissing, reversing, modifying or affirming the order, including the reasons for the Administrator's action. Additionally, the proposed amendment would add a requirement specifying that the Administrator could only consider whether: (1) Each finding of fact is supported by a preponderance of the reliable, probative and substantial evidence; (2) each conclusion is made in accordance with law, precedent, and policy; and (3) the Hearing Officer committed any prejudicial error. This addition would harmonize this subpart D appeal provision with § 13.233(b) in subpart G and 49 U.S.C. 46301(d)(7)(A), which apply to civil penalty cases against persons not acting as pilots, mechanics, repairmen or flight engineers. Adopting this same standard for subpart D appeals to the Administrator would preclude frivolous and unnecessary appeals of initial decisions that merely delay the proceedings and decrease the deterrent effect of the sanction imposed.

Proposed § 13.65(e) would address the role of the Director and legal personnel of the Office of Adjudication. Specifically, this section would describe the scope of the Director's authority and provide that the Director and legal personnel of the Office of Adjudication serve as the advisors to the Administrator for appeals under this section. The proposed addition would also provide for re-delegation of the Director's authority, as necessary, except to Hearing Officers and others materially involved in the hearing that is the subject of an appeal.

Proposed § 13.65(f) would allow a party to file a motion requesting reconsideration of the final order of the

Administrator. There are not currently any reconsideration procedures for orders of the Administrator on appeal from the Hearing Officer in subpart D matters. In contrast, parties in civil penalty proceedings under subpart G may file petitions for reconsideration of the Administrator's order under § 13.234. This proposed addition to subpart D would provide consistency across the various FAA proceedings provided for under part 13. The FAA proposes that motions for reconsideration filed under § 13.65(f) would be filed with the FAA Hearing Docket within thirty days of service of the Administrator's Order. This would harmonize with the time provided for motions for reconsideration under subpart G in § 13.234.

Finally, proposed § 13.65(g) would address judicial review of the Administrator's final order under this proposed section as provided under 49 U.S.C. 5127 or 46110. This would create uniformity with the judicial review provision in subpart G, § 13.235.

Procedures for Expedited Proceedings (§ 13.67)

The FAA proposes adding a new § 13.67 to subpart D, which would provide an expedited hearing process for notices to which emergency procedures proposed in § 13.20(d) apply, as well as an expedited appeal process to the Administrator from a Hearing Officer's decision after an expedited hearing. Section 13.67(a) would explain that the procedures in subpart D generally apply to the proposed expedited administrative process, except as provided by certain procedures in § 13.67 intended to facilitate the expedited nature of the process. For example, service and filing of pleadings, motions, and documents would have to be by overnight delivery and fax or email to accommodate the shorter time-periods provided under the proposed expedited procedures. Additionally, all responses to motions, the complaint, and an answer would be due on an abbreviated timeline as compared to other subpart D matters. The rule would make clear that all allegations in the complaint not specifically denied in the answer would be deemed admitted, which is consistent with the Federal Rules of Civil Procedure, current § 13.35(c) in subpart D, and § 13.209 in subpart G. Additionally, a failure to file a timely answer, absent a showing of good cause, would constitute withdrawal of the request for hearing. The proposed rule would also require that within 3 days of the filing of the complaint the Director of the Office of Adjudication would assign a Hearing Officer to preside over the matter. Furthermore, the expedited hearing would commence within 40 days after the filing of the complaint.

Given the abbreviated time frames in the proposed expedited administrative process, the parties would be required to serve discovery requests as soon as possible. The proposed rule would allow parties to set the time limits for compliance with discovery requests to accommodate the accelerated schedule. The rule would also provide that the Hearing Officer would resolve any failure of the parties to agree to a discovery schedule.

Proposed § 13.67(a)(7) would provide that, at the conclusion of the proposed expedited hearing, a Hearing Officer would issue an order dismissing, reversing, modifying, or affirming the notice. The Hearing Officer's order would be appealable to the Administrator under an expedited appeal process. If neither party filed a notice of appeal from the order, it would be final with respect to the parties and not subject to judicial review.

Proposed § 13.67(b) would provide the procedures for an expedited appeal of the Hearing Officer's final order to the Administrator. A party would file a notice of appeal within 3 days after the issuance of the order. Time limitations for the filing of documents for appeals under this section would not be extended because of the unavailability of the hearing transcript. Under proposed § 13.67(b)(1), the expedited appeal would require a party to perfect the appeal within 7 days after filing the notice of appeal by filing a brief. Any reply would have to be filed within 7 days after the date the appeal brief was served on that party. The Administrator would issue an immediately effective order deciding the appeal no later than 80 days after the date the notice of proposed action was issued. This 80-day time period is proposed to ensure that the Administrator's order would be issued prior to the expiration of the 80-day time-limited immediately effective order. Proposed § 13.67(b)(2) would explain that the Administrator's order would be immediately effective and constitute the final agency decision. It would also provide that a respondent could petition a U.S court of appeals for review of the Administrator's order pursuant to 49 U.S.C. 46110, although such a petition for review would not stay the effectiveness of the Administrator's order due to the emergency nature of the order.

Finally, proposed § 13.67(c) would provide that any time after an immediately effective order is issued, the FAA could ask the United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25. The FAA's current authority to request such action is located in § 13.25, in subpart C. By adding such a provision to subpart D, the amendment would clarify that a Hearing Officer's final, non-appealed order issued after an expedited administrative hearing would be enforceable by the FAA in a U.S. district court, as provided in § 13.25. The same would be true of the Administrator's final order issued under the proposed subpart D expedited appeal provisions.

Other Matters: Alternative Dispute Resolution, Standing Orders, and Forms (§ 13.69)

The FAA proposes adding § 13.69 titled ''Other matters: Alternative dispute resolution, standing orders, and forms.'' This new section would provide for the voluntary use of mediation, consistent with the DOT's statement on ADR.[7] Mediation is a form of ADR in which a neutral mediator assists with open discussion between parties in dispute and helps them come to a mutually agreeable solution. A mediator has no authority to impose a decision on the parties. Parties may engage the services of a mutually acceptable mediator. The mediator could not participate in any subsequent adjudication of the case under subpart D.

As provided in DOT's ADR statement, the FAA believes that the use of ADR would help resolve disputes at an early stage in an expeditious, cost-effective, and mutually acceptable manner. Participation in ADR is voluntary and there must be mutual agreement to its use. The FAA would not impose ADR on parties. Additionally, the FAA recognizes the importance of confidentiality in ADR, which would ensure that the parties may speak freely with a neutral who will not disclose their confidences to other parties or to the outside world. Without that assurance, the parties may be unwilling to freely discuss their interests and possible settlements. Confidentiality would also allow the parties to raise sensitive issues and discuss creative ideas and solutions that they would be unwilling to discuss publicly. The proposed mediation process, therefore, would provide confidentiality consistent with the provisions of the Administrative Dispute Resolution Act, 5 U.S.C. 571–584, the principles of

[7] *Department of Transportation Alternative Dispute Resolution Policy Statement,* 67 FR 40367 (Jun. 12, 2002).

Federal Rule of Evidence 408, and other applicable Federal laws.

The FAA also proposes providing the Director of the Office of Adjudication with the authority to issue standing orders and forms needed for the proper dispatch of business under subpart D. Such standing orders could describe common procedure or practices such as font requirements and page limits on pleadings. All applicable forms and standing orders would be published on the official website of the Office of Adjudication: *http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/.*

The use of standing orders and forms promotes efficient case management practices, ensures that the Office of Adjudication can adapt to new circumstances, and provides the public with pertinent information. The authority to issue forms would be used to standardize the subpoena process as well as other processes if the need arises.

E. Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

Subpart E (current § 13.71 through 13.87) states who has the authority to issue an order of compliance related to violations of the HMTA. It includes the process of issuing a notice of proposed order of compliance, how a person may respond to a notice, and the consequences of failing to respond to a notice. It also provides for disposing of a case through a consent order of compliance. Statutory citations would be updated throughout this section.

Current §§ 13.79, 13.83, 13.85, and 13.87 would be removed and reserved because their subjects, related to appeals of non-emergency orders of compliance, would be addressed in proposed subpart D. The remaining amendments to this subpart are addressed in the section-by-section discussion.

Applicability (§ 13.71)

Section 13.71 describes when an order of compliance may be issued under this subpart. Proposed § 13.71(a) would add an explicit statement that an order of compliance may be issued after notice and an opportunity for hearing per proposed §§ 13.73 through 13.79. It would also amend the delegation of authority to reflect the reorganization of the Office of the Chief Counsel.

A new § 13.71(b) would be added to clarify that emergency orders of compliance are issued per § 13.81.

Notice of Proposed Order of Compliance (§ 13.73)

Section 13.73 currently provides the authority to issue a notice of proposed order of compliance and describes its contents. The FAA proposes to update the delegation of authority in this section just as described in the delegation amendment for § 13.71.

Reply or Request for Hearing (§ 13.75)

A person may reply to a notice of proposed order of compliance consistent with § 13.75. The FAA proposes to amend § 13.75(a)(2) by adding an express statement that a person may request an informal conference with an agency attorney. Accordingly, the process for requesting a hearing must also be amended to account for instances in which an informal conference has occurred. This change supports the harmonization of options for responding to a notice throughout part 13 and is consistent with current practice in HMTA proceedings.

Consent Order of Compliance (§ 13.77)

Currently, § 13.77 provides the process for issuing a consent order of compliance to settle a case initiated under this subpart. The proposed § 13.77 changes parallel similar proposed amendments to the consent order requirements in § 13.13.[8]

Emergency Orders (§ 13.81)

Existing § 13.81 describes the authority and procedure for issuing an emergency order of compliance. The FAA proposes to amend the delegation of authority to issue an emergency order in the same way as proposed in § 13.71(a). For purposes of consistency and clarity, the FAA also proposes to revise § 13.81(a) to reference the criteria for issuing an emergency order of compliance.

Current § 13.81(a)(2) and (a)(3) would be deleted and replaced with § 13.81(a). That section would cite the definition of ''imminent hazard'' in 49 CFR 109.1, which is the source of current § 13.81(a)(2) and (a)(3).

Current § 13.81(b) and (e) through (g) would be removed as those matters are now addressed in 49 CFR part 109, subpart C.

[8] Section 13.13 governs consent orders associated with orders issued under subpart C while § 13.77 addresses only consent orders associated with hazmat orders of compliance issued under subpart E.

F. Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation

Subpart F (current § 13.101 through 13.131) governs formal fact-finding investigations under FAA orders of investigation. The FAA proposes amending this subpart for clarity, improved readability, to update outdated statutory references, and to harmonize provisions in this subpart with other subparts in part 13. The FAA has proposed several editorial changes to §§ 13.101 through 13.109 to clarify the existing language but no substantive changes have been made to these sections.

Subpoenas (§ 13.111)

Section 13.111 governs the issuance, service, and jurisdiction of subpoenas under subpart F. The FAA proposes amending § 13.111(a) to clarify that a Presiding Officer, an FAA employee who is named in an investigation report by an individual authorized in current § 13.3, need not file a motion for the issuance of a subpoena; rather the Presiding Officer may issue a subpoena at his or her discretion.

Noncompliance With the Investigative Process (§ 13.113)

Section 13.113 provides consequences for noncompliance with a subpoena or order issued under subpart F, as well as for noncompliance with the provisions in subpart F. The FAA proposes amending this section to divide the text into paragraphs (a) and (b) to delineate against whom judicial enforcement may be sought for noncompliance with subpoenas, orders of the Presiding Officer, and with the provisions of subpart F. Section 13.113 currently provides for judicial enforcement for noncompliance by ''any person.'' The FAA proposes creating § 13.113(a) to specify that the Administrator may seek judicial enforcement of a subpoena when any person disobeys a subpoena. Proposed § 13.113(b), however, would only provide for judicial enforcement of the provisions of this subpart or an order issued by the Presiding Officer against a party to the investigation.

Immunity and Orders Requiring Testimony or Other Information (§ 13.119)

The FAA proposes amending the title of § 13.119 from ''Rights of persons against self-incrimination'' to ''Immunity and orders requiring testimony or other information.'' This proposed title would more accurately reflect the current contents of this section.

Witness Fees (§ 13.121)

Section 13.121 governs witness fees in formal fact-finding investigations under subpart F. This section currently provides that all witnesses appearing shall be compensated at the same rate as a witness appearing before a U.S. district court. The proposed amendment would include additional specificity by citing the provision that describes the fees and allowances that must be paid to witnesses in 28 U.S.C. 1821, and would incorporate language consistent with the statute by replacing ''rate'' with ''fees and allowances.''

Reports, Decisions, and Orders (§ 13.127)

Currently, § 13.127 provides that the FAA will publish a report of investigation in ''the public docket'' to comply with the requirement in 49 U.S.C. 40114 to publish the report. Because the statute does not require publication by a specific means and the existing regulation does not specify a particular docket, the FAA proposes to remove the non-specific docket reference to provide continued flexibility on how to publish a report. For example, the FAA could publish the report on the FAA website and provide notice of its availability on the FAA website in the **Federal Register** as a way to meet the statutory requirement to publish it ''in the form and way best adapted for public use.'' The provision has also been amended to remove language that is not regulatory in nature because it describes how the regulation demonstrates compliance with the statute.

G. Subpart G—Rules of Practice in FAA Civil Penalty Actions

Subpart G (§§ 13.201 through 13.235) provides the rules of practice applicable to appeals of FAA civil penalty actions initiated under § 13.16. This rulemaking proposes to reorganize and modernize the rules of practice applicable to subpart G proceedings (referred to as civil penalty proceedings) and create consistency, where appropriate, within subpart G and across part 13.

The applicability of subpart G as provided in § 13.201 has not changed, however, this rulemaking would remove the date reference to September 7, 1988, as there are no longer any open proceedings that were initiated on or prior to September 7, 1988, so the antiquated reference no longer serves any purpose. The following miscellaneous changes are also proposed throughout subpart G, but are not specifically addressed in the section-by-section analysis. For accuracy and consistency, the FAA proposes replacing references to the FAA ''decisionmaker,'' with ''FAA Hearing Docket'' when in reference to filing requirements, because under current practice, documents are sent to the FAA Hearing Docket, not the FAA decisionmaker. Similarly, all references to the ''hearing docket clerk'' would be replaced with ''FAA Hearing Docket'' to accurately reflect current practice.

The FAA also proposes amending the filing and service instructions by adding cross-references to §§ 13.210 and 13.211, which would contain amended filing and service instructions permitting the use of email or fax to file and serve documents. The FAA anticipates that these additional methods of filing and service will increase the speed, efficiency, and convenience of the process of filing and service, and in some instances may decrease costs. Email service and filing would be voluntary. The FAA also proposes removing redundant filing and service information. Any service or filing requirements that diverge from the proposed instructions in §§ 13.210 and 13.211 would be specifically described in the provision addressing that particular document.

Definitions (§ 13.202)

Section 13.202 currently contains the definitions applicable to civil penalty proceedings. The FAA proposes amending this section to define new terms and to revise some current definitions.

To accurately reflect the reorganization of the Chief Counsel's Office, the FAA proposes defining the term ''Office of Adjudication'' as the Federal Aviation Administration Office of Adjudication, including the FAA Hearing Docket, the Director of the Office of Adjudication and legal personnel, or any subsequently designated office (including its head and any legal personnel) that advises the FAA decisionmaker regarding appeals of initial decisions and orders to the FAA decisionmaker.

The definition of ''agency attorney'' would be amended to make it consistent with the current structure and operation of the Office of the Chief Counsel. The definition would also amend the list of those persons specifically precluded from acting as agency attorneys by removing enumerated paragraphs (1) through (3) and providing that an agency attorney would not include the Chief Counsel or anyone from the Office of Adjudication. The FAA notes that the Deputy Chief Counsel responsible for enforcement-related prosecutions does not participate in the advising of the FAA decisionmaker on the resolution of appeals from initial decisions or orders issued by administrative law judges and thus is not excluded from the definition of agency attorney.

The FAA also proposes amending the definition of ''mail'' to clarify that it does not include email, and does include all U.S. mail and expedited courier service.

The FAA proposes changing the definition of the word ''party'' to include an intervenor. The FAA also proposes adding a definition of the word ''Complainant'' to clarify that the Complainant is the office that initiates the action by issuing a notice of proposed civil penalty under § 13.16.

Finally, the FAA proposes adding a definition of ''writing or written'' to provide that it would include paper or electronic documents that are filed or served by email, mail, personal delivery, or fax.

Separation of Functions (§ 13.203)

Section 13.203 currently provides that agency attorneys prosecute civil penalty proceedings. It also addresses the separation of functions within the FAA. The FAA proposes amending § 13.203(c) by replacing the current list of advisors to the FAA decisionmaker with the Chief Counsel, and the Director and legal personnel of the Office of Adjudication. This amendment would reflect the current structure of the Office of the Chief Counsel, as set forth in FAA Order GC 1100.170, effective January 3, 2017 (available at *http://www.faa.gov/regulations_policies/orders_notices/*), and would also be consistent with the Administrator's delegation of authority to the Chief Counsel and the Director of the Office of Adjudication to manage appeals in civil penalty cases governed by part 13, subpart G (81 FR 24686, April 26, 2016).

As in the current rule, the Chief Counsel is an advisor to the FAA decisionmaker regarding appeals of initial decisions and orders. Under the current delegation of authority and office structure, the Director of the Office of Adjudication has replaced the Assistant Chief Counsel for Litigation as advisor to the FAA decisionmaker on appeals from initial decisions and orders issued by an ALJ. The Director of the Office of Adjudication has no responsibilities for the investigation or prosecution of civil penalty cases.

These proposed amendments would maintain the separation of functions between FAA employees who serve as prosecutors—the ''agency attorneys''—and the employees who advise the Administrator regarding the resolution of appeals in civil penalty cases.

Appearances and Rights of Parties (§ 13.204)

Section 13.204 provides the rights of parties to appear and be heard in person, to have representation, and to request copies of documents in the record. While it is common practice for a party's representative to file a notice of appearance, the rule currently does not require a notice of appearance. Additionally, the rule does not currently require a party to file a copy of the notice of appearance on the ALJ assigned to the matter.

The FAA proposes amending § 13.204(b) to clarify that any attorney or other representative of a party in a matter must file a notice of appearance in the action. The content currently required in a notice of appearance would also be amended to include the email address and fax number, if available, of the attorney or other representative. The amendment would also require a party to serve a copy of the notice of appearance on the ALJ, if one is assigned to the matter when the notice of appearance is filed. Under current practice, the notice of appearance is served only on each party and not on the ALJ. These amendments would facilitate an ALJ's administration of a case.

Administrative Law Judges (§ 13.205)

Section 13.205 currently enumerates the powers and limitations of an ALJ in FAA civil penalty proceedings. It also provides that an ALJ may self-disqualify at any time and that parties may file a motion for disqualification of the assigned ALJ.

The FAA proposes amending § 13.205(a) by removing from the list of an ALJ's powers the authority to issue a notice of deposition. This reference was originally included in error, as the ALJ is not responsible for providing a notice of deposition. Rather, a party requesting a deposition is responsible for providing a notice of deposition, as is correctly provided in current § 13.220(j)(3).

Section 13.205(b), which limits an ALJ's sanction authority, provides that an ALJ retains the authority to bar a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding. The FAA proposes to amend § 13.205 by moving the provision authorizing an ALJ to bar a person from a specific proceeding under specified circumstances to § 13.205(a), where the other powers of an ALJ are listed, as new § 13.205(a)(10).

The FAA also proposes adding a new § 13.205(a)(11), to state that an ALJ could take any other action authorized under subpart G. This amendment would make clear that the list of powers enumerated in § 13.205 is not exhaustive and must be read in the context of subpart G in its entirety.

The FAA also proposes amending § 13.205(b) to correct an erroneous cross-reference. The amendment would replace the cross-reference to § 13.219(c)(4) with a cross-reference to section § 13.219(c), since § 13.219(c)(4) does not exist in either the current or proposed rule.

Certification of Documents (§ 13.207)

Section 13.207 currently provides the rules for certification of documents that are filed or served in subpart G matters. The FAA proposes amending the existing signature requirement in § 13.207(a) to explain how to satisfy the signature requirement when filing or serving a document by email. The amendment would provide that documents tendered for filing with the FAA Hearing Docket or served on the ALJ and on each party must be signed by hand, electronically, or by other method acceptable to the ALJ, or if the matter is on appeal, to the FAA decisionmaker.

Complaint (§ 13.208)

Section 13.208 governs complaints filed in FAA civil penalty proceedings. It addresses filing, service, and content requirements, as well as instructions for motions to dismiss allegations or the entire complaint.

Section 13.208(a) contains the instructions for filing complaints. The FAA proposes removing the filing instructions regarding the number of required copies, as this requirement would be addressed in § 13.210. The FAA also proposes amending the cross-reference in § 13.208(a) from § 13.218(f)(2)(i) to § 13.218 and specifying that the referenced ''written motion'' specifically refers to a motion to dismiss a request for hearing.

Section 13.208(b) contains the instructions for serving the complaint in civil penalty proceedings. The FAA proposes removing the reference to service by personal delivery or mail and instead cross-referencing § 13.211.

Answer (§ 13.209)

Section 13.209 contains the rules governing answers filed in FAA civil penalty proceedings. The FAA proposes a non-substantive reorganization of the various paragraphs in § 13.209, as indicated in the Redesignation Table. Additional amendments would include replacing the specific filing instructions in § 13.209(b) with a cross-reference to the proposed filing instructions in proposed § 13.210. The language regarding the 30-day time frame to file an answer in current § 13.209(b) would be removed because this requirement already appears in current § 13.209(a).

Section 13.209(c) would be amended to address service of motions filed in lieu of an answer to the complaint, as provided in § 13.209(a). The FAA also proposes adding a cross-reference to the service instructions in proposed § 13.211.

The FAA proposes amending § 13.209(d), which addresses the contents of an answer, to provide that the person filing an answer may suggest a location for the hearing when filing the answer. This requirement is being moved from current § 13.209(b) and into proposed § 13.209(d) to consolidate all the content requirements for an answer.

The FAA proposes amending § 13.209(e), which currently provides that a statement or allegation in the complaint that is not specifically denied in an answer may be deemed admitted. The amendment would provide that all allegations in the complaint not specifically denied in the answer are deemed admitted. This is consistent with the Federal Rules of Civil Procedure, and current § 13.35(c) in subpart D.

Filing of Documents (§ 13.210)

Section 13.210 provides filing instructions for civil penalty proceedings, but currently does not permit parties to file by email or fax. The FAA proposes amending § 13.210 to provide for filing by email and fax. In addition, the filing addresses would be updated to reflect organizational updates and to correct existing address errors.

Section 13.210(a) would be amended to move the methods of filing to proposed § 13.210(b). The FAA also proposes reorganizing § 13.210(a) by moving the requirements regarding the number of copies needed for filing to new proposed § 13.210(g), and moving the FAA Hearing Docket addresses for filing by mail and in person to § 13.210(c). Two new methods of filing with the FAA Hearing Docket, by email and fax, would be added in proposed § 13.210(b). Guidelines for filing can be found on the FAA Office of Adjudication website: *http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/civil_penalty/.* Amendments throughout subpart G would add cross-references to proposed § 13.210, which would require documents to be filed with the FAA Hearing Docket.

Section 13.210(b) contains the date of filing provision, which explains when a document would be considered filed with the FAA Hearing Docket. The FAA proposes moving this date of filing provision to § 13.210(d) and in its place adding the FAA Hearing Docket mailing addresses currently in § 13.210(a)(1) and (a)(2), amended to reflect organizational updates and to correct existing address errors. The FAA also proposes adding a new provision that would explain how to file by email or fax.

Section 13.210(c) would specifically require a person filing a document with the FAA Hearing Docket to use the appropriate address corresponding to the method of service used. The email address and fax number, as well as other contact information, for the FAA Hearing Docket would be available on the FAA Office of Adjudication website at: *http://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/adjudication/civil_penalty/.*

Section 13.210(c) currently contains the form requirements for filings with the FAA Hearing Docket. The FAA proposes moving these requirements to § 13.210(e) and in their place adding the date of filing definition currently in § 13.210(b), amended to add the date of filing for email and fax filing. Section 13.210(d) would provide how the date of filing is determined depending on the method of filing used.

Section 13.210(d) currently provides the required contents for documents filed with the FAA Hearing Docket. The FAA proposes to redesignate paragraph (d) as paragraph (f), and in its place provide the form requirements for filings with the FAA Hearing Docket currently in § 13.210(c), without amendment.

Section 13.210(e)(1) currently explains that materials filed in the FAA Hearing Docket in civil penalty adjudications are made publicly available on the Federal Docket Management System's (FDMS) website, *www.regulations.gov.* For purposes of administrative efficiency, the FAA plans to discontinue using the FDMS website for such materials. Final decisions will continue to be made available on the FAA's website and through commercial legal reporting services.

The FAA notes that the Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(2), requires federal agencies to make certain adjudicatory materials available to the public electronically for public inspection. Each agency must make final opinions and orders issued in the adjudication of cases ''available for public inspection in an electronic format'' and ''to maintain and make available for public inspection current indexes of final decisions and orders in an electronic format.'' 5 U.S.C. 552(a)(2).

When a party appeals from an initial decision issued by an ALJ in a civil penalty proceeding, the Administrator will issue a final decision and order. The Administrator's final decisions and orders are precedential.[9] The FAA makes the Administrator's final agency decisions and indexes of those decisions available on its website. In addition, the Administrator's final agency decisions, as well as the initial decisions issued by ALJs, are published in electronic and paper formats by commercial publishers. Thus, the FAA will continue to meet the requirements of the FOIA.

In addition, due to the service requirements in subpart G, parties and the ALJs will have copies of all documents filed in the FAA Hearing Docket. Hence, they will not need to rely on FDMS website.

Section 13.210(e)(2) currently explains that certain information, including the Administrator's final decisions and orders and indexes of those decisions and orders, are available on the FAA website. Although we plan to continue to make these materials available on the FAA website, we propose to delete this paragraph because it is only informational.

Section 13.210(f) would be amended to set forth the content requirements for documents filed with the FAA Hearing Docket that are currently in § 13.210(d).

The FAA proposes adding new § 13.210(g) titled ''Requirement to File an Original Document and Number of Copies.'' This new section would retain the filing requirement currently in § 13.210(a) which provides that a party shall file an original document and one copy when filing by personal delivery or by mail. To accommodate for the addition of email and fax filing, the amendment would provide that only one copy is required when filing is accomplished by email or fax.

Finally, the FAA proposes adding new § 13.210(h) titled ''Filing by email.'' This new section would require all documents filed by email to be attached to the email message as a Portable Document Format (PDF) file. The email message, however, would not constitute a submission, but serves only to deliver the attached PDF file to the FAA Hearing Docket. The amendment would also require that all documents emailed for filing be signed in accordance with § 13.207 as amended.

[9] Under existing 14 CFR 13.233(f)(3) (proposed § 13.233(j)(3)), ''Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed'' to the Administrator ''is not precedent in any other civil penalty action.''

Service of Documents (§ 13.211)

Section 13.211 provides instructions for serving documents in civil penalty proceedings. It currently does not provide for service by email or fax. The FAA proposes amending § 13.211 to permit service by email and fax and reorganizing and amending the existing provisions to accommodate service by fax and email.

Section 13.211(a) states who must be served a copy of a document filed with the FAA Hearing Docket. Currently, the section only provides for service on each party at the time of filing. The FAA proposes amending this section to also require service of any document filed in the FAA Hearing Docket on the ALJ, if assigned, unless otherwise provided. This new requirement to serve the ALJ would not add a paperwork burden on the parties because under current practice the ALJ issues procedural orders requiring that the parties send documents to them directly. The FAA also proposes amending § 13.211(a) by removing the explanation that service on a party's attorney of record or a party's designated representative may be considered adequate service on the party. This provision is unnecessary as it simply states the universally accepted legal practice in the United States, and its removal would harmonize subpart G with the other subparts in part 13 which do not address this universal principal by regulation.

Section 13.211(b) provides the types of service permitted in civil penalty proceedings. The FAA proposes moving this requirement to § 13.211(c) and in its place adding a provision that would allow the FAA Hearing Docket, the ALJ, and the FAA decisionmaker to send documents to a party by personal delivery, mail, fax, or email. This provision would replace a similar provision currently in § 13.211(f), which provides that an ALJ shall serve parties with documents by personal delivery or mail. Allowing email service, if the party has consented to it, or service by fax would enable parties to receive documents faster and by more cost-effective means.

Section 13.211(c) provides the rules regarding certificates of service accompanying served documents. The FAA proposes moving these requirements to § 13.211(d) and in their place, describing the types of service permitted, currently in § 13.211(b). The FAA proposes adding paragraph (c)(1), which would expand the currently permitted methods of service to include service by email or fax. This addition should make service less costly and more efficient for parties. The

amendment would also add paragraph (c)(2) to make clear that service of documents by email is voluntary and requires the prior consent of the person to be served by email. The proposed amendment would also allow a person to retract consent to be served by email by filing a written retraction with the FAA Hearing Docket and serving it on the other party and the ALJ. Finally, for consistency with the subpart G proposed filing requirements, the amendment would require that all documents filed by email be attached as a PDF file to an email. These amendments to the subpart G service requirements would provide parties with greater flexibility in how they choose to serve documents and how they are served by other parties.

Section 13.211(d) explains the date a document is considered served. The FAA would move this explanation to § 13.211(e) and in its place including the certificate of service requirement currently in § 13.211(c). The FAA proposes amending the description of a certificate of service to make clear that a person is required to include a certificate of service with a document filed with the FAA Hearing Docket and that the certificate must include a statement, dated and signed by the person filing the document, reciting the date it was served, the method of service, and on whom it was served.

Section 13.211(e) currently contains the ''mailing rule'' which provides parties with additional time to serve documents when service is accomplished by mail. The FAA proposes removing the ''mailing rule'' which automatically extends parties' deadlines by five additional days. Instead, under this proposal, a party who may or must act within a specified time after service would need to seek an extension of time if additional time to act is needed. Elimination of the mailing rule would ensure that the same filing and service deadlines, without automatic extensions, apply to all the methods of filing and service. This amendment would also help harmonize part 13, as subpart D does not currently provide an equivalent mailing rule. While the proposed new methods of service by email and fax negate the need for the mailing rule, the FAA recognizes that parties may still choose to serve documents by mail. The FAA, therefore, is considering extending the time frames provided in subpart G for actions or responses, such as, but not limited to: The 10-day time frame in section 13.218(d); the 15-day time frame in section 13.218(f)(6); and the 30-day time frames in sections 13.231(c) and 13.232(c). The FAA requests the public's comments on whether such time frames are sufficient in light of the removal of the mailing rule, or whether they should be extended, and by how much.

The FAA proposes moving current § 13.211(g), which addresses when there is valid service of documents, to § 13.211(f), and amending the section to specify that it applies to documents served by mail or personal delivery.

Finally, § 13.211(h), describing when there is a presumption of service, would be removed as unnecessary because proposed § 13.211(f) would already describe when there is valid service.

Extension of Time (§ 13.213)

Section 13.213 provides the rules for requesting extensions of time, which are currently divided into oral requests and written motions. The FAA would amend this section to eliminate the distinction between oral requests and written motions, and instead to distinguish between requests for extensions that the parties have or have not agreed upon.

Proposed § 13.213(a) would provide that the ALJ must sign and issue the parties' proposed order for extension of time if the extension request is for a reasonable length of time. This added requirement of reasonableness would help avoid unnecessary delays in litigation and it would also eliminate the restriction that the ALJ could only grant an agreed-upon extension once for each party.

Section 13.213(b), which addresses written motions for extensions of time would no longer be titled ''written motions,'' since this section actually addresses extension requests where the parties have not agreed to the extension. The FAA would amend this section by removing the current mandatory language and replacing it with discretionary language to make clear that a party ''may'' file a written motion for an extension request. The FAA also proposes adding regulatory cross-references to §§ 13.210 and 13.211 to make clear that if a party files such a motion with the FAA Hearing Docket, it must be done in accordance with these sections, which require that a copy of the motion be served on the ALJ and on each party. The FAA would not amend the timing requirement currently in § 13.213(b).

Section 13.213(c) would be amended to remove the ''failure to rule'' title and the reference to a ''written'' motion for an extension of time, to make clear that this provision applies to all requests for extensions. The remaining contents of the paragraph would not change.

Amendment of Pleadings (§ 13.214)

Section 13.214 governs the amendment of pleadings and currently requires a party to file all proposed amendments and responses with the ALJ, and also serve a copy on each party to the proceedings. The FAA proposes amending § 13.214(a) and (c) to align with the amended filing and service requirements in §§ 13.210 and 13.211. This would require parties to file proposed amendments and responses with the FAA Hearing Docket, and would also require service of a copy on the ALJ and each party to the proceedings. This would ensure consistency in filing and service requirements throughout subpart G.

Joint Procedural or Discovery Schedule (§ 13.217)

Section 13.217 governs joint procedural and discovery schedules. The FAA proposes amending § 13.217 to update the filing and service requirements for consistency across subpart G, to restate the scope of the ALJ's sanction options for failure to comply with a joint schedule, and to increase readability of the section.

The FAA proposes amendments to § 13.217(b) and (b)(2) to update the filing and service requirements which currently provide that parties must file the joint schedule with the ALJ, and must serve each party with a copy. To ensure consistency in the filing and service of documents across subpart G, these proposed amendments would provide that the joint schedule must be filed and served in accordance with proposed §§ 13.210 and 13.211 respectively.

The FAA also proposes a minor, non-substantive amendment to § 13.217(d) to change the section title to ''Joint scheduling order,'' and to make clear that a joint schedule filed by the parties is a proposed schedule that requires approval of the administrative law judge to become the joint scheduling order.

Section 13.217(f) governs the ALJ's sanction options for a party's failure to comply with a joint scheduling order. The FAA proposes amending this section to clarify that if a party fails to comply with a joint scheduling order, the ALJ may impose any of the listed sanctions as long as the sanction is proportional to the party's failure to comply with the scheduling order. The amendment would replace the current language ''limited to the extent of the party's failure to comply'' with the phrase ''proportional to the party's failure to comply'' simply to make the rule less wordy and more readable. The amendment would also delete the

current language that the ALJ ''may direct the party to comply with a motion to discovery request'' because a party does not have to comply with a motion or discovery request but instead with the scheduling order. These proposed revisions would not affect the ALJ's authority to adjust the schedule or direct a party to respond to a discovery request, as that authority is distinct from the ALJ's authority to impose sanctions under § 13.217(f).

Motions (§ 13.218)

Section 13.218 governs motions practice in civil penalty proceedings. The FAA proposes amending the filing and service requirements in this section to align with and reference the filing and service amendments in proposed §§ 13.210 and 13.211. Proposed amendments would also add clarity, specify that the list of motions included in this section is not exhaustive, provide that the ALJ's authority to strike allegations in the complaint in response to a motion for more definite statement is discretionary, more closely align motions to strike with Rule 12 of the Federal Rules of Civil Procedure, and add a new provision to address motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing, or order dismissing a request for hearing and answer.

Section 13.218(f) would be amended to clarify that the listed motions are not exclusive by modifying the provision to state that the motions that a party may file ''include'' the listed motions. Paragraphs (f)(2)(i) and (f)(2)(ii) would be amended for clarity by specifying that the referenced decision on appeal refers to the FAA decisionmaker's decision on appeal. Section 13.218(f)(2)(ii), which addresses motions to dismiss a complaint, would also be amended to add a cross-reference to § 13.208 which permits the filing of a motion to dismiss a complaint in lieu of filing an answer to the complaint when the allegations are ''stale.''

Additionally, § 13.218(f)(3)(i) would be amended to provide that the ALJ may—rather than must—strike an allegation in the complaint if the agency attorney fails to comply with the ALJ's order to supply a more definite statement. This change gives the ALJ more flexibility to regulate the course of the proceedings.

Section 13.218(f)(4) would be amended to add that a party may move to strike ''impertinent'' and ''scandalous'' matters in a pleading, to conform with Rule 12 of the Federal Rules of Civil Procedure. The current rule permits a motion to strike ''redundant,'' ''immaterial'' or ''irrelevant'' material. The FAA proposes deleting the word ''irrelevant'' as unnecessary with the proposed addition of ''impertinent'' matter. The proposed rule would be in harmony with the similar proposed rule regarding motions to strike in subpart D, § 13.49(d).

Finally, the FAA would add a new § 13.218(f)(7), titled ''Motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer.'' This proposed section would explain that the FAA decisionmaker could treat such motions as notices of appeal to the FAA decisionmaker. If such motions were filed within the time permitted for filing a notice of appeal, the FAA decisionmaker would issue a briefing schedule. This proposed addition would not establish new practice, but rather reflect current practice and case law. The Administrator has held that once the ALJ issues an initial decision, the ALJ loses jurisdiction over the matter and therefore does not have authority to reconsider the initial decision. *Degenhardt,* FAA Order No. 90–20 (August 16, 1990). The Administrator has also held that the ALJ has no jurisdiction after issuing an order dismissing a complaint, (*Keller,* FAA Order No. 2011–2 (Jan. 11, 2011)), or an order dismissing a request for hearing, (*Seeman,* FAA Order No. 2014–3 (Oct. 29, 2014); *Barnhill,* FAA Order No. 92–32 (May 5, 1992) (ALJ does not have jurisdiction to reconsider an order granting a motion for summary judgment)).

Parties have at times filed motions seeking reconsideration, rehearing or modification after the ALJ has issued an initial decision or an order dismissing a request for hearing or complaint even though the rules of practice do not provide for such motions. The Administrator has directed that in such instances, the ALJ should forward the motions to the FAA decisionmaker for consideration as an appeal. The ALJs have referred these motions to the Administrator and the Administrator has construed such motions as notices of appeal, and at times, if the motions were sufficiently detailed, as appeal briefs as well.[10]

The FAA has concluded that amending the rules to permit an ALJ to reconsider an order dismissing a request for hearing or a complaint, or an initial decision would unduly lengthen the civil penalty proceedings. The FAA therefore proposes amending the rule to reflect current practice and case law, clarifying that the FAA decisionmaker may treat any motion for reconsideration or the like as a notice of appeal under § 13.233. Further, if the motion was filed during the time period for filing notices of appeal, then the Administrator, if appropriate, would issue a briefing schedule.

Interlocutory Appeals (§ 13.219)

Section 13.219 addresses interlocutory appeals in civil penalty proceedings. The FAA proposes amending § 13.219(b), (c) and (d) to provide that written notices of, requests for, or briefs on interlocutory appeal must be filed with the FAA Hearing Docket and served on each party and the ALJ. This would ensure conformity with the service and filing amendments made to §§ 13.210 and 13.211.

Discovery (§ 13.220)

Section 13.220 governs discovery in civil penalty proceedings. The FAA would amend § 13.220(b), (g), and (h), the provisions addressing methods of discovery, confidential orders, and protective orders, to align their filing and service instructions with proposed amendments to §§ 13.210 and 13.211 requiring documents to be filed with the FAA Hearing Docket and served on the ALJ and each other party.

Additionally, the FAA proposes amending § 13.220(b) to clarify that a party must not file or serve written interrogatories, requests for production of documents or tangible items, requests for admissions, or responses to any of these with the FAA Hearing Docket or the ALJ. The current provision does not make this clear, as it merely states that a party ''is not required'' to file these with the ALJ or the FAA Hearing Docket Clerk. This amendment is intended to prevent unnecessary cluttering of the official record in a case. As the rule currently provides, if a discovery dispute arises, the discovery documents must be attached to any related motion so that the ALJ would have the relevant documents to make rulings to resolve the dispute.

Section 13.220(e) currently provides, in part, that a party has no ground to object to a discovery request on the basis that the information sought would

[10] *E.g., Seeman,* (Administrator construed Complainant's motion to vacate order for default judgment as a notice of appeal and an appeal brief); *Rawlings,* FAA Order No. 1997–33 (Oct. 21, 1997) (Administrator construed a memorandum to the ALJ that was received after the ALJ dismissed the proceedings due to the respondent's failure to file an answer as a notice of appeal.

not be admissible at the hearing if the information sought during discovery is ''reasonably calculated'' to lead to the discovery of admissible evidence. The FAA proposes changing the ''reasonably calculated'' standard to the ''relevant to any party's claim or defense'' standard consistent with recently amended Rule 26(b) of the Federal Rules of Civil Procedure.

Current § 13.220(k) provides that a party must not serve more than 30 interrogatories, but allows a party to file a motion for permission to serve more than 30 interrogatories. In accordance with current paragraph (k)(2), the ALJ must ''grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.'' To clarify this provision, the FAA proposes to amend § 13.220(k)(2) to provide that the ALJ may grant a motion to serve more than 30 interrogatories only upon a showing of good cause. A showing of good cause could include reasons why the party did not inquire about particular information in a previously served set of interrogatories.

Section 13.220(n) currently governs the ALJ's sanction options for a party's failure to comply with discovery orders and orders to compel. The FAA proposes removing references to ''order to compel'' that are in 13.220(n) and its title to streamline the regulation, as it already refers to the broader term ''discovery order'' which includes an order to compel. The proposed amendment would also remove the term ''motion to compel'' which was clearly an error in the original drafting, because a party does not have to comply with a motion to compel but instead with a discovery order.

Additionally, the FAA proposes streamlining the text in § 13.220(n) to parallel that in amended § 13.217(f). The amendment would provide that if a party fails to comply with a discovery order, the ALJ may impose any of the listed sanctions as long as the sanction is proportional to the party's failure to comply with the order. The FAA proposes to replace the current language ''limited to the extent of the party's failure to comply'' with the phrase ''proportional to the party's failure to comply'' simply to make the rule less wordy and more readable. The proposed revisions would not restrict the ALJ's authority to adjust the discovery schedule or to direct a party to respond to a discovery request, as that authority is distinct from the ALJ's authority to impose sanctions under § 13.220(n).

Public Disclosure of Information (§ 13.226)

Section 13.226 governs public disclosure of any information contained in the record. Therefore, the FAA proposes amending the title of this section to ''Public disclosure of information.''

The FAA proposes amending the filing and service provision in § 13.226(a) to align with the amended filing and service instructions in §§ 13.210 and 13.211.

Subpoenas (§ 13.228)

Section 13.228 governs subpoenas in civil penalty proceedings. The FAA proposes amending § 13.228(a) and (b), which address requests for subpoenas and motions to quash or modify subpoenas, to align with the proposed filing and service amendments in §§ 13.210 and 13.211.

Section 13.228(a) would also be amended to remove the authority of the FAA Hearing Docket Clerk and the ALJ to issue blank subpoenas upon request by a party. Instead, a party would need to apply for a subpoena from the ALJ as permitted by the relevant governing statutes (*i.e.,* 49 U.S.C. 46104 and 5121). The party applying for the subpoena would be required to show the general relevance and reasonable scope of the evidence sought by the subpoena. This amendment would place the burden on the requester to prove that a subpoena would be appropriate rather than permit the issuance of a subpoena in blank with the burden to prove the inappropriateness of the subpoena on the person to whom it was directed. Under the proposed change, only the ALJ—and not the FAA Hearing Docket Clerk—could issue the requested subpoena if warranted. This change would harmonize § 13.228(a) with § 13.205(a)(3), which currently provides that it is within the ALJ's authority to issue subpoenas. It would also harmonize the subpart G subpoena procedures with the proposed amended subpoena rule in subpart D, § 13.57.

The FAA also proposes broadening § 13.228(a) by providing that the subpoena may be served on the holder of requested documents or tangible items as permitted by applicable statute, rather than solely on a witness in a proceeding, as is currently provided in the rule. The FAA proposes this amendment to make clear that under applicable law parties must serve subpoenas for relevant documents or tangible items on the witness or the holder of the documents or tangible items. Finally, the FAA proposes adding time frames for the service and filing of requests for subpoenas that would be applicable absent good cause shown. A request for a subpoena for the purpose of taking depositions would be filed and served at least 15 days before a scheduled deposition. A request for a subpoena for the purpose of requiring the attendance of witnesses or the production of documents or tangible things at a hearing would be filed and served at least 30 days before a scheduled hearing. These amendments would harmonize this provision with subpart D subpoena procedures proposed in § 13.57.

Witness Fees (§ 13.229)

Section 13.229 governs witness fees in civil penalty proceedings. Section 13.229(a) provides that the party who applies for a subpoena shall pay the associated witness fees, unless otherwise authorized by the ALJ. The FAA would remove this fee-shifting provision which permits the ALJ to shift the standard witness fee burden away from the party requesting the appearance of a witness. This fee-shifting authority has not been used, it is not supported by an applicable statute, and it runs contrary to the ''American Rule'' [11] that parties pay their own costs. Under the proposed rule, the party applying for a subpoena would pay the associated witness fees. This same change is proposed in subpart D, § 13.57(d).

The FAA also proposes amending § 13.229(b), which currently provides that a witness who appears at a deposition or hearing (with the exception of an employee of the FAA who appears at the direction of the FAA) is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances. The amendment would provide clarification by specifying that that these witnesses would be entitled to fees and allowances as provided under 28 U.S.C. 1821, the applicable statute governing the payment of witnesses in judicial proceedings. This change would also harmonize the witness fee provision in subpart G with § 13.57 in subpart D, as revised by this proposal.

Record (§ 13.230)

Section 13.230 explains what constitutes the record in civil penalty proceedings and how to examine or acquire a copy of the record. Section 13.230(a) provides that the record in a civil penalty proceeding is comprised of

[11] *See* Rule 54(d)(1) of the Federal Rules of Civil Procedure (each party is responsible for paying its own attorney's fees unless specific authority permits otherwise).

transcripts of the hearing, exhibits received into evidence, motions, applications, requests, and rulings. The FAA proposes amending this section to add that pleadings, transcripts of the prehearing conferences, briefs, responses to motions, applications, and requests are also part of the record. Additionally, the FAA would clarify that only exhibits admitted into evidence are part of the record before an ALJ, although excluded evidence may form part of the record on appeal under § 13.225. These proposed amendments would align the rule with current practice.

The FAA also proposes amending § 13.230(b), which provides how a person may examine the record or acquire a copy. This section does not currently distinguish between parties and nonparties. Under current practice, parties may have access to all documents that constitute the record unless ordered otherwise by an ALJ. Current practice is that non-parties, however, may only obtain a copy of the publicly available portions of the record. The public, for example, may not examine or obtain a copy of the portions of the record that the ALJ has ordered to be withheld from public disclosure or that contain financial information. To align the regulation with statutory requirements and existing practice, the FAA proposes specifying that any person may obtain a copy of the releasable portions of the record in accordance with applicable law.

Argument Before the Administrative Law Judge (§ 13.231)

Section 13.231 provides the rules governing argument before an ALJ in civil penalty proceedings, including arguments during the hearing, final oral argument, and post-hearing briefs. The FAA proposes amending § 13.231 by adding filing and service requirements to align with proposed filing and service amendments in §§ 13.210 and 13.211. This would create consistency with filing and service amendments made throughout subpart G and ensure that FAA Hearing Docket has the complete record.

Initial Decision (§ 13.232)

Section 13.232 governs the ALJ's initial decision. The FAA would amend § 13.232(d), which currently addresses when the ALJ's initial decision is considered an order assessing civil penalty, by moving this provision to new proposed § 13.232(e). In its place, the FAA would add a provision that would allow the FAA decisionmaker to treat a motion for reconsideration of an initial decision as a notice of appeal under § 13.233, and if the motion were filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker would issue a briefing schedule, as provided in § 13.218. This reflects current practice, as previously explained in the discussion of proposed amendments to § 13.218. The FAA decisionmaker would not be required to treat such motions as notices of appeal.

Proposed § 13.232(e) would contain the provision currently in § 13.232(d), amended to provide that the ALJ may not assess a civil penalty exceeding the amount sought in the complaint. This limitation is currently provided in § 13.16(j) of subpart C. The FAA proposes moving the requirement to this section as it pertains to a limitation on the ALJ's initial decision.

Appeal From Initial Decision (§ 13.233)

Section 13.233 governs the rules for appealing from an ALJ's initial decision in civil penalty proceedings. The FAA proposes adding references to the filing and service rules in §§ 13.210 and 13.211 throughout § 13.233. The proposed amendment to § 13.233(a) provides an exception to the requirement in proposed § 13.211 that documents be served on the ALJ. The proposed amendment would provide that a party is not required to serve any appellate documents under § 13.233 on the ALJ. This exception includes the notice of appeal, appeal brief, and reply brief.

The FAA also proposes amending § 13.233(c)(1) and (e)(1) to replace references to the ''appellate docket clerk'' with the FAA decisionmaker, as there is no separate appellate docket clerk. This amendment would clarify that the FAA decisionmaker, rather than the FAA Hearing Docket Clerk, must serve a letter confirming an extension of time to file a brief when the parties agree to the extension.

Sections 13.233(c)(2) and (e)(2) would be amended to permit a party to file a written response to a motion for extension of time filed by another party when the parties do not agree to an extension of time. The current rule does not provide for such responses. The amendment would provide that a response must be filed no later than 10 days after service of the motion for extension of time.

Section 13.233(g) would be amended to require a party to file the original plus only one copy, instead of two copies, of the appeal brief or reply brief with the FAA Hearing Docket. The amendment would also accommodate proposed filing by fax and email as provided in § 13.210, by requiring only one copy of the appeal brief or reply brief.

Finally, § 13.232(j) would be amended to provide that the FAA decisionmaker may not assess a civil penalty that is greater than the amount sought in the complaint as is currently provided in current § 13.16(j), in subpart C of part 13. The FAA proposes moving the requirement to this section where is it more suited as it pertains to a limitation on the FAA decisionmaker's decision.

Petition To Reconsider or Modify a Final Decision and Order of the FAA Decisionmaker on Appeal (§ 13.234)

Section 13.234 governs petitions for reconsideration or modification of a final decision and order of the FAA decisionmaker on appeal. The FAA proposes amending § 13.234(a), (b), and (e) to align with the proposed filing amendments in §§ 13.210 and 13.211. Specifically, under § 13.234(a), a party would file a petition for reconsideration or modification of a final decision and order of the FAA decisionmaker with the FAA Hearing Docket, as there is no appellate docket. The amendment would also accommodate proposed filing by fax and email by requiring only one copy of the petition for review. Additionally, § 13.234(e) would be amended to provide that replies to petitions for reconsideration or modification must be filed with the FAA Hearing Docket and served on each party as provided under amended §§ 13.210 and 13.211. This proposed amendment provides an exception to the requirement that documents be served on the ALJ. The proposed amendment to § 13.234(a) would provide that a party is not required to serve any documents under § 13.234 on the ALJ.

Section 13.234(f) describes the effect of filing petitions for reconsideration or modification of a final decision and order of the FAA decisionmaker. The FAA proposes amending this section to provide that the filing of a timely petition would stay the effectiveness of a decision and order of the FAA decisionmaker until final disposition of the petition by the FAA decisionmaker. The amended rule would ensure that the effective date of the Administrator's final decision and order would be the date that reconsideration or modification is granted, dismissed or denied. This amendment would bring § 13.234(f) in line with the comparable provision of the NTSB's Rules of Practice (49 CFR 821.50(f)) and current case law. As a result of this amendment, the FAA would remove the provision indicating that such petitions to reconsider or modify a final decision and order of the FAA decisionmaker on

appeal do not toll the time allowed for judicial review.

Alternate Dispute Resolution (§ 13.236)

The FAA proposes adding a new § 13.236 titled ''Alternative dispute resolution.'' This new section would provide for the voluntary use of mediation, consistent with the DOT's policy statement on ADR.[12] This proposed section would be similar to the ADR provision proposed in subpart D, § 13.69(a).

H. Redesignation Table

Current section	Proposed section
Subpart A:	
N/A	§ 13.1.
§ 13.1	§ 13.2.
§ 13.3	§ 13.3.
§ 13.5(a)–(d), (f)–(k).	§ 13.5.
§ 13.5(a)	§ 13.5(a).
§ 13.5(b)	§ 13.5(b).
§ 13.5(c)	§ 13.5(c).
§ 13.5(d)	§ 13.5(d).
§ 13.5(e)	Removed.
§ 13.5(f)	§ 13.5(e).
§ 13.5(g)	§ 13.5(f).
§ 13.5(h)	§ 13.5(f)(1).
§ 13.5(i)	§ 13.5(f)(2).
§ 13.5(j)	§ 13.5(g).
§ 13.5(k)	§ 13.5(h).
§ 13.7	§ 13.7.
Subpart B:	
§ 13.11	§ 13.11.
Subpart C:	
§ 13.13(a)	§ 13.13(a).
§ 13.13(b)	§ 13.13(b).
§ 13.13(c)	§ 13.13(b)(5).
§ 13.14	Removed.
§ 13.15(a)	§ 13.15(a).
§ 13.15(b)	§ 13.15(b).
§ 13.15(c)(1)	§ 13.15(c)(1).
§ 13.15(c)(2)	§ 13.15(c)(2)(ii), (c)(3), (c)(4).
§ 13.15(c)(3)	§ 13.15(c)(2)(i).
§ 13.15(c)(4)	§ 13.15(c)(2)(i).
§ 13.15(c)(5)	§ 13.15(c)(5).
§ 13.16(a)–(c)	§ 13.16(a)–(c).
§ 13.16(d)	§ 13.16(e).
§ 13.16(e)	§ 13.16(d).
§ 13.16(f)–(j)	§ 13.16(f)–(j).
§ 13.16(k)	§ 13.15(l).
§ 13.16(l)	§ 13.15(m).
§ 13.16(m)	§ 13.15(k).
§ 13.16(n)	§ 13.16(n).
§ 13.17	§ 13.17.
§ 13.18	§ 13.18.
§ 13.19(a)–(b)	§ 13.19(a).
§ 13.19(c)	§ 13.19(b).
§ 13.19(d)	Removed.
N/A	§ 13.19(c).
N/A	§ 13.19(d).
§ 13.20(a)	§ 13.20(a).
§ 13.20(b)	§ 13.20(b).
§ 13.20(c)	§ 13.20(c)(1).
§ 13.20(d)	§ 13.20(c)(2).
§ 13.20(e)	§ 13.20(c)(4).
§ 13.20(f)	§§ 13.20(c)(3), 13.63(b).
§ 13.20(g)	§ 13.65(a).
§ 13.20(h)	§ 13.65(b).
§ 13.20(i)	§ 13.65(c).
§ 13.20(j)	§ 13.65(d).
§ 13.20(k)	§ 13.45(c).
§ 13.20(l)	§ 13.20(f).
§ 13.20(m)	Removed.
N/A	§ 13.20(e).
§ 13.21	Removed.
§ 13.23	Removed.
§ 13.25	Removed.
§ 13.27	Removed.
§ 13.29	Removed.
Subpart D:	
§ 13.31	§ 13.31.
§ 13.33	§ 13.33(b).
N/A	§ 13.33(a), (c).
§ 13.35(a)	§ 13.35(a), § 13.43(c).
§ 13.35(b)	§ 13.35(a).
§ 13.35(c)	§ 13.35(c).
§ 13.35(d)	§ 13.35(b).
§ 13.37(a)–(j)	§ 13.37(a)–(j).
§ 13.37(k)	§ 13.37(l).
N/A	§ 13.37(m).
§ 13.39	§ 13.39.
N/A	§ 13.41.
§ 13.43(a)	§ 13.43(a).
N/A	§ 13.43(b), (d), (e).
§ 13.43(b)	§ 13.43(f).
§ 13.43(c)	§ 13.43(g).
§ 13.43(d)	§ 13.43(h).
§ 13.43(e)	§ 13.43(h).
§ 13.44(a)	§ 13.45(a).
§ 13.44(b)	§ 13.45(b), (c).
§ 13.45	§ 13.47(b).
§ 13.47	§ 13.47(a).
§ 13.49(a)	§ 13.49(a)(1).
N/A	§ 13.49(b).
§ 13.49(c)	§ 13.49(a)(2).
§ 13.49(d)	§ 13.49(c).
§ 13.49(e)	§ 13.49(d).
§ 13.49(f)	§ 13.49(e).
§ 13.49(g)	Removed.
N/A	§ 13.49(g).
§ 13.49(h)	§ 13.49(h).
§ 13.51	§ 13.51.
§ 13.53	§ 13.53(d).
N/A	§ 13.53(a)–(c), (e).
§ 13.55	§ 13.55.
§ 13.57(a)	§ 13.57(a).
§ 13.57(b)	§ 13.57(b).
§ 13.57(c)	§ 13.57(c).
§ 13.57(d)	Removed.
N/A	§ 13.57(d).
N/A	§ 13.57(e).
N/A	§ 13.57(f).
§ 13.59(a)	§ 13.59(a).
§ 13.59(b)	§ 13.59(b).
§ 13.59(c)	§ 13.49(f).
§ 13.61	§ 13.61.
§ 13.63	§ 13.63(a).
N/A	§ 13.63(b)–(c).
N/A	§ 13.65.
N/A	§ 13.67.
N/A	§ 13.69.
Subpart E:	
§ 13.71	§ 13.71.
§ 13.73	§ 13.73.
§ 13.75	§ 13.75.
§ 13.77	§ 13.77.
§ 13.79	§ 13.63(b).
§ 13.81(a)	§ 13.81(a).
§ 13.81(b)	Removed.
§ 13.81(c)	§ 13.81(b).
§ 13.81(d)	§ 13.81(c).
§ 13.81(e)–(g)	Removed.
§ 13.83(a)	§ 13.65(a).
§ 13.83(b)	Removed.
§ 13.83(c)	Removed.
§ 13.83(d)	§ 13.65(b).
§ 13.83(e)	§ 13.65(c).
§ 13.83(f)	Removed.
§ 13.83(g)	§ 13.65(d).
§ 13.83(h)	Removed.
§ 13.85	Removed.
§ 13.87	§ 13.45(b)–(c).
Subpart F:	
§ 13.101	§ 13.101.
§ 13.103	§ 13.103.
§ 13.105	§ 13.105.
§ 13.107	§ 13.107.
§ 13.109	§ 13.109.
§ 13.111	§ 13.111.
§ 13.113	§ 13.113.
§ 13.115	§ 13.115.
§ 13.117	§ 13.117.
§ 13.119	§ 13.119.
§ 13.121	§ 13.121.
§ 13.123	§ 13.123.
§ 13.125	§ 13.125.
§ 13.127	§ 13.127.
§ 13.129	§ 13.129.
§ 13.131	§ 13.131.
Subpart G:	
§ 13.201	§ 13.201.
§ 13.202	§ 13.202.
§ 13.203	§ 13.203.
§ 13.204	§ 13.204.
§ 13.205(a)(1)–(9).	§ 13.205(a)(1)–(9).
§ 13.205(b)	§ 13.205(a)(10).
N/A	§ 13.205(a)(11).
§ 13.206	§ 13.206.
§ 13.207	§ 13.207.
§ 13.208	§ 13.208.
§ 13.209(a)	§ 13.209(a).
§ 13.209(b)	§ 13.209(a)–(b), (d), § 13.210.
§ 13.209(c)	§ 13.209(c).
§ 13.209(d)	§ 13.209(d).
§ 13.209(e)	§ 13.209(e).
§ 13.209(f)	§ 13.209(f).
§ 13.210(a)	§ 13.210(a), (b), (c), (g).
§ 13.210(b)	§ 13.210(d).
§ 13.210(c)	§ 13.210(e).
§ 13.210(d)	§ 13.210(f).
§ 13.210(e)	§ 13.230(b).
N/A	§ 13.210(h).
§ 13.211(a)	§ 13.211(a).
§ 13.211(b)	§ 13.211(c).
§ 13.211(c)	§ 13.211(d).
§ 13.211(d)	§ 13.211(e).
§ 13.211(e)	Removed.
§ 13.211(f)	§ 13.211(b).
§ 13.211(g)	§ 13.211(f).
§ 13.211(h)	Removed.
§ 13.212	§ 13.212.
§ 13.213	§ 13.213.
§ 13.214	§ 13.214.
§ 13.215	§ 13.215.
§ 13.216	§ 13.216.
§ 13.217	§ 13.217.
§ 13.218	§ 13.218.
N/A	§ 13.218(f)(7).
§ 13.219	§ 13.219.

[12] *Department of Transportation Alternative Dispute Resolution Policy Statement,* 67 FR 40367, June 12, 2002.

Current section	Proposed section
§ 13.220	§ 13.220.
§ 13.221	§ 13.221.
§ 13.222	§ 13.222.
§ 13.223	§ 13.223.
§ 13.224	§ 13.224.
§ 13.225	§ 13.225.
§ 13.226	§ 13.226.
§ 13.227	§ 13.227.
§ 13.228	§ 13.228.
§ 13.229	§ 13.229.
§ 13.230	§ 13.230.
§ 13.231	§ 13.231.
§ 13.232(a)	§ 13.232(a).
§ 13.232(b)	§ 13.232(b).
§ 13.232(c)	§ 13.232(c).
§ 13.232(d)	§ 13.232(e).
N/A	§ 13.232(d).
§ 13.233	§ 13.233.
§ 13.234	§ 13.234.
§ 13.235	§ 13.235.
N/A	§ 13.236.

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, the 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). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

This proposed rule would amend the FAA's investigative and enforcement procedures to update position title references and reflect organizational changes in the Chief Counsel's Office, update outdated statutory and regulatory references, update outdated addresses, and provide uniformity across part 13. The proposal would also reorganize and reword existing provisions to eliminate inconsistencies, clarify ambiguity, increase efficiency, and improve readability. These changes would ensure that the public has current information and rule language that is easier to understand. Another proposed change would require that persons filing documents take reasonable steps to prevent disclosure of certain personally identifiable information via documents filed under Subpart G. A person or party may object to public disclosure of the information by filing a motion as is currently required, but under this proposed rule would have to include both an un-redacted and a redacted copy that indicates the information sought to be withheld. The cost of these changes would be minimal.

The proposed rule would also provide the option for an expedited administrative process to subjects of emergency orders to which § 13.20 applies. Currently, part 13 does not provide for an expedited administrative process for the subjects of such orders. The only recourse for litigating such an order is a direct appeal under 49 U.S.C. 46110 to a U.S. court of appeals, which can be costly and slow. The rule proposes adding the option of an expedited administrative hearing before a Hearing Officer followed by an expedited administrative appeal to the Administrator. The proposed expedited process is consistent with existing processes for issuing other types of emergency orders and notices of proposed actions. Also, expedited subpart D proceedings are not new, as current subpart E uses subpart D procedures for appeals of hazardous materials emergency orders of compliance issued under current § 13.81(a). Because the proposed process is similar to existing processes, and because there have only been two appeals of such orders since 2012 where it would apply, the costs stemming from the proposed process would be minimal. Finally, an order issued after exhaustion of the proposed expedited administrative process could be appealed to a U.S. court of appeals under 49 U.S.C. 46110.

The proposed expedited administrative process could also lead to an efficient resolution of the matter, without an appeal to a U.S. court of appeals. This could result in lower costs than if the matter had been directly litigated before a U.S. court of appeals, which requires an initial $500 filing fee versus no initial filing fee in the proposed administrative proceedings. Other potential cost savings might result because of net savings in attorneys' fees, *i.e.,* the difference in cost of hiring an attorney for a potentially lengthy U.S. court of appeals case versus, for the expedited administrative process, either proceeding *pro se* (without an attorney) or hiring an attorney. In addition, the expedited administrative process could resolve the matter in a far shorter time than a U.S. court of appeals, as the Administrator must issue the final order in the proposed expedited administrative process within 80 days. U.S. court of appeals cases, on the other hand, have a median duration of approximately 8 months that could result in protracted litigation costs and business loss. Additionally, a direct appeal to a U.S. court of appeals could require a remand to the agency for it to consider matters that otherwise could have been resolved under the proposed expedited administrative process. After exhaustion of the proposed expedited administrative process, a respondent could still appeal to a U.S. court of appeals. Even if a respondent resorts to judicial review first, the court of appeals has discretion to require further administrative proceedings, if, for example, the court believes doing so would help develop the record in the case. Therefore, even if the case is not resolved by the proposed expedited administrative process, records developed during that process could later be used by the U.S. court of appeals, reducing the potential costs of a judicial appeal.

As the FAA does not know how many persons subject to emergency orders would opt for expedited hearings and of these how many would end up before a U.S. court of appeals, the FAA cannot conclude how many persons would potentially receive cost savings. However, the FAA expects small cost savings because emergency orders issued under § 13.20 are infrequent. As already mentioned, there have been only two such cases since 2012.

The proposed rule also provides the additional option of using mediation as an alternative dispute resolution procedure in actions under subparts D and G to reduce the potential burden associated with litigating these matters. Litigation could be avoided if mediation results in a mutually agreeable outcome. If mediation is successful and litigation can be avoided there is the potential for cost savings as the cost of mediation is likely to be less than that of litigation.

As with the option for an expedited hearing, mediation may not fully resolve a matter and the respondent may still choose to litigate. However, mediation may reduce the cost of litigation because it can narrow issues and provide for greater cooperation during discovery.

The FAA does not know how many parties would participate in a mediation process, or whether the outcome would be lower costs. The annual average number of subpart D and G cases received by the FAA Hearing Docket from 2012 through 2016 was 61. The FAA expects that the number of parties opting for mediation would likely not exceed this number. As the cost savings of opting for mediation is expected to be minimal, the FAA concludes that the total cost savings of providing this option would be minimal.

The proposed rule would also add the less burdensome options of serving and filing a single copy of a document in subpart D and G proceedings by email or fax. This would have the potential of minimal cost savings. Current requirements only allow filing and serving documents by personal delivery or by mail. The party must file an original and a copy of each document and also serve a copy on each party.

The rule also proposes to remove the FAA Hearing Docket Clerk's authority in civil penalty cases under subpart G to issue blank subpoenas upon request by a party and instead requires a party applying for a subpoena to show the general relevance and reasonable scope of the evidence sought by the subpoena. Under the proposal, only the ALJ would have the authority to issue a subpoena upon a showing of the general relevance and reasonable scope of the evidence sought by the subpoena. The burden would be on the party requesting the subpoena to prove it is appropriate. Because it could avoid subpoenas that impose irrelevant and burdensome requests for testimony, documents, and tangible things, it is potentially cost saving. From the start of 2014 through the end of 2017, the FAA Hearing Docket Clerk has issued 40 subpoenas, and if some unnecessary and irrelevant subpoenas could be avoided in the future there might be minimal cost savings.

Finally, section 13.210(e)(1) currently explains that materials filed in the FAA Hearing Docket in civil penalty adjudications are made publicly available on the Federal Docket Management System's (FDMS) website, *www.regulations.gov.* For purposes of administrative efficiency, the FAA proposes to discontinue using the FDMS website for such materials.[13] Based on current billing, the FAA estimates the cost savings would be approximately $50,000 per year to discontinue using the FDMS website for part 13 adjudication docket materials.[14] Over a 10-year period of analysis this cost savings would total about $500,000 or about $351,179 present value at a 7% discount rate.

The FAA concludes that this proposed rule is a minimal cost rule based on the potential for minimal cost savings as explained herein.

The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. 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 will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, 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 proposed rule, if promulgated is likely to affect a substantial number of small entities, but as it is a minimal cost rule it is not expected to have a significant economic impact on a substantial number of small entities.

The rule would codify current practice, and rewrite and reorganize a part of the CFR to make it more understandable. It would update outdated references and addresses. It would add less burdensome and faster-moving administrative appeal options. It would require that persons filing documents take reasonable steps to prevent disclosure of certain personally identifiable information via those documents, and that motions to withhold information from the public be accompanied by an un-redacted and a redacted copy of the document. It would also add less burdensome options for serving and filing papers. It could eliminate some requests for subpoenas that otherwise would cost parties or subpoenaed persons time and money to defend against. The FAA has determined the proposed rule is a minimal cost rule with the potential for cost savings.

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) and based on the foregoing, the head of the FAA certifies that this proposed rule, if promulgated, 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 proposed rule and determined that it would impose the same minimal costs and minimal cost savings 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

[13] Final decisions will continue to be made available on the FAA's website and through commercial legal reporting services.

[14] Savings based on the portion of FAA's total annual billing costs for dockets and FDMS services attributable to adjudication materials.

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 one 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 proposed 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.

This action does not propose new information collection requirements. Currently, the public may voluntarily submit information to the FAA as provided in Section 13.5 of title 14 of the CFR. To address this voluntary information collection, the FAA has submitted this information collection assessment to OMB for its review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Summary: Section 13.5 of title 14 of the CFR currently allows any person to file a complaint with the FAA Administrator regarding a person's violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes. Thus, the overall burden associated with submission and processing of these complaints is not new. It is also optional, as there is no obligation for any individual file a formal complaint.

As laid out in 14 CFR 13.5(b), a formal complaint must be in writing, state that it is a complaint seeking an appropriate order or enforcement action, identify the subjects of the complaint, state the specific laws that each subject violated, provide a concise but complete statement of the facts substantiating the violations, and include the name, address, telephone number, email, and signature of the person filing the complaint. After the FAA confirms that the complaint meets these requirements, it sends the complaint to the subjects of the complaint and gives them an opportunity to submit a written answer. If a complaint does not meet these requirements, it is considered a report under 14 CFR 13.2.

Use: The FAA uses the information in the complaint and answer to determine if the matter warrants investigation or action. If it does, the FAA proceeds with an investigation. If not, the FAA dismisses the complaint and gives the reason for dismissal in writing to both the person who filed the complaint and the subjects of the complaint.

Respondents: Formal complaints are typically submitted by a single individual or organization. Almost all formal complaints are about evenly split between three basic categories (complainant listed first): Individual vs. individual, individual vs. organization, and organization vs. organization.

Frequency: We estimate this collection of information would result in 7 formal complaints per year.[15]

Annual Burden Estimate: We estimate that it would take an individual about 4 hours to write a formal complaint acceptable under § 13.5. Most of this time would be the research required to determine which laws the subject of the complaint supposedly violated. The second largest amount of time would be devoted to writing the ''concise but complete'' statement of facts substantiating the complaint.

The FAA estimates there would be 7 complaints filed per year by 7 respondents. Each complaint would take no more than 4 hours to complete. The annual hourly burden would be 28 hours for the public to submit formal complaints (7 complaints × 4 hours = 28 hours).

After the FAA reviews the complaint and confirms it meets the requirements, each subject of the complaint would have an opportunity to submit a written answer. We estimate this would take the subject 4 hours. The annual hourly burden to the public would be another 28 hours for the subject of the complaint to provide a written answer (7 written answers × 4 hours = 28 hours).[16] The total annual hourly burden to the public would be 56 hours.

Since a complainant and a subject of a complaint could be employed in any occupation, we selected a mean hourly wage rate for all occupations in the U.S. The U.S. Bureau of Labor Statistics estimates of the mean hourly wage rate of all occupations was $24.34 in May 2017.[17] The FAA estimates the total burdened hourly wage rate is $35.69 when including full employee benefits.[18] The total annual cost burden to the public would be about $1,999 ($35.69 × 56 hours).

The complaint would take an FAA attorney no more than 4 hours to review to confirm it meets the requirements as laid out in 14 CFR 13.5(b). The annual time burden for the FAA would be 28 hours. The FAA would take an additional hour to send the complaint to the subjects of that complaint, which would add an additional 7 hours. The FAA would then take another estimated 3 hours to determine if an investigation would be necessary, adding an additional 21 hours to the FAA annual burden. The total annual burden would be 56 hours for the FAA.

We assume an FAA hourly wage rate of $63.51.[19] We estimate the total burdened FAA hourly wage rate to be $86.54 when including full civilian employee benefits.[20] The total annual cost burden to the FAA to review and process the complaint would be $4,846 ($86.54 × 56 = $4,846).

We estimate the total combined (public + FAA) annual burden and cost of the information requirements to be about 112 hours and $6,845. The total combined burden and cost over three years is about 336 hours and $20,535. This annual burden and cost already exists under the current regulations and it is optional, as there is no obligation for any individual to file a formal complaint.

[15] This estimate is based on the number of formal complaints the FAA has received in the last three years. Between calendar years 2015 and 2017, 18 formal complaints were submitted to the FAA: 3 in 2015, 7 in 2016, and 8 in 2017.

[16] Assumes each formal complaint would meet the requirements as laid out in 14 CFR 13.5(b), so the FAA can send the complaint to the subject of the complaint to give them an opportunity to submit a written answer.

[17] Source: U.S. Bureau of Labor Statistics, May 2017 National Occupational Employment and Wage Estimates, see Occupational Code #00–0000, All Occupations (*https://www.bls.gov/oes/current/oes_nat.htm#00-0000*).

[18] Derived from the U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation—March 2018 (*https://www.bls.gov/news.release/pdf/ecec.pdf*, June 8, 2018 release), which indicates that wages and salaries were 68.2% of total employee compensation (salary and benefits) providing a fringe benefit factor of about 1.4663 (=1 ÷ 0.682). We use this factor to estimate the total ''burdened'' employee compensation (salary and benefits) hourly wage rate of $35.69 (=$24.34 × 1.4663).

[19] We assume that 75% of the work would be performed by an FAA attorney at a grade level 14 step 5 hourly wage of $60.83 and 25% by an FAA attorney at a grade level 15 step 5 hourly wage of $71.56 (wages based on U.S. Office of Personnel Management General Schedule Salary Data).

[20] We use a civilian fringe benefit cost factor of 36.25% (or 1.3625) to estimate the total ''burdened'' FAA employee compensation (salary and benefits) hourly wage rate of $86.54 (=$63.51 × 1.3625). The civilian fringe benefit cost factor is based on guidance from the U.S. Office of Management and Budget (*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2008/m08-13.pdf*).

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by April 15, 2019. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

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 proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would 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, would not have Federalism implications.

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

The FAA analyzed this proposed 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 would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

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

This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data or rationale. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

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

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

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous material transportation, Investigations, Law enforcement, Penalties.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter 1 of title 14, Code of Federal Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. Revise the authority citation for part 13 to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 5127 40113–40114, 44103–44106, 44701–44703, 44709–44710, 44713, 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318, 46501–46502, 46504–46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Revise Subpart A to read as follows:

Subpart A—General Authority to Re-Delegate and Investigative Procedures

Sec.
13.1 Re-delegation.
13.2 Reports of violations.
13.3 Investigations (general).
13.5 Formal complaints.
13.7 Records, documents and reports.

§ 13.1 Re-delegation.

Unless otherwise specified, the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement may re-delegate the authority delegated to them under this part.

§ 13.2 Reports of violations.

(a) Any person who knows of any violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes, should report the violation to FAA personnel.

(b) FAA personnel will review each report made under this section to determine whether any additional investigation or action is warranted.

§ 13.3 Investigations (general).

(a) The Administrator may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) The Administrator may delegate the authority to conduct investigations to the various services and offices for matters within their respective areas.

(c) The Administrator's authority to issue orders, conduct investigations, order depositions, hold hearings, issue subpoenas, and require the production of relevant documents, records, and property, is delegated to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement.

(d) A complaint against the sponsor, proprietor, or operator of a federally assisted airport involving violations of the legal authorities listed in § 16.1 of this chapter must be filed in accordance with the provisions of part 16 of this chapter.

§ 13.5 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to a violation by a person of any requirement under 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes. This section does not apply to complaints against the Administrator or employees of the FAA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint seeking an appropriate order or other enforcement action;

(2) Be submitted to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Formal Complaint Clerk (AGC–300), 800 Independence Avenue SW, Washington, DC 20591;

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the statute, rule, regulation, or order that the complainant believes were violated;

(4) Contain a concise but complete statement of the facts relied upon to substantiate each allegation;

(5) State the name, address, telephone number, and email of the person filing the complaint; and

(6) Be signed by the person filing the complaint or an authorized representative.

(c) A complaint that does not meet the requirements of paragraph (b) of this section will be considered a report under § 13.2.

(d) The FAA will send a copy of a complaint that meets the requirements of paragraph (b) of this section to the subject(s) of the complaint by certified mail.

(e) A subject of the complaint may serve a written answer to the complaint to the Formal Complaint Clerk at the address specified in paragraph (b)(2) of this section no later than 20 days after service of a copy of the complaint. For purposes of this paragraph, the date of service is the date on which the FAA mailed a copy of the complaint to the subject of the complaint.

(f) After the subject(s) of the complaint have served a written answer or after the allotted time to serve an answer has expired, the Administrator will determine if there are reasonable grounds for investigating the complaint, and—

(1) If the Administrator determines that a complaint does not state facts that warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal will be given, in writing, to the person who filed the complaint and the subject(s) of the complaint; or

(2) If the Administrator determines that reasonable grounds exist, an informal investigation may be initiated or an order of investigation may be issued in accordance with subpart F of this part, or both. The subject(s) of a complaint will be advised which official has been delegated the responsibility under § 13.3(b) or (c), as applicable, for conducting the investigation.

(g) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(h) The complaint and other records relating to the disposition of the complaint are maintained in the Formal Complaint Docket (AGC–300), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Any interested person may examine any docketed material at that office at any time after the docket is established, except material that is required to be withheld from the public under applicable law, and may obtain a copy upon paying the cost of the copy.

§ 13.7 Records, documents and reports.

Each record, document, and report that FAA regulations require to be maintained, exhibited, or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section which imposes the requirement, the records, documents, and reports may be used in any civil penalty action, certificate action, or other legal proceeding.

■ 3. Revise subpart B to read as follows:

Subpart B—Administrative Actions

§ 13.11 Administrative disposition of certain violations.

(a) If, after an investigation, FAA personnel determine that an apparent violation of 49 U.S.C. subtitle VII, 49 U.S.C. chapter 51, or any rule, regulation, or order issued under those statutes, does not require legal enforcement action, an appropriate FAA official may take administrative action to address the apparent violation.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may take the form of—

(1) A Warning Notice that recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A Letter of Correction that states the corrective action the apparent violator has taken or agrees to take. If the apparent violator does not complete the agreed corrective action, the FAA may take legal enforcement action.

■ 4. Revise subpart C to read as follows:

Subpart C—Legal Enforcement Actions

Sec.
13.13 Consent orders.
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§ 13.13 Consent orders.

(a) The Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement may issue a consent order to resolve any matter with a person that may be subject to legal enforcement action.

(b) A person that may be subject to legal enforcement action may propose a consent order. The proposed consent order must include—

(1) An admission of all jurisdictional facts;

(2) An express waiver of the right to further procedural steps and of all rights to legal review in any forum;

(3) An express waiver of attorney's fees and costs;

(4) If a notice or order has been issued prior to the proposed consent order, an incorporation by reference of the notice or order and an acknowledgment that the notice or order may be used to construe the terms of the consent order; and

(5) If a request for hearing or appeal is pending in any forum, a provision that the person will withdraw the request for hearing or notice of appeal.

§ 13.14 [Reserved]

§ 13.15 Civil penalties: Other than by administrative assessment.

(a) The FAA uses the procedures in this section when it seeks a civil penalty other than by the administrative assessment procedures in §§ 13.16 or 13.18.

(b) The authority of the Administrator to seek a civil penalty, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions sought by the Administrator is delegated to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement. This delegation applies to cases involving one or more of the following:

(1) An amount in controversy in excess of:

(i) $400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) $50,000, if the violation was committed by an individual or small business concern.

(2) An in rem action, seizure of aircraft subject to lien, suit for injunctive relief, or for collection of an assessed civil penalty.

(c) The Administrator may compromise any civil penalty proposed under this section, before referral to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement sends a civil penalty letter to the person charged with a violation. The civil penalty letter contains a statement of the charges, the applicable law, rule, regulation, or order, and the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(2) Not later than 30 days after receipt of the civil penalty letter, the person cited with an alleged violation may respond to the civil penalty letter by—

(i) Submitting electronic payment, a certified check, or money order in the amount offered by the Administrator in the civil penalty letter. The agency attorney will send a letter to the person charged with the violation stating that payment is accepted in full settlement of the civil penalty action; or

(ii) Submitting one of the following to the agency attorney:

(A) Written material or information that may explain, mitigate, or deny the violation or that may show extenuating circumstances; or

(B) A written request for an informal conference to discuss the matter with the agency attorney and to submit any relevant information or documents that may explain, mitigate, or deny the violation or that may show extenuating circumstances.

(3) The documents, material, or information submitted under subparagraph (c)(2)(ii) of this section may include support for any claim of inability to pay the civil penalty in whole or in part, or for any claim of small business status as defined in 49 U.S.C. 46301(i).

(4) The Administrator will consider any material or information submitted under paragraph (c)(2)(ii) of this section to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(5) If the parties cannot agree to compromise the civil penalty, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a U.S. district court to prosecute and collect the civil penalty.

§ 13.16 Civil Penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman. Administrative assessment against all persons for hazardous materials violations.

(a) The FAA uses the procedures in this section when it assesses a civil penalty against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairman for a violation cited in the first sentence of 49 U.S.C. 46301(d)(2), or in 49 U.S.C. 47531, or any implementing rule, regulation or order, except when the U.S. district courts have exclusive jurisdiction.

(b) The U.S. district courts have exclusive jurisdiction of any civil penalty action initiated by the FAA for violations described in paragraph (a) of this section if—

(1) The amount in controversy is more than $400,000 for a violation committed by a person other than an individual or small business concern;

(2) The amount in controversy is more than $50,000 for a violation committed by an individual or a small business concern;

(3) The action is in rem or another action in rem based on the same violation has been brought;

(4) The action involves an aircraft subject to a lien that has been seized by the Government; or

(5) Another action has been brought for an injunction based on the same violation.

(c) *Hazardous materials violations.* An order assessing a civil penalty for a violation under 49 U.S.C. chapter 51, or a rule, regulation, or order issued under that chapter is issued only after the following factors have been considered:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) With respect to the violator, the degree of culpability, any history of

prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) Other matters that justice requires.

(d) *Delegation of authority.* The authority of the Administrator is delegated to each Deputy Chief Counsel and the Assistant Chief Counsel for Enforcement, as follows:

(1) Under 49 U.S.C. 46301(d), 47531, and 5123, and 49 CFR 1.83, to initiate and assess civil penalties for a violation of those statutes or a rule, regulation, or order issued under those provisions;

(2) Under 49 U.S.C. 5123, 49 CFR 1.83, 49 U.S.C. 46301(d), and 49 U.S.C. 46305, to refer cases to the Attorney General of the United States or a delegate of the Attorney General for collection of civil penalties;

(3) Under 49 U.S.C. 46301(f), to compromise the amount of a civil penalty imposed; and

(4) Under 49 U.S.C. 5123 (e) and (f) and 49 CFR 1.83, to compromise the amount of a civil penalty imposed.

(e) *Order assessing civil penalty.*

(1) An order assessing civil penalty may be issued for a violation described in paragraphs (a) or (c) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing, when:

(i) A person charged with a violation agrees to pay a civil penalty for a violation; or

(ii) A person charged with a violation does not request a hearing under paragraph (g)(2)(ii) of this section within 15 days after receipt of a final notice of proposed civil penalty.

(2) The following also serve as an order assessing civil penalty:

(i) An initial decision or order issued by an administrative law judge as described in § 13.232(e).

(ii) A decision or order issued by the FAA decision maker as described in § 13.233(j).

(f) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty to the person charged with a violation, the designated agent for the person, or if there is no such designated agent, the president of the company charged with a violation. In response to a notice of proposed civil penalty, a company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30 days after receipt of the notice of proposed civil penalty, the person charged with a violation may—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order under paragraph (n) of this section may be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an informal conference to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing conducted in accordance with subpart G of this part.

(g) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty will be sent to the person charged with a violation, the designated agent for the person under 49 U.S.C. 46103, the designated agent named in accordance with paragraph (f) of this section, or the president of the company charged with a violation. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

(i) If the person charged with a violation fails to respond to the notice of proposed civil penalty within 30 days after receipt of that notice; or

(ii) If the parties participated in any procedures under paragraph (f)(2) of this section and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation may do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order under paragraph (n) of this section may be issued in that amount; or

(ii) Request a hearing conducted in accordance with subpart G of this part.

(h) *Request for a hearing.* Any person requesting a hearing, under paragraph (f)(3) or paragraph (g)(2)(ii) of this section must file the request with the FAA Hearing Docket Clerk and serve the request on the agency attorney in accordance with the requirements in subpart G of this part.

(i) *Hearing.* The procedural rules in subpart G of this part apply to the hearing.

(j) *Appeal.* Either party may appeal the administrative law judge's initial decision to the FAA decisionmaker under the procedures in subpart G of this part. The procedural rules in subpart G of this part apply to the appeal.

(k) *Judicial Review.* A person may seek judicial review only of a final decision and order of the FAA decisionmaker in accordance with § 13.235.

(l) *Payment.*

(1) A person must pay a civil penalty by:

(i) Sending a certified check or money order, payable to the Federal Aviation Administration, to the FAA office identified in the notice of proposed civil penalty, the final notice of proposed civil penalty, or the order assessing civil penalty, or

(ii) Making an electronic payment according to the directions specified in the notice of proposed civil penalty, the final notice of proposed civil penalty, or the order assessing civil penalty.

(2) The civil penalty must be paid within 30 days after service of the order assessing civil penalty, unless otherwise agreed to by the parties. In cases where a hearing is requested, an appeal to the FAA decisionmaker is filed, or a petition for review of the FAA decisionmaker's decision is filed in a U.S. court of appeals, the civil penalty must be paid within 30 days after all litigation in the matter is completed and the civil penalty is affirmed in whole or in part.

(m) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order assessing civil penalty or other final order, the Administrator may take action to collect the penalty.

(n) *Compromise.* The FAA may compromise the amount of any civil penalty imposed under this section under 49 U.S.C. 5123(e), 46301(f), or 46318 at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) When a civil penalty is compromised with a finding of

violation, an agency attorney issues an order assessing civil penalty.

(2) When a civil penalty is compromised without a finding of violation, the agency attorney issues a compromise order that states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments.

(ii) The FAA makes no finding of a violation.

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

§ 13.17 Seizure of aircraft.

(a) A State or federal law enforcement officer, or a Federal Aviation Administration safety inspector, authorized in an order of seizure issued by the Regional Administrator of the region, or by the Chief Counsel, may seize an aircraft that is involved in a violation for which a civil penalty may be imposed on its owner or the individual commanding the aircraft.

(b) Each person seizing an aircraft under this section places it in the nearest available and adequate public storage facility in the judicial district in which it was seized.

(c) The Regional Administrator or Chief Counsel, without delay, sends a written notice and a copy of this section to the registered owner of the seized aircraft and to each other person shown by FAA records to have an interest in it, stating the—

(1) Time, date, and place of seizure;

(2) Name and address of the custodian of the aircraft;

(3) Reasons for the seizure, including the violations alleged or proven to have been committed; and

(4) Amount that may be tendered as—

(i) A compromise of a civil penalty for the alleged violation; or

(ii) Payment for a civil penalty imposed for a proven violation.

(d) The Chief Counsel or Assistant Chief Counsel for Enforcement immediately sends a report to the United States Attorney for the judicial district in which it was seized, requesting the United States Attorney to institute proceedings to enforce a lien against the aircraft.

(e) The Regional Administrator or Chief Counsel directs the release of a seized aircraft when—

(1) The alleged violator pays a civil penalty or an amount agreed upon in compromise, and the costs of seizing, storing, and maintaining the aircraft;

(2) The aircraft is seized under an order of a federal court in proceedings in rem initiated under 49 U.S.C. 46305 to enforce a lien against the aircraft, or the United States Attorney for the judicial district concerned notifies the FAA that the United States Attorney refuses to institute those proceedings; or

(3) A bond in the amount and with the sureties prescribed by the Chief Counsel or the Assistant Chief Counsel for Enforcement is deposited, conditioned on payment of the penalty or the compromise amount, and the costs of seizing, storing, and maintaining the aircraft.

§ 13.18 Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman.

(a) *General.* (1) This section applies to each action in which the FAA seeks to assess a civil penalty by administrative procedures against an individual acting as a pilot, flight engineer, mechanic, or repairman under 49 U.S.C. 46301(d)(5) for a violation listed in 49 U.S.C. 46301(d)(2). This section does not apply to a civil penalty assessed for a violation of 49 U.S.C. chapter 51, or a rule or order issued thereunder.

(2) *District court jurisdiction.* Notwithstanding the provisions of paragraph (a)(1) of this section, the U.S. district courts have exclusive jurisdiction of any civil penalty action involving an individual acting as a pilot, flight engineer, mechanic, or repairman for violations described in that paragraph, or under 49 U.S.C. 46301(d)(4), if:

(i) The amount in controversy is more than $50,000.

(ii) The action involves an aircraft subject to a lien that has been seized by the government; or

(iii) Another action has been brought for an injunction based on the same violation.

(b) *Definitions.* As used in this part, the following definitions apply:

(1) *Flight engineer* means an individual who holds a flight engineer certificate issued under part 63 of this chapter.

(2) *Individual acting as a pilot, flight engineer, mechanic, or repairman* means an individual acting in such capacity, whether or not that individual holds the respective airman certificate issued by the FAA.

(3) *Mechanic* means an individual who holds a mechanic certificate issued under part 65 of this chapter.

(4) *Pilot* means an individual who holds a pilot certificate issued under part 61 of this chapter.

(5) *Repairman* means an individual who holds a repairman certificate issued under part 65 of this chapter.

(c) *Delegation of authority.* The authority of the Administrator is delegated to each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement, as follows:

(1) To initiate and assess civil penalties under 49 U.S.C. 46301(d)(5);

(2) To refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties; and

(3) To compromise the amount of a civil penalty under 49 U.S.C. 46301(f).

(d) *Notice of proposed assessment.* A civil penalty action is initiated by sending a notice of proposed assessment to the individual charged with a violation specified in paragraph (a) of this section. The notice of proposed assessment contains a statement of the charges and the amount of the proposed civil penalty. The individual charged with a violation may do the following:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order of assessment or a compromise order will be issued in that amount.

(2) Answer the charges in writing by submitting information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances.

(3) Submit a written request to reduce the proposed civil penalty, stating the amount of reduction and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a financial inability to pay.

(4) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents.

(5) Request that an order of assessment be issued so that the individual charged may appeal to the National Transportation Safety Board.

(e) *Failure to respond to notice of proposed assessment.* An order of assessment may be issued if the individual charged with a violation fails to respond to the notice of proposed assessment within 15 days after receipt of that notice.

(f) *Order of assessment.* An order of assessment, which imposes a civil penalty, may be issued for a violation described in paragraph (a) of this section after notice and an opportunity to answer any charges and be heard as to why such order should not be issued.

(g) *Appeal.* Any individual who receives an order of assessment issued under this section may appeal the order to the National Transportation Safety Board. The appeal stays the

effectiveness of the Administrator's order.

(h) *Judicial review.* A party may seek judicial review only of a final decision and order of the National Transportation Safety Board under 49 U.S.C. 46301(d)(6), 46301(g), and 46110. Neither an initial decision nor an order issued by an administrative law judge that has not been appealed to the National Transportation Safety Board, nor an order compromising a civil penalty action, may be appealed under any of those sections.

(i) *Compromise.* The FAA may compromise any civil penalty imposed under this section at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) When a civil penalty is compromised with a finding of violation, an agency attorney issues an order of assessment.

(2) When a civil penalty is compromised without a finding of violation, the agency attorney issues a compromise order of assessment that states the following:

(i) The individual has paid a civil penalty or has signed a promissory note providing for installment payments;

(ii) The FAA makes no finding of violation; and

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(j) *Payment.* (1) An individual must pay a civil penalty by:

(i) Sending a certified check or money order, payable to the Federal Aviation Administration, to the FAA office identified in the order of assessment, or

(ii) Making an electronic payment according to the directions specified in the order of assessment.

(2) The civil penalty must be paid within 30 days after service of the order of assessment, unless an appeal is filed with the National Transportation Safety Board. The civil penalty must be paid within 30 days after a final order of the Board or a court of appeals affirms the order of assessment in whole or in part.

(k) *Collection of civil penalties.* If an individual does not pay a civil penalty imposed by an order of assessment or other final order, the Administrator may take action provided under the law to collect the penalty.

§ 13.19 Certificate actions appealable to the National Transportation Safety Board.

(a) The Administrator may issue an order amending, modifying, suspending, or revoking all or part of any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if as a result of a reinspection, reexamination, or other investigation, the Administrator determines that the public interest and safety in air commerce requires it, if a certificate holder has violated an aircraft noise or sonic boom standard or regulation prescribed under 49 U.S.C. 44715(a), or if the holder of the certificate is convicted of violating 16 U.S.C. 742j–1(a).

(b) Before issuing a non-immediately effective order to amend, modify, suspend, or revoke a type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, air agency certificate, or to revoke an aircraft certificate of registration because the aircraft was used to carry out or facilitate an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year and the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity—

(1) The agency attorney issues a notice advising the certificate holder or aircraft owner of the charges or other reasons upon which the Administrator bases the proposed action and allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, modified, or revoked.

(2) In response to a notice of proposed certificate action described in paragraph (b)(1) of this section, the certificate holder or aircraft owner, within 15 days of the date of receipt of the notice, may—

(i) Surrender the certificate and waive any right to contest or appeal the charged violations and sanction, in which case the Administrator will issue an order;

(ii) Answer the charges in writing by submitting information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that the proposed sanction is not warranted by the circumstances;

(iii) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

(iv) Request that an order be issued in accordance with the notice of proposed certificate action so that the certificate holder or aircraft owner may appeal to the National Transportation Safety Board.

(c) In the case of an emergency order amending, modifying, suspending, or revoking a type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate, a person affected by the immediate effectiveness of the Administrator's order may petition the National Transportation Safety Board for a review of the Administrator's determination that an emergency exists.

(d) A person may not petition the National Transportation Safety Board for a review of the Administrator's determination that an emergency exists where the action is based on the circumstances described in paragraphs (d)(1), (d)(2) or (d)(3) of this section.

(1) The revocation of an individual's airman certificates for the reasons stated in paragraph (d)(1)(i) or (d)(1)(ii) of this section:

(i) A conviction under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) An aircraft was used to commit, or facilitate the commission of the offense; and

(B) The individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(ii) Knowingly carrying out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year; and—

(A) An aircraft was used to carry out or facilitate the activity; and

(B) The individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(2) The revocation of a certificate of registration for an aircraft, and any other aircraft the owner of that aircraft holds, if the Administrator finds that—

(i) The aircraft was used to carry out or facilitate an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year; and

(ii) The owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (d)(2)(i) of this section.

(3) The revocation of an airman certificate, design organization certificate, type certificate, production certificate, airworthiness certificate, air carrier operating certificate, airport operating certificate, air agency certificate, or air navigation facility certificate if the Administrator finds that the holder of the certificate or an individual who has a controlling or ownership interest in the holder—

(i) Was convicted in a court of law of a violation of a law of the United States relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material; or

(ii) Knowingly, and with the intent to defraud, carried out or facilitated an activity described in paragraph (d)(3)(i) of this section.

§ 13.20 Orders of compliance, cease and desist orders, orders of denial, and other orders.

(a) This section applies to all of the following:

(1) Orders of compliance;

(2) Cease and desist orders;

(3) Orders of denial;

(4) Orders suspending or revoking a certificate of registration (but not revocation of a certificate of registration because the aircraft was used to carry out or facilitate an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year and the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity); and

(5) Other orders issued by the Administrator to carry out the provisions of the federal aviation statute codified at 49 U.S.C. subtitle VII for which there is no administrative process provided by statute, rule, regulation, or order.

(b)(1) Prior to the issuance of a non-immediately effective order covered by this section, the person who would be subject to the order is provided with notice, advising the person of the charges or other reasons upon which the proposed action is based, and the provisions in paragraph (c) of this section apply.

(2) If the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action and issues an order covered by this section that is immediately effective, the provisions of paragraph (d) of this section apply.

(c) *Non-Emergency Procedures.* (1) Within 30 days after service of the notice, the person subject to the notice may:

(i) Submit a written reply;

(ii) Agree to the issuance of the order as proposed in the notice of proposed action, waiving any right to contest or appeal the agreed-upon order issued under this option in any administrative or judicial forum;

(iii) Submit a written request for an informal conference to discuss the matter with an agency attorney; or

(iv) Request a hearing in accordance with the non-emergency procedures of subpart D of this part.

(2) After an informal conference is held or a reply is filed, if the agency attorney notifies the person that some or all of the proposed agency action will not be withdrawn, the person may, within 10 days after receiving the agency attorney's notification, request a hearing on the parts of the proposed agency action not withdrawn, in accordance with the non-emergency procedures of Subpart D of this part.

(3) If a hearing is requested in accordance with paragraph (d)(1)(iv) or (d)(2) of this section, the non-emergency procedures of Subpart D of this part apply.

(4) Failure to request a hearing within the periods provided in paragraphs (d)(1)(iv) or (d)(2) of this section:

(i) Constitutes a waiver of the right to a hearing and appeal; and

(ii) Authorizes the agency to make any appropriate findings of fact and to issue an appropriate order without further notice or proceedings.

(d) *Emergency Procedures.* (1) If the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator issues simultaneously:

(i) An immediately effective order that expires 80 days after the date of issuance and sets forth the charges or other reasons upon which the order is based.

(ii) A notice of proposed action that:

(A) Sets forth the charges or other reasons upon which the notice of proposed action is based; and

(B) Advises that within 10 days after service of the notice, the person may appeal the notice by requesting an expedited hearing in accordance with the emergency procedures of subpart D of this part.

(2) The Administrator will serve the immediately effective order and the notice of proposed action together by personal or overnight delivery and by certified or registered mail to the person subject to the order and notice of proposed action.

(3) Failure to request a hearing challenging the notice of proposed action under the expedited procedures in subpart D within 10 days after service of the notice:

(i) Constitutes a waiver of the right to a hearing and appeal under subpart D; and

(ii) Authorizes the Administrator, without further notice or proceedings, to make appropriate findings of fact, issue an immediately effective order without expiration, and withdraw the 80-day immediately effective order.

(4) The filing of a request for hearing under subpart D does not stay the effectiveness of the 80-day immediately effective order issued under this section.

(e) The authority of the Administrator under this section is delegated to the Chief Counsel, each Deputy Chief Counsel, and the Assistant Chief Counsel for Enforcement.

§ 13.21 [Removed and Reserved]

§ 13.23 [Removed and Reserved]

§ 13.25 [Removed and Reserved]

§ 13.27 [Removed and Reserved]

§ 13.29 [Removed and Reserved]

■ 5. Revise subpart D to read as follows:

Subpart D—Rules of Practice for FAA Hearings

Sec.

13.31 Applicability.
13.33 Parties, representatives, and notice of appearance.
13.35 Request for hearing, complaint, and answer.
13.37 Hearing Officer: Assignment and powers.
13.39 Disqualification of Hearing Officer.
13.41 Separation of functions and prohibition on ex parte communications.
13.43 Service and filing of pleadings, motions, and documents.
13.44 [Removed and Reserved]
13.45 Computation of time and extension of time.
13.47 Withdrawal or amendment of the complaint, answer or other filings.
13.49 Motions.
13.51 Intervention.
13.53 Discovery.
13.55 Notice of hearing.
13.57 Subpoenas and witness fees.
13.59 Evidence.
13.61 Argument and submittals.
13.63 Record, decision, and aircraft registration proceedings.
13.65 Appeal to the Administrator, reconsideration and judicial review.
13.67 Procedures for expedited proceedings.
13.69 Other matters: Alternative dispute resolution, standing orders, and forms.

§ 13.31 Applicability.

This subpart applies to proceedings in which a hearing has been requested in accordance with §§ 13.20 or 13.75. Hearings under this subpart are considered informal and are provided through the Office of Adjudication.

§ 13.33 Parties, representatives, and notice of appearance.

(a) *Parties.* Parties to proceedings under this subpart include the following: Complainant, respondent, and where applicable, intervenor.

(1) Complainant is the FAA Office that issued the notice of proposed action under the authorities listed in § 13.31.

(2) Respondent is the party filing a request for hearing.

(3) Intervenor is a person permitted to participate as a party under § 13.51.

(b) *Representatives.* Any party to a proceeding under this subpart may appear and be heard in person or by a representative. A representative is an attorney, or another representative designated by the party.

(c) *Notice of appearance.* (1) Content. The representative of a party must file a notice of appearance that includes the representative's name, address, telephone number, and, if available, fax number, and email address.

(2) Filing. A notice of appearance may be incorporated into an initial filing in a proceeding. A notice of appearance by additional representatives or substitutes after an initial filing in a proceeding must be filed independently.

§ 13.35 Request for hearing, complaint, and answer.

(a) *Initial filing and service.* A request for hearing must be filed with the FAA Hearing Docket, and a copy must be served on the official who issued the notice of proposed action, in accordance with the requirements in § 13.43 for filing and service of documents. The request for hearing must be in writing and describe the action proposed by the FAA, and must contain a statement that a hearing is requested under this subpart D.

(b) *Complaint.* Within 20 days after service of the copy of the request for hearing, the official who issued the notice of proposed action must forward a copy of that notice, which serves as the complaint, to the FAA Hearing Docket.

(c) *Answer.* Within 30 days after service of the copy of the complaint, the Respondent must file an answer to the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted.

§ 13.37 Hearing Officer: Assignment and powers.

As soon as practicable after the filing of the complaint, the Director of the Office of Adjudication will assign a Hearing Officer to preside over the matter. The Hearing Officer may—

(a) Give notice concerning, and hold, prehearing conferences and hearings;

(b) Administer oaths and affirmations;

(c) Examine witnesses;

(d) Adopt procedures for the submission of evidence in written form;

(e) Issue subpoenas;

(f) Rule on offers of proof;

(g) Receive evidence;

(h) Regulate the course of proceedings, including but not limited to discovery, motions practice, imposition of sanctions, and the hearing;

(i) Hold conferences, before and during the hearing, to settle and simplify issues by consent of the parties;

(j) Dispose of procedural requests and similar matters;

(k) Issue protective orders governing the exchange and safekeeping of information otherwise protected by law, except that national security information may not be disclosed under such an order;

(l) Issue orders and decisions, and make findings of fact, as appropriate; and

(m) Take any other action authorized by this subpart.

§ 13.39 Disqualification of Hearing Officer.

If disqualified for any reason, the Hearing Officer must withdraw from the case.

§ 13.41 Separation of functions and prohibition on ex parte communications.

(a) *Separation of powers.* The Hearing Officer independently exercises the powers under this subpart in a manner conducive to justice and the proper dispatch of business. The Hearing Officer must not participate in any appeal to the Administrator.

(b) *Ex parte communications.* (1) No substantive ex parte communications between the Hearing Officer and any party are permitted.

(2) A hearing, conference, or other event scheduled with prior notice will not constitute ex parte communication prohibited by this section. A hearing, conference, or other event scheduled with prior notice, may proceed in the Hearing Officer's sole discretion if a party fails to appear, respond, or otherwise participate, and will not constitute an ex parte communication prohibited by this section.

(3) For an appeal to the Administrator under this subpart, FAA attorneys representing the complainant must not advise the Administrator or engage in any ex parte communications with the Administrators or his advisors.

§ 13.43 Service and filing of pleadings, motions, and documents.

(a) *General rule.* A party must file all requests for hearing, pleadings, motions, and documents with the FAA Hearing Docket, and must serve a copy upon all parties to the proceedings.

(b) *Methods of filing.* Filing must be by email, personal delivery, mail, or fax.

(c) *Address for filing.* A person filing a document with the FAA Hearing Docket must use the address identified for the method of filing as follows:

(1) *If delivery is in person, or by expedited or overnight express courier service:* Federal Aviation Administration, 600 Independence Avenue SW, Wilbur Wright Building—Suite 2W100, Washington, DC 20597; Attention: FAA Hearing Docket, AGC–70.

(2) *If delivery is via U.S. mail, or U.S. certified or registered mail:* Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Attention: FAA Hearing Docket, AGC–70, Wilbur Wright Building—Suite 2W100.

(3) The FAA Office of Adjudication will make available on its website, an email address and fax number for the FAA Hearing Docket, as well as other contact information.

(d) *Requirement to file an original document and number of copies.* A party must file an original document and one copy when filing by personal delivery or by mail. Only one copy must be filed if filing is accomplished by email or fax.

(e) *Filing by email.* A document that is filed by email must be attached as a Portable Document Format (PDF) file to an email. The document must be signed in accordance with § 13.207. The email message does not constitute a submission, but serves only to deliver the attached PDF file to the FAA Hearing Docket.

(f) *Methods of service.*—(1) *General.* A person may serve any document by email, personal delivery, mail, or fax.

(2) *Service by email.* Service of documents by email is voluntary and requires the prior consent of the person to be served by email. A person may retract consent to be served by email by filing and serving a written retraction. A document that is served by email must be attached as a PDF file to an email message.

(g) *Certificate of service.* A certificate of service must accompany all documents filed with the FAA Hearing

Docket. The certificate of service must be signed, describe the method of service, and state the date of service.

(h) *Date of filing and service.* If a document is sent by fax or email, the date of filing and service is the date the email or fax is sent. If a document is sent by personal delivery or by expedited or overnight express courier service, the date of filing and service is the date that delivery is accomplished. If a document is mailed, the date of filing and service is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

§ 13.44 [Removed and Reserved]

§ 13.45 Computation of time and extension of time.

(a) In computing any period of time prescribed or allowed by this subpart, the date of the act, event, default, notice or order is not to be included in the computation. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or a Federal holiday.

(b) The parties may agree to extend the time for filing any document required by this subpart, with the consent of—

(1) The Director of the Office of Adjudication, prior to the designation of a Hearing Officer;

(2) The Hearing Officer, prior to the filing of a notice of appeal; or

(3) The Director of the Office of Adjudication, after the filing of a notice of appeal.

(c) If the parties do not agree, a party may make a written request to extend the time for filing to the appropriate official identified in paragraph (b) of this section. The appropriate official may grant the request for good cause shown.

§ 13.47 Withdrawal or amendment of the complaint, answer or other filings.

(a) *Withdrawal.* At any time before the hearing, the complainant may withdraw the complaint, and the respondent may withdraw the request for hearing.

(b) *Amendments.* At any time more than 10 days before the date of hearing, any party may amend its complaint, answer, or other pleading, by filing the amendment with the FAA Hearing Docket and serving a copy of it on each other party. After that time, amendment requires approval of the Hearing Officer. If an initial pleading is amended, the Hearing Officer must allow the other parties a reasonable opportunity to respond.

§ 13.49 Motions.

(a) *Motions in lieu of an answer.* A respondent may file a motion to dismiss or a motion for a more definite statement in place of an answer. If the Hearing Officer denies the motion, the respondent must file an answer within 10 days.

(1) *Motion to dismiss.* The respondent may file a motion asserting that the allegations in the complaint fail to state a violation of federal aviation statutes, regulations in this chapter, lack of qualification of the respondent, or other appropriate grounds.

(2) *Motion for more definite statement.* The respondent may file a motion that the allegations in the notice be made more definite and certain.

(b) *Motion to dismiss request for hearing.* The FAA may file a motion to dismiss a request for hearing based on jurisdiction, timeliness, or other appropriate grounds.

(c) *Motion for decision on the pleadings or for summary decision.* After the complaint and answer are filed, either party may move for a decision on the pleadings or for a summary decision, in the manner provided by Rules 12 and 56, respectively, of the Federal Rules of Civil Procedure.

(d) *Motion to strike.* Upon motion of either party, the Hearing Officer may order stricken, from any pleadings, any insufficient allegation or defense, or any redundant, immaterial, impertinent, or scandalous matter.

(e) *Motion to compel.* Any party may file a motion asking the Hearing Offer to order any other party to produce discovery requested in accordance with § 13.53 if—

(1) The other party has failed to timely produce the requested discovery; and

(2) The moving party certifies it has in good faith conferred with the other party in an attempt to obtain the requested discovery prior to filing the motion to compel.

(f) *Motion for protective order.* The Hearing Officer may order information contained in anything filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Hearing Officer, disclosure would be detrimental to aviation safety; disclosure would not be in the public interest; or the information is not otherwise required to be made available to the public. Any person may make written objection to the public disclosure of any information, stating the ground for such objection.

(g) *Other motions.* Any application for an order or ruling not otherwise provided for in this subpart must be made by motion.

(h) *Responses to motions.* Any party may file a response to any motion under this subpart within 10 days after service of the motion.

§ 13.51 Intervention.

Any person may move for leave to intervene in a proceeding and may become a party thereto, if the Hearing Officer, after the case is sent to the Hearing Officer for hearing, finds that the person may be bound by the order to be issued in the proceedings or has a property or financial interest that may not be adequately represented by existing parties, and that the intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, a motion for leave to intervene may not be considered if it is filed less than 10 days before the hearing.

§ 13.53 Discovery.

(a) Discovery requests and responses are not filed with the FAA Hearing Docket unless in support of a motion, offered for impeachment, or other permissible circumstances as approved by the Hearing Officer.

(b) *Scope of discovery.* Any party may discover any matter that is not privileged and is relevant to any party's claim or defense.

(c) *Time for response to written discovery requests.* (1) Written discovery includes interrogatories, requests for admission or stipulations, and requests for production of documents.

(2) Unless otherwise directed by the Hearing Officer, a party must serve its response to a discovery request no later than 30 days after service of the discovery request.

(d) *Depositions.* After the respondent has filed a request for hearing and an answer, either party may take testimony by deposition.

(e) *Limits on discovery.* The Hearing Officer may limit the frequency and extent of discovery upon a showing by a party that—

(1) The discovery requested is cumulative or repetitious;

(2) The discovery requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

§ 13.55 Notice of hearing.

The Hearing Officer must set a reasonable date, time, and location for the hearing, and must give the parties adequate notice thereof and of the nature of the hearing. Due regard must be given to the convenience of the parties with respect to the location of the hearing.

§ 13.57 Subpoenas and witness fees.

(a) The Hearing Officer, upon application by any party to the proceeding, may issue subpoenas requiring the attendance of witnesses or the production of documents or tangible things at a hearing or for the purpose of taking depositions, as permitted by law. The application for producing evidence must show its general relevance and reasonable scope. Absent good cause shown, a party must file a request for a subpoena at least:

(1) 15 days before a scheduled deposition under the subpoena; or

(2) 30 days before a scheduled hearing where attendance at the hearing is sought.

(b) A party seeking the production of a document in the custody of an FAA employee must use the discovery procedure found in § 13.53, and if necessary, a motion to compel under § 13.49. A party that applies for the attendance of an FAA employee at a hearing must send the application, in writing, to the Hearing Officer setting forth the need for that employee's attendance.

(c) Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and allowances as provided for under 28 U.S.C. 1821. The party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees and allowances described in this section.

(d) *Service of subpoenas.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person. Except for the Complainant, the party that requested the subpoena must tender at the time of service the fees for 1 day's attendance and the allowances allowed by law if the subpoena requires that person's attendance. Proving service, if necessary, requires the filing with the FAA Hearing Docket of a statement showing the date and manner of service and the names of the persons served. The server must certify the statement.

(e) *Motion to quash or modify the subpoena.* A party, or any person served with a subpoena, may file a motion to quash or modify the subpoena with the Hearing Officer at or before the time specified in the subpoena for compliance. The movant must describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible thing is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the Hearing Officer on the motion.

(f) *Enforcement of subpoena.* If a person disobeys a subpoena, a party may apply to a U.S. district court to seek judicial enforcement of the subpoena.

§ 13.59 Evidence.

(a) Each party to a hearing may present the party's case or defense by oral or documentary evidence, submit evidence in rebuttal, and conduct such cross-examination as may be needed for a full disclosure of the facts.

(b) Except with respect to affirmative defenses and notices of proposed denial, the burden of proof is upon the complainant.

§ 13.61 Argument and submittals.

The Hearing Officer must give the parties adequate opportunity to present arguments in support of motions, objections, and the final order. The Hearing Officer may determine whether arguments are to be oral or written. At the end of the hearing the Hearing Officer may allow each party to submit written proposed findings and conclusions and supporting reasons for them.

§ 13.63 Record, decision, and aircraft registration proceedings.

(a) *The record.* The testimony and exhibits admitted at a hearing, together with all papers, requests, and rulings filed in the proceedings are the exclusive basis for the issuance of an order. Any party may obtain a transcript of the hearing from the official reporter upon payment of the required fees.

(b) *Hearing Officer's Decision.* The decision by the Hearing Officer must include findings of fact based on the record, conclusions of law, and an appropriate order.

(c) *Certain Aircraft Registration Proceedings.* If the Hearing Officer determines that an aircraft is ineligible for a certificate of aircraft registration in proceedings relating to aircraft registration orders suspending or revoking a certificate of registration under § 13.20, the Hearing Officer may suspend or revoke the aircraft registration certificate.

§ 13.65 Appeal to the Administrator, reconsideration, and judicial review.

(a) Any party to a hearing may appeal from the order of the Hearing Officer by filing with the FAA Hearing Docket a notice of appeal to the Administrator within 20 days after the date of issuance of the order. Filing and service of the notice of appeal, and any other papers, are accomplished according to the procedures in § 13.43.

(b) If a notice of appeal is not filed from the order issued by a Hearing Officer, such order is final with respect to the parties. Such order is not binding precedent and is not subject to judicial review.

(c) Any person filing an appeal authorized by paragraph (a) of this section must file an appeal brief with the Administrator within 40 days after the date of issuance of the order, and serve a copy on the other party. A reply brief must be filed within 40 days after service of the appeal brief and a copy served on the appellant.

(d) On appeal the Administrator reviews the record of the proceeding, and issues an order dismissing, reversing, modifying or affirming the order. The Administrator's order includes the reasons for the Administrator's action. The Administrator considers only whether:

(1) Each finding of fact is supported by a preponderance of the reliable, probative and substantial evidence;

(2) Each conclusion is made in accordance with law, precedent, and policy; and

(3) The Hearing Officer committed any prejudicial error.

(e) The Director and legal personnel of the Office of Adjudication serve as the advisors to the Administrator for appeals under this section.

(1) The Director has the authority to:

(i) Manage all or portions of individual appeals; and to prepare written decisions and proposed final orders in such appeals;

(ii) Issue procedural and other interlocutory orders aimed at proper and efficient appeal management, including, without limitation, scheduling and sanctions orders;

(iii) Grant or deny motions to dismiss appeals;

(iv) Dismiss appeals upon request of the appellant or by agreement of the parties;

(v) Stay decisions and orders of the Administrator, pending judicial review or reconsideration by the Administrator;

(vi) Summarily dismiss repetitious or frivolous petitions to reconsider or modify orders;

(vii) Correct typographical, grammatical and similar errors in the Administrator's decisions and orders, and to make non-substantive editorial changes; and

(viii) Take all other reasonable steps deemed necessary and proper for the management of the appeals process, in accordance with this part and applicable law.

(2) The Director's authority in paragraph (e)(1) of this section may be re-delegated, as necessary, except to Hearing Officers and others materially involved in the hearing that is the subject of the appeal.

(f) Motions to reconsider the final order of the Administrator must be filed with the FAA Hearing Docket within thirty days of service of the Administrator's order.

(g) Judicial review of the Administrator's final order under this section is provided in accordance with 49 U.S.C. 5127 or 46110, as applicable.

§ 13.67 Procedures for expedited proceedings.

(a) When an expedited administrative hearing is requested in accordance with § 13.20(d), the procedures in this subpart will apply except as provided in paragraphs (a)(1) through (a)(7) of this section.

(1) Service and filing of pleadings, motions, and documents must be by overnight delivery, and fax or email. Responses to motions must be filed within 7 days after service of the motion.

(2) Within 3 days after receipt of the request for hearing, the agency must file a copy of the notice of proposed action, which serves as the complaint, to the FAA Hearing Docket.

(3) Within 3 days after receipt of the complaint, the person that requested the hearing must file an answer to the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted. Failure to file a timely answer, absent a showing of good cause, constitutes withdrawal of the request for hearing.

(4) Within 3 days of the filing of the complaint, the Director of the Office of Adjudication will assign a Hearing Officer to preside over the matter.

(5) The parties must serve discovery as soon as possible and set time limits for compliance with discovery requests that accommodate the accelerated adjudication schedule set forth in this subpart. The Hearing Officer will resolve any failure of the parties to agree to a discovery schedule.

(6) The expedited hearing must commence within 40 days after the notice of proposed action was issued.

(7) The Hearing Officer must issue an oral decision and order dismissing, reversing, modifying, or affirming the notice of proposed action at the close of the hearing. If a notice of appeal is not filed, such order is final with respect to the parties and is not subject to judicial review.

(b) Any party to the expedited hearing may appeal from the initial decision of the Hearing Officer to the Administrator by filing a notice of appeal within 3 days after the date on which the decision was issued. The time limitations for the filing of documents for appeals under this section will not be extended by reason of the unavailability of the hearing transcript.

(1) Any appeal to the Administrator under this section must be perfected within 7 days after the date the notice of appeal was filed by filing a brief in support of the appeal. Any reply to the appeal brief must be filed within 7 days after the date the appeal brief was served on that party. The Administrator must issue an order deciding the appeal no later than 80 days after the date the notice of proposed action was issued.

(2) The Administrator's order is immediately effective and constitutes the final agency decision. The Administrator's order may be appealed pursuant to 49 U.S.C. 46110. The filing of an appeal under 49 U.S.C. 46110 does not stay the effectiveness of the Administrator's order.

(c) At any time after an immediately effective order is issued, the FAA may request the United States Attorney General, or the delegate of the Attorney General, to bring an action for appropriate relief in accordance with § 13.25.

§ 13.69 Other matters: Alternative dispute resolution, standing orders, and forms.

(a) Parties may use mediation to achieve resolution of issues in controversy addressed by this subpart. Parties seeking alternative dispute resolution services may engage the services of a mutually acceptable mediator. The mediator must not participate in the adjudication under this subpart of any matter where he serves as a mediator. Mediation discussions and submissions will remain confidential consistent with the provisions of the Administrative Dispute Resolution Act, the principles of Federal Rule of Evidence 408, and other applicable federal laws.

(b) The Director of the Office of Adjudication may issue standing orders and forms needed for the proper dispatch of business under this subpart.

■ 6. Revise subpart E to read as follows:

Subpart E—Orders of Compliance Under the Hazardous Materials Transportation Act

Sec.
13.71 Applicability.
13.73 Notice of proposed order of compliance.
13.75 Reply or request for hearing.
13.77 Consent order of compliance.
13.79 [Removed and Reserved]
13.81 Emergency orders.
13.83 [Removed and Reserved]
13.85 [Removed and Reserved]
13.87 [Removed and Reserved]

§ 13.71 Applicability.

(a) An order of compliance may be issued after notice and an opportunity for a hearing in accordance with §§ 13.73 through 13.77 whenever the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement has reason to believe that a person is engaging in the transportation or shipment by air of hazardous materials in violation of the Hazardous Materials Transportation Act, as amended and codified at 49 U.S.C. chapter 51, or any regulation, or order issued under it, for which the FAA exercises enforcement responsibility, and the circumstances do not require the issuance of an emergency order under 49 U.S.C. 5121(d).

(b) If circumstances require the issuance of an emergency order under 49 U.S.C. 5121(d), the Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement will issue an emergency order of compliance as described in § 13.81.

§ 13.73 Notice of proposed order of compliance.

The Chief Counsel, a Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement, may issue to an alleged violator a notice of proposed order of compliance advising the alleged violator of the charges and setting forth the remedial action sought in the form of a proposed order of compliance.

§ 13.75 Reply or request for hearing.

(a) Within 30 days after service upon the alleged violator of a notice of proposed order of compliance, the alleged violator may—

(1) Submit a written reply;

(2) Submit a written request for an informal conference to discuss the matter with an agency attorney; or

(3) Request a hearing in accordance with subpart D of this part.

(b) If, after an informal conference is held or a reply is filed, the agency attorney notifies the person named in the notice that some or all of the proposed agency action will not be withdrawn or not subject to a consent order of compliance, the alleged violator may, within 10 days after receiving the agency attorney's notification, request a hearing in accordance with subpart D of this part.

(c) Failure of the alleged violator to file a reply or request a hearing within the period provided in paragraph (a) or (b) of this section, as applicable—

(1) Constitutes a waiver of the right to a hearing under subpart D of this part and the right to petition for judicial review; and

(2) Authorizes the Administrator to make any appropriate findings of fact and to issue an appropriate order of compliance, without further notice or proceedings.

§ 13.77 Consent order of compliance.

(a) At any time before the issuance of an order of compliance, an agency attorney and the alleged violator may agree to dispose of the case by the issuance of a consent order of compliance.

(b) The alleged violator may submit a proposed consent order to an agency attorney. The proposed consent order must include—

(1) An admission of all jurisdictional facts;

(2) An express waiver of the right to further procedural steps and of all rights to legal review in any forum;

(3) An express waiver of attorney's fees and costs;

(4) If a notice has been issued prior to the proposed consent order of compliance, an incorporation by reference of the notice and an acknowledgement that the notice may be used to construe the terms of the consent order of compliance; and

(5) If a request for hearing is pending in any forum, a provision that the alleged violator will withdraw the request for a hearing and request that the case be dismissed.

§ 13.79 [Removed and Reserved]

§ 13.81 Emergency orders.

(a) Notwithstanding §§ 13.73 through 13.77, the Chief Counsel, each Deputy Chief Counsel, or the Assistant Chief Counsel for Enforcement may issue an emergency order of compliance, which is effective upon issuance, in accordance with the procedures in subpart C of 49 CFR part 109, if the person who issues the order finds that there is an ''imminent hazard'' as defined in 49 CFR 109.1.

(b) The FAA official who issued the emergency order of compliance may rescind or suspend the order if the criteria set forth in paragraph (a) of this section are no longer satisfied, and, when appropriate, may issue a notice of proposed order of compliance under § 13.73.

(c) If at any time in the course of a proceeding commenced in accordance with § 13.73 the criteria set forth in paragraph (a) of this section are satisfied, the official who issued the notice may issue an emergency order of compliance, even if the period for filing a reply or requesting a hearing specified in § 13.75 has not expired.

§ 13.83 [Removed and Reserved]

§ 13.85 [Removed and Reserved]

§ 13.87 [Removed and Reserved]

■ 7. Revise subpart F to read as follows:

Subpart F—Formal Fact-Finding Investigation Under an Order of Investigation

Sec.

13.101 Applicability.
13.103 Order of investigation.
13.105 Notification.
13.107 Designation of additional parties.
13.109 Convening the investigation.
13.111 Subpoenas.
13.113 Noncompliance with the investigative process.
13.115 Public proceedings.
13.117 Conduct of investigative proceeding or deposition.
13.119 Immunity and orders requiring testimony or other information.
13.121 Witness fees.
13.123 Submission by party to the investigation.
13.125 Depositions.
13.127 Reports, decisions and orders.
13.129 Post-investigation action.
13.131 Other procedures.

§ 13.101 Applicability.

(a) This subpart applies to fact-finding investigations in which an investigation has been ordered under §§ 13.3(c) or 13.5(f)(2) of this part.

(b) This subpart does not limit the authority of any person to issue subpoenas, administer oaths, examine witnesses and receive evidence in any informal investigation as otherwise provided by law.

§ 13.103 Order of investigation.

The order of investigation—

(a) Defines the scope of the investigation by describing the information sought in terms of its subject matter or its relevancy to specified FAA functions;

(b) Sets forth the form of the investigation which may be either by individual deposition or investigative proceeding or both; and

(c) Names the official who is authorized to conduct the investigation and serve as the Presiding Officer.

§ 13.105 Notification.

Any person under investigation and any person required to testify and produce documentary or physical evidence during the investigation will be advised of the purpose of the investigation, and of the place where the investigative proceeding or deposition will be convened. This may be accomplished by a notice of investigation or by a subpoena. A copy of the order of investigation may be sent to such persons when appropriate.

§ 13.107 Designation of additional parties.

(a) The Presiding Officer may designate additional persons as parties to the investigation, if in the discretion of the Presiding Officer, it will aid in the conduct of the investigation.

(b) The Presiding Officer may designate any person as a party to the investigation if—

(1) The person petitions the Presiding Officer to participate as a party;

(2) The disposition of the investigation may as a practical matter impair the ability to protect the person's interest unless allowed to participate as a party; and

(3) The person's interest is not adequately represented by existing parties.

§ 13.109 Convening the investigation.

The Presiding Officer will conduct the investigation at a location convenient to the parties involved and as expeditious and efficient handling of the investigation permits.

§ 13.111 Subpoenas.

(a) At the discretion of the Presiding Officer, or at the request of a party to the investigation, the Presiding Officer may issue a subpoena directing any person to appear at a designated time and place to testify or to produce documentary or physical evidence relating to any matter under investigation.

(b) Subpoenas must be served by personal service on the person or an agent designated in writing for the purpose, or by registered or certified mail addressed to the person or agent. Whenever service is made by registered or certified mail, the date of mailing will be considered the time when service is made.

(c) Subpoenas extend in jurisdiction throughout the United States and any territory or possession thereof.

§ 13.113 Noncompliance with the investigative process.

(a) If a person disobeys a subpoena, the Administrator or a party to the investigation may petition a court of the United States to enforce the subpoena in accordance with applicable statutes.

(b) If a party to the investigation fails to comply with the provisions of this subpart or an order issued by the Presiding Officer, the Administrator may bring a civil action to enforce the requirements of this subpart or any order issued under this subpart in a court of the United States in accordance with applicable statutes.

§ 13.115 Public proceedings.

(a) All investigative proceedings and depositions must be public unless the Presiding Officer determines that the public interest requires otherwise.

(b) The Presiding Officer may order information contained in any report or document filed or in any testimony given pursuant to this subpart withheld from public disclosure when, in the judgment of the Presiding Officer, disclosure would adversely affect the interests of any person and is not required in the public interest or is not otherwise required by statute to be made available to the public. Any person may make written objection to the public disclosure of information, stating the grounds for such objection.

§ 13.117 Conduct of investigative proceeding or deposition.

(a) The Presiding Officer may question witnesses.

(b) Any witness may be accompanied by counsel.

(c) Any party may be accompanied by counsel and either the party or counsel may—

(1) Question witnesses, provided the questions are relevant and material to the matters under investigation and would not unduly impede the progress of the investigation; and

(2) Make objections on the record and argue the basis for such objections.

(d) Copies of all notices or written communications sent to a party or witness must, upon request, be sent to that person's attorney of record.

§ 13.119 Immunity and orders requiring testimony or other information.

(a) Whenever a person refuses, on the basis of a privilege against self-incrimination, to testify or provide other information during the course of any investigation conducted under this subpart, the Presiding Officer may, with the approval of the Attorney General of the United States, issue an order requiring the person to give testimony or provide other information. However, no testimony or other information so compelled (or any information directly or indirectly derived from such testimony or other information) may be used against the person in any criminal case, except in a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(b) The Presiding Officer may issue an order under this section if—

(1) The testimony or other information from the witness may be necessary to the public interest; and

(2) The witness has refused or is likely to refuse to testify or provide other information on the basis of a privilege against self-incrimination.

(c) Immunity provided by this section will not become effective until the person has refused to testify or provide other information on the basis of a privilege against self-incrimination, and an order under this section has been issued. An order, however, may be issued prospectively to become effective in the event of a claim of the privilege.

§ 13.121 Witness fees.

All witnesses appearing, other than employees of the Federal Aviation Administration, are entitled to the same fees and allowances as provided for under 28 U.S.C. 1821.

§ 13.123 Submission by party to the investigation.

(a) During an investigation conducted under this subpart, a party may submit to the Presiding Officer—

(1) A list of witnesses to be called, specifying the subject matter of the expected testimony of each witness, and

(2) A list of exhibits to be considered for inclusion in the record.

(b) If the Presiding Officer determines that the testimony of a witness or the receipt of an exhibit in accordance with paragraph (a) of this section will be relevant, competent and material to the investigation, the Presiding Officer may subpoena the witness or use the exhibit during the investigation.

§ 13.125 Depositions.

Depositions for investigative purposes may be taken at the discretion of the Presiding Officer with reasonable notice to the party under investigation. Depositions must be taken before the Presiding Officer or other person authorized to administer oaths and designated by the Presiding Officer. The testimony must be reduced to writing by the person taking the deposition, or under the direction of that person, and where possible must then be subscribed by the deponent. Any person may be compelled to appear and testify and to produce physical and documentary evidence.

§ 13.127 Reports, decisions and orders.

The Presiding Officer must issue a written report based on the record developed during the formal investigation, including a summary of principal conclusions. A summary of principal conclusions must be prepared by the official who issued the order of investigation in every case which results in no action, or no action as to a particular party to the investigation. All such reports must be furnished to the parties to the investigation and made available to the public on request.

§ 13.129 Post-investigation action.

A decision on whether to initiate subsequent action must be made on the basis of the record developed during the formal investigation and any other information in the possession of the Administrator.

§ 13.131 Other procedures.

Any question concerning the scope or conduct of a formal investigation not covered in this subpart may be ruled on by the Presiding Officer on his or her own initiative, or on the motion of a party or a person testifying or producing evidence.

■ 8. Revise subpart G to read as follows:

Subpart G—Rules of Practice in FAA Civil Penalty Actions

Sec.

13.201 Applicability.
13.202 Definitions.
13.203 Separation of functions.
13.204 Appearances and rights of parties.
13.205 Administrative law judges.
13.206 Intervention.
13.207 Certification of documents.
13.208 Complaint.
13.209 Answer.
13.210 Filing of documents.
13.211 Service of documents.
13.212 Computation of time.
13.213 Extension of time.
13.214 Amendment of pleadings.
13.215 Withdrawal of complaint or request for hearing.
13.216 Waivers.
13.217 Joint procedural or discovery schedule.
13.218 Motions.
13.219 Interlocutory appeals.
13.220 Discovery.
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13.223 Standard of proof.
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13.228 Subpoenas.
13.229 Witness fees.
13.230 Record.
13.231 Argument before the administrative law judge.

13.232 Initial decision.
13.233 Appeal from initial decision.
13.234 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.
13.235 Judicial review of a final decision and order.
13.236 Alternative dispute resolution.

§ 13.201 Applicability.

(a) This subpart applies to all civil penalty actions initiated under § 13.16 of this part in which a hearing has been requested.

§ 13.202 Definitions.

For this subpart only, the following definitions apply:

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel or the Assistant Chief Counsel responsible for the prosecution of enforcement-related matters under this subpart, or attorneys who are supervised by those officials or are assigned to prosecute a particular enforcement-related matter under this subpart. Agency attorney does not include the Chief Counsel or anyone from the Office of Adjudication.

Complaint means a document issued by an agency attorney alleging a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or a rule, regulation, or order issued under those statutes, that has been filed with the FAA Hearing Docket after a hearing has been requested under § 13.16(f)(3) or (g)(2)(ii) of this part.

Complainant means the FAA office that issued the notice of proposed civil penalty under § 13.16.

FAA decisionmaker means the Administrator of the Federal Aviation Administration, acting in the capacity of the decisionmaker on appeal, or any person to whom the Administrator has delegated the Administrator's decisionmaking authority in a civil penalty action. As used in this subpart, the FAA decisionmaker is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

Mail includes U.S. mail, U.S. certified mail, U.S. registered mail, or use of an expedited or overnight express courier service, but does not include email.

Office of Adjudication means the Federal Aviation Administration Office of Adjudication, including the FAA Hearing Docket, the Director of the Office of Adjudication and legal personnel, or any subsequently designated office (including its head and any legal personnel) that advises the FAA decisionmaker regarding appeals of initial decisions and orders to the FAA decisionmaker.

Order assessing civil penalty means a document that contains a finding of a violation of a provision of the Federal aviation statute listed in the first sentence of 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or a rule, regulation or order issued under those statutes, and may direct payment of a civil penalty. Unless an appeal is filed with the FAA decisionmaker in a timely manner, an initial decision or order of an administrative law judge is considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. Unless a petition for review is filed with a U.S. Court of Appeals in a timely manner, a final decision and order of the Administrator is considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

Party means the Respondent, the Complainant and any intervenor.

Personal delivery includes hand-delivery or use of a contract or express messenger service. ''Personal delivery'' does not include the use of Federal Government interoffice mail service.

Pleading means a complaint, an answer, and any amendment of these documents permitted under this subpart.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this subpart, or any other address shown by other reasonable and available means.

Respondent means a person named in a complaint.

Writing or written includes paper or electronic documents that are filed or served by email, mail, personal delivery, or fax.

§ 13.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, are prosecuted by an agency attorney.

(b) An agency employee who has engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not participate in deciding or advising the administrative law judge or the FAA decisionmaker in that case, or a factually-related case, but may participate as counsel for the Complainant or as a witness in the public proceedings.

(c) The Chief Counsel and the Director and legal personnel of the Office of Adjudication will advise the FAA decisionmaker regarding any appeal of an initial decision or order in a civil penalty action to the FAA decisionmaker.

§ 13.204 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a party must file a notice of appearance in the action, in the manner provided in § 13.210, and must serve a copy of the notice of appearance on each party, and on the administrative law judge, if assigned, in the manner provided in § 13.211, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address and telephone number, and, if available, fax number, and email address, of the attorney or representative in the notice of appearance.

(c) Any person may request a copy of a document in the record upon payment of reasonable costs. A person may keep an original document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

§ 13.205 Administrative law judges.

(a) *Powers of an administrative law judge.* In accordance with the rules of this subpart, an administrative law judge may:

(1) Give notice of, and hold, prehearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas as authorized by law;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests;

(9) Make findings of fact and conclusions of law, and issue an initial decision;

(10) Bar a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding; and

(11) Take any other action authorized by this subpart.

(b) *Limitations on the power of the administrative law judge.* The administrative law judge must not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right under § 13.219(c).

(c) *Disqualification.* The administrative law judge may disqualify himself or herself at any time. A party may file a motion for disqualification under § 13.218.

§ 13.206 Intervention.

(a) A person may submit a motion for leave to intervene as a party in a civil penalty action. Except for good cause shown, a motion for leave to intervene must be submitted not later than 10 days before the hearing.

(b) The administrative law judge may grant a motion for leave to intervene if the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings and—

(1) The person seeking to intervene will be bound by any order or decision entered in the action, or

(2) The person seeking to intervene has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

(c) The administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

§ 13.207 Certification of documents.

(a) *Signature required.* The attorney of record, the party, or the party's representative must sign, by hand, electronically, or by other method acceptable to the administrative law judge, or, if the matter is on appeal, to the FAA decisionmaker, each document tendered for filing with the FAA Hearing Docket or served on the administrative law judge and on each other party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with these rules;

(2) Warranted by existing law or that a good faith argument exists for extension, modification, or reversal of existing law; and

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the FAA decisionmaker must:

(1) Strike the pleading signed in violation of this section;

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party;

(3) Deny the motion or request signed in violation of this section;

(4) Exclude the document signed in violation of this section from the record;

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the FAA decisionmaker.

§ 13.208 Complaint.

(a) *Filing.* The agency attorney must file the complaint with the FAA Hearing Docket, or may file a written motion to dismiss a request for hearing under § 13.218 instead of filing a complaint, not later than 20 days after receipt by the agency attorney of a request for hearing. When filing the complaint, the agency attorney must follow the filing instructions in § 13.210. The agency attorney may suggest a location for the hearing when filing the complaint.

(b) *Service.* An agency attorney must serve a copy of the complaint on the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action. When serving the complaint, the agency attorney must follow the service instructions in § 13.211.

(c) *Contents.* A complaint must set forth the facts alleged, any regulation allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

(d) *Motion to dismiss stale allegations or complaint.* Instead of filing an answer to the complaint, a respondent may move to dismiss the complaint, or that part of the complaint, alleging a violation that occurred on or after August 2, 1990, and more than 2 years before an agency attorney issued a notice of proposed civil penalty to the respondent.

(1) An administrative law judge may not grant the motion and dismiss the complaint or part of the complaint if the administrative law judge finds that the agency has shown good cause for any delay in issuing the notice of proposed civil penalty.

(2) If the agency fails to show good cause for any delay, an administrative law judge may dismiss the complaint, or that part of the complaint, alleging a violation that occurred more than 2 years before an agency attorney issued the notice of proposed civil penalty to the respondent.

(3) A party may appeal the administrative law judge's ruling on the motion to dismiss the complaint or any part of the complaint in accordance with § 13.219(b).

§ 13.209 Answer.

(a) *Writing required.* A respondent must file in the FAA Hearing Docket a written answer to the complaint, or may file a written motion pursuant to §§ 13.208 or 13.218 instead of filing an answer, not later than 30 days after service of the complaint. The answer must be dated and signed by the person responding to the complaint. An answer must be typewritten or legibly handwritten.

(b) *Filing.* A person filing an answer or motion under paragraph (a) of this section must follow the filing instructions in § 13.210.

(c) *Service.* A person filing an answer or a motion under paragraph (a) of this section must serve a copy of the answer or motion in accordance with the service instructions in § 13.211.

(d) *Contents.* An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer. The person filing an answer may recommend a location for the hearing when filing the answer.

(e) *Specific denial of allegations required.* A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each allegation in the complaint. All allegations in the complaint not specifically denied in the answer are deemed admitted. A general denial of

the complaint is deemed a failure to file an answer.

(f) *Failure to file answer.* A person's failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.

§ 13.210 Filing of documents.

(a) *General rule.* Unless provided otherwise in this subpart, all documents in proceedings under this subpart must be tendered for filing with the FAA Hearing Docket.

(b) *Methods of filing.* Filing must be by email, personal delivery, mail, or fax.

(c) *Address for filing.* A person filing a document with the FAA Hearing Docket must use the address identified for the method of filing as follows:

(1) *If delivery is in person, or by expedited or overnight express courier service:* Federal Aviation Administration, 600 Independence Avenue SW, Wilbur Wright Building—Suite 2W100, Washington, DC 20597; Attention: FAA Hearing Docket, AGC–70.

(2) *If delivery is via U.S. mail, or U.S. certified or registered mail:* Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Attention: FAA Hearing Docket, AGC–70, Wilbur Wright Building—Suite 2W100.

(3) *If delivery is via email or fax:* The email address and fax number for the FAA Hearing Docket, made available on FAA Office of Adjudication website.

(d) *Date of filing.* If a document is filed by fax or email, the date of filing is the date the email or fax is sent. If a document is filed by personal delivery, the date of filing is the date that personal delivery is accomplished. If a document is filed by mail, the date of filing is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

(e) *Form.* Each document must be typewritten or legibly handwritten.

(f) *Contents.* Unless otherwise specified in this subpart, each document must contain a short, plain statement of the facts on which the person's case rests and a brief statement of the action requested.

(g) *Requirement to File an Original Document and Number of Copies.* A party must file an original document and one copy when filing by personal delivery or by mail. Only one copy must be filed if filing is accomplished by email or fax.

(h) *Filing by email.* A document that is filed by email must be attached as a Portable Document Format (PDF) file to an email. The document must be signed in accordance with § 13.207. The email message does not constitute a submission, but serves only to deliver the attached PDF file to the FAA Hearing Docket.

§ 13.211 Service of documents.

(a) *General.* A person must serve a copy of all documents on each party and the administrative law judge, if assigned, at the time of filing with the FAA Hearing Docket except as provided otherwise in this subpart.

(b) *Service by the FAA Hearing Docket, the Administrative Law Judge, and the FAA Decisionmaker.* The FAA Hearing Docket, the administrative law judge, and the FAA decisionmaker must send documents to a party by personal delivery, mail, fax, or email as provided in this section.

(c) *Methods of service.*—(1) *General.* A person may serve any document by email, personal delivery, mail, or fax.

(2) *Service by email.* Service of documents by email is voluntary and requires the prior consent of the person to be served by email. A person may retract consent to be served by email by filing a written retraction with the FAA Hearing Docket and serving it on the other party and the administrative law judge. A document that is served by email must be attached as a PDF file to an email message.

(d) *Certificate of service.* A certificate of service must accompany all documents filed with the FAA Hearing Docket. The certificate of service must be signed, describe the method of service, and state the date of service.

(e) *Date of service.* If a document is served by fax or served by email, the date of service is the date the email or fax is sent. If a document is served by personal delivery, the date of service is the date that personal delivery is accomplished. If a document is mailed, the date of service is the date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or the mailing date shown by other evidence if there is no certificate of service or postmark.

(f) *Valid service.* A document served by mail or personal delivery that was properly addressed, was sent in accordance with this subpart, and that was returned as unclaimed, or that was refused or not accepted, is deemed to have been served in accordance with this subpart.

§ 13.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, by notice or order of the administrative law judge, or by any applicable statute.

(b) The date of an act, event, or default is not included in a computation of time under this subpart.

(c) The last day of a time period is included unless it is a Saturday, Sunday, or a Federal holiday. If the last day is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 13.213 Extension of time.

(a) The parties may agree to extend for a reasonable period the time for filing a document under this subpart. The party seeking the extension of time must submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the FAA Hearing Docket. The administrative law judge must sign and issue the order if the extension is reasonable.

(b) A party may file a written motion for an extension of time. A written motion for an extension of time must be filed with the FAA Hearing Docket in accordance with § 13.210. The motion must be filed no later than seven days before the document is due unless good cause for the late filing is shown. The party filing the motion must serve a copy of the motion in accordance with § 13.211. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) If the administrative law judge fails to rule on a motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed.

§ 13.214 Amendment of pleadings.

(a) *Filing and service.* A party must file the amendment with the FAA Hearing Docket and must serve a copy of the amendment on the administrative law judge, if assigned, and on all parties to the proceeding.

(b) *Time.* (1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the administrative law judge.

(2) Less than 15 days before the scheduled date of a hearing, the administrative law judge may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) *Responses.* The administrative law judge must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or

other pleading has been filed with the FAA Hearing Docket and served on the administrative law judge and other parties.

§ 13.215 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 13.216 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 13.217 Joint procedural or discovery schedule.

(a) *General.* The parties may agree to submit a schedule for filing all prehearing motions, conducting discovery in the proceedings, or both.

(b) *Form and content of schedule.* If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule setting forth the dates to which the parties have agreed, in accordance with § 13.210, and must also serve a copy of the joint schedule in accordance with § 13.211. The filing of the joint schedule must include a draft order establishing a joint schedule to be signed by the administrative law judge.

(1) The joint schedule may include, but need not be limited to, requests for discovery, objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the joint schedule.

(c) *Time.* The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) *Joint scheduling order.* The joint schedule filed by the parties is a proposed schedule that requires approval of the administrative law judge to become the joint scheduling order.

(e) *Disputes.* The administrative law judge must resolve disputes regarding discovery or disputes regarding compliance with the joint scheduling order as soon as possible so that the parties may continue to comply with the joint scheduling order.

(f) *Sanctions for failure to comply with joint schedule.* If a party fails to comply with a joint scheduling order, the administrative law judge may impose any of the following sanctions, proportional to the party's failure to comply with the order:

(1) Strike the relevant portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of the relevant portion of a party's evidence at the hearing, or

(4) Preclude the relevant portion of the testimony of that party's witnesses at the hearing.

§ 13.218 Motions.

(a) *General.* A party applying for an order or ruling not specifically provided in this subpart must do so by filing a motion in accordance with § 13.210. A party must serve a copy of each motion in accordance with § 13.211.

(b) *Form and contents.* A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) *Filing of motions.* A motion made prior to the hearing must be in writing. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion not later than 30 days before the hearing in the FAA Hearing Docket in accordance with § 13.210, and must serve a copy on the administrative law judge, if assigned, and on each party in accordance with § 13.211. Motions introduced during a hearing may be made orally on the record unless the administrative law judge directs otherwise.

(d) *Responses to motions.* Any party may file a response, with affidavits or other evidence in support of the response, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the response may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

(1) *Discovery motions.* The administrative law judge must resolve all pending discovery motions not later than 10 days before the hearing.

(2) *Prehearing motions.* The administrative law judge must resolve all pending prehearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) *Motions made during the hearing.* The administrative law judge must issue rulings and orders on oral motions. Oral rulings or orders on motions must be made on the record.

(f) *Specific motions.* The motions that a party may file include but are not limited to the following:

(1) *Motion to dismiss for insufficiency.* A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 10 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a provision of the Federal aviation statute listed in the first sentence in 49 U.S.C. 46301(d)(2) or in 49 U.S.C. 47531, or any implementing rule, regulation, or order, or a violation of the Federal hazardous materials transportation statute, 49 U.S.C. 5121–5128, or any implementing rule, regulation or order.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under § 13.219(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint in the FAA Hearing Docket and must serve a copy of the complaint on the administrative law judge and on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may appeal to

the FAA decisionmaker under § 13.233. If required by the decision on appeal, the agency attorney must file a complaint in the FAA Hearing Docket and must serve a copy of the complaint on the administrative law judge and each party not later than 10 days after service of the FAA decisionmaker's decision on appeal.

(ii) *Motion to dismiss a complaint.* A respondent may file a motion to dismiss a complaint instead of filing an answer, including a motion to dismiss a stale complaint or allegations as provided in § 13.208. If the motion to dismiss is not granted, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the administrative law judge's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the agency attorney may file an appeal in the FAA Hearing Docket under § 13.233 and must serve each other party. If required by the FAA decisionmaker's decision on appeal, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the decision on appeal.

(3) *Motion for more definite statement.* A party may file a motion for more definite statement of any pleading which requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) *Complaint.* A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the administrative law judge grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the administrative law judge may strike the allegations in the complaint to which the motion is directed. If the administrative law judge denies the motion, the respondent must file an answer in the FAA Hearing Docket and must serve a copy of the answer on the administrative law judge and on each party not later than 10 days after service of the order of denial.

(ii) *Answer.* An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the administrative law judge grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the administrative law judge must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) *Motion to strike.* Any party may make a motion to strike any insufficient allegation or defense, or any redundant, immaterial, impertinent, or scandalous matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading. A motion to strike must be filed in the FAA Hearing Docket and served on the administrative law judge, if assigned, and on each other party.

(5) *Motion for decision.* A party may make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge has officially noticed, or evidence introduced during the hearing shows that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party making the motion for decision has the burden of showing that there is no genuine issue of material fact disputed by the parties.

(6) *Motion for disqualification.* A party may file a motion for disqualification in the FAA Hearing Docket and must serve a copy on the administrative law judge and on each party. A party may file the motion at any time after the administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge files an initial decision in the proceedings.

(i) *Motion and supporting affidavit.* A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors showing disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) *Response.* A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) *Decision on motion for disqualification.* The administrative law judge must render a decision on the motion for disqualification not later than 15 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge fails to rule on a party's motion for disqualification within 15 days after the motion has been filed, the motion is deemed granted.

(iv) *Appeal.* A party may appeal the administrative law judge's denial of the motion for disqualification in accordance with § 13.219(b).

(7) *Motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer.* The FAA decisionmaker may treat motions for reconsideration of an initial decision, order dismissing a complaint, order dismissing a request for hearing or order dismissing a request for hearing and answer as a notice of appeal under § 13.233, and if the motion was filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker will issue a briefing schedule.

§ 13.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge to the FAA decisionmaker until the initial decision has been entered on the record. A decision or order of the FAA decisionmaker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review as provided in § 13.235.

(b) *Interlocutory appeal for cause.* If a party orally requests or files a written request for an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. Any written request for interlocutory appeal for cause must be filed in the FAA Hearing Docket and served on each party and on the administrative law judge. If the

administrative law judge grants the request, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. The administrative law judge must grant the request if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) *Interlocutory appeals of right.* If a party notifies the administrative law judge of an interlocutory appeal of right, the proceedings are stayed until the FAA decisionmaker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal of right, without the consent of the administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings;

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 13.215; or

(3) A ruling or order by the administrative law judge in violation of § 13.205(b).

(d) *Procedure.* A party must file a notice of interlocutory appeal, with supporting documents, with the FAA Hearing Docket, and must serve a copy of the notice and supporting documents on each party and the administrative law judge not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, as appropriate. A party must file a reply, if any, with the FAA Hearing Docket, and serve a copy on each party and the administrative law judge not later than 10 days after service of the appeal. The FAA decisionmaker must render a decision on the interlocutory appeal on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) The FAA decisionmaker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

§ 13.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section without the consent or approval of the administrative law judge at any time after a complaint has been filed in the proceedings.

(b) *Methods of discovery.* The following methods of discovery are permitted under this section: Depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party must not file written interrogatories and responses, requests for production of documents or tangible items and responses, and requests for admission and response with the FAA Hearing Docket or serve them on the administrative law judge. In the event of a discovery dispute, a party must attach a copy of the relevant documents in support of a motion made under this section.

(c) *Service on the agency.* A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) *Time for response to discovery requests.* Unless otherwise directed by this subpart or agreed by the parties, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) *Scope of discovery.* Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to any party's claim or defense, including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party has no ground to object to a discovery request on the basis that the information sought would not be admissible at the hearing.

(f) *Limiting discovery.* The administrative law judge must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) *Confidential orders.* A party or person who has received a discovery request for information that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order in the FAA Hearing Docket in accordance with § 13.210 and must serve a copy of the motion for a confidential order on each party and on the administrative law judge in accordance with § 13.211.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge must preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge must provide:

(i) An opportunity for review of the document by the parties off the record;

(ii) Procedures for excluding the information from the record; and

(iii) Order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(h) *Protective orders.* A party or a person who has received a request for discovery may file a motion for protective order in the FAA Hearing Docket and must serve a copy of the motion for protective order on the administrative law judge and each other party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the administrative law judge may:

(1) Deny the discovery request;

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery; or

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(i) *Duty to supplement or amend responses.* A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness's testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(j) *Depositions.* (1) *Form.* A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) *Administration of oaths.* Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. In foreign countries, a party must take a deposition in any manner allowed by the Federal Rules of Civil Procedure.

(3) *Notice of deposition.* A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, the administrative law judge, and each party not later than 7 days before the deposition. The notice must be filed in the FAA Hearing Docket simultaneously. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the administrative law judge. The party noticing a deposition must attach a copy of any subpoena *duces tecum* requesting that materials be produced at the deposition to the notice of deposition.

(4) *Use of depositions.* A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory must be counted as a separate interrogatory.

(2) A party must file a motion for leave to serve additional interrogatories on a party with the administrative law judge before serving additional interrogatories on a party. The administrative law judge may grant the motion only if the party shows good cause.

(l) *Requests for admission.* A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) *Time.* A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The administrative law judge may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) *Response.* A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the administrative law judge determines that a response does not comply with the requirements of this paragraph or that the response is insufficient, the matter is deemed admitted.

(3) *Effect of admission.* Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(m) *Motion to compel discovery.* A party may make a motion to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before making a motion to compel if a person refuses to answer. Any motion to compel must be filed with the FAA Hearing Docket and served on the administrative law judge and other parties in accordance with §§ 13.210 and 13.211, respectively.

(n) *Failure to comply with a discovery order.* If a party fails to comply with a discovery order, the administrative law judge may impose any of the following sanctions proportional to the party's failure to comply with the order:

(1) Strike the relevant portion of a party's pleadings;

(2) Preclude prehearing or discovery motions by that party;

(3) Preclude admission of the relevant portion of a party's evidence at the hearing; or

(4) Preclude the relevant portion of the testimony of that party's witnesses at the hearing.

§ 13.221 Notice of hearing.

(a) *Notice.* The administrative law judge must provide each party with notice of the date, time and location of the hearing at least 60 days before the hearing date.

(b) *Date, time, and location of the hearing.* The administrative law judge to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

(c) *Earlier hearing.* With the consent of the administrative law judge, the parties may agree to hold the hearing on

an earlier date than the date specified in the notice of hearing.

§ 13.222 Evidence.

(a) *General.* A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) *Admissibility.* A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The administrative law judge must admit any relevant oral, documentary, or demonstrative evidence introduced by a party but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) *Hearsay evidence.* Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 13.223 Standard of proof.

The administrative law judge must issue an initial decision or must rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of reliable, probative, and substantial evidence.

§ 13.224 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 13.225 Offer of proof.

A party whose evidence has been excluded by a ruling of the administrative law judge may offer the evidence for the record on appeal.

§ 13.226 Public disclosure of information.

(a) The administrative law judge may order that any information contained in the record be withheld from public disclosure. Any party or interested person may object to disclosure of information in the record by filing and serving a written motion to withhold specific information in accordance with §§ 13.210 and 13.211 respectively. A party may file a motion seeking to protect from public disclosure information contained in a document that the party is filing at the same time it files the document. The person or party must state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge must grant the motion to withhold if, based on the motion and any response to the motion, the administrative law judge determines that: Disclosure would be detrimental to aviation safety; disclosure would not be in the public interest; or the information is not otherwise required to be made available to the public.

§ 13.227 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness for any party other than the FAA in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for the FAA in any proceeding governed by this subpart to which the respondent is a party.

§ 13.228 Subpoenas.

(a) *Request for subpoena.* The administrative law judge, upon application by any party to the proceeding, may issue subpoenas requiring the attendance of witnesses or the production of documents or tangible things at a hearing or for the purpose of taking depositions, as permitted by law. A request for a subpoena must show its general relevance and reasonable scope. The party must serve the subpoena on the witness or the holder of the documents or tangible items as permitted by applicable statute. A request for a subpoena must be filed and served in accordance with §§ 13.210 and 13.211, respectively. Absent good cause shown, the filing and service must be completed as follows:

(1) 15 days before a scheduled deposition under the subpoena; or

(2) 30 days before a scheduled hearing where attendance at the hearing is sought.

(b) *Motion to quash or modify the subpoena.* A party or any person upon whom a subpoena has been served may file in the FAA Hearing Docket a motion to quash or modify the subpoena and must serve a copy on the administrative law judge and each party at or before the time specified in the subpoena for compliance. The movant must describe, in detail, the basis for the motion to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the administrative law judge on the motion.

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the appropriate U.S. district court to seek judicial enforcement of the subpoena.

§ 13.229 Witness fees.

(a) *General.* The party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) *Amount.* Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and allowances provided for under 28 U.S.C. 1821.

§ 13.230 Record.

(a) *Exclusive record.* The pleadings, transcripts of the hearing and prehearing conferences, exhibits admitted into evidence, rulings, motions, applications, requests, briefs, and responses thereto, constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding. Any proceedings regarding the disqualification of an administrative law judge must be included in the record. Though only exhibits admitted into evidence are part of the record before an administrative law judge, evidence proffered but not admitted is also part of the record on appeal, as provided by § 13.225.

(b) *Examination and copying of record.* The parties may examine the record at the FAA Hearing Docket and may obtain copies of the record upon payment of applicable fees. Any other person may obtain copies of the releasable portions of the record in accordance with applicable law.

§ 13.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The administrative law judge may request written arguments during the hearing if

the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the administrative law judge issues an initial decision in the proceedings, the administrative law judge must allow the parties to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) *Post-hearing briefs.* The administrative law judge may request written post-hearing briefs before the administrative law judge issues an initial decision in the proceedings if the administrative law judge finds that submission of written arguments would be reasonable. If a party files a written post-hearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, but not more than 30 days after receipt of the transcript, to prepare and submit the briefs. A party must file and serve any post-hearing brief in in accordance with §§ 13.210 and 13.211, respectively.

§ 13.232 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge must include findings of fact and conclusions of law, as well as the grounds supporting those findings and conclusions, for all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the administrative law judge's discretion, and the amount of any civil penalty found appropriate by the administrative law judge. The administrative law judge must also include a discussion of the basis for any order issued in the proceedings. The administrative law judge is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the FAA decisionmaker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge's oral initial decision and order must be on the record.

(c) *Written decision.* The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last post-hearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

(d) *Reconsideration of an initial decision.* The FAA decisionmaker may treat a motion for reconsideration of an initial decision as a notice of appeal under § 13.233, and if the motion was filed within the time allowed for the filing of a notice of appeal, the FAA decisionmaker will issue a briefing schedule, as provided in § 13.218.

(e) *Order assessing civil penalty.* Unless appealed pursuant to § 13.233, the initial decision issued by the administrative law judge is considered an order assessing civil penalty if the administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted. The administrative law judge may not assess a civil penalty exceeding the amount sought in the complaint.

§ 13.233 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the administrative law judge's initial decision, and any decision not previously appealed to the FAA decisionmaker on interlocutory appeal pursuant to § 13.219, by filing a notice of appeal in accordance with § 13.210 no later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties. The party must serve a copy of the notice of appeal on each party in accordance with § 13.211. A party is not required to serve any documents under § 13.233 on the administrative law judge.

(b) *Issues on appeal.* In any appeal from a decision of an administrative law judge, the FAA decisionmaker considers only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and

(3) Whether the administrative law judge committed any prejudicial errors.

(c) *Perfecting an appeal.* Unless otherwise agreed by the parties, a party must perfect an appeal to the FAA decisionmaker no later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the parties by filing an appeal brief in accordance with § 13.210 and serving a copy on each other party in accordance with § 13.211.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to perfect the appeal, the FAA decisionmaker must serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension in accordance with § 13.210 and must serve a copy of the motion on each party under § 13.211. Any party may file a written response to the motion for extension no later than 10 days after service of the motion. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(d) *Appeal briefs.* A party must file the appeal brief in accordance with § 13.210 and must serve a copy of the appeal brief on each party in accordance with § 13.211.

(1) A party must set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also must set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party must specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

(2) The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker.

(e) *Reply brief.* Unless otherwise agreed by the parties, any party may file a reply brief in accordance with § 13.210 not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party in accordance with § 13.211. If the party

relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) *Extension of time by agreement of the parties.* The parties may agree to extend the time for filing a reply brief with the consent of the FAA decisionmaker. If the FAA decisionmaker grants an extension of time to file the reply brief, the FAA decisionmaker must serve a letter confirming the extension of time on each party.

(2) *Written motion for extension.* If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension in accordance with § 13.210 and must serve a copy of the motion on each party in accordance with § 13.211. Any party choosing to respond to the motion must file and serve a written response to the motion no later than 10 days after service of the motion. The FAA decisionmaker may grant an extension if good cause for the extension is shown in the motion.

(f) *Other briefs.* The FAA decisionmaker may allow any person to submit an *amicus curiae* brief in an appeal of an initial decision. A party may not file more than one brief unless permitted by the FAA decisionmaker. A party may petition the FAA decisionmaker, in writing, for leave to file an additional brief and must serve a copy of the petition on each party. The party may not file the additional brief with the petition. The FAA decisionmaker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The FAA decisionmaker will allow a reasonable time for the party to file the additional brief.

(g) *Number of copies.* A party must file the original plus one copy of the appeal brief or reply brief, but only one copy if filing by email or fax, as provided in § 13.210.

(h) *Oral argument.* The FAA decisionmaker may permit oral argument on the appeal. On the FAA decisionmaker's own initiative or upon written motion by any party, the FAA decisionmaker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) *Waiver of objections on appeal.* If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The FAA decisionmaker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection or argument is based on evidence contained on the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, when considering the issues on appeal. The FAA decisionmaker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary. The FAA decisionmaker may assess a civil penalty but must not assess a civil penalty in an amount greater than that sought in the complaint.

(1) The FAA decisionmaker may raise any issue, on the FAA decisionmaker's own initiative, that is required for proper disposition of the proceedings. The FAA decisionmaker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the FAA decisionmaker requires the consideration of additional testimony or evidence, the FAA decisionmaker will remand the case to the administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the FAA decisionmaker is solely an issue of law or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the FAA decisionmaker.

(2) The FAA decisionmaker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 13.235, a final decision and order of the Administrator will be considered an order assessing civil penalty if the FAA decisionmaker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is precedent in any other civil penalty action. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the FAA decisionmaker is not precedent in any other civil penalty action.

§ 13.234 Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal.

(a) *General.* Any party may petition the FAA decisionmaker to reconsider or modify a final decision and order issued by the FAA decisionmaker on appeal from an initial decision. A party must file a petition to reconsider or modify in accordance with § 13.210 not later than 30 days after service of the FAA decisionmaker's final decision and order on appeal and must serve a copy of the petition on each party in accordance with § 13.211. A party is not required to serve any documents under § 13.234 on the administrative law judge. The FAA decisionmaker will not reconsider or modify an initial decision and order issued by an administrative law judge that has not been appealed by any party to the FAA decisionmaker.

(b) *Number of copies.* The parties must file the original plus one copy of the petition or the reply to the petition, but only one copy if filing by email or fax, as provided in § 13.210.

(c) *Contents.* A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the FAA decisionmaker's decision, the party must describe these allegations and must describe, and support, the basis for the allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) *Repetitious and frivolous petitions.* The FAA decisionmaker will not consider repetitious or frivolous petitions. The FAA decisionmaker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) *Reply petitions.* Any party replying to a petition to reconsider or modify must file the reply in accordance with § 13.210 no later than 10 days after service of the petition on that party, and must also serve a copy of the reply on each party in accordance with § 13.211.

(f) *Effect of filing petition.* The filing of a timely petition under this section will stay the effective date of the FAA decisionmaker's decision and order on

appeal until final disposition of the petition by the FAA decisionmaker.

(g) *FAA decisionmaker's decision on petition.* The FAA decisionmaker has discretion to grant or deny a petition to reconsider. The FAA decisionmaker will grant or deny a petition to reconsider within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The FAA decisionmaker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the FAA decisionmaker determines may be necessary.

§ 13.235 Judicial review of a final decision and order.

(a) In cases under the Federal aviation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 46110(a), and, as applicable, in 49 U.S.C. 46301(d)(7)(D)(iii), 46301(g), or 47532.

(b) In cases under the Federal hazardous materials transportation statute, a party may seek judicial review of a final decision and order of the Administrator, as provided in 49 U.S.C. 5127.

(c) A party seeking judicial review of a final order issued by the Administrator may file a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the United States Court of Appeals for the circuit in which the party resides or has its principal place of business.

(d) The party must file the petition for review no later than 60 days after service of the Administrator's final decision and order.

§ 13.236. Alternative dispute resolution.

Parties may use mediation to achieve resolution of issues in controversy addressed by this subpart. Parties seeking alternative dispute resolution services may engage the services of a mutually acceptable mediator. The mediator must not participate in the adjudication under this subpart of any matter where he serves as a mediator. Mediation discussions and submissions will remain confidential consistent with the provisions of the Administrative Dispute Resolution Act and other applicable federal laws.

Issued under the authority provided by 49 U.S.C. 106(f) and 44701(a) in Washington, DC, on December 18, 2018.

Charles M. Trippe, Jr.

Chief Counsel.

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FEDERAL REGISTER

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Part IV

The President

Proclamation 9842—Addressing Mass Migration Through the Southern Border of the United States

Federal Register
Vol. 84, No. 29
Tuesday, February 12, 2019

Presidential Documents

Title 3—

The President

Proclamation 9842 of February 7, 2019

Addressing Mass Migration Through the Southern Border of the United States

By the President of the United States of America

A Proclamation

In Proclamation 9822 of November 9, 2018 (Addressing Mass Migration Through the Southern Border of the United States), I found that our immigration and asylum system is in crisis as a consequence of the mass migration of aliens across the border between the United States and Mexico (southern border). Accordingly, pursuant to sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a), respectively), I found that the unlawful entry of aliens through that border is detrimental to the interests of the United States and suspended and limited entry of such aliens. I exempted from the scope of Proclamation 9822 any alien who entered the United States at a port of entry and properly presented for inspection, as well as any lawful permanent resident of the United States.

Section 2(d) of Proclamation 9822 directed the Secretary of State, the Attorney General, and the Secretary of Homeland Security jointly to submit to me a recommendation on whether an extension or renewal of the suspension and limitation on entry in Proclamation 9822 is in the interests of the United States. Those officials have now jointly recommended extending the suspension and limitation for an additional 90 days.

As that recommendation reflects, the problem of large numbers of aliens traveling through Mexico to enter our country unlawfully or without proper documentation has not materially improved, and indeed in several respects has worsened, since November 9, 2018. An average of approximately 2,000 inadmissible aliens continue to enter the United States each day at our southern border. And large, organized groups of aliens continue to travel through Mexico towards the United States with the reported intention to enter the United States unlawfully or without proper documentation.

The ability of the United States to address those problems has also been hampered by a nationwide injunction issued by a United States District Judge in the Northern District of California. That injunction currently prevents the Attorney General and the Secretary of Homeland Security from implementing an interim final rule that would render any alien who enters the country in contravention of a proclamation limiting or suspending entry at the southern border, including Proclamation 9822, ineligible to be granted asylum. The United States is appealing that injunction. Should the injunction be lifted, aliens who enter the United States unlawfully through the southern border in contravention of this proclamation will be ineligible to be granted asylum under that interim final rule.

As President, I must act to protect the national interest, and to maintain an effectively functioning asylum system for legitimate asylum seekers who demonstrate that they have fled persecution and warrant the many special benefits associated with being granted asylum. In view of the foregoing circumstances, and the joint recommendation from the Secretary of State, the Attorney General, and the Secretary of Homeland Security, I have determined to extend the suspension and limitation, as set forth below, on

entry into the United States through the southern border established by Proclamation 9822.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the INA, hereby find that, absent the measures set forth in this proclamation, the entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Suspension and Limitation on Entry.* The entry of any alien into the United States across the international boundary between the United States and Mexico is hereby suspended and limited, subject to section 2 of this proclamation. That suspension and limitation shall expire 90 days after the date of this proclamation or the date on which an agreement permits the United States to remove aliens to Mexico in compliance with the terms of section 208(a)(2)(A) of the INA (8 U.S.C. 1158(a)(2)(A)), whichever is earlier.

Sec. 2. *Scope and Implementation of Suspension and Limitation on Entry.* (a) The suspension and limitation on entry pursuant to section 1 of this proclamation shall apply only to aliens who enter the United States after the date of this proclamation.

(b) The suspension and limitation on entry pursuant to section 1 of this proclamation shall not apply to any alien who enters the United States at a port of entry and properly presents for inspection, or to any lawful permanent resident of the United States.

(c) Nothing in this proclamation shall limit an alien entering the United States from being considered for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) or protection pursuant to the regulations promulgated under the authority of the implementing legislation regarding the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or limit the statutory processes afforded to unaccompanied alien children upon entering the United States under section 279 of title 6, United States Code, and section 1232 of title 8, United States Code.

(d) No later than 75 days after the date of this proclamation, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall jointly submit to the President, through the Assistant to the President for National Security Affairs, a recommendation on whether an extension or renewal of the suspension or limitation on entry in section 1 of this proclamation is in the interests of the United States.

Sec. 3. *Interdiction.* The Secretary of State and the Secretary of Homeland Security shall continue to consult with the Government of Mexico regarding appropriate steps—consistent with applicable law and the foreign policy, national security, and public-safety interests of the United States—to address the approach of large groups of aliens traveling through Mexico with the intent of entering the United States unlawfully, including efforts to deter, dissuade, and return such aliens before they physically enter United States territory through the southern border.

Sec. 4. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the failure to follow certain procedures, the relevant executive branch officials shall

implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 5. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

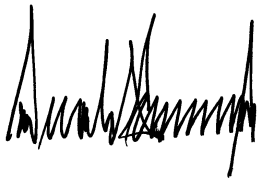
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation 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.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of February, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



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